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Tax Guardian

AUTHORITATIVE - RELEVANT - GLOBAL EXCELLENCE

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ENHANCING TAXPAYER RIGHTS VIA ADMINISTRATIVE REFORMS

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CHARTERED TAX INSTITUTE OF MALAYSIA

- A STUDY OF TAX COMPLIANCE BEHAVIOUR IN AUSTRALIA
- FINDING REAL VALUE IN REITS
- GLOBAL EMERGING MIDDLE IS THE NEXT BIG MARKET

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Tax Guardian

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INVITATION TO WRITE

The Institute welcomes original contributions which are of interest to tax professionals, lawyers and academicians. They may cover local or international tax developments. Article contributions should be written in UK English. All articles should be between 1,800 to 2,000 words submitted in a typed single spaced format using font size 10 in Microsoft Word via email.

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

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From the President's Desk

SM THANNEERMALAI

It has been a very exciting period since I took over the Presidency of the Chartered Tax Institute of Malaysia in June 2011.

Developments have been both internal and external.

The key internal developments have been the investments made in recruiting additional staff particularly in the technical department for the secretariat to support the increased level of activity, and the introduction of an integrated management system to manage data with the aim of providing enhanced focused services to members. During my tenure as President of this Institute I plan to continue investing in people and technology and build up a reservoir of information, with the aim of providing support to our members such that they can rely on CTIM as a sole source for all tax and related information needed to advise their clients or bosses in industry or to carry on their business.

External developments in the tax arena have been numerous. The Council Members and the Secretariat have been engaging the IRB and the MoF continuously in the following areas:

- Deferment of the imposition of penalty imposed (applying new rates) on late filing of tax returns to 30 September 2011
- Working together with SSM on the taxation aspects of the Limited Liability Partnerships – we have recommended that an option be made available i.e. being treated as a partnership or as a corporate entity – we are waiting to hear from the SSM and the MOF on their final decision.
- Review of the stamp duty provisions upon the request of the IRB – recommended that the current instrument based system of taxation be retained with minor changes, as opposed to introducing a new transaction based stamp duty regime
- Engagement with the MOF on a regular basis on our feedback on the tax impact of the introduction of the IFRS. This is still ongoing and the feedback is available to members on our website.
- Engaging the MOF and the IRB on the need to retain the current regime of licensing tax agents under Section 153 of the Income Tax Act 1967. In a nutshell, CTIM is agreeable to dispensing with the need for tax agents to be licensed under the Section 153 regime. CTIM has indicated its willingness to take over the responsibilities of managing the affairs of its members, to ensure they provide a quality and responsible service to the the taxpayers, and deal with the relevant government authorities such as the IRB in a professional manner. We have assured the authorities that we have all the necessary protocols and support mechanisms to take on this responsibility.
- Working with the tax review panel on the approach that should be adopted in licensing our members to provide goods and services tax (GST) services to their clients in the future, when GST is introduced. This is ongoing.

- In February and March 2012 we have been running a number of roadshows across Malaysia to deal with the operational issues relating to tax compliance. I hope it has provided you an opportunity to express your views on the compliance matters directly to the IRB officials.

As I have said repeatedly during my opening remarks during the IRB-CTIM roadshows across the country, the tax profession is facing many significant challenges which would adversely affect the tax profession, if they are not addressed satisfactorily. I believe the most significant one is the rising cost of recruiting, retaining and training staff, in an environment where clients are constantly applying pressure to reduce our fees. I believe it is time for the tax profession to react and say "enough is enough" and we ought to be paid for the value we deliver to our clients. Here, my plan is for CTIM through its newly formed Public Practice Committee, to consider providing guidance on the minimum fees CTIM members should be charging for the different types of compliance work. The Committee will need your support in arriving at the guidance and in the course of it they may contact you either through a general survey (or several of you directly) to get your thoughts on how we should approach the matter. I urge you to please respond 100 % and please do not take the view of "let my neighbour do the job for me "

Finally I wish to record a big note of thanks to my 15 fellow Council Members and Secretariat staff who have worked relentlessly to help CTIM deliver the services to the members.

Thank you.

Editor'sNote

DATO' RAYMOND LIEW LEE LEONG

ENHANCING TAX COMPLIANCE

Taxation continues to be an important revenue instrument for governments. Properly designed and enforced, taxation can also be an important ingredient in attracting investment and encouraging reinvestment, which is a key strategic plank for Malaysia in its drive to become a high income developed nation.

In order to raise tax revenue, it's important that the government's tax agency – in this case, the Inland Revenue Board or IRB – gets compliance from taxpayers. Aptly, in this issue we look at the theme of tax compliance and non-compliance, together with related topics like taxpayer psychology and tax reforms.

In our cover article, Enhancing Taxpayer Rights Via Administrative Reforms, Dr. Veerinderjeet Singh argues that tax reforms are an on-going process that must be based on regional and worldwide developments as well as the economic / structural developments and needs of a country.

While tax reforms are needed to make tax enforcement and compliance more effective and efficient, research has also shown that educating and informing taxpayers and providing better services may be a more effective and less costly method of securing compliance compared to punitive measures and deterrents to counter non-compliance. It is also important to ensure that there is a balance between taxpayer rights and the powers granted to the tax agency in enforcing the tax law.

Dr. Veerinderjeet also writes that "Compliance management is not simply about audits, verification and enforcement. It is also about making it as easy as possible for people to comply." This is definitely food for thought for tax authorities and regulators, and it is hoped that Malaysia will amend its systems accordingly to become more progressive and customer-centric, and importantly, facilitate business as well. In this climate of political reform, where the political leadership seems intent on ringing in positive change, reforms – but not draconian changes! - would augur well for taxpayers in general.

To strengthen the theme of compliance, we look to Australia for best practices and lessons learnt.

In his research on tax compliance behaviour in Australia, Dr. Ken Devos of Monash University stresses that an important issue for any government and revenue collecting authority is to obtain knowledge and understanding of the reasons for taxpayer non-compliance, because the amount of tax lost through evasion is potentially enormous. In Australia an estimate of the underground economy was USD10 billion or 1.2% of the level of GDP in 2002-03. Consequently to prevent the erosion of government revenue, further research is required into understanding taxpayer attitudes and behaviour. Perhaps these lessons can be applied in the Malaysian context to improve tax compliance and systems.

Meanwhile, we also catch up on real estate investment trusts or REITs. In this competitive economic environment, countries – like companies and organisations – are constantly trying to outdo each other to attract investments. Malaysia needs to take stock of its REITs offerings and examine how we can offer better tax incentives – such as withholding taxes - to further promote our REIT market, writes Jennifer Chang of PwC.

Our competitiveness on the global scale might also be improved if we cease to fiddle with reinvestment allowances (RA), which are highly changeable in Malaysia. Business decisions cannot be based on an ever-fluid tax incentive, and businesses like predictability and stability. "The changes in a tax incentive like RA nevertheless can be avoided and if avoided, this tax incentive can continue to generate benefits to our economy. The multiplier effect of any expansion, modernisation, diversification or automation projects to our economy certainly outshines the tax forgone via this tax incentive," noted Daniel Lim of Deloitte Malaysia in Reinvestment Allowance... Cliffhanger: Changes in Direction Regularly.

Other similar nuggets of wisdom and thought leadership lie ahead in our pages, and I strongly urge our valued members to read *Tax Guardian* carefully in order to remain abreast of the latest thinking and developments. Read and keep yourselves current, or risk becoming obsolete in a Malaysia that's embracing change. I think the choice is clear.

Editor

Asia Oceania Tax Consultants Association (AOTCA) International Tax Conference

AOTCA 2011 was hosted by Indonesia in November 2011 and attended by the President and the Executive Director of CTIM. The Business Report for FY 2011 presented by the AOTCA President touched on general administration, information sharing, relationships with Confederation Fiscale Europeene (CFE) and the OECD and inputs into the formulation of the taxpayer's charter.

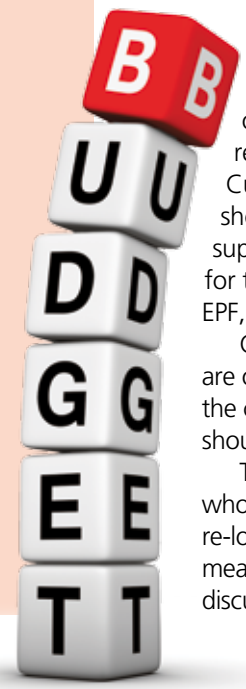
The Conference proper had speakers from various member countries who talked on anti-tax avoidance rules and recent developments in transfer pricing.

CTIM requested and was able to obtain feedback on the tax license regimes of AOTCA member body countries. The feedback obtained was analysed and submitted to the Ministry of Finance (MoF) based on MoF's request for the purpose of reviewing the Malaysian tax agent license requirements.

2012 Budget Issues

As in the past, the Institute had a joint meeting with the MIA and MICPA on 28 October 2011 to discuss issues relating to the 2012 Budget. However, in view of the importance of the proposed amendments to tax administration provisions of the Income Tax Act 1967, members were alerted of the same through e-CTIM No. 43 and 46/2011. A separate submission (Key Issues on 2012 Budget and Finance (No.2) Bill 2011) concentrating on the 4 key issues affecting all tax practitioners was submitted to MoF on 21 Nov 2011. Several of these proposed amendments were withdrawn subsequently.

A Joint Memorandum on Post 2012 Budget Issues was finalised and submitted to MoF and the IRB on 21 February 2012.



Briefing on Service Tax Treatment on Outsourcing of Employees / Human Resource Management Industry

CTIM was invited to a briefing on the treatment of service tax on outsourcing of employees / human resource management industry. The Royal Malaysian Customs (RMC) suggestd that the supply of employees should fall under management services because the supplier provides human resource management services for their customers such as managing employees' salary, EPF, SOCSO, medical, etc.

CTIM and representatives from the industry associations are of the view that the actual service being procured by the customer is the outsourcing of employee service and it should fall under employment services in Group G.

The Deputy Director-General of Customs and Excise who chaired the discussion concluded that the RMC would re-look into this matter and the points raised, especially the meaning of "for a period of time" and will call for another discussion before making a decision.

IRB-CTIM Roadshow

On 27 February 2012 at the Seri Pacific Hotel in Kuala Lumpur, the Chief Executive Officer of the Inland Revenue Board (IRB), Dato' Dr. Mohd Shukor Hj. Mahfar, launched the IRB-CTIM Roadshow.

The event, jointly organised by the IRB and the Chartered Tax Institute of Malaysia, was aimed at bringing tax filing and tax payment knowledge to the public to enhance tax compliance.

Themed "Enhancing Tax Compliance: Avoiding Common Mistakes and Improving Efficiency", it showcased key personalities of the IRB who shared with tax professionals, and the public alike, how to derive maximum benefits from the e-filing system and the e-payment system.

The panel discussions on the Filing of Tax Returns and Payment of Tax covered the common mistakes to avoid in these areas. Problems faced by taxpayers in completing their Tax Returns and consequences of non-payment of taxes were also highlighted, in addition to the post-judgement actions taken by the IRB in respect of tax collection. The audience took the opportunity to get answers from the horses' mouth, so to speak, as they fielded question on pressing issues. Some written questions from the audience were also accepted.

At the inaugural event, the President of CTIM expressed his gratitude for the invaluable opportunity to collaborate with the IRB on the event and allow the audience to interact with the IRB; the event was one where issues and concerns could be raised and response received in real time.

In his keynote address, Dato' Dr. Mohd Shukor announced the achievements of IRB, and urged the public to rally to work hand-in-hand with the IRB.

The roadshow would go to Johor Bahru, Penang, Kota Kinabalu and Kuching (on 5 March, 19 March, 26 March and 27 March respectively).

CTIM PERAK BRANCH: TAX FORUM

CTIM held its annual full day Tax Forum 2012 on 15 March 2012 at the Syuen Hotel, Ipoh.

YBhg Dato' Chang Ko Youn was invited to open the forum. In his opening address, Dato' Chang commented on the Malaysian tax structure, as well as adding his views on time management brought up in the speech by the President of CTIM. He mentioned that the LHDN plays an important role in revenue collection for the country as well as CTIM that also plays an important role in updating the technical knowledge and upholding the professional ethics of the tax agents so that taxpayers pay tax according to the regulations.

The Forum then commenced with a very detailed and informative talk on Corporate Tax Planning and there were 120 delegates including officers from the LHDN and the Customs Department.

The Forum concluded with a Gala Dinner later in the evening with the presence of the VIP guest, Liew Nee Fook. The programme for the dinner was a presentation of popular and classical tunes by the Kinta Valley Wind Orchestra and lucky draws for the patrons and guests.

CTIM PERAK MEMBERS' DIALOGUE

On 27 December 2011, members in Perak were treated to a members' dialogue cum luncheon held at a local club here in Ipoh graced by the presence of the CTIM President, two Council Members and a technical manager of CTIM. The event was well attended.

The President shared his plans for the Institute, updated the members present of the current status of ongoing developments and welcomed feedback. Among the matters noted were the expansion of the CTIM secretariat, MoUs with China, Australia and Indonesia, the Integrated Management System (IMS), investing in Technology to facilitate dissemination of information (ie e-CTIM etc.), sub-committees initiatives, attracting new members, practicing certificates etc.

The President also urged the CTIM Perak committee to engage with the IRB, Customs and relevant state agencies in Perak to promote the CTIM brand.

Council Members and the technical manager present chipped in to update members on recent developments involving the Ministry of Finance and the Inland Revenue in relation to the tax profession. Members present also shared their views.

It was indeed an unforgettable encounter for many as members in Perak had never been so timely updated before with these recent ongoing developments.

The President and his entourage then capped off the visit to Ipoh, Perak with a courtesy call to the IRB with the Branch Chairman, Chak Kong Keong and Committee Members of CTIM Perak.

Tax Treatment of Limited Liability Partnerships

On 4 August 2011, the Institute received an invitation from SSM to a Consultation Meeting on Tax Treatment of Limited Liability Partnerships (LLP) in Malaysia. A tele-conference with MIA and MICPA representatives was held before the Consultation Meeting on 16 August 2011. Subsequently CTIM had a meeting with MICPA on 25 August and submitted a Joint Memorandum to SSM on 9 September 2011.

On 11 November 2011, SSM called for a further meeting to discuss the proposals suggested and to request for recommendations on anti-avoidance measures. A Joint Meeting with MIA and MICPA was held on 23 November 2011 at CTIM to discuss the anti-avoidance provisions and a Joint Submission was made on 30 November 2011.

Members Dialogue in Johor Bahru

This year, CTIM President SM Thanneermalai spent Valentine's Day with CTIM Johor members for the specific purpose of having a members dialogue, the first in a series of members dialogues planned to be held in the larger cities outside Kuala Lumpur. The members who attended the dialogue had the opportunity to be briefed in person by the President on the significant happenings that took place in the second half of 2011 and 2012. The Chairman of the Technical Committee, Poon Yew Hoe was also present and gave a brief talk on the significant technical updates.

CPD WORKSHOPS

A series of workshops were conducted in the 1st quarter of 2012 as follows:

- Tax Planning on Individuals' Income from Employment & Statutory Requirements by Employers.
- Tax Deductible Expenses – Latest Developments & Practical Issues
- Tax Audits & Investigations
- Tax Planning for Individuals

The workshop on "Tax Planning on Individuals' Income from Employment & Statutory Requirements by Employers"

was conducted by Sivaram Nagappan, who discussed various tax issues on the chargeability of employment income and ways to minimise tax exposures.

The two-day workshop on "Tax Deductible Expenses – latest developments & practical issues was conducted by Chow Chee Yen, a well-known and popular speaker who received many questions from the participants during his sessions.

Following the successful collaboration with ACCA Malaysia last year, CTIM once again conducted workshops on "Tax Audits & investigations" at smaller towns i.e Kota Bharu and Kuantan on 16 January 2012 and 20 February 2012 respectively. The speaker, Vincent Josef who is a former Assistant Director-General of the Inland Revenue Board of Malaysia shared his vast experience on how to engage with the authorities when tax audits and investigations are conducted.

In addition to the above, Vincent also conducted a workshop on "Tax Planning for Individuals" on 15 February 2012. This workshop was organised by CTIM in collaboration with MAICSA. Both parties are planning to conduct a workshop on "Tax Planning for Companies" which is scheduled to be held on 18 April 2012 at MAICSA Auditorium, Kuala Lumpur.

Review of Stamp Act 1949

CTIM was invited to a briefing on the Review of Stamp Act 1949 on 2 November 2011 at the IRB and was requested to submit its proposal on 31 December 2011. A Stamp Duty Task Force was then set up to carry out the Review. The first meeting was held on 29 November 2011 followed by a subsequent meeting on 16 December 2011. CTIM finalised the Review of Stamp Act 1949 on 30 January 2012 and submitted it to the IRB.

Review of Tax Agent Licensing

The Institute was also invited to attend a special meeting called by the IRB on Initiatives to Review Business Licences under the purview of the Ministry of Finance at the IRB on 4 November 2011. On 12 December 2011, a joint meeting was held among MIA, MICPA and MAICSA to discuss the issue and to agree on the general principles. The professional bodies agreed that submission will be made separately. CTIM submitted its Memorandum on the Regulation of Tax Profession in Malaysia to the IRB and the MoF on 16 January 2012.

Establishment of Public Practice Committee

The Council had restructured the Technical & Public Practice Committee (TPPC) into Technical Committee (TC) and Public Practice Committee (PPC) in December 2011. The objective of the restructuring is to reflect the Institute's emphasis on matters relating to public practice and the code of ethics and to ensure more focus on separate and distinct functions.

Enhancing Taxpayer Rights

VIA ADMINISTRATIVE REFORMS

TAXATION CONTINUES TO BE AN IMPORTANT INGREDIENT IN ATTRACTING INVESTMENT AND ENCOURAGING REINVESTMENT IN THE VARIOUS DEVELOPING ECONOMIES.

By Dr. Veerinderjeet Singh

IN the context of globalisation and liberalisation, no country is immune to changes occuring outside its borders. As a result, the tax system in many jurisdictions is subjected to modifications and reform by way of studying and adopting what may have been applied in other jurisdictions. At the same time, the pressure to simplify the system continues unabated together with the need to improve service delivery initiatives as a part of measures to enhance compliance and to make the tax system more efficient.

Tax reforms are an ongoing process that must be based on regional and worldwide developments as well as the economic/ structural developments and needs of a country. It is impossible for any country to say that it has completed reforming the tax system as the changing dynamics within and outside necessitates suitable responses and action plans. On most occasions, what normally happens is that there may be a particular focus on aspects of the tax system and specific approaches are identified at a particular point of time. However, things do not remain static. One must always be surveying the landscape to see what else is happening around us and how we should respond to various developments.

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

PSYCHOLOGY OF TAXPAYERS

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

An income tax system is based on the willingness of citizens/persons to pay their taxes voluntarily. This requires the tax agency to adopt a philosophy of having

TAX REFORMS ARE AN ONGOING PROCESS THAT MUST BE BASED ON REGIONAL AND WORLDWIDE DEVELOPMENTS AS WELL AS THE ECONOMIC / STRUCTURAL DEVELOPMENTS AND NEEDS OF A COUNTRY. IT IS IMPOSSIBLE FOR ANY COUNTRY TO SAY THAT IT HAS COMPLETED **REFORMING THE TAX SYSTEM AS THE CHANGING DYNAMICS WITHIN AND OUTSIDE NECESSITATES SUITABLE RESPONSES AND ACTION PLANS**.

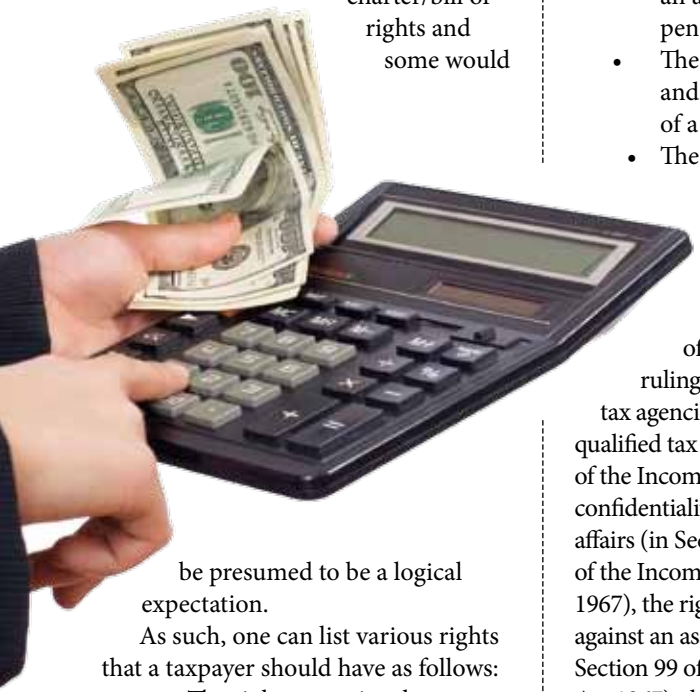
outreach and education programmes to promote voluntary compliance.

The study of taxpayer compliance is an important aspect of this approach. One needs to understand the psychology of taxpayers i.e. appreciating why persons comply or fail to comply with tax laws is important. This is essential so that steps can be taken to try to reduce non-compliance behaviour. With self-assessment, the monitoring of compliance levels and therefore, research into compliance should increase. It is also important to understand the behaviour of different groups of taxpayers (based on income level, occupational groupings, ethnicity, etc.) so that remedial steps and new strategies can be devised to try to overcome negative perceptions.

Studies on taxpayer behaviour do seem to suggest that services to taxpayers that facilitate reporting, filing and paying taxes, or that impart education or information among citizens about their obligations under the tax laws, may in many circumstances constitute a more cost-effective method of securing compliance than measures designed to counter non-compliance. This would involve providing certainty and clarifying legal ambiguities, communicating clearly and assisting in lowering compliance costs to taxpayers.

TAXPAYER RIGHTS

In this article, the focus is not on constitutional or human rights but more on what should be the rights of a taxpayer in terms of complying with the income tax law in Malaysia. Some of these would be included in the relevant tax legislation whereas some would be stated in a taxpayers charter/bill of rights and some would be presumed to be a logical expectation.

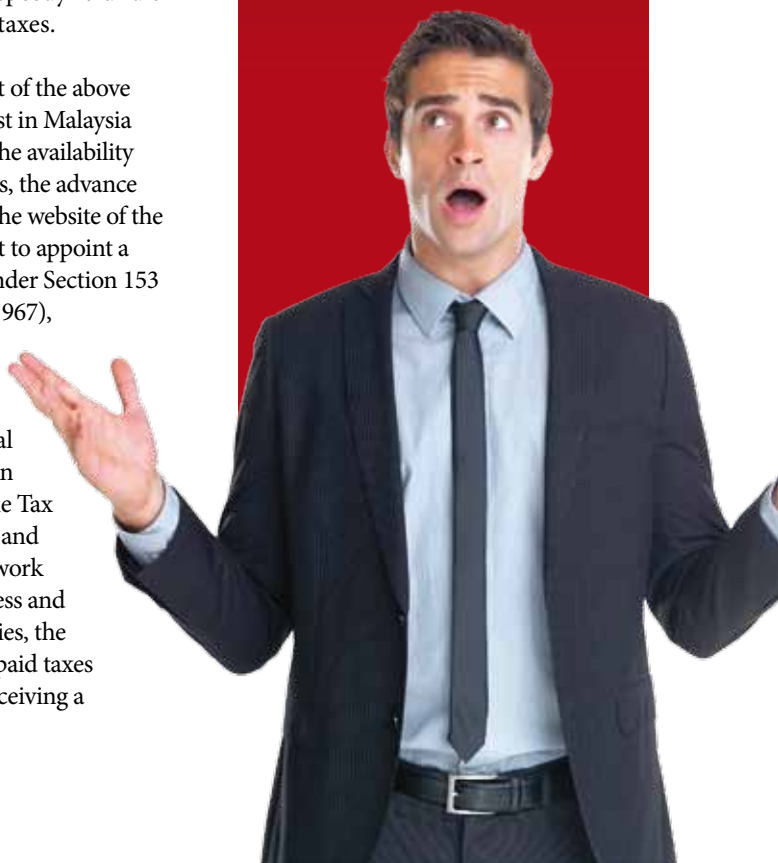


As such, one can list various rights that a taxpayer should have as follows:

- The right to receive the relevant information.
- The right to obtain clarifications on aspects of the law and administration.
- The right to appoint a representative or a tax adviser to represent the taxpayer before the tax agencies.
- The right to receive efficient service from the tax agencies.
- The right to confidentiality of one's tax affairs.
- The right to be treated fairly in the conduct of a tax audit or tax investigation.
- The right to object against an assessment (including penalties).
- The right to make an appeal and to an effective settlement of a tax dispute.
- The right to a speedy refund of overpaid taxes.

Most of the above does exist in Malaysia such as the availability of call centres, the advance rulings process, the website of the tax agencies, the right to appoint a qualified tax adviser (under Section 153 of the Income Tax Act 1967), confidentiality of tax affairs (in Section 138 of the Income Tax Act 1967), the right to appeal against an assessment (in Section 99 of the Income Tax Act 1967), the tax audit and tax investigation framework which sets out the process and obligations of both parties, the right to refunds of overpaid taxes and soon the right to receiving a

THE RIGHT TO BE INFORMED OF DECISIONS IN TAX CASES ON A TIMELY BASIS IN THE CONTEXT OF A SELF-ASSESSMENT SYSTEM AS SUCH A SYSTEM PRESUMES THAT TAXPAYERS KNOW THE LAW WHEN COMPUTING THEIR TAX LIABILITY.



compensation for any delay in the refund of overpaid taxes (via the new Section 111D of the Income Tax Act 1967 which takes effect from the year of assessment 2013). There should be more effective use of the website of the Inland Revenue Board (IRB) and more information should be displayed on a timely basis. Why not expose drafts of intended public rulings for a period of time so that the public has the occasion to provide feedback which can then be considered before the public ruling is finalised? However, the key issue would be the question of how effectively are such 'rights' being delivered and how fairly are guidelines being implemented. This is always a subjective matter and taxpayers will need to have an avenue of expressing their views, etc. on such matters - a form of an administrative tribunal (without the formalities of a court) or the setting up of an Ombudsman may well be an option to consider if the usual discussions with the authorities is not satisfactory. The desired outcome in such situations is a more speedier resolution of a dispute.

In addition to the above, one can go further to say that a taxpayer should also be entitled to the following:

- The right to be informed of decisions in tax cases on a timely basis in the context of a self-assessment system as such a system presumes that taxpayers know the law when computing their tax liability. This can easily be done by way of the IRB's website.
- The right to be able to access information on a taxpayer's tax liability. Alternatively, this could be done by way of the issuance of statements by the IRB. Perhaps, we should look into ways in which taxpayers can check their latest account balance through the internet. All this is possible with proper and effective use of technology. It is understood that the IRB has some plans to enhance its capabilities in this area.
- The right to expect that all relevant legislative changes are enacted on a timely basis
The right to expect that there is clarity in the law via guidelines, clarifications and other pronouncements so that there is certainty in terms of the tax treatment.
- The right to be made aware of the parameters within which the discretionary powers of the tax agency would be exercised.
- The right to be informed on how the nation's tax revenue is being spent….an alternative would also be the issuance of a tax expenditures statement like what many developed countries do as this will provide clarity on how the tax collected is utilised.

As part of the move to build a tax system that is more efficient, equitable, business-friendly and transparent, we have to seriously consider the need to ensure that taxpayers are given the due respect and provided effective services so that tax compliance is enhanced. However, it is also a fundamental fact that a person must also fulfil the responsibility to pay the correct amount of taxes based on the income derived/earned in the relevant year! This becomes easier if we have effective and efficient services and trust!

One cannot overlook the fact that Malaysians are becoming vocal in expressing their rights through associations, the media, political parties and the like. The recent 2012 Budget proposals to amend the Income Tax Act 1967 to allow greater powers to the IRB to be able to require advance payment of taxes without an assessment being issued, to have greater access to computerised data of taxpayers, to disregard information provided after the due date and not being able to present that information in the courts, etc. met with disapproval from the general public and the tax profession. Ultimately, when the Finance Act 2012 was enacted, these proposals were excluded.

TAXPAYERS' CHARTER

With reference to taxpayers' charters, it would be useful to note what the Australian Taxpayers' Charter states. This is listed below:

YOU CAN EXPECT US TO

- Treat you fairly and reasonably.
- Treat you as being honest in your tax affairs unless you act otherwise.
- Offer you professional service and assistance to help you understand and meet your obligations.
- Accept you can be represented by a person of your choice and get advice about your tax affairs.
- Respect your privacy.
- Keep the information we hold about you confidential in accordance with the law.
- Give you access to information we hold about you in accordance with the law.
- Give you advice and information you can rely on.
- Explain to you the decisions we make about your tax affairs.
- Respect your right to a review.
- Respect your right to make a complaint.
- Administer the tax system in a way that minimises your costs of compliance.
- Be accountable for what we do.

WE EXPECT YOU TO

- Be truthful in your dealings with us.
- Keep records in accordance with the law.
- Take reasonable care in preparing your tax returns and other documents and in keeping records.
- Lodge tax returns and other required documents or information by the due date.
- Pay your taxes and other amounts by the due date.
- Be cooperative in your dealings with us."

What is stated are the key aspects of the Australian Charter. There is a document which explains each of the expectations and obligations in greater detail. There is even a Taxpayers' Charter Team at the Australian Tax Office (ATO) to whom feedback can be sent on the Charter. The Charter is on the website and printed copies can be requested. There are a number of separate booklets which cover specific aspects mentioned in the Charter.

The Malaysian IRB does have a Client Charter (the English version is listed in the Appendix to this article) on its website. However, when one looks at the Australian example, it is clear that the Malaysian Charter is obviously lacking in terms of the depth of coverage. The Malaysian Charter fundamentally looks at the micro aspects rather than the macro aspects. In addition, there are no substantive materials (other than some process flow charts on the website) to explain further what has been spelt out in the Charter. The IRB had updated its Charter in 2008 and specified certain timelines in delivering its services to taxpayers. However, there does not appear to be any mechanism in place to measure how the IRB has performed in implementing the Charter and to report it to the public. In Australia, the ATO is accountable to Parliament and reports to Parliament on its performance. The area of accountability is one area in which government agencies definitely need to do a lot of work.

ADMINISTRATIVE REFORMS

There are various areas in which a review of tax administrative practices may need to be done as part of the move to build a tax system that is more efficient, equitable, business-friendly and transparent and espouses the upholding of taxpayer rights. In this context, modern tax systems have to seriously consider the need to ensure that taxpayers are given the due respect and provided effective services so that tax compliance is enhanced.

Given the discussion above, three aspects which could be looked at closely by the authorities involve the need to:

- Review the manner in which tax audits and tax investigations are being carried out. A clear mechanism/process must be in place which shows mutual respect for taxpayers as well as tax officers of the IRB. With the Tax Audit and Tax Investigations Framework in place, this means that the enforcement of the Frameworks must be monitored continuously to ensure fairplay and consistency.

- Enhance and protect taxpayers' rights by enhancing and monitoring the Taxpayer's/Client Charter. Quite obviously, having a charter (as various government agencies including the IRB have) is not enough. Its effectiveness MUST be monitored and steps should be taken to improve matters. Perhaps, the Auditor-General's Office could do this or an independent watchdog could be set up to monitor all government agencies.
- Creating the office of an Ombudsman to provide an avenue for taxpayers to complain about the action or inaction of tax officials.

Effective surveys which provide feedback on the services offered by the tax agencies will help these agencies improve the way it provides taxpayer services. This should be done as part of a Taxpayer Assistance Blueprint like in the USA where this is a multi-year effort by the Internal Revenue Service (IRS) to review its customer service operations and develop plans for continued improvements. In addition, the Media & Publications External Customer Satisfaction Survey of 10,000 taxpayers serves to help the IRS determine the effectiveness of its forms and publications. It measures how satisfied respondents are with the information they get from the IRS and how well it equips them to understand and meet their obligations under federal tax laws. The questions address the content, usefulness, format, graphics and delivery of IRS forms and publications. Customers have the option of taking the survey by telephone or via the internet.

Both these surveys are designed to provide the IRS with greater and more accurate understanding of taxpayer service needs, preferences, and behaviour. Both surveys are repeated in future years, which will allow the IRS to continually refine and improve taxpayer services based on taxpayer preferences and needs. Such types of surveys would be a truly effective way of seeking feedback and then evaluating ways in

which changes could be made to improve processes.

Compliance management is not simply about audits, verification and enforcement. It is also about making it as easy as possible for people to comply. One third of the compliance budget of the ATO is directed at the provision of advice and assistance involving marketing and education programmes, advisory visits for new businesses, seminars and responding to telephone and written enquiries. How much does the IRB spend on such initiatives? It is hoped that more information is made available on the amounts being incurred by the IRB on its various activities so that there is transparency in what it does.

Effective tax administration requires establishing an environment in which citizens are induced to comply with tax laws voluntarily, while efficient tax administration requires that this task be performed at minimum cost to the community. An important element in any successful administrative reform is simplicity. It is important to simplify procedures for taxpayers, for example, by eliminating demands for superfluous information in tax returns. The move is now on in some countries to pre-populate tax returns with information that is already available rather than to require a taxpayer to fill up the whole tax return annually. This is a measure that is being considered by the IRB.

Tax administration requires facilitating compliance, monitoring compliance and dealing with non-compliance. Facilitating compliance involves improving services to taxpayers by providing clear instructions, understandable forms, and assistance and information as necessary. This would involve providing certainty and clarifying legal ambiguities, communicating clearly and assisting in lowering compliance costs to taxpayers. Timeliness is crucial.

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

CONCLUSION

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

The need to recognise that taxpayers have rights has become very important in this current day and age. We should be looking at innovation and introducing cost-savings in providing effective services i.e. reduce the waiting time and have satisfied customers. Introducing a well-crafted Taxpayer's/ Client Charter AND monitoring its effectiveness is a significant aspect of the culture of being accountable and receptive to ideas.

In line with improving the overall public delivery system, it is timely that tax agencies (and other government agencies) adopt best practices, enhance the effective use of technology, cut down timelines, introduce greater clarity and implement friendly and courteous service and recognise that taxpayers' rights must be protected. This thus involves a balancing act in terms of service and enforcement. Finally, there has to be corresponding improvements in terms of taxpayers complying with the relevant rules and regulations as well as timelines so that the tax system works for all. There is much to be done!

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APPENDIX

CLIENT CHARTER OF THE INLAND REVENUE BOARD (IRB)

WE ARE COMMITTED TO CONTINUOUSLY IMPROVE THE SERVICE DELIVERY SYSTEM AND PROVIDE A FAIR AND JUST SERVICE FOR ALL TRANSACTIONS BASED ON THE FOLLOWING STANDARDS:

1. To provide the current year Income Tax Return Form for:
   - Individual taxpayer - by the end of February
   - Non-individual taxpayer - by the end of April
2. To provide e-Filing facility for the submission of the Income Tax Return Form.
3. To refund excess payment/to issue repayment of income tax from the date a complete and accurate Income Tax Return Form is received via:
   - e-Filing - 30 working days
   - post or submitted by hand - 90 working days
4. To issue the tax clearance letter within 10 working days from the date the relevant completed document is received.
5. To initiate action on the property and land transfer instruments for the assessment of stamp duties as follows:
   - to send the PDS 15 Form for valuation - 8 working days
   - to issue the notice of assessment from the date the valuation report is received - 8 working days
   - to endorse the KTN 14A Form from the date the payment is received - 3 working days
6. To assess instruments other than property and land transfer instruments for:
   - formal assessment - 5 working days
   - informal assessment - 1 working day limited to 30 instruments per applicant
7. To resolve appeals/objections other than Form Q within 60 days provided complete information is received.
8. To process Form Q for submission to the Special Commissioners of Income Tax within 5 months from the date of receipt.
9. To take action on letters, faxes, and e-mails by issuing:
   - acknowledgement letter within 3 working days from the date of receipt.
   - letter notifying progress status within 7 working days from the issuance of acknowledgement letter if matters raised need further action.
10. To answer telephone calls within 3 rings.
11. To provide service at the counter within 15 minutes after obtaining the queue number.

TO ENABLE THE IRB TO DELIVER EFFICIENT SERVICE, YOU ARE REQUIRED:

1. To register a tax file if you are liable to pay income tax.
2. To report the actual income and claim reliefs/expenses or qualified deductions in the Income Tax Return Form.
3. To complete Income Tax Return Form correctly and to submit either by e-Filing or by post on or before the due date.
4. To pay tax by the due date.
5. To furnish required information within the stipulated time.
6. To inform any change in address within 3 months.
7. To keep documents/records for 7 years from the date of submission of the Income Tax Return Form.
8. To submit property and land transfer/share documents in accordance with the IRBM check-list.
9. To pay the stamp duties within 30 days from the date of notice of assessment.

ALL YOUR PERSONAL AND FINANCIAL INFORMATION ARE CONFIDENTIAL AND WILL ONLY BE USED FOR PURPOSES ALLOWED BY THE LAW

(Amended on 1 April 2008)

SOURCE: **Extracted from the IRB website on 3 March 2012**

A STUDY OF TAX COMPLIANCE BEHAVIOUR IN AUSTRALIA

By Dr. Ken Devos

AN IMPORTANT ISSUE FOR ANY GOVERNMENT AND REVENUE COLLECTING AUTHORITY IS TO **OBTAIN KNOWLEDGE AND UNDERSTANDING OF THE REASONS** FOR TAXPAYER NON-COMPLIANCE.

However, measurement of the magnitude of intentional and unintentional non-compliance can be difficult as it involves estimating levels of uncollected tax, which by its nature is not detected by the revenue authority. The amount of tax lost through evasion is potentially enormous. (The IRS estimated it to be USD345 billion in 2006 which amounted to 16.3 per cent of estimated actual paid plus unpaid tax liability -Slemrod 2007). In Australia an estimate of the underground economy was USD10 billion or 1.2% of the level of GDP in 2002-03. Consequently to prevent the erosion of government revenue, further research is required into understanding taxpayer attitudes and behaviour.

There are two broad schools of thought regarding taxpayer compliance which emerge from the literature. The first is studies based around the theory of economics that explain the change in taxpayer compliance. The second is studies based on theories of psychology and sociology that explain the varying levels of taxpayer compliance. The focus of this study will primarily be on three compliance variables, which have been predominant throughout the review of the literature. They are the economic variable of deterrence which includes (the likelihood of being caught and the range of penalties applied to those who are caught) and the

IN AUSTRALIA AN ESTIMATE OF THE UNDERGROUND ECONOMY WAS USD10 BILLION OR 1.2% OF THE LEVEL OF GDP IN 2002-03

psychology variables of moral values and the perceptions of equity and fairness held by taxpayers.

Logic suggests that the most efficient way to design an affective taxpayer compliance programme would be to concentrate on the factors that appear to have the most impact on compliance levels. Of all the variables examined by scholars, deterrence, equity and moral values have been critical and accordingly the focus of this study is on these three factors. This study also expands upon a prior study conducted by Ian Wallschutztky (1984) over twenty-five years ago who also investigated the attitudes and behaviours of both compliant and non-compliant taxpayers. The remainder of this paper is organised as follows. Section 2 outlines the main research questions addressed and the methodology adopted in this study. This is followed by a discussion and analysis of the research findings and empirical evidence in section 3. Finally, section 4 of the paper concludes the study and provides some tax policy considerations.

RESEARCH STUDY

RESEARCH QUESTIONS

As indicated earlier the major attitudinal variables of interest in this study comprise fairness/equity of the tax system, the moral values of taxpayers and deterrence mechanisms such as penalties and law enforcement measures. The possible relationship between these variables and taxpayers compliance attitudes/behaviours was considered in the context of six main research questions (RQ) as follows:

RQ1 Is there a relationship between taxpayers perceptions of tax penalties and sanctions and their tax compliance attitudes/behaviour?

RQ2 Is there a relationship between taxpayers perception of tax fairness and their tax compliance attitudes/behaviour?

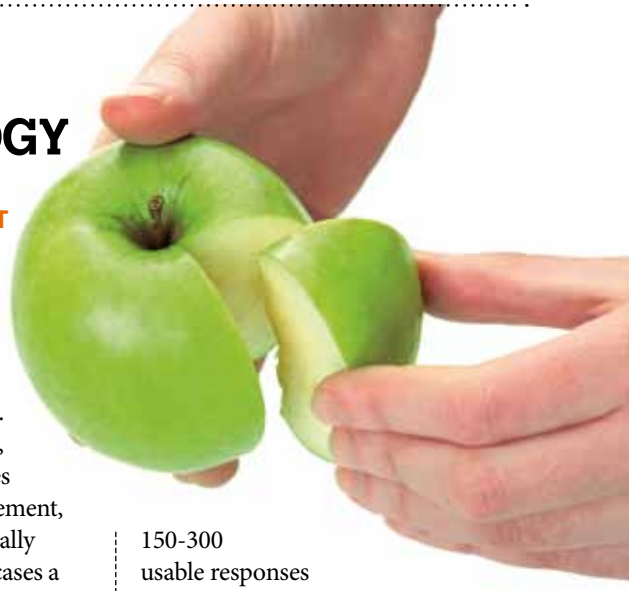
RQ3 Is there a relationship between taxpayers tax morals and their tax compliance attitudes/behaviour?

RQ4 Is there a relationship between taxpayers perception of tax law enforcement by the revenue authorities and their tax compliance behaviour?

RQ5 Is there a relationship between taxpayers perception of the probability of detection by the revenue authorities and their tax compliance attitudes/behaviour?

RQ6 Is there a relationship between taxpayers tax awareness and their tax compliance attitudes/behaviour?

RESEARCH METHODOLOGY



THE SURVEY INSTRUMENT

The survey instrument comprised six sections including 30 questions, of which there were many parts to most questions and a space at the end for comments. The six areas covered included, general tax awareness, penalties and deterrence, tax law enforcement, tax fairness, tax morals and finally demographic details. In most cases a seven point likert scale was used with scales ranging from strongly agree (7) to strongly disagree (1) and moderate scores found in between the two extremes. Ajzen and Fishbein (1980) argued that a number of studies administered on different occasions provide evidence that the standard attitude scales are highly reliable in measuring the strength of beliefs and intentions. In particular Ajzen and Fishbein have cited other studies, Czaja and Blair (1996) which reported test-retest reliability greater than 0.95 for the "likely –unlikely scale."

THE SURVEY SAMPLE AND INTERVIEWS- EVADER GROUP

Fowler (1993) indicated that a sample of 150 people would describe a population of 15,000 or 15 million with virtually the same degree of accuracy. On this basis, it was determined that, somewhere between 150-300 usable responses for each group (evader and non-evader) would be desirable for this study given the taxpaying population in Australia.

A mail-out version of the survey was conducted for a random selection of personal taxpayers labelled the evader group (i.e. non-compliant taxpayers). The sample frame was to be those personal taxpayers that, according to the Australian Taxation Office (ATO) records, had lodged tax returns for three previous income tax years, including 2004, 2005 and 2006 and had been audited and subjected to a penalty. In accordance with the researcher's specifications, tax evaders were randomly selected based on the following criteria; age, gender, marital status, agent prepared or not, location, (which Australian state/territory) occupation and the level of income, all of which could be determined from their tax returns.

The other important demographic variables relevant to this study which were indirectly identified were the educational level of those taxpayers given their occupational groups, nationality based on residence and also that they had lodged tax returns in the previous and current year.

The sample population was 700 records for this evader group. Given an expected response rate of 25 - 30 per cent, this number would result in a sample size of at least 150 - 200 respondents which would be sufficient in terms of the credibility of the results. Names and addresses of those selected were only known to the ATO. Understandably due to the privacy provisions, the ATO was not willing to allow the researcher direct access to taxpayers details. To satisfy this condition the surveys were supplied by the researcher to the ATO who conducted the distribution of the surveys to the evader sample. The survey responses were then received by the researcher directly at the University. Such an approach maintained taxpayers privacy in that neither the researcher, nor the ATO, could match taxpayers' details to completed surveys. As the study was conducted in conjunction with the ATO, it was considered that this approach would also improve response rates. The actual response rate received for this study was (174/636 effective distributions = 27.4%). Other previous tax compliance studies indicate that a response rate of anything between 25%- 30% is acceptable in tax surveys –Murphy (2003). A small number of survey participants (six) who voluntarily provided their contact details were also interviewed over the telephone-Dillman (1978). It was considered that the findings derived from these interviews would complement and cross validate the results from the survey component of the research study.

EVERY PERSON ON THE DATA-BASE OF THE MARKET RESEARCH COMPANY ALSO HAD THE SAME PROBABILITY OF BEING SELECTED GIVEN THE CROSS SECTION OF TAXPAYERS REQUIRED FOR THE SAMPLE.

THE SURVEY SAMPLE AND INTERVIEWS- GENERAL POPULATION

With respect to drawing a sample from the general population, in the absence of the ATO support, it was considered that a market research company could be approached to perform this task. The particular market research company which had access to a large database of people from the general population identified via demographical details was able to distribute an electronic version of the survey instrument to potential participants. Given the required selection criteria (i.e. specific demographics that were representative of the Australian taxpaying population) the market research company was able to select a sample of 300 personal taxpayers labelled as non-evaders (i.e. compliant taxpayers). That is, it was assumed that there were no tax evaders in this group, given the likelihood of this occurring being very small. Every person on the database of the market research company also had the same probability of being selected given the cross section of taxpayers required for the sample.

This sample was generally representative of the Australian population according to figures released by the Australian Bureau of Statistics (ABS). Taxpayer privacy was maintained at all times, as no names or address were released to the researcher given it was an anonymous survey. A small group of taxpayers (seven) who had participated in the survey were contacted by the market research company and they were also happy to be interviewed in person.

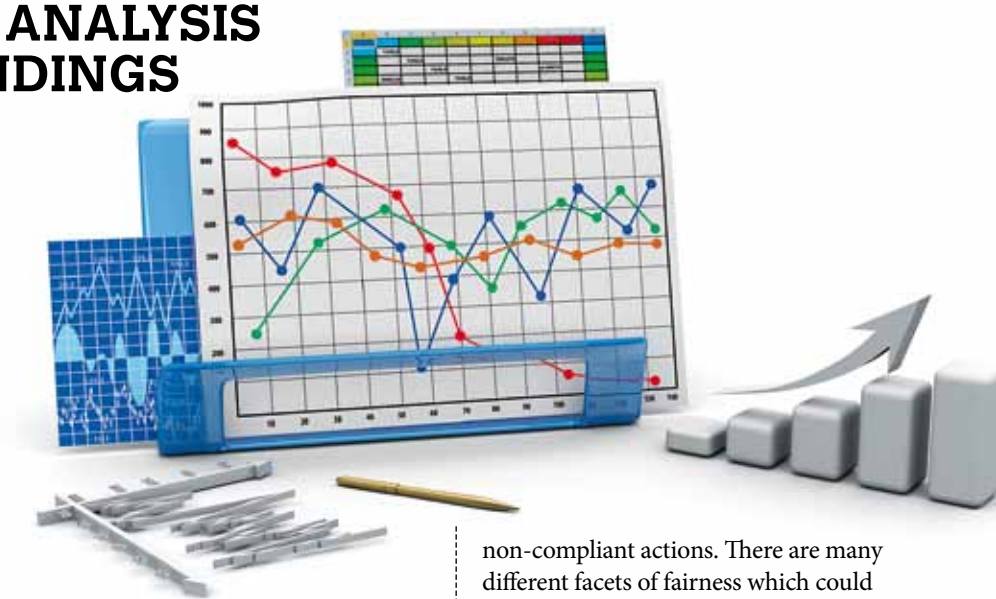
SELECTED STATISTICAL TESTS

Specifically in terms of an exploratory analysis and giving a snapshot of the data gathered, it was considered that employing chi-square tests was appropriate to explore the relationship between various categorical variables (i.e. compliance behaviour against perceived tax penalties, tax fairness, tax law enforcement, tax morals and tax awareness – excluding demographics). Chi-square, as a non-parametric technique is ideal for situations where data are measured on nominal (categorical) scales and

also where sample sizes are relatively small Pallant (2005), as was the case here. Chi-square is also a fairly robust test that does not have such stringent requirements and does not make assumptions about the underlying population distribution. To extend the quantitative component of the study, logistic regression was also employed to give the overall analysis more rigour and improve the validity of results.

Initially, for the purpose of the preliminary analysis the chi-square statistical test was chosen to investigate the effect of selected survey questions upon compliance behaviour. Specifically, survey questions two, four, eleven, twelve, fifteen and seventeen were statistically analysed in the study against question seven, compliance behaviour. These questions represented the thrust of the study in terms of; tax penalties for non-compliance, taxpayers' awareness, law enforcement, tax morals and tax fairness. The variables employed were tested for statistical significance at the 5 per cent level. (i.e. statistically significant at $p \leq 0.05$) Cross tabulation (SPSS output) of the chi-square results was examined to determine the relationship between the dependent and independent variables while the frequencies and percentage breakdown of responses to selected questions was also examined to enable comparisons with other studies-Birch, Peters and Sawyer (2003).

DISCUSSION AND ANALYSIS OF RESEARCH FINDINGS



RESEARCH RESULTS

From the combined findings matrixes below it is easy to identify the areas of convergence and divergence with respect to the research questions posed under both the quantitative and qualitative components of the study for both the evader group and general population samples.

It is evident that the perception of fairness of the tax system was clearly influential upon the compliance attitudes and behaviours of non-compliant taxpayers. Despite the absence of regression results, this was supported by the chi-square test results and comments both in the survey and at interview. Some taxpayers even admitted that it was the issue of fairness that had lead them to partake in their non-compliant actions. There are many different facets of fairness which could have been compromised because of the tax system. To a slightly lesser degree the issue of tax morals also indicated converging and complementary results with respect to chi-square tests and survey comments. The regression results and interview findings produced some qualifications, however given that the cohort of taxpayers investigated were those who were found to be non-compliant, this qualification is not unexpected. During the interviews it was discovered that significant factors such as, self-assessment, competitive pressures and a vibrant cash economy nevertheless impacted upon taxpayers' morals and their consequential compliance behaviour.

	Quantitative Component		Qualitative Component	
Primary Research Question/ Hypotheses	**Chi-square tests results**	**Regression results**	**Survey Comments**	**Interview Findings**
RQ1 Penalties*	×	×	×	√ (qualified yes)
RQ2 Fairness*	√	_____	√	√
RQ3 Morals*	√	√ (qualified yes)	√	√ (qualified yes)
RQ4 Enforcement*	× (qualified no)	√	√	√ (qualified yes)
RQ5 *Probability of Detection	×	√ (qualified yes)	×	×
RQ6 Tax Awareness	√	_____	?	× (qualified no)

Combined Findings Matrix- Evader Sample

IN THIS RESPECT THERE WAS A CLEAR DISTINCTION MADE BY TAXPAYERS BETWEEN NEGATIVE AND POSITIVE ENFORCEMENT WITH THE LATTER BEING PREFERABLE

An examination of the matrix also reveals that tax law enforcement was a factor upon the taxpayers' compliance behaviour. Other than receiving qualifications under both the chi-square tests and at interview, the factor was found to be influential. In this respect there was a clear distinction made by taxpayers between negative and positive enforcement with the latter being preferable. The reason for this became obvious from the interview comments where all taxpayers indicated that the harsh treatment of an audit was undesirable.

However, there was also evidence of a divergence in results regarding other forms of enforcement by way of penalty and the probability of detection. Specifically other than some qualified support at interview, penalties *per se* were generally viewed as being ineffective in influencing compliance behaviour. There was no authoritative support that an introduction or increase in penalties would lead to improved compliance on its own. The results suggested rather, that penalties ought to be used in combination with other factors, such as, taxpayer education and services, in order to improve compliance. The results indicated a divergence for RQ5 with respect to the perception of a high probability of detection improving compliance behaviour. Other than qualified support from the regression results, tax evaders were of the belief that audit rates and coverage was poor citing the cash economy as a visual example. Consequently it was clear that taxpayers who perceived the probability of detection as low were non-compliant.

Finally, a real divergence in results was discovered for tax awareness and its impact upon compliance. There were no findings under the regression analysis and survey comments were inconclusive with regards to this factor. Where chi-square test results indicated that poor tax awareness results in negative compliance behaviour, this was not supported by comments at interview. In fact it was clear from the interviews that taxpayers did possess general tax awareness with respect to tax avoidance/evasion distinction and evasion opportunities. A possible explanation for the divergence is that the statistical tests were not able to differentiate between the subtle differences in tax awareness/ knowledge.

It is evident from an examination of the matrix above that there was a convergence and gathering of results under the penalties head. Along with

	Quantitative Component		Qualitative Component
Primary Research Question/ Hypotheses	**Chi-square tests results**	**Regression results**	**Interview Findings**
RQ1 Penalties*	√	(qualified yes)	(qualified yes)
RQ2 Fairness*	×	_____	√ (qualified yes)
RQ3 Morals*	√	_____	√
RQ4 Enforcement*	×	_____	√ (qualified yes)
RQ5 *Probability of Detection	√ (qualified yes)	√ (qualified yes)	√ (qualified yes)
RQ6 Tax Awareness	× (qualified no)	√	√

Combined Findings Matrix-General Population Sample

qualified support from the interview findings and regression results, there was strong support from the chi-square tests. Overall there appears to be a consensus amongst this group of taxpayers that penalties (including severe penalties –imprisonment) can be influential upon compliance behaviour.

The perception of fairness of the tax system did not appear to have a significant impact upon compliance behaviour in the general population sample, as shown by the divergence of results in the matrix. While there was an absence of regression results, only qualified support at interview indicated that there was any relationship between fairness and compliance behaviour. Again the many different facets of fairness may have also lead to the divergence of the results and lack of evidence. There appears to be clear support for a relationship between compliance behaviour and tax morals. Despite the absence of regression results, complementary results can be found in both the chi-square tests and interview findings. Taking peoples' views on face value is always difficult but consistent with the majority of the tax complying population, tax morals were found to be generally of a high standard. In contrast an examination of the matrix reveals that tax law enforcement was not generally influential upon compliance behaviour. Other than some qualified support at interview there was no evidence to suggest that enforcement whether positive or negative would have any impact upon compliance levels.

There was a convergence in the results for the probability of detection, where qualified support was discovered in both the chi-square and regression tests and through the interview findings, of this variable having an influence upon tax compliance. Despite admitting to low audit and collection rates, compliant taxpayers generally felt that detection was possible. Overall there was some convergence of results with respect to tax awareness and compliance behaviour, particularly with respect to the statistical tests. Tax awareness of both general and specific issues was evident despite the statistical tests being incapable of picking the subtle differences in tax awareness/ knowledge. Compliant taxpayers were found to generally have a good understanding of tax issues overall.

SUMMARY AND CONCLUSION

NON-COMPLIANT TAXPAYERS

Consequently, based on the findings of the two components of the research, the following conclusions can be drawn with respect to the research questions posed to non-compliant taxpayers. A clear result from the research is that perceptions of tax fairness did impact upon the behaviour of non-compliant taxpayers,' confirming a positive response to RQ2. This finding is consistent with the findings of other studies –Wallshultzy (1984), Wearing and Headley (1997) regarding the impact of fairness perceptions upon compliance behaviour. The tax morals of non-compliant taxpayers were also influential upon their behaviour according to the survey results, but were more qualified with respect to the interviews. This is not surprising given the cohort of taxpayers examined but taken on face value these findings are supported by the literature-Smith (1990). These taxpayers fell into the category of intrinsic taxpayers-Torgler and Murphy (2004), where their weaker values and morals influenced their non-compliant behaviour. Overall on balance, the answer to RQ3 was yes.

WITH REGARDS TO ENFORCEMENT, OVERALL THE RESULTS INDICATED TO A LESSER DEGREE THAT IT WAS INFLUENTIAL UPON THE BEHAVIOUR OF NON-COMPLIANT TAXPAYERS.

With regards to enforcement, overall the results indicated to a lesser degree that it was influential upon the behaviour of non-compliant taxpayers. In particular, ineffective enforcement by the ATO to tackle the cash economy and offshore evasion was found to be a factor upon voluntary compliance. Other studies have reported similar findings-Mason and Galvin (1984). Consequently, RQ4 was confirmed. Following on from the issue of enforcement is the issue of the probability of detection. Results were mixed and somewhat inconclusive, however overall it appeared that taxpayers felt there to be a low probability of detection. This will be of a concern to the ATO who perceive the audit function as a vital component of the self- assessment system as evidenced in prior studies- Tittle and Logan (1973). Consequently the answer to RQ5 was no.

It was evident from the findings that penalties *per se* were generally viewed as being ineffective in influencing compliance behaviour. It should also be noted that although a specific deterrent may have been achieved for non-compliant taxpayers, the general deterrent effect of penalties was inconclusive-Mason and Galvin (1978). Likewise, results suggest that penalties should be used in combination with other measures such as taxpayer education and services, (as a preferred deterrent) in order to achieve greater compliance. Consequently, the answer to RQ1 was no. Finally with respect to tax awareness/knowledge it was evident that taxpayers possessed some basic tax knowledge although it was inconclusive as to whether it impacted upon their compliance behaviour. What was clear in interviews, was that this cohort of taxpayers, were aware of the tax evasion/tax avoidance distinction and were willing to push the boundaries of the law as has been discovered in prior studies- Eriksen and Fallen (1996). Nevertheless, RQ6 could be neither confirmed nor denied.

COMPLIANT TAXPAYERS

Based on the findings of the two components of the research the following conclusions can be drawn with respect to the research questions posed to compliant taxpayers. It is clear from the study that the perceptions of tax fairness did not impact upon the behaviour of compliant taxpayers, confirming a negative response to RQ2. This finding is inconsistent with the findings of other studies- Tan (1998) regarding the impact of fairness perceptions upon compliance behaviour.

In contrast, the tax morals of compliant taxpayers were influential upon their behaviour according to particular statistical tests and interview findings. This result is consistent with the literature and was expected- Smith (1990). Compliant taxpayers also fall into the category of intrinsic taxpayers who can be persuaded by institutional factors- Torgler and Murphy (2004). However, their stronger values and morals were more likely to influence their compliant behaviour than external factors. Overall the answer to RQ3 was yes. The results indicated that enforcement was not influential upon the behaviour of compliant taxpayers. Similar to evaders, ineffective enforcement by the ATO to tackle

IN CONTRAST, THE TAX MORALS OF COMPLIANT TAXPAYERS WERE INFLUENTIAL UPON THEIR BEHAVIOUR ACCORDING TO PARTICULAR STATISTICAL TESTS AND INTERVIEW FINDINGS.

the cash economy and offshore evasion was found to be a factor upon voluntary compliance. Other studies have reported similar findings- Mason and Galvin (1978). Consequently, the answer to RQ4 was no. Following on from the issue of enforcement is the issue of the probability of detection. Results were consistent across all components of the research indicating that compliant taxpayers generally felt that detection was possible with some reservations. Consequently the answer to RQ5 was a qualified yes.

their compliance behaviour. The degree of tax knowledge and awareness varied between taxpayers in the sample but was nevertheless evident. Consequently, the answer to RQ6 was yes.

TAX POLICY IMPLICATIONS

The key finding from the study is that the ATO and the Australian government needs to improve the fairness of the tax system in order to positively influence the behaviour of non-compliant individual taxpayers. This has generally been supported

In particular a suggestion was made that the actual levels of penalty may be made more transparent on public literature and in the tax return itself. This would assist in providing a general deterrent for potential tax offenders while educating compliant taxpayers.

The limitations of the research include the lack of other compliance and demographic variables employed herein and that the number of interviews, somewhat limited the value of the qualitative element. However, these considerations are being taken up

With a focus of this study also upon the penalties for non-compliance, it was evident from the findings that penalties *per se* were generally viewed as being effective in influencing taxpayer behaviour in the general population. This was qualified at interviews to some degree as other deterrent measures such as taxpayer education and services, were also suggested ought to be used in combination with penalties in order to achieve greater compliance. Overall, the answer to RQ1 was yes. Finally with respect to tax awareness it was evident that compliant taxpayers possessed a basic tax awareness that did impact upon

by the literature- Hite and Roberts (1992). Specifically the ATO needs to address the issues of both vertical and horizontal inequity, but more so, the problem associated with taxpayers legally avoiding payment of their fair share of tax. This perception amongst the taxpaying community has the potential to seriously damage the revenue. While penalties were perceived to have minimal impact upon the compliance behaviour of taxpayers, there was a clear message that the penalties should be supported by other preventative measures such as, educational programmes-Hite (1997).

as part of this continuing research. As further data is gathered and analysed, hopefully the reasons for taxpayers behaviour and attitudinal changes can be more closely explored. This should in turn result in improving the revenue authority's tax compliance strategies and targeting of certain taxpayer groups.

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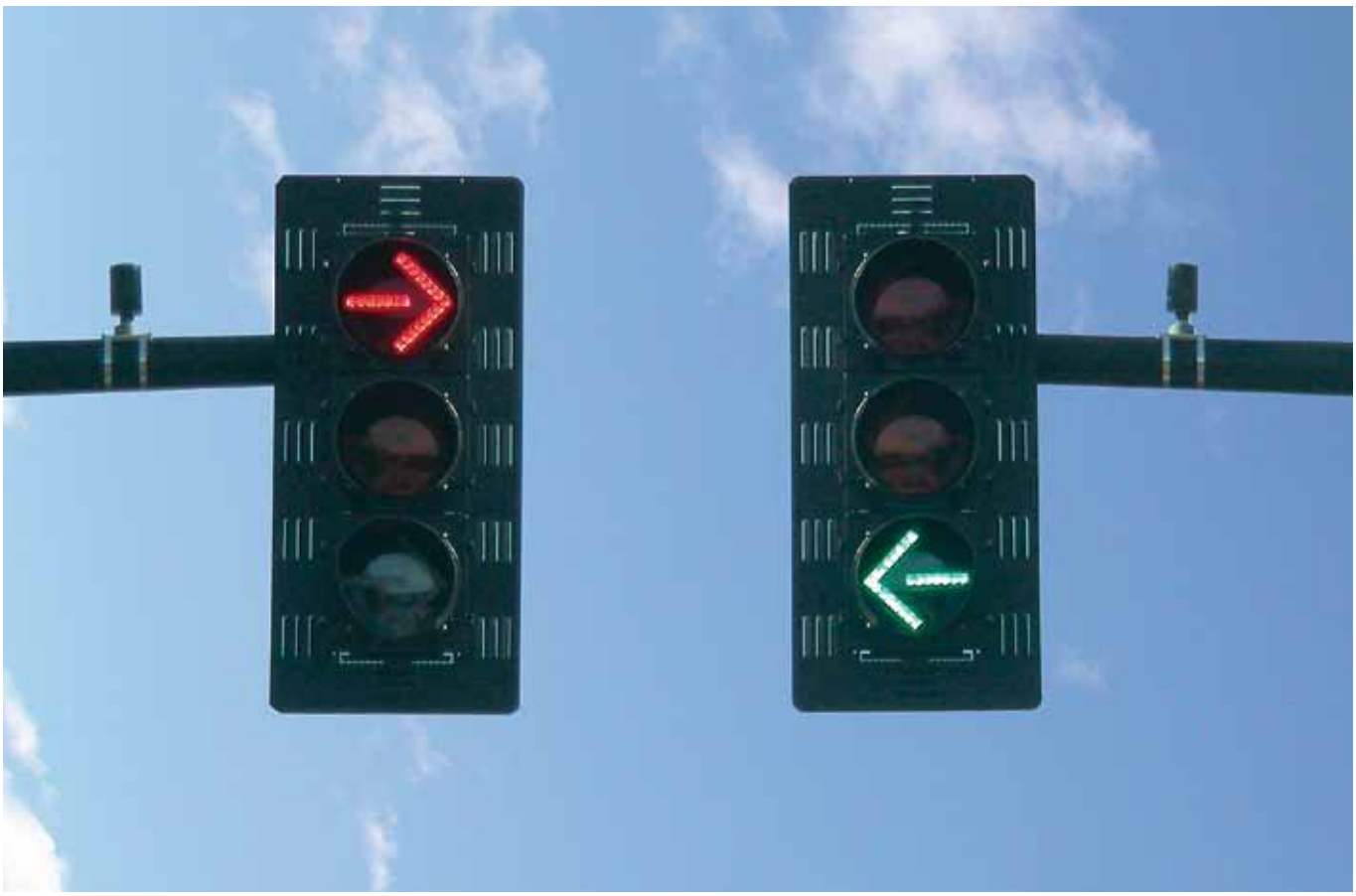

REINVESTMENT ALLOWANCE... CLIFFHANGER?

By Daniel Lim Aik Heng

I have been told by my children's teachers that the students are recently being streamed to ensure that relevant attention can be provided. The top 200 students in an age group are segregated from the rest of the 550 students in order for the teachers to provide additional support and attention to these 'special' students. My boys go to a school that comprises 750 students – on average – in a particular standard. They prefer to fall into the 'special' category as they feel more wanted. Pride aside, I hope the same for them to receive the additional support and attention too – a kind of incentive granted by the school administrators. In one way or another, difficult choices have to be made due to scarce resources and one has to live with the consequences whether positive or otherwise. There is no such thing as second chance in life, or in taxes.

THE EVOLUTION OF REINVESTMENT ALLOWANCE (RA)

Yes, taxes. I had better recalibrate your attention to the topic at hand. Manufacturers, processors and those in the agriculture sector in Malaysia since the late 80s are envied by other businesses because they fall within a 'special' category. This 'special' category is granted additional support and attention by the Malaysian government through a tax incentive called Reinvestment Allowance (RA). There are also other tax incentives for this sector but let's just 'poke our eyes' on RA.

RA survived many Finance Ministers and along the way, it had been battered, scrutinised and recalibrated many times over. The most recent update on RA can be viewed as an effort to stream businesses again. Beginning of this year, while most Malaysians are just recovering from the long festive holidays, a rule was gazetted – Income Tax (Prescription of Activity Excluded From The Definition of "Manufacturing") Rules 2012 (subsequently referred to as "Exclusion List Rules 2012"). The Minister prescribed that certain activities are excluded from the definition of "Manufacturing" pursuant to paragraph 9 of Schedule 7A to the Income Tax Act, 1967 (the Act). As a result, businesses that carried out activities in the Exclusion List Rules 2012 do not fall within the 'special' category that can enjoy RA.

THE DEFINITION FOR MANUFACTURING WAS INTRODUCED IN THE FINANCE ACT 2009 – ACT 693 AND WAS MADE EFFECTIVE FROM THE YEAR OF ASSESSMENT 2009 ONWARDS. THIS DEFINITION IS CRITICAL AS IT SETS PARLIAMENT'S INTENTION ON WHO CAN BE ELIGIBLE TO CLAIM RA.

The definition for manufacturing was introduced in the Finance Act 2009 – Act 693 and was made effective from the year of assessment 2009 onwards. This definition is critical as it sets Parliament's intention on who can be eligible to claim RA. In that Finance Act, the term "…or process…" in subparagraph 8(a) of the same Schedule was deleted. As such, a company can be eligible for Reinvestment Allowance if its project undertaken is in respect of an activity that falls within the definition of manufacturing. There are other conditions to be fulfilled before RA is claimed but one must fall within the definition of Manufacturing before advancing to a claim. It is like making sure that your children are below 14 years old before they can be admitted to a children-only edutainment centre.

ABCs OF MANUFACTURING

'Manufacturing' is defined to mean:

- conversion by manual or mechanical means of organic or inorganic materials into a new product by changing the size, shape, composition, nature or quality of such materials;
- assembly of parts into a piece of machinery or products; or
- mixing of materials by a chemical reaction process including biochemical process that changes the structure of a molecule by the breaking of the intra molecular bonds or by altering the spatial arrangement of atom in the molecule.

The following activities are specifically excluded from the definition of 'manufacturing':

- the installation of machinery or equipment for the purpose of construction;
- a simple packaging operations such as bottling, placing in boxes, bags and cases;
- a simple fixing;
- a simple mixing of any products;
- a simple assembly of parts;
- any activity to ensure the preservation of products in

good condition during transportation and storage;
- any activity to facilitate shipment and transportation;
- any activity of packaging or presenting goods for sale; or
- any activity that may be prescribed by the Minister, notwithstanding the above interpretation.

In order to clarify further on the activities specifically excluded from manufacturing, the definition of 'simple' was also introduced. 'Simple' generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

The Exclusion List Rules 2012 covers 20 activities regardless of whether such activities fall within the definition of 'manufacturing' stated in paragraph 9 of Schedule 7A of the Act. Some of these activities had, by themselves or collectively, been in the 'special' category in the past, meaning that these activities were regarded as manufacturing and thus eligible for RA up to the year of assessment 2008. Some may say that these activities are able to flourish without RA while others feel that these activities may not be encouraged as an activity in Malaysia.

Some activities in the Exclusion List Rules 2012 are, in the normal sense of the word, not manufacturing. Nevertheless, these non-manufacturing activities fell within the definition of 'manufacturing' introduced from the year of assessment 2009. At the time, it was a joyous period for businesses whose activities fell within the definition of 'manufacturing'. They were happy because they could get special support and attention through their

eligibility for RA as a result of being streamed into the 'special' category. Such tax incentives are now made available to them as long as they meet the rest of the RA conditions such as expansion, modernisation, expansion, automation amongst others.

NOT-SO-MANUFACTURING SECTORS IN THE 'SPECIAL' CATEGORY

One of the activities in the Exclusion List Rules 2012 is quarrying. In general, quarrying involves exploitation of a quarry resulting in the sale of sand, limestone, etc. Mining or extraction of mineral is also stated in the Exclusion List Rules 2012. Prior to 2009, many would regard these activities as non-manufacturing. Nevertheless, it would not be difficult to defend that these activities meet the definition of manufacturing introduced in 2009. Quarrying requires the use of specialised equipment and skills. It also involves converting earth to sand or copper by changing its size, shape, composition, nature or quality of the earth.

Is it possible to miss what you never had? These businesses were not eligible to claim RA in the past and based on the Exclusion List Rules 2012, they are still not eligible.

Another activity in the Exclusion List Rules 2012 is baking except where the activity is carried out in a factory. It may be easy to conclude that baking does meet the definition of manufacturing as stated in paragraph 9 of Schedule 7A of the Act. To those who are expert bakers, please bear with me. I understand that baking involves converting by manual means (e.g. hands and a stirrer) organic materials (e.g. eggs, flour, sugar, etc.) into a new product (e.g. a cake) by changing the composition and/or nature of these organic materials.

THE PRODUCTION OF **HERB OR TRADITIONAL MEDICINE MUST BE QUITE FLOURISHING** WHEREBY NORMAL BUSINESS CONDITIONS WILL NOW DICTATE WHETHER ANY EXPANSION, DIVERSIFICATION, MODERNISATION OR AUTOMATION PROJECTS IN MALAYSIA ARE FEASIBLE.

Furthermore, such baking activity must require special skills, machines and apparatus uniquely required for baking a cake. Fortunately, baking carried out in a factory will be eligible for RA if it meets the manufacturing definition. A factory is defined in paragraph 9 of Schedule 7A of the Act to mean "portion of the floor area of a building…used for the purposes of qualifying project to place or install plant or machinery…". The definition continues to limit certain areas used for storage. So if you purchase a second oven, another stirrer, bowl and tray which will be used for an expansion project and place them in a building, the portion of the floor area of the building is a factory. Whilst it is impossible to acknowledge that your local suburb bakery is a manufacturer, that baker may be eligible for RA because the baking activity is carried out in an area where baking plant or machinery are placed or installed.

The production of herb or traditional medicine must be quite flourishing whereby normal business conditions will now dictate whether any expansion, diversification, modernisation or automation projects in Malaysia are feasible. Before 2009, the production of herb or traditional medicine was no different from the production of modern medicine. From the year of assessment 2009, no longer will the additional support and attention by the government through RA be part of the driving force that incentivises businesses to embark on such projects. On the contrary, the production of modern medicines is still in the 'special' category that continues to be eligible for Reinvestment Allowance. I wonder how old modern medicine needs to be before it matures to become traditional medicine.

Aircraft building activities are still eligible for RA but shipbuilding activity is excluded. One may think that our maritime industry – which has always been competitive and a reliable mode of transportation – has been taken for granted and that Malaysia is more in 'tune' with the glamorous aviation industry. Not to worry, our Malaysian Industrial

Development Authority (MIDA) still considers shipbuilding in promoted areas as a promoted activity, where a shipbuilder can enjoy pioneer or investment tax allowance. Upon expiration of the tax incentive under pioneer or investment tax allowance, RA is not available even if a very large and technologically advanced project is undertaken to expand, modernise or automate the shipbuilding activities.

RA CHECKLIST

In order to be eligible for RA, these are the steps to be taken:-

- Consider if the activity falls within the definition of manufacturing;
- If yes, consider if the activity does not fall within the list of activities in subparagraph 9(aa) to 9(ii);
- If yes, consider if the activity is not listed in the Exclusion List Rules 2012.

PRACTICAL DIFFICULTIES IN PROCESSING

In the Exclusion List Rules 2012, the activity involving cleaning, processing, packing or freezing of product, or any of its combination (under item 13) is excluded from the definition of 'manufacturing'. Just like a safe passcode combination, there are 256 different combinations of these activities that will not be eligible for RA. In the Oxford dictionary, the word 'process' means 'course of action… esp. series of stages in manufacture, etc'. Would one be very wrong if one's meaning of 'process' is a series of actions, changes, or functions to bring about a result? Isn't manufacturing a process? If manufacturing is a process, the activity involving manufacturing itself or combined with any of the other three activities (i.e. cleaning, packing and/or freezing) of a product is not eligible for RA. Prior to the deletion of the term "or process" in subparagraph 8(a) of Schedule 7A of the Act, the meaning of 'processing' was stated by the tax authorities in its Public Ruling 2/2008 to be as follows:

- Processing is the subjection of goods to a process which means goods or materials are subjected to a process which falls short of the manufacturing of a new article and involves the treatment of the goods in some way, other than natural growth.
- Processing refers to a technique of preparation, handling or other activity designed to effect a physical or chemical change in article or substance.

- Processing also connotes a substantial measure of uniformity of treatment or system of treatment.
- An activity may be termed as 'processing' where a product has gone through a series of actions that are systematic, has a higher value than before (has been made more marketable and would attract a higher price for the same amount) and accepted by the market.

Having read the above especially "goods or materials are subjected to a process which falls short of the manufacturing of a new article" in conjunction with the definition of manufacturing in paragraph 9 of Schedule 7A of the Act and item 13 of the Exclusion List 2012, I find myself wondering whether I have encountered a 'tax' circular reference, one that appears often in a computer spreadsheet.

As a result of the definition of 'manufacturing', the Public Ruling 2/2008 and the Exclusion List Rules 2012, many businesses with activities that fall within the meaning of processing stated in the Public Ruling 2/2008 are now in a circular reference as to whether they are still eligible to be streamed into the 'special' category where RA is available.

I suggest that item 13 of the Exclusion List Rules 2012 be revisited.

RETROSPECTIVE EFFECT

The Exclusion List Rules 2012 is deemed effective from the year of assessment 2009 although made in 2012. The retrospective effect of a rule made under subparagraph 154(1)(b) and (ii) under paragraph 9 of Schedule 7A to the Act is a conspicuous exception from the norm especially under a Self-Assessment regime. Taxpayers have made a self-assessment for the years of assessment 2009, 2010 and 2011 based on the current definition of 'manufacturing' and now additional exclusions have been introduced with effect from the year of assessment 2009. There is no legislation in the Act to require a taxpayer to make a self-reassessment for the years of assessment 2009, 2010 and 2011.

In the Act, penalties for making an incorrect return is not applicable if the taxpayer can satisfy the Court that the incorrect return was made in good faith. Very few would disagree that a return made without taking into consideration the Exclusion List Rules

reinvestment allowance... cliffhanger?

2012 would have been made in good faith. On the other hand, the Director-General of Inland Revenue can impose a penalty under Section 113(2) of the Act where prosecution had not been instituted. Such penalties would be grossly unjust if imposed as the taxpayer's tax return is not incorrect at the time the tax return was self-assessed. I am sure that the Chartered Tax Institute of Malaysia (CTIM) is already in some sort of dialogue with the tax authorities on this matter.

Notwithstanding the administrative implication of the retrospective effect of Exclusion List Rules 2012, taxpayers are within sound reason to cry foul to having a restrictive rule introduced in 2012 being effective from the year of assessment 2009. Many business decisions were made under sound advice from 2009 to 2011 on the basis that their activities are still eligible for RA before the Exclusion List Rules 2012 was publically available. Businesses expanded, modernised, diversified and automated believing that their projects were economically viable in view of the tax incentive. Payback periods were calculated based on the applicability of RA and businesses went incurring capital expenditure in 2009, 2010 and 2011 only to realise that the Exclusion List Rules 2012 now disqualify them from RA from 2009.

REGULAR CHANGES

According to the noted French author, Francois de la Rochefoucauld, "The only thing constant in life is change".

This apparently applies also to the tax provisions for RA. Businesses have strived and sunk in an ever-changing environment be it natural disasters, technology, financials, customer demands or government, and so on. The changes in a tax incentive like RA nevertheless can be avoided and if avoided, this tax incentive can continue to generate benefits to our economy. The multiplier effect of any expansion, modernisation, diversification or automation projects to our economy certainly outshines the tax forgone via this tax incentive. I know of businesses, in recent times, excluding the financial impact arising from RA when projects are considered to be undertaken now and/or in Malaysia. Sometimes businesses delay their projects or locate them to places other than Malaysia. This is because their decisions cannot be based on an ever fluid tax incentive. Delays in implementing modernisation and expansion projects directly impact our scarce resources and economic growth.

Fortunately, some businesses can enjoy alternative tax incentives that are more stable and the guarantee provided by the government is quite assuring.

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INTEREST AGAINST THE REVENUE FOR UNLAWFUL COLLECTION OF TAX: ANALYSIS OF THE PELANGI CASE

By Datuk D.P. Naban and S. Saravana Kumar[1]

In a recent landmark decision, the High Court in the *Pelangi Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri case* among others, ordered the Inland Revenue Board (IRB) to refund the tax unlawfully retained by them with interest accruing at 4% per annum from the date of the IRB's decision to retain the tax. This article aims to analyse the legal reasoning behind the High Court's decision.

FACTS OF PELANGI

The facts of the Pelangi case are as follows. The taxpayer's principal activities are property development and investment holding. Among others, it owned 19 parcels of land situated in Johor Bahru which were its stocks in trade. In 2008, the said parcels of land were compulsorily acquired by the State Authority, for which the taxpayer was paid compensation. The taxpayer did not subject the gains from the compensation to income tax following the concurrent decisions of the High Court and the Court of Appeal in the *Ketua Pengarah Hasil Dalam Negeri v Penang Realty Sdn Bhd [2006] 2 CLJ 835* case. The IRB disagreed and in adjusting the taxpayer's tax liability for the year of assessment 2008, subjected the gains arising from the compensation to income tax. The IRB's decision resulted in the taxpayer's chargeable income in the year of assessment 2008 being increased from RM42,402,623.00 to RM51,482,330.00; and consequently, the taxpayer's tax payable were increased from RM10,361,134.56 to RM12,721,858.38. As a result of this adjustment, the IRB retained the increased tax

[1] *The authors successfully represented the taxpayer in the Pelangi Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri R2-25-39-2011 case.*

from the excessive estimated taxes paid by the taxpayer. The IRB issued a notice of reduced assessment amounting to RM12,202,726.64 when in actual fact, the IRB should have issued a notice of reduced assessment amounting to RM14,563,450.46 for the year of assessment 2008.

This prompted the taxpayer to apply for judicial review, whereby the taxpayer prayed for the IRB's decision to be declared illegal and for the tax withheld to be refunded with interest. Upon hearing the submissions of both parties, the High Court following of Penang Realty and the recent Court of Appeal decision on *Ketua Pengarah Hasil Dalam Negeri v Metacorp Development Sdn Bhd* held that the gains arising from the compensation for compulsory acquisition of land are not subject to income tax. According to the High Court, the element of compulsion vitiated the intention to trade and thus, the gains cannot be treated as the taxpayer's income from an ordinary course of business. The High Court also held that the taxpayer is entitled to interest accruing from the date of the IRB's decision to subject the said gains to income tax.

SECTION 11 OF THE CIVIL LAW ACT 1956

It must be noted that the High Court has the discretion to award interest, be it pre-judgment interest or post-judgement interest. Section 11 of the Civil Law Act 1956 reads:

"In any proceedings tried in any court for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgement is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgement…"

The Federal Court in the *Lim Eng Kay v Jaafar Bin Mohamed Said [1982] 2 MLJ 156* case had the occasion to observe the following:

"The ordering of interest to be included in a sum awarded for damages is a judicial discretion. Section 11 of the Civil Law Act 1956 gives a fairly wide discretion to award to the court to order interest on a sum adjudged by the court in cases where a claimant succeeds in proceedings for the recovery of debts or damages."

Consequently, the Court of Appeal in the *Lee Guan Par v Hotel Universal Sdn Bhd [2005] 3 CLJ 1* case added:

"…Unlike O. 42 r. 12 of the RHC which governs only the post-judgement interest, Sec.11 of Act 67 provides for the pre-judgement interest. Section 11 clearly confers on the court a discretion to award interest on the amount for the period before judgement…

The basis on which the courts have acted in awarding interest under this section is that the defendant has kept the plaintiff out of the money which ought to have been paid to him and since the defendant has had the use of the money the defendant ought to compensate the plaintiff accordingly…

Thus, we see no reason why the learned judge, in exercise of his discretion, should not award interest…"

Recently, the Court of Appeal also adopted a similar approach in the *Mirra Sdn Bhd v The Ayer Molek Rubber Company Bhd [2008] 4 CLJ 657* case.

INTEREST AS COMPENSATION

The Federal Court has also ruled that an award of interest serves as compensation. Interest is a remedy available to the aggrieved party when the use of his money has been unlawfully deprived by other party. In the *Lim Eng Kay v Jaafar Bin Mohamed Said (supra)* case, it was held that:

"...the court had always had discretion to award interest as a compensation for a party who has been deprived of the use of its money to which it is legally entitled...

Interest is not awarded as a compensation on account of inflation, but awarded because an injured plaintiff has been deprived of the use of money to which he is entitled..."

In the *Karpal Singh a/l Ram Singh v DP Vijandran [2003] 2 MLJ 385* case, the Federal Court added:

"...Since it is unfair to deprive plaintiffs of interest for the period in which they have been deprived of their money, as interest ought to be awarded to the extent that is fair and proper."

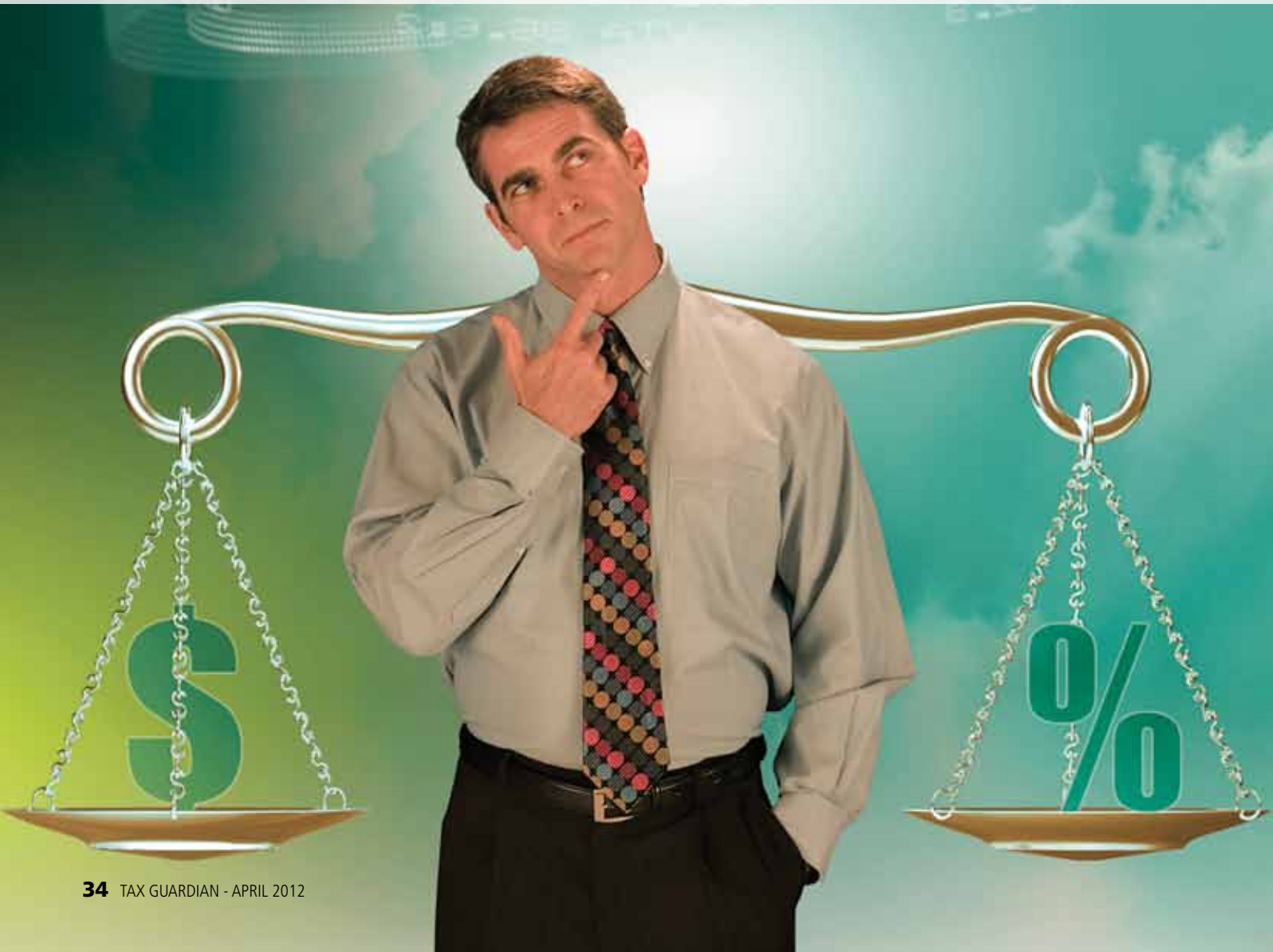
The following passage by Salleh Abas FJ (as he was then) in the *Trengganu State Economic Development Corporation v Nadefincon Ltd [1982] 1 MLJ 365 (High Court)* case is also instructive:

"Interest is a sum of money representing the return for the use or the

compensation for the retention by one person of a sum of money belonging to or owed to another. In essence it is regarded as representing a profit which the other person might have made if he had the use of the money or conversely the loss which he had suffered because he had not that use. In other words interest is a compensation for the deprivation of the use of money, which he is lawfully entitled to (per Lord Wright in Riches v Westminister Bank Ltd [1947] AC 390)..."

Based on the passages, the crux of the matter in Pelangi was with regard to the principle that the High Court may award interest as compensation to make good the unlawful deprivation of use of the taxpayer's money. In fact, the Federal Court in the *Karpal Singh a/l Ram Singh v DP Vijandran (supra)* case held that interest under Section 11 of the Civil Law Act 1956 could be awarded even in a defamation matter. Mohamed Dzaiddin CJ ruled that it was unfair to deprive the plaintiffs of interest for the period in which they have been deprived of their money, as interest ought to be awarded to the extent that is fair and proper. In Pelangi's situation, the IRB had subjected the gains arising from the compulsory land acquisition to income tax despite the decisions of the Superior Courts on that point. Consequently, the IRB had retained the taxpayer's tax refund, which at all material times was the rightful money belonging to the taxpayer. The taxpayer argued that the IRB subjected the said gains to income tax despite the decisions of the Superior Courts in the Penang Realty and Metacorp Development being brought to its attention. The IRB's action was inappropriate as it continued to ignore the decision of the Superior Courts.

According to the taxpayer, the IRB had clearly acted ultra vires and arbitrarily. This is because the IRB had kept the taxpayer out of the money amounting to RM2,360,723.82 which ought to have been refunded to the taxpayer and



since the IRB has had the use of the money, the IRB ought to compensate the taxpayer accordingly. At this juncture, it is worth noting the following passages from the *Mangalore Chemicals & Fertilisers Ltd v Deputy Commissioner of Commercial Taxes* are instructive:

"…"It must be emphasised that these amounts which we are directing to be refunded, were collected by the excise authorities without the authority of law and were illegal levies. The Central Government had use of these amount during this period of three years and correspondingly the petitioner concerned was kept out of the use of these amounts during the said period. It is therefore just and proper that the respondents should pay interest at 12 per cent per annum (which is the proper rate looking to the conditions in the money market) from the dates of the collection of the said amount directed to be refunded till the date of actual repayment."

…Duty collected in disregard of the exemption was held to be an unauthorised collection of duty and that "interest is returned or compensation for the use or retention of another's money"; since the Revenue had retained and enjoyed the benefit of such money, petitioners were held to be entitled to interest; interest at the rate of 12 per cent per annum was directed to be paid from the date of collection till the date of repayment…

… We are of the view that, the petitioner was deprived of the beneficial use of the funds to the extent of Rs.45 lakhs, in view of the interim order made in this writ petition … and the State had enjoyed the benefit of the same. Therefore, justice and equity requires that the petitioner should be compensated by an appropriate order.

The rate of interest to be awarded is within the exclusive discretionary jurisdiction of the court... we direct the respondents to pay interest as the rate of 10 per cent per annum computable from the respective date on which Rs.45 lakhs was paid by the petitioner, till the date of refund of the said sum to the petitioner…"

THE WOOLWICH CASE: RESTITUTION AND UNJUST ENRICHMENT

The High Court in the Pelangi case considered the cases highlighted above and made reference to the landmark ruling of the House of Lords in the *Woolwich Building Society v Inland Revenue Commissioner [1992] BTC 470* case, which upheld on appeal that a taxpayer was entitled to interest on the sums repaid to it by the Revenue, running from the dates when those sums were paid to the Revenue by the taxpayer. As the High Court's decision in Pelangi is premised on Woolwich Building Society, it is of interest that one appreciates the illuminating comments of the Law Lords. In this regard, the following extracts from Lord Goff's judgement in Woolwich Building Society, which expands the scope of law of restitution to tax matters are instructive:

"...The justice underlying the Woolwich's submission is, I consider, plain to see. Take the present case. The Revenue has made an unlawful demand for tax. The taxpayer is convinced that the demand is unlawful, and has to decide what to do. It is faced with the Revenue, armed with the coercive power of the state, including what is in practice a power to charge interest which is penal in its effect. In addition, being a reputable society which alone among building societies is challenging the lawfulness of the demand, it understandably fears damage to its reputation if it does not pay. So it decides to pay first, asserting that it will challenge the lawfulness of the demand in litigation. Now, the Woolwich having won that litigation, the Revenue asserts that it was never under any obligation to repay the money, and that it in fact repaid it only as a matter of grace. There being no applicable statute to regulate the position, the Revenue has to maintain this position at common law.

Stated in this stark form, the Revenue's position appears to me, as a matter of common justice, to be unsustainable; and the injustice is rendered worse by the fact that it involves, as Nolan J pointed out, the Revenue having the benefit of a massive interest-free loan as the fruit of its unlawful action. I turn then from the particular to the general. Take any tax or duty paid by the citizen pursuant to an unlawful demand. Common justice seems to require that tax to be repaid, unless special circumstances or some principle of policy require otherwise; prima facie, the taxpayer should be entitled to repayment as of right.

…The first is that the retention by the state of taxes unlawfully exacted is particularly obnoxious, because it is one

of the most fundamental principles of our law – enshrined in a famous constitutional document, the Bill of Rights – that taxes should not be levied without the authority of Parliament; and full effect can only be given to that principle if the return of taxes exacted under an unlawful demand can be enforced as a matter of right. The second is that, when the Revenue makes a demand for tax, that demand is implicitly backed by the coercive powers of the state and may well entail (as in the present case) unpleasant economic and social consequences if the taxpayer does not pay. In any event, it seems strange to penalise the good citizen, whose natural instinct is to trust the Revenue and pay taxes when they are demanded of him...

…I would therefore hold that money paid by a citizen to a public authority in the form of taxes or other levies paid pursuant to an ultra vires demand by the authority is prima facie recoverable by the citizen as of right. As at present advised, I incline to the opinion that this principle should extend to embrace cases in which the tax or other levy has been wrongly exacted by the public authority not because the demand was ultra vires but for other reasons, for example because the authority has misconstrued a relevant statute or regulation…"

Similarly, Lord Browne-Wilkinson in Woolwich Building Society also found in favour of the taxpayer and relied on the concept on unjust enrichment. His Lordship had the occasion to state that:

"…the concept of unjust enrichment lies at the heart of all the individual instances in which the law does give a right of recovery. As Lord Wright said in the Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd [1943] AC 32 case at p. 61:

"The claim was for money paid for a consideration which had failed. It is clear that any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution."

The Crown demanded and received payment of the sum by way of tax alleged to be due under regulations subsequently held by your Lordships' House to be ultra vires. The payment was made under protest. Yet the Crown maintains that it was under no legal obligation to repay the wrongly extracted tax and in consequence is not liable to pay interest on the sum held by it between the date it received the money and the date of the order of Nolan J.

In the present case, the concept of unjust enrichment suggests that the plaintiffs should have a remedy. The Crown demanded and received payment of the sum by way of tax alleged to be due under regulations subsequently held by your Lordships' House to be ultra vires. The payment was made under protest. Yet the Crown maintains that it was under no legal obligation to repay the wrongly extracted tax and in consequence is not liable to pay interest on the sum held by it between the date it received the money and the date of the order of Nolan J. If the Crown is right, it will be enriched by the interest on money to which it had no right during that period. In my judgement, this is the paradigm of a case of unjust enrichment…

…In cases such as the present both the concept of want of consideration and payment under implied compulsion are in play. The money was demanded and paid for tax, yet no tax was due: there was a payment for no consideration. The money was demanded by the state from the citizen and the inequalities of the

parties' respective positions is manifest even in the case of a major financial institution like the Woolwich. There are, therefore, in my judgement sound reasons by way of analogy for establishing the law in the sense which Lord Goff proposes. I agree with him that the practical objections to taking this course are not sufficient to prevent this House from establishing the law in accordance with both principle and justice…"

Meanwhile, Lord Slynn in Woolwich Building Society added by commenting that:

"…The question on the appeal can be stated shortly: does the citizen have the right to recover from the Revenue money demanded by the Revenue and paid by him which was not due in law because the demand was ultra vires? It is, however short, a question of fundamental importance…

…I do not consider that the fact that Parliament has legislated extensively in this area means that no principle of recovery at common law can or should at this stage of the development of the law be found to exist. If the principle does exist that tax paid on a demand from the Crown when the tax was the subject of an ultra vires demand can be recovered as money had and received then, in my view, it is for the courts to declare it. In so doing they do not usurp the legislative function. I regard the proper approach as the converse. If the legislature finds that limitations on the common law principle are needed for reasons of policy or good administration then they can be adopted by legislation, e.g. by a short limitation period, presumptions as to validity…The 'flood gates' argument is therefore not a persuasive one in this case. If it were a risk, then the Revenue would need to consider appropriate legislation...

… I find it quite unacceptable in principle that the common law should have no remedy for a taxpayer who has paid large sums or any sum of money to the Revenue when those sums have been demanded pursuant to an invalid regulation and retained free of interest pending a decision of the courts…"

The High Court's unprecedented approach in Pelangi must be applauded as in the circumstances of the case, it was only fair, reasonable and appropriate that the High Court exercised its discretion under Section 11 of the Civil Law Act 1956 and award interest from the date when the tax was unlawfully exacted on the taxpayer. [2]

CONCLUSION

The Pelangi case illustrates that the High Court has the jurisdiction to award interest in tax cases and that the Income Tax Act 1967 and Civil Law Act 1956 do not in any manner restrict this. The IRB's decision to subject the gains from the compensation to income tax despite the decisions of the Superior Courts being brought to its attention is inappropriate. As held by the High Court, the act of the IRB had kept the taxpayer out of money amounting to RM2,360,723.82 which ought to have been refunded to the taxpayer. Since the Revenue has had the use of the money, which at all material times was rightful money of the taxpayer, the authors applaud the decision of the High Court to rule that the IRB ought to compensate the taxpayer accordingly. The Pelangi case embodies the principle that public interest demands that the IRB exercises its statutory power reasonably and with due consideration. After all, matters of this nature involve, *inter alia*, balancing the need of the government to realise the taxes and the need of the taxpayer to be protected against arbitrary or incorrect assessments.

[2] *Reference is made to the Federal Court case of Kon Thean Soong v. Tan Eng Nam [1982] CLJ (Rep) 149 (FC), where it was ruled:*

" With regard to the interest awarded in the court below under prayer (1), appellant complains that the obligation due after taking of accounts, so that interest should only become payable after that date. ***We take the view that appellant had the use of respondent's share of money to which he was entitled from 1 April 1970, and that should be, as the trial judge ordered, the day from which interest should be payable ."***

Datuk D.P. Naban *and* ***S. Saravana Kumar*** *are tax lawyers with Lee Hishammuddin Allen & Gledhill. They have appeared before the Special Commissioners of Income Tax and the superior Courts for various landmark tax and customs disputes in Malaysia. They also actively work with tax practitioners on tax advisory & planning and tax audit & investigation matters.*

FINDING REAL VALUE IN REITs

WHAT ARE REAL ESTATE INVESTMENT TRUSTS (REITs) AND HOW DO THEY FIT INTO YOUR INVESTMENT PORTFOLIO? WITH ALL THE BUZZ ON THE LANDMARK KL PAVILLION REIT UNVEILED JUST END OF LAST YEAR, WE CHART THE GROWTH OF REITs IN MALAYSIA AND UNFOLD THE STORY WITH THE HELP OF **JENNIFER CHANG**, SENIOR EXECUTIVE DIRECTOR OF PwC MALAYSIA.

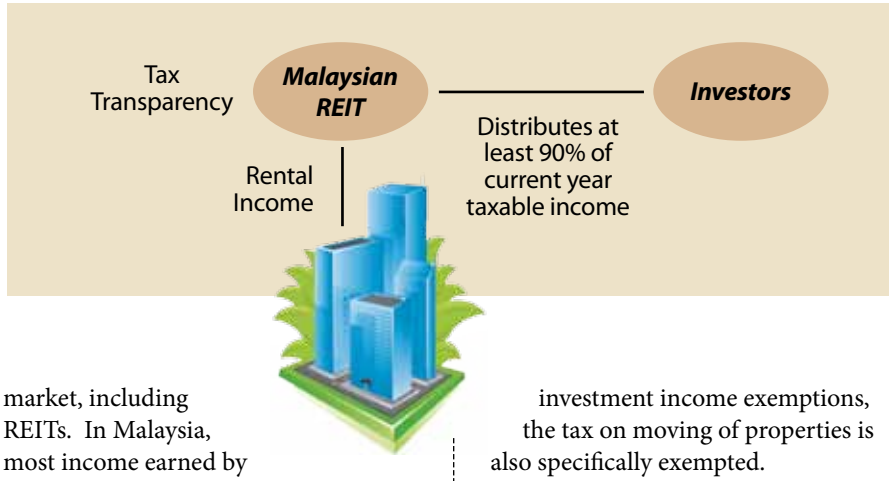
IN 1989, the Amanah Harta Tanah PNB (AHT) was introduced on Bursa Malaysia as the first listed property trust in Malaysia. The Amanah Harta Tanah PNB 2 (AHT2) and Arab Malaysian First Property Trust (AMFPT) followed soon after. In fact, Malaysia was the first country in Asia to develop listed property trusts so that small investors could invest in the local property sector. In subsequent years, the government announced more incentives and provisions in the annual Budget to further boost this sector. These set the scene for what we now know as Real Estate Investment Trust funds, or REIT. The first REIT to make its debut on the Malaysia stock market was the Axis REIT in 2004.

December 2011 saw another REIT being listed on Bursa Malaysia, bringing the total of number of REITs in Malaysia to 14. The Pavillion REIT is Malaysia's sole premium REIT, with the iconic Pavillion KL being injected as its most valuable asset.

Although structurally similar to a unit trust, REITs are normally traded through stock exchanges. A REIT normally provides returns to investors through capital appreciation from price changes as well as distributions annually from investment income such as rental income. As a REIT holds rental properties, its main income would be from rental income from the properties - usually malls, offices, hotels or industrial buildings. Rental is usually a fairly consistent source of income, so if a REIT pays out at least 90% of its taxable profit as distributions to investors, the income stream from a REIT should be fairly consistent. This makes REITs very attractive income generating assets.

FAVOURABLE TAX TREATMENTS

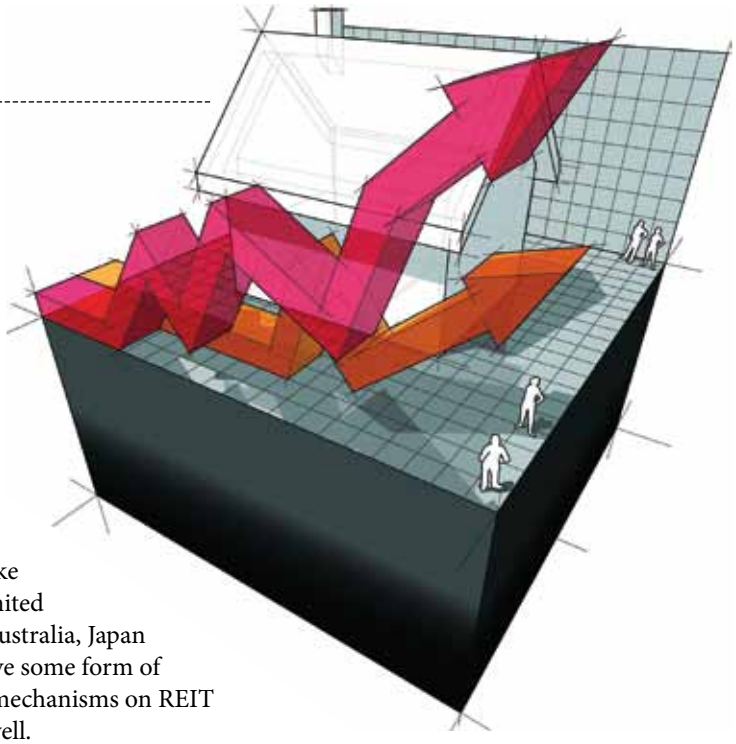
The Malaysian government has been progressively introducing tax incentives to promote Malaysia's capital market, including REITs. In Malaysia, most income earned by unit trusts and REITs are not subject to income tax. For example, interest on bonds, interest on fixed deposits with licensed banks, gains on sale of investments and foreign sources of income are not taxed when received by unit trusts and REITs. Besides such investment income exemptions, the tax on moving of properties is also specifically exempted.



ALTHOUGH STRUCTURALLY SIMILAR TO A UNIT TRUST, REITs ARE NORMALLY TRADED THROUGH STOCK EXCHANGES. A REIT NORMALLY PROVIDES RETURNS TO INVESTORS THROUGH CAPITAL APPRECIATION FROM PRICE CHANGES AS WELL AS DISTRIBUTIONS ANNUALLY FROM INVESTMENT INCOME SUCH AS RENTAL INCOME.

When a Malaysian REIT acquires properties, it will not have to pay stamp duty, which is normally fixed at a maximum of 3% of the property purchase price. Likewise, sellers of such properties do not have to pay real property gains tax (RPGT) either. The RPGT levy is usually 10% on the gains from the disposal of the property if it is sold within two years of purchase and 5% if it is sold within two to five years. This represents huge savings to the REIT as well as to the seller of the properties. In fact, Malaysia was the first country to provide zero tax moving costs to REITs and property sellers. Our neighbour across the causeway, Singapore, followed this tax incentive subsequently to promote their REIT market. Although some REITs may not explicitly state that the distribution policy is to distribute at least 90% of its current year income, the tax structure may actually encourage REIT managers to do so.

Similar to other countries with a thriving REIT market, the Malaysian tax system has provided for tax transparency to Malaysian REITs. What this means is that as long as a Malaysian REIT distributes at least 90% of its current year taxable income, the REIT will be treated as tax transparent and would not be levied a 25% income tax. This will allow a REIT to declare and distribute income to investors on a gross basis.



WITHHOLDING TAX MECHANISMS FOR GREATER TRANSPARENCY

As REITs are normally listed entities, REIT investors can be Malaysians, foreigners, individuals, companies or collective investment vehicles (such as investment funds). Where the REIT distributions are made without the REIT having to pay a 25% income tax, Malaysian tax authorities would have a tough time tracking whether or not the investors have paid taxes on such distribution income. This is especially since it is quite common for investors in a listed entity to change periodically over the stock exchange.

As such, a withholding tax mechanism has been introduced as part of the tax transparency system where the REIT manager would have to deduct withholding tax based on the profile of each investor. After declaring the distributions to investors, the REIT manager would then have to determine who the investor is and deduct the appropriate withholding tax. The Malaysian tax system has provided for the following rates of withholding tax based on the profile of the investor:

INVESTORS	TAX RESIDENCY	WITHHOLDING TAX RATES
Individuals & Non-corporate investors	Malaysian resident	10%*
	Non-resident	10%*
Corporate investors	Malaysian resident	No withholding tax. Malaysian corporates have to declare REIT distributions in their tax returns and pay the normal corporate income tax of 25%
	Non-resident	25%
Institutional investors	Foreign	10%*

**Extension of reduced rate until 31 December 2016, as announced in Budget 2012*

Malaysia has withholding tax levied on payments such as interest, royalties, lease payments and technical fees made to non-residents. It's a mechanism to make sure that the appropriate tax is collected on recipients of income where the level of tax submission and compliance may be uncertain. Most countries in the world have some form of withholding tax mechanism within their tax system and withholding tax on REIT distributions is nothing new. Countries like Singapore, the United States, Canada, Australia, Japan and Germany have some form of withholding tax mechanisms on REIT distributions as well.

In comparing withholding tax rates around the world, we find that the withholding tax rate on REIT distributions by a Malaysian REIT is lower than most countries, except Japan and Singapore. For example, Singapore levies a withholding tax of 10% on distributions to non-resident non-individuals, while individuals pay no tax at all.

Although the Malaysian withholding tax rates on REIT distributions is one of the lowest in the world, Malaysia needs to reconsider these rates if we want to compete with other regional REITs in Asia. According to former General Electric CEO Jack Welch, 'an organisation's ability to learn, and translate that learning into action rapidly, is the ultimate competitive advantage.' Similarly, in this competitive economic environment, countries – like companies and organisations - are constantly trying to outdo each other to attract investments. We need to take stock of what they're offering and examine how we can offer better tax incentives to further promote our REIT market.

Article contributed by Jennifer Chang, a Senior Executive Director with PricewaterhouseCoopers Taxation Services. She is a member of the Institute of Chartered Accountants in Australia, the Securities Institute of Australia and International Fiscal Association. Her extensive tax and financial services experience both in Australia and Malaysia enables her to regularly advise clients on various tax matters including income tax, real property gains tax, stamp duty, service tax, applicable tax incentives and double tax treaties. She can be contacted at jennifer.chang@my.pwc.com.

This article first appeared in the February 2012 issue of iProperty.com Magazine

TechnicalUpdates

The technical updates published here are summarised from selected government gazette notifications published between 1 November 2011 and 31 January 2012 including Public Rulings and guidelines issued by the Inland Revenue Board , the Royal Customs Department and other regulatory authorities .

INCOME TAX

Public Ruling No.8/2011: Foreign nationals working in Malaysia -Tax treatment

Public Ruling No.8/2011 issued on 16 November 2011 explains the tax treatment of income derived by foreign nationals exercising an employment in Malaysia and is effective from the year of assessment (YA)2011.

Public Ruling No. 9/2011: Co-operative society

Public Ruling No.9/2011 was issued on 16 November 2011 to explain the tax treatment of a co-operative society registered in Malaysia.

Public Ruling No. 10/2011: Gratuity

Public Ruling No.10/2011 was issued on 5 December 2011 to explain how lump-sum payments received by employees upon the termination of their employment are taxed and is effective for the YA 2011 and subsequent years. Lump-sum payment that is attributable to past services is regarded as gratuity.

Public Ruling No. 11/2011: Bilateral credit and unilateral credit

Public Ruling No.11/2011 was issued on 20 December 2011 to explain how a person who has been charged to tax on the same income both in Malaysia and in another country may claim bilateral credit or unilateral credit.

Public Ruling No. 12/2011: Tax exemption on employment income of non-citizen individuals working for certain companies in Malaysia

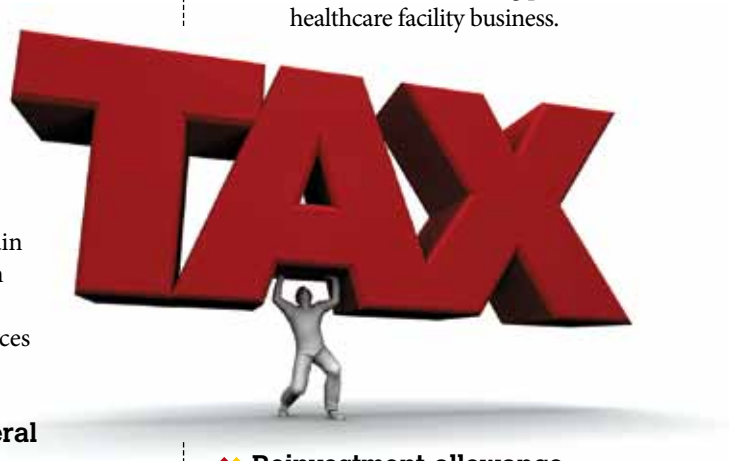
Public Ruling No.12/2011 was issued on 20 December 2011 to explain the tax treatment of non-citizens employed by an operational headquarters company , international procurement centre company, regional distribution centre company and regional office in Malaysia.

Income Tax (Deduction for payment of premium to Malaysia Deposit Insurance Corporation) Rules 2011

The Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2011 [P.U.(A) 379/2011] were issued on 3 November 2011. The Rules provide a tax deduction in ascertaining the adjusted income of the member institution on an amount equivalent to the first premium or annual premium paid to the Malaysia Deposit Insurance Corporation.

Income Tax (Exemption) Order – Private healthcare facilities business

The Income Tax (Exemption) Order 2012 [P.U. (A) 22] was issued on 27 December 2011 and is effective from 1 January 2010 until 31 December 2014. The Order exempts statutory income equivalent to 100% of the qualifying capital expenditure incurred within five years by a company undertaking a qualifying project in a new private healthcare facilities business; or any project for the expansion, modernisation or refurbishment of an existing private healthcare facility business.



Reinvestment allowance – Restricted definition of "manufacturing"

The Income Tax (Prescription of Activity Excluded from the Definition of "Manufacturing") Rules 2012 [P.U.(A) 23] were issued on 9 January 2012 and are deemed to have effect from YA 2009. The Rules list out the activities that are now excluded from the definition of "manufacturing" for the purposes of claiming reinvestment allowance under paragraph 9 of Schedule 7A of the Income Tax Act 1967.

Income Tax Exemption Orders relating to non-ringgit Sukuk

The 2012 Budget proposed a further extension of three years to

the existing tax incentives concerning non-ringgit *Sukuk* (Islamic bond). Towards this implementation, two new Orders were issued on 30 December 2011 and are effective from YA 2012 until YA 2014:

(1) Income Tax (Exemption) (No.10) Order 2011 [P. U.(A) 444]

Income tax exemption is given to the relevant persons specified in respect of statutory income derived from dealing in non-ringgit *Sukuk* regulated under the Capital Markets and Services Act 2007.

(2) Income Tax (Exemption) (No.11) Order 2011 [P. U.(A) 445]

Income tax exemption is given to the relevant persons specified in respect of statutory income derived from dealing in securities and advising on corporate finance regulated under Capital Markets and Services Act 2007 relating to the arranging, underwriting and distributing of non-ringgit *Sukuk*.

Income Tax (Deduction) Rules – Islamic securities

The Income Tax (Deduction for expenditure on issuance of Islamic securities) Rules 2011 [P.U.(A) 443] were issued on 30 December 2011 following the 2012 Budget proposal that deduction allowed for expenditure incurred on the issuance of Islamic securities be extended to those based on the *Wakalah* principle. The Rules are effective from YA 2012 until 2015.

Income Tax (Exemption) Orders on services rendered in Labuan

Four new Income Tax (Exemption) Orders on services rendered in Labuan were issued on 19 December 2011. The Orders are effective from YA 2011 until YA 2020 and provide for the following tax exemptions:

(1) Income Tax (Exemption) (No.6) Order 2011 [P. U.(A) 418]

Income tax exemption is given on 65% of the statutory income of any person derived from providing qualifying professional services in Labuan by that person to a Labuan entity.

(2) Income Tax (Exemption) (No.7) Order 2011 [P. U.(A) 419]

Income tax exemption is given in respect of fees received by a non-Malaysian individual in his capacity as director of a Labuan entity.

(3) Income Tax (Exemption) (No.8) Order 2011 [P. U.(A) 420]

Income tax exemption is given on 50% of the gross income received by a non-Malaysian individual from exercising an employment in a managerial capacity with a Labuan entity in Labuan, a co-located office or marketing office.

(4) Income Tax (Exemption) (No.9) Order 2011 [P.U.(A) 421]

Income tax exemption is given on 50% of the gross housing allowance and gross Labuan Territory allowance received by a Malaysian citizen in consideration for exercising an employment in Labuan with a Labuan entity.

REAL PROPERTY GAINS TAX

Real Property Gains Tax (Exemption) Order 2011

The Real Property Gains Tax (Exemption) Order 2011 [P.U. (A) 434] was issued on 30 December 2011 and came into operation on 1 January 2012. The Exemption Order implements the changes to the real property gains tax (RPGT) rate that were proposed in the 2012 Budget wherein the RPGT rate is now increased from 5% to 10% on gains from disposals of chargeable assets made within a period of two years from acquisition date with effect from 1 January 2012.

STAMP DUTY

Three new Stamp Duty (exemption) Orders to implement some of the 2012 Budget proposals were issued on 30 December 2011. The Orders which came into operation on 1 January 2012 are as follows:

(1) Stamp Duty (Exemption) (No.3) Order 2011[P.U.(A) 441] exempts stamp duty on any loan agreement to purchase a residential property under the Perumahan Rakyat 1Malaysia programme (PR1MA).

(2) Stamp Duty (Exemption) (No.4) Order 2011[P.U.(A) 446] exempts stamp duty on any agreement for a loan or financing pursuant to a microfinancing scheme approved by the National Small and Medium Enterprise Development Council for an amount not exceeding fifty thousand ringgit (RM50,000).

(3) Stamp Duty (Exemption) (No.5) Order 2011 [P.U.(A) 447] exempts stamp duty on all financing instruments in relation to the Professional Service Fund for an amount not exceeding fifty thousand ringgit (RM50,000) between a borrower and Bank Simpanan Nasional executed on or after 1 January 2012.

Remission of Stamp Duty on deed of assignment between contractor and subcontractor

The Stamp Duty (Remission) Order 2012 [P.U.(A) 8] was issued on 30 December 2011 and is deemed to have come into operation on 1 May 2011. Pursuant to this Order, the amount of stamp duty chargeable under sub-item 32(a) of the First Schedule to the Stamp Act 1949, which is in excess of RM50, is remitted on any deed of assignment executed between a contractor and a subcontractor pursuant to 'Dasar Pengagihan Kerja kepada Kontraktor Bumiputera Kelas E dan F'.

LABUAN

Labuan international commodity trading

The Labuan Financial Services Authority (LFSA) and the Malaysian Petroleum Resources Corporation issued the Directive on Labuan International Commodity Trading Business (Directive) and Guidelines on the Establishment of the Labuan International Commodity Trading Company dated 31 October 2011under the Global Incentive For Trading (GIFT) programme . The GIFT programme will serve as an incentive for traders of specified commodities to use Malaysia as their international trading base.

Pursuant to the directive, the Labuan International Commodity Trading Business is now specified as a Labuan financial business under Section 86 of the Labuan Financial Services & Securities Act 2010 (LFSSA). The business can only be undertaken by a company licensed under Section 92 of the LFSSA and shall be referred to as Labuan International Commodity Trading Company (LICTC).

The guidelines are issued pursuant to Section 4A of the LFSAA to clarify the licensing procedures for the establishment of LICTC as required under Section 92 of the LFSSA.

CUSTOMS AND EXCISE DUTIES

Service tax exemptions for free zones and principal customs area

With effect from 1 January 2012, the Minister of Finance has exempted service tax on all taxable services provided by any person in :

- Free Zones and supplied to any other person in Free Zones;
- Free Zones and supplied to any other person in the Principal Customs Area;
- the Principal Customs Area and supplied to any person in Free Zones; and
- the Principal Customs Area or Free Zones in connection with any matters in Langkawi, Labuan, Tioman and the Joint Development Area or supplied to any person in those places

Customs (Values Of Imported Completely Built-Up Motor Vehicles) (New) (Amendment) (No. 2) Order 2011, Customs Act 1967 [P.U. (A) 407/2011]

This Order which took effect on 16 December 2011 shows the changes to the value of certain dutiable imported completely built-up (CBU) motor vehicles (new) listed in the Customs (Values Of Imported Completely Built-Up Motor Vehicles) (New) Order 2006. This Order also includes the value of certain models of the imported CBU (new) for purpose of levying and payment of customs duties.

Customs (Prohibition Of Imports) (Amendment) (No. 4) Order 2011, Customs Act 1967 [P.U. (A) 437/2011]

One of the changes, amongst others, effective from 1 January 2012, is that the importation of goods (from all countries) listed below is to be accompanied by a certificate of approval issued by SIRIM:-

(1) All new and used apparatus or equipment to be attached to or connected to a Public Telecommunications network or system or their motherboards including other parts and accessories ; and

(2) All new and used radio communication apparatus capable of being used for telecommunications in the frequency band up to 420 THz or their motherboards including other parts and accessories, except for:

(i) receivers that are designed for use in the broadcasting services; and

(ii) radio communication apparatus having a valid licence issued by the Telecommunications Authority of any country or an international automatic roaming (IAR) card issued by a licensed operator

Customs (Prohibition Of Exports) (Amendment) (No. 2) Order 2011, Customs Act 1967 [P.U. (A) 438/2011]

Amongst the changes effective from 1 January 2012 is that the exportation of goods listed below is to be accompanied with a letter of approval issued by the relevant authority:-

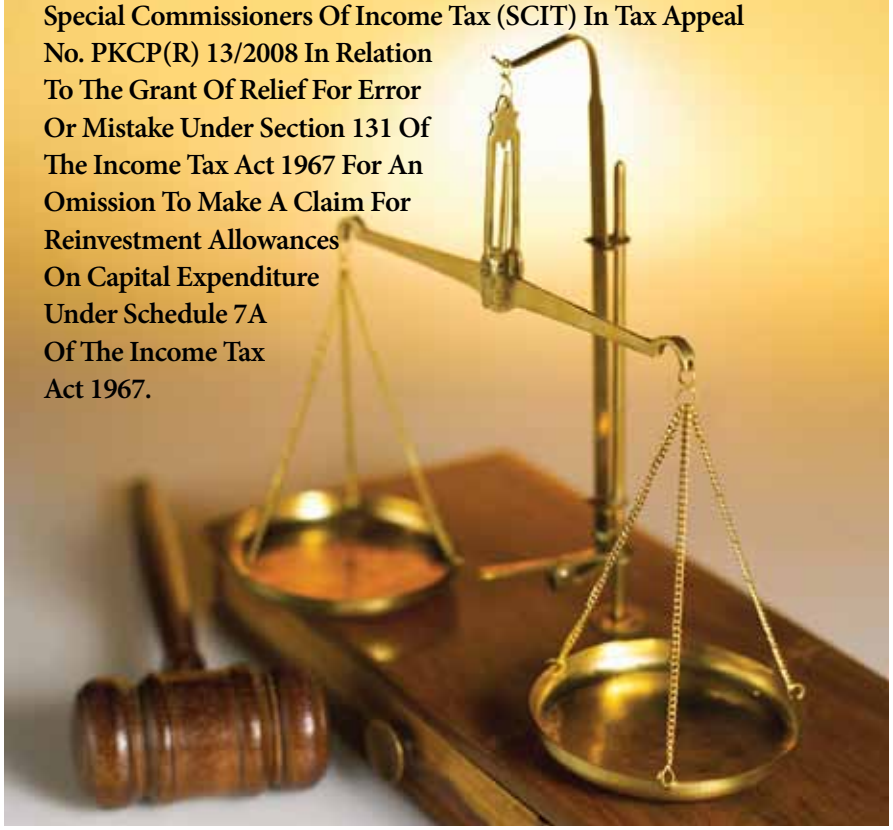
(1) Diesel fuel (HS 2710.19), Petrol RON 95 (HS 2710.11 213), Liquefied petroleum gas (LPG) - Propane (HS 2711.12 000), LPG - Butanes (HS 2711.13 000) and LPG - Other (HS 2711.19 000) – Accompanied by a letter of approval issued by the Controller of Supplies, Ministry of Domestic Trade, Co-operatives and Consumerism; and

(2) Tributyltin compounds (chemically pure) under HS code 2931.00 900 and preparations of paint and varnishes of acrylic or vinyl polymers (HS 3208.20 000) – Accompanied by a letter of approval issued by or on behalf of the Director-General of the Department of Environment

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

Grant of relief : Section 131 of the Income Tax Act 1967

In This Article, Irene Yong Reviews The Recent Decision Of The Special Commissioners Of Income Tax (SCIT) In Tax Appeal No. PKCP(R) 13/2008 In Relation To The Grant Of Relief For Error Or Mistake Under Section 131 Of The Income Tax Act 1967 For An Omission To Make A Claim For Reinvestment Allowances On Capital Expenditure Under Schedule 7A Of The Income Tax Act 1967.



FACTS

The taxpayer was carrying on the business of processing and supply of certain construction materials for the relevant years of assessment (relevant YA) during which it had incurred capital expenditure on plant and machinery, a significant part of which related to mixer trucks, constituting mobile machinery as well as other items of plant and machinery (capital expenditure). The mixer trucks are road-going items of plant and machinery which deliver concrete to construction job sites.

It was common ground that the mixer trucks and other items of claim constituted plant and machinery for the purposes of Schedule 3 to the Income Tax Act 1967 (ITA) as capital allowances thereon had been claimed and allowed in full.

However, by an oversight, the taxpayer omitted to make claims for Reinvestment Allowances (RAs) on these items of plant and machinery under Schedule 7A of the ITA when the taxpayer filed its tax returns for the relevant YAs.

Accordingly, the taxpayer subsequently wrote to the Inland Revenue Board (Revenue) some years later to seek relief in respect of its "error or mistake" under Section 131 of the ITA arising from its omission to make a claim for RAs on the mixer trucks and the other items of plant and machinery.

RELEVANT LEGISLATIVE PROVISIONS

Section 131 of the ITA reads as follows:

> *"(1) If any person who has paid tax for any year of assessment alleges that an assessment relating to that year is excessive by reason of some error or mistake in a return or statement made by him for the purposes of this Act and furnished by him to the Director-General prior to the assessment becoming final and conclusive, he may within six years after the end of the year of assessment within which the assessment was made make an application in writing to the Director-General for relief.*
> *(2) On receiving an application under subsection (1) the Director-General shall inquire into the matter and, subject to this section, shall give by way of repayment of tax such relief in respect of the alleged error or mistake as appears to him to be just and reasonable. …" (emphasis added)*

The relevant RA provisions at the time governing the grant of relief are set out in Paragraphs 1 and 8(a) of Schedule 7A of the ITA which read as follows:

> *"Paragraph 1 –*
> *Where a company which is resident in Malaysia –*
> *(a) has been in operation for not less than twelve months; and*
> *(b) has incurred in the basis period for a year of assessment capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project, there shall be given to the company for that year of assessment a reinvestment allowance of an amount equal to sixty per cent of that expenditure:…*

Paragraph 8(a) –
In this Schedule, "qualifying project" means – (a) a project undertaken by a company, in expanding, modernising or automating its existing business in respect of manufacturing or processing of a product or any related product within the same industry or in diversifying its existing business into any related product within the same industry;…" (emphasis added)

APPEAL TO THE SPECIAL COMMISSIONERS OF INCOME TAX

The Revenue rejected the taxpayer's claims for relief under Section 131 of the ITA as well as for RAs on various grounds.

Against that decision, the taxpayer lodged notices of appeal by way of Form Q with the Revenue which Form Q were forwarded to the SCIT. These Form Q were lodged pursuant to Section 131(5) of the ITA which provides that an application under Section 131(1) shall be as nearly as may be in the same form as a notice of appeal under Section 99 of the ITA.

(This appeal was filed before the creation of Form CP 15C – 1/2009 which are now the form which the Revenue claim should be used for Section 131 of the ITA applications.)

TAXPAYER'S CONTENTIONS

The taxpayer contended, amongst others, that:

the Revenue should not take advantage of such error or mistake to collect more tax than what it was entitled to; the Revenue would be unjustly enriched contrary to the law should the grant of relief be refused to the taxpayer; statutory provisions should be given a purposive reading; and the relevant parts of statutory provisions which favour the taxpayer must be read liberally.

SCIT'S DECISION

The SCIT considered the following issues:

(1) whether by omitting to claim the RAs in its tax returns for the relevant YAs, the taxpayer made an "error or mistake" within the meaning of Section 131 of the ITA (first issue); and
(2) whether all or any of the capital expenditure incurred by the taxpayer during the relevant YAs qualifies for RAs under Schedule 7A of the ITA ("second issue").

On the first issue, the SCIT found that Section 131 of the ITA gives a taxpayer the right to claim relief where an error or mistake had been made, and such error or mistake can be by way of omission, commission, exclusion, inclusion, allowance or disallowance.

As such, the words "error or mistake" are to be interpreted to mean a slip or mischance, something that has happened not by design and the intention behind Section 131 is to restore the taxpayer to the position which it would have been in had such error or mistake not occurred.

Accordingly, the SCIT held that by omitting to claim the RAs in its tax returns for the relevant YAs, the taxpayer had in fact made an "error or mistake" within the ordinary meaning of the statutory language contained in Section 131 of the ITA.

On the second issue, the SCIT held that the burden was on the taxpayer to establish that capital expenditure had been incurred on a project undertaken by the taxpayer in expanding, modernising or automating its existing business in respect of manufacturing or processing of a product or any related product within the same industry or in diversifying its existing business into any related product within the same industry within the meaning of Schedule 7A of the ITA.

The SCIT found that upon a holistic consideration of the facts, the taxpayer had tendered sufficient evidence and fulfilled all the requirements to claim RAs under paragraphs (1) and 8(a) of Schedule 7A of the ITA. Accordingly, the SCIT held that the capital expenditure on the mixer trucks and other items of plant and machinery incurred by the taxpayer during the relevant YAs qualifies for RAs under Schedule 7A of the ITA.

CONCLUSION

This is a landmark case being the first decision on the grant of relief for error or mistake under Section 131 and whether mixer trucks qualify for RAs under Schedule 7A of the ITA and on whether Section 131 relief can apply to RA claims which had been overlooked by a taxpayer at the time of the filing of the taxpayer's returns. The Revenue are not appealing to the High Court.

Irene Yong *is an advocate & solicitor in Shearn Delamore & Co. This article is published with the permission of Shearn Delamore Corporate Services Sdn. Bhd.*

Counsel for the taxpayer: *Anand Raj, Irene Yong and Foong Pui Chi*
Counsel for the IRB: *Neng Juliana Ismail and Seri Hanem Mohd Ayob*

InternationalNews

This column only covers selected developments from countries identified by CTIM and relates to the period 1 November 2011 to 15 February 2012.

CHINA (PEOPLE'S REP.)

Thresholds for VAT and business tax amended

The Ministry of Finance (MoF) issued an Order on 28 October 2011 (Order of the Ministry of Finance [2011] No.65) amending the implementation rules of both VAT and business tax. The amendments, which apply from 1 November 2011, are summarised below: (i) VAT thresholds for supply of goods and provision of services by small enterprises run by individuals are increased to CNY5,000 – CNY20,000 on a monthly turnover basis. In case of transaction per payment, the threshold is increased to CNY300 – CNY500 per payment on a daily basis. (ii) Business tax threshold (for provision of services as only provision of services is subject to business tax) has been increased to the same band as VAT. The exact threshold within the band will be determined by the local government finance department and the SAT depending on the local situation. The increase of these tax thresholds has reduced the burden of a large number of small enterprises run by individuals who are facing a difficult time in China and are in need of financial support from the government.

Pilot programme for (partial) integration of business tax and VAT published

On 16 November 2011, the MoF and the SAT jointly issued Cai Shui [2011] No. 110 releasing the pilot programme with regard to the partial integration of business tax and VAT previously announced by the State Council. The programme, providing guidelines on inclusion of some taxable items of business tax in the taxable scope of VAT, will be implemented from 1 January 2012. The main points of the programme cover VAT rate for taxable services, tax calculation methods for the different services, tax base, import and export of taxable services, transitional measures for business tax incentives, cross-region coordination and others.

Tax incentive for small low-profit enterprises extended

The MoF and the SAT jointly issued Cai Shui [2011] No. 117 on 29 November 2011 extending the tax incentive for small low-profit enterprises, as defined. According to the notice, a small low-profit enterprise will be subject to enterprise income tax on 50% of its taxable income at a reduced rate of 20% provided that the annual turnover of such enterprise is less than CNY60,000 (including CNY60,000) and applicable from 1 January 2012 to 31 December 2015. A similar incentive for small low-profit enterprises with an annual turnover of up to CNY30,000 applies for 2010 and 2011. This notice extends the incentive to enterprises with an annual turnover of up to CNY60,000 and the applicable period to 31 December 2015.

Windfall tax threshold for oil industry increased

On 29 December 2011, the MoF issued Cai Qi [2011] No. 480 stating that the tax threshold of windfall tax for the oil industry is increased from USD40 to USD55 per barrel as from 1 November 2011. The amendment applies to all oil companies operating in China (People's Rep.) and the Notice was specially addressed to China National Petroleum Corporation (CNPC), China National Offshore Oil Corporation (CNOOC) and Sinopec. The increase in the threshold of this tax may alleviate the tax burden caused by the new calculation system of resource tax on crude oil and natural gas which took effect on 1 November 2011, the same date on which the amendment of the threshold became effective.

VAT and business tax – Recent developments

The MoF and the SAT issued several notices on VAT and business tax.

The contents of these notices are summarised below. (i) Business tax on transfer of use-right of natural resources - The MoF and SAT jointly issued Cai Shui [2012] No.6 on 6 January 2012 stating that the transfer of the use-right of natural resources in China is taxable as taxable transfer of intangibles. However, the transfer of natural resources conducted by the local government or government department in charge of natural resources at the level higher than the county level is exempt from business tax. The notice applies from 1 February 2012. (ii) VAT on sale of fixed assets used by the taxpayer - According to Circular [2012] No. 1 issued by SAT, the sale of the fixed assets used by an ordinary taxpayer himself is subject to VAT at a reduced rate of 2% (50% of 4%) in the following circumstances: (a) the taxpayer selling the fixed assets was classified as small-size taxpayer at the time that the fixed asset was purchased or produced by the taxpayer. However, at the time that the sale of the fixed assets takes place, the taxpayer has become an ordinary taxpayer by meeting the criteria for ordinary taxpayers. For such a sale, the taxpayer may not be allowed to issue a VAT invoice; and (b) the fixed assets sold by an ordinary taxpayer were not eligible for input tax credit and also the ordinary taxpayer, the seller, has never claimed input tax credit on purchase of the sold fixed assets (iii) VAT exemption for vegetables – Pursuant to Cai Shui [2011] No. 137 issued on 31 December 2011, the MoF and SAT exempt wholesalers and retailers of vegetables (including processed vegetables) from VAT starting from 1 January 2012, but excluded canned vegetables. (iv) VAT and business tax on animations - The MoF and SAT jointly issued Cai Shui [2011] No. 119 on 23 December 2011 extending the preferential tax treatment to the animation industry to 31 December 2012, whereby an ordinary taxpayer engaged in the development of animation software will be charged 17% VAT, but any VAT in excess of 3% of VAT burden will be refunded, and the export of animation software is exempt from VAT. To that effect the animation software is, in terms of VAT, treated in the same way as the development of general software and ICs. Art.1 and 3 of the previous notice on tax treatment of animations (Cai Shui [2009] No. 65) ceased to apply on 1 January 2012. Services relating to the production of an animation such as drafting of the script, design of figures, decor,

filming, composing of the music, royalties derived from the copyright and so on are subject to business tax at a reduced rate of 3%.

Income tax on capital gains derived by a qualified foreign institutional investor (QFII) proposed

Dividends and interest derived in China by a QFII are subject to EIT at a rate of 10% since 2009 (Guo Shui Han [2009] No.47). However, the tax treatment of the capital gains arising from stock transactions is unclear; although it should be noted that such gains are exempt from business tax (Cai Shui [2005] No.155). It has been reported that the tax authority intends to impose a 10% EIT on capital gains arising from stock transactions derived by a QFII, and that losses from such transactions are not deductible.

Note. A QFII refers to fund management institutions permitted to operate in the Chinese security market, and includes: (i) a fund management company, (ii) an insurance company, (iii) a security company, (iv) a trust or (v) a commercial bank.

HONG KONG

Budget for 2010/2011: Inland Revenue (Amendment) (No. 3) 2011 gazetted – deduction for IP purchase

Further to the Budget 2010/2011 announcement on 25 February 2010, the Inland Revenue (Amendment) (No. 3) Ordinance 2011 was gazetted

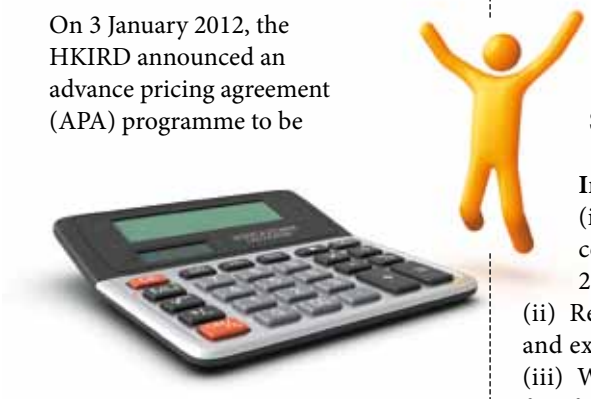
on 16 December 2011, to be effective from 1 April 2011. The Amendment Ordinance was enacted to implement the Budget proposals in respect of profits tax deduction for capital expenditure incurred on the purchase of copyrights, registered designs and registered trademarks.

The Amended Ordinance amends the existing Section 16E (expand the scope of deduction of capital expenditure on purchase of IPR), and introduced three new sections,

namely Section 16EA (condition for tax deduction), 16EB (Sale of relevant IPR) and 16EC (Anti-avoidance provision). A DIPN will be issued in due course.

APA programme – to be launched shortly

On 3 January 2012, the HKIRD announced an advance pricing agreement (APA) programme to be



launched in April 2012. The draft DIPN is expected to be released for consultation.

Budget for 2012-13 – details

The Budget for 2012-13 was presented to the Legislative Council by the Financial Secretary on 1 February 2012. Details of the Budget, which unless otherwise indicated will apply from 1 April 2012, are summarized below.

Corporate taxation
Profits tax for the year of assessment 2011-12 reduced by 75%, subject to a ceiling of HKD12,000 per case.

Personal taxation (salaries tax)
(i) A 75% reduction of salaries tax and tax under personal assessment for the year of assessment 2011-12, subject to a ceiling of HKD12,000 per case;
(ii) Various personal allowances such as the Basic and married person's allowance, child allowance, dependent parents/grandparents allowance, dependent brother/sister allowance, single parent allowance, etc were increased
(iii) tax deduction for home loan interest was extended from 10 years to 15 years, with the cap of HKD100,000 per year remaining unchanged;
(iv) Increase in allowable tax deduction for mandatory contributions to Mandatory Provident Fund Schemes.

Indirect taxation
(i) Capital duty levied on local companies to be abolished in 2012-2013;
(ii) Reduction of charges for import and export declarations by 50%;
(iii) Waiver of business registration fees for 2012-2013; and
(iv) Waiver of property rates for 2012-13, capped at HKD2,500 per tenement per quarter

INDONESIA

Revision of transfer pricing regulation

The Directorate General of Taxation (DGT) has revised the TP regulation in Indonesia through its Regulation No. PER-32/PJ/2011, which is applicable from 11 November 2011. The main changes in the new regulation are summarized as follows: (i) Scope - The new regulation differentiates between transactions with foreign related parties and domestic related parties. For domestic related parties, which includes PE in Indonesia, the regulation is applicable to a related party transaction that is used to arbitrage differences in tax rates due to: (a) final and non-final income tax in certain business sectors; (b) sales tax on luxury goods; and (c) transaction with companies on production sharing contract in the oil and gas sector. (ii) TP method - The TP method is now based on the most appropriate method, and no longer on the hierarchy of TP methods.(iii) Arm's length principle (ALP) - ALP is now required for a related party transaction whose value is more than IDR10 billion. (iv) Comparability analysis - DGT now acknowledges the use of incidental internal comparables which could be used only in an incidental related party transaction. The new regulation lists more comparability factors for economic circumstances. For functional analysis, additional consideration should be given to organizational structure in supply chain management contract / toll manufacturing and full fledge manufacturing. (v) Other - The new regulation provides more details about the definition and the use of trade intangibles and marketing intangibles. Additionally, the regulation acknowledges cost contribution arrangements between related parties.

List of official zakat institutions issued

Pursuant to regulation No. PER-33/PJ/2011 (PER-33) dated 11 November 2011 which is effective upon issuance, the DGT has issued the official list of 20 institutions as the recipient of *zakat* or any compulsory religious donations. Regulation PER-33, in conjunction with Government Regulation No.60 /2010, will allow individual and corporate taxpayers to deduct the *zakat* or other compulsory religious donations from the taxable income only if the donation is made to the acknowledged institutions.

Tax residency clarification

A Regulation PER-43/PJ/2011 dated 28 December 2011 was issued which provides clarification on the

determination of tax residency, as described below.

(i) Individuals - An individual is treated as being a tax resident of Indonesia if he meets any of the following: (i) The person resides or is domiciled in Indonesia. This means that the person has a place of residence in Indonesia that is used as a permanent dwelling place, where he carries on his "ordinary course of life" or his "place of habitual abode". Ordinary course of life refers to the carrying on of daily work, private, social or community activities in Indonesia. The place of habitual abode refers to a place that is used for the person's usual activities or hobbies, whether routine or infrequent; (ii) The person is present in Indonesia for more than 183 days in a 12-month period. The stay can be continuous or broken up, and part-days are to be counted as 1 full day; (iii) The person stays and intends to reside in Indonesia. The intention can be evidenced by a work visa, a limited stay permit card (KITAS) or a contract of employment/ business/ other activities that are performed in Indonesia for more than 183 days. The leasing of a place of residence or the relocation of his family to Indonesia would also indicate this intention. If the conditions above are met, the individual will be treated as being resident in Indonesia.
An Indonesian citizen who is a resident abroad will be treated as an Indonesian tax resident unless he has valid official documentation proving that he is tax resident abroad, such as a green card, identity card, student card or other verifications by the Indonesian foreign embassies.

Companies - A company is treated as being a tax resident of Indonesia if the following conditions are met: (i) It is incorporated in Indonesia; (ii) Its head office, centre of administration or finance is in Indonesia; (iii) Its management resides in Indonesia; or (iv) Board meetings at which strategic decisions are made are held in Indonesia.

A foreign company that is not established or domiciled in Indonesia but conducts business activities in Indonesia will be treated as being resident in Indonesia only where strategic decisions of the company are made in Indonesia.

The Regulation also provides that the "place of effective management" rule in Indonesia's tax treaties refers to the place where significant management and commercial decisions are made, or where the management makes decisions for the well-being of the company.

Exchange of information based on tax treaty – audit procedure

A Regulation No. PER-41/PJ/2011 dated 28 December 2011 was issued, and effective as of that date, which stipulates the audit procedure concerning exchange of information based on a tax treaty. The regulation addresses the tax audit from the Indonesian tax auditor to be conducted in the treaty partner's country, as well as the tax audit for the treaty partner to be conducted in Indonesia. It is noted that the tax audit is related to tax avoidance, tax evasion and tax treaty abuse. The information required in the treaty partner's country consists of: (i) the identity of the domestic taxpayer; (ii) the identity of the foreign entity which had transactions with that domestic taxpayer; (iii) the reason and background of the tax audit abroad; (iv) the period of the audit; (v) the type of tax; (vi) the suspected transaction; and (vii) the statute of limitations. The taxpayer's identity itself includes the name, taxpayer identification number, address, company registration number, organizational chart or other documents describing those taxpayers' relationship.

MIDDLE-EAST

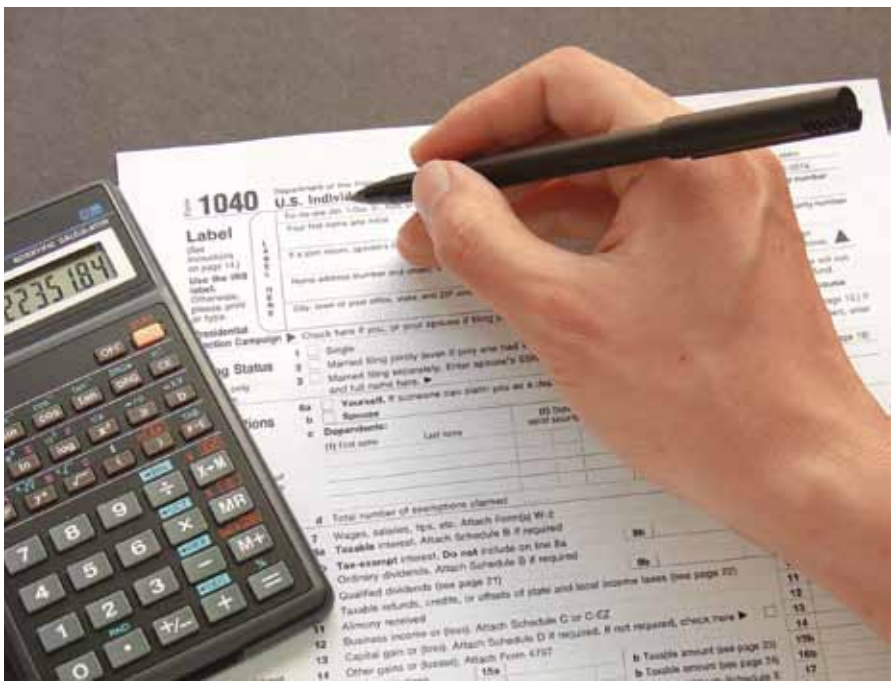
Palestinian Autonomous Areas - New Income Tax Law suspended

On 31 January 2012, the Ministerial Council agreed on the Prime Minister's proposal to suspend the enforcement of the new Income Tax Law 8/2011.

National dialogue sessions regarding the new Income Tax Law will last until 15 February 2012.

Lebanon

The MoF published the draft Budget for 2012. The measures will apply as of 1 January 2012 upon approval. The important tax measures are summarized below. (a) Withholding taxes - The application of the reduced 5% dividend withholding tax rate will be restricted to distributions made by resident companies listed on the Beirut Stock Exchange (BSE). Accordingly, the 10% standard withholding tax rate will apply instead of the 5% reduced rate when 20% of the share capital of the distributing company is held by (i) a company resident in an Arabic country and listed on the stock exchange of that country, (ii) foreign companies listed on the stock exchange in an OECD Member country; or (iii) when the distributing company has listed Global Depositary Receipts on the BSE equivalent to, at least, 20% of its share capital. The withholding tax rate has been increased from 5% to 8% for specific types of interest.



(b) Capital gains – (i) The exemption of capital gains on the transfer of shares by resident individuals will be restricted to shares listed on the BSE. A general 10% capital gains tax will be introduced on the disposal of non-listed shares by resident individuals; (ii) A special 3% capital gains tax will be introduced on the disposal of immovable property located in Lebanon; (iii) An exceptional revaluation of fixed and current assets will be allowed within a 6-month period from the entry into force of the 2012 Budget. The revaluation is allowed for assets posted to the balance sheet before 1 January 2011. Unrealized gains derived from the revaluation will be taxable at the rate of 6%; (iv) The tax rate applicable on capital gains triggered by the transformation of partnerships and limited liability companies to joint stock companies will be reduced from 10% to (1) 6% when the capital ownership structure remain unchanged; and (2) 8% when the transformation will change the ownership structure.(c) VAT – (i) The standard VAT rate will be increased from 10% to 12%; (ii) The VAT thresholds have been unified to LBP150 million; (iii) Certain transactions has been stated as outside the VAT scope including:(a) the transfer of undeveloped lands; (b) the activities of offshore companies; and (c) transactions related to undeveloped lands for agriculture purposes; and (v) The right to claim refund of input VAT charged on fixed assets and operational expenses related to the supply of certain zero-rated goods and services will be abolished. In this respect, a deadline of 6 months as of the publication of the Budget will be allowed for VAT refund claims which have not been filed yet. (d) Tax management - Penalties applicable to holding companies and offshore companies will be strengthened. Accordingly, holding companies and offshore companies exercising unauthorized activities will be liable to tax not only on profits derived from unauthorized activities but on profits derived from all their activities.

Oman

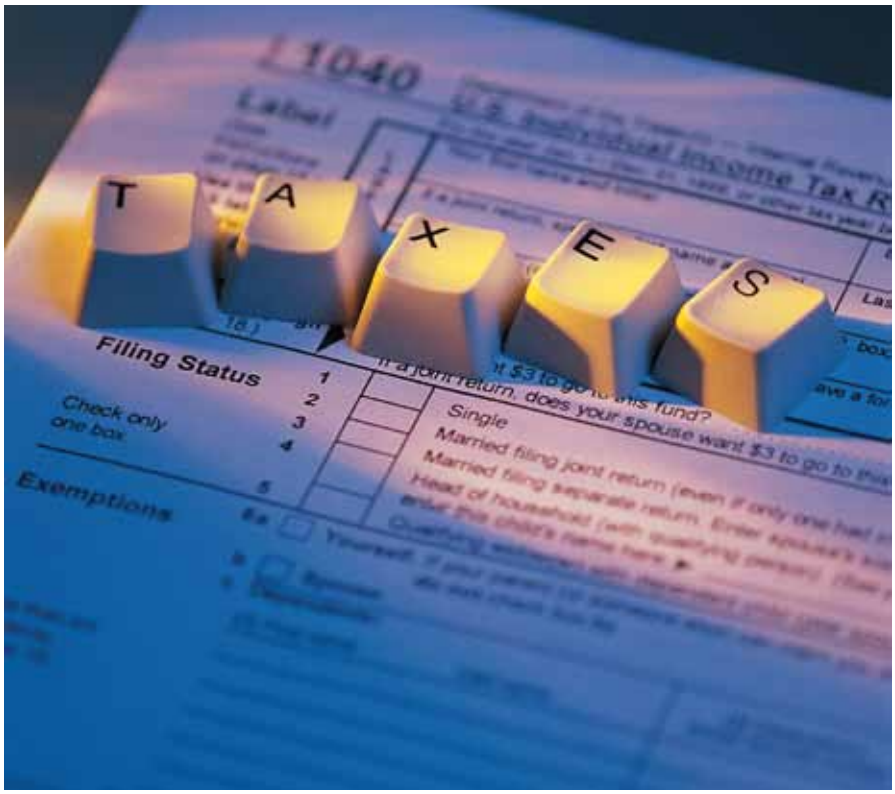
The Executive Regulations (ER) of the new Income Tax Law (ITL) was issued by way of Ministerial Decision No. 30/2012 dated 16 January 2012 and published in Official Gazette No. 958 of 28 January 2012. The ER applies, generally, as of the first day following its publication in the Official Gazette i.e. 29 January 2012, subject to the following:(i) article 6 (definition of professional activities), Articles 18 to 66 (deduction of expenses) and articles 130 to 132 and 134 to 143 (filing requirements) apply to taxable years beginning on or after 1 January 2012; and (ii) article 133 (withholding tax) and articles 148 to 154 (collection of

tax) apply to tax due being payable on or after 29 January 2012. The ER, which repealed all decisions issued under the previous Income Tax Decrees, provided details concerning the provisions of the ITL dealing with such issues as taxation of non-residents, deduction of expenses, conditions and procedures of exemption, filing requirements, payment of tax, etc.

SINGAPORE

Additional buyer's stamp duty on purchase of residential properties

The IRAS issued an e-tax Guide on 7 December 2011, which details the imposition of an additional buyer's stamp duty (ABSD) on certain purchases of residential properties. The ABSD applies in addition to existing stamp duty, to purchases of residential properties (including residential land) on or after 8 December 2011 as follows: (i) 10% of the higher of the purchase price or market value for purchases by foreigners, companies, partnerships and societies; (ii) 3% of the higher of the purchase price or market value for purchases by: (a) Singapore permanent residents (PR) who already own 1 or more residential properties, whether owned wholly, partially, or jointly with others; and (b) Singapore citizens who already own 2 or more residential properties, whether owned wholly, partially, or jointly with others. Where the property purchased is jointly bought by buyers with different profiles (e.g. a foreigner and a Singaporean PR), the higher rate of ABSD of 10% applies. All residential properties are included in the count of properties owned by a person, whether he owns the property wholly or partially or jointly with others. These properties include: (i) all residential buildings



including HDB flats, serviced apartments, mixed use buildings with a residential component such as shophouses, shopflats, and shops with dwelling units, etc; (ii) all the above buildings which are to be built or being built; and (iii) vacant land and development sites for residential use.

Other than a direct purchase, the following methods of property acquisition are also subject to the ABSD: (i) via a gift, inheritance, release or settlement; (ii) via a trust declaration where the beneficial interest in the property passes to the beneficiary; (iii) via a letter of authority; and (iv) via an exchange. The ABSD is payable in the same manner as the existing stamp duty.

Property tax changes in relation to HDB flats

The IRAS issued an e-tax Guide on 2 December 2011, which provides changes to property tax for HDB flats. The changes take effect from 1 January 2012, and are as follows: (i) the annual values (AV) of three-room HDB flats and larger on which the 10% property tax is imposed will be revised upwards; and (ii) a rebate will be given to all owner-occupiers of HDB flats whose HDB flats are currently subject to property tax. The rebate amounts to the lower of SGD 55 or the property tax payable based on the revised AV. All one and two-room owner occupied HDB flats will continue to be exempt from property tax in 2012.

THAILAND

Tax Incentives for Infrastructure Fund (IFF)

On 15 November 2011, the Thai cabinet approved the draft legislation with

the following tax incentives: (i) Exemption of VAT, specific business tax and stamp duties for the transfer of the assets from the originator to IFF. Such exemption will be applicable only if the assets will eventually be returned to the originator or transferred to the government authorities or state enterprises. (ii) Where there is a transfer of immovable properties from the originator to IFF, the registration fees charged by the Land Department will be reduced from the normal rate of 2% to 0.01% of the properties' value. The registration fees for the mortgage and lease of immovable properties will be reduced from 1% to 0.01% (not to exceed THB100,000 for the mortgage registration). (iii) Exemption of personal income tax on the profits distributed from IFF to the individual unit holders for a period of 10 years, starting from the day IFF is established. It is unclear if foreign resident individual unit holders will be entitled to such tax exemption. After such 10 year period, the investors will be subject to the normal tax rate that is currently applicable to a mutual fund, i.e. 10% flat tax (instead of progressive tax rates). Note that the draft does not exempt the transaction from corporate income tax.

Note that, where the unit holders are a foreign legal entity, they are normally not taxed for the profits that are distributed from the mutual funds established under the securities exchange laws (including IFF). As for Thai company unit holders, normally 50 per cent of the profits distributed from IFF is exempted from income tax where the recipient is a non-listed company, and fully exempted for listed companies, provided that the investment units are held for at least 3 months before the distribution and remain un-transferred for 3 months after the distribution.

Legislation on corporate income tax reductions

It was announced on 21 December 2011, pursuant to Royal Decree No. 530 (RD 530) dated 14 December 2011, that the current corporate income tax (CIT) rate of 30% on net profits will be reduced as follows for the next 3 accounting years: (i) 23% on the net profits derived in the accounting year starting on or after 1 January 2012; and (ii) 20% on the net profits derived during the 2 consecutive accounting years, starting on or after 1 January 2013. It is still unclear what the applicable CIT rate will be thereafter. Additionally, RD 530 also amended the following: (i) Definition and CIT rate for Small and medium enterprises (SMEs); and (ii) Companies listed in Stock Exchange of Thailand.

Summary of tax incentives for flood victims' recovery

Throughout the second half of 2011, the government regularly issued incentives to alleviate the burden of its taxpayers under Royal Decree No. 527, Article 2(82) of the Ministerial Regulation No. 126 and Notification of the BOI Office No. Paw. 4/2554(2011).

VIETNAM

Recent changes to CIT and PIT

Corporate Income Tax (CIT)

(a) Non-deductible donation. Official letter (OL) 3695/TCT-CS dated 17 October 2011 confirms that only donations made to registered agencies authorized to receive donations shall be treated as deductible expenses when calculating taxable income.

(b) Foreign tax credit. OL 3573/TCT-CS issued on 7 October 2011 states that income being loan interest in a foreign country will be subject to CIT in Vietnam at the rate of 25%. However, in calculating the CIT, the business entity will be entitled to deduct the amount of foreign tax paid. The foreign tax deductible

must not exceed the Vietnamese tax payable.

(c) Foreign Contractor Tax (FCT) – training activities. Pursuant to OL 3751/TCT-HTQT dated 19 October 2011, a foreign contractor being a training organization offering training services in Vietnam will be subject to CIT in Vietnam at the rate of 5% and will be exempt from VAT should the training activities create a PE in Vietnam.

Personal Income Tax (PIT)

(a) Withholding of PIT – seasonal labour contracts. OL 3667/2011-TCT dated 14 October 2011, provides for the withholding of PIT for employees under seasonal labour contracts. Organizations and individuals with employees under seasonal labour contracts with a term of less than 3 months for each contract, but which cumulatively amount to more than 3 months in a year, are required to withhold tax at the progressive rates from 5% to 35% and not at 10%.

(b) School fees paid by employer. Based on OL 8965/CT-TTHT dated 18 October 2011, school fees paid by the employer for children of a foreign employee will only be deductible for PIT purposes if the benefit is provided for in the labour contract between the employer and the foreign employee. This would apply even if there is no signed labour contract.

(c) Social insurance contribution rates from 1 January 2012. For the years 2012 and 2013, the applicable rates for monthly social insurance contributions for employers and employees on the agreed salary in the labour contract will be as follows: (i) employer: 17% and (ii) employee: 7%.

Changes to value added tax

Decree 121/2011/ND-CP on VAT was issued on 27 December 2011, amending and supplementing the existing decree on VAT (Decree 123 dated 8 December 2008). The key changes, which are generally effective from 1 March 2012 and the 2012 tax year, are as follows: (i) Introduces a new category of "goods and services for which VAT declaration and calculation is not required", effectively zero rating the following: (a) exported goods and services with special conditions for international transportation; (b) certain financial transactions – including Certificate of Emissions (CER) transfers; (c) goods and services provided outside of Vietnam; and (d) assets disposed of for liquidation purposes, (ii) Provides for additional goods and services not subject to VAT such as financing services, reinsurance, debt factoring, foreign currency trading, and securities trading services. (iii) Amends the VAT taxable value of goods/services subject to special sales tax and environment tax, and certain land transfer transactions. (iv) Disallows the input VAT deduction for machinery and equipment of credit institutions and enterprises involved in reinsurance, life insurance and securities trading. (v) Waives the 6 month time limit for correction of VAT declaration returns where VAT is paid at the import stage and in respect of input VAT at the initial investment stage.

Changes to corporate income tax

Decree 122/2011/ND-CP dated 27 December 2011, amending and supplementing the existing decree

on corporate income tax (Decree 124 dated 11 December 2008). The key changes, which are generally effective from 1 March 2012 and the 2012 tax year, are as follows: (i) "Other income" to include income from the transfer of projects, transfer of rights of exploration, exploitation and processing of minerals, and the disposal of assets and selling of scraps not directly related to an incentivized business. Conversely, the reversal of provisions such as stock price reductions, inventory devaluations, financial investment losses, bad debts and salary would not constitute "other income". (ii) Exempts the income from the transfer (within a year of the date of issuance) of CERs. (iii) Details the determination of non-cash income arising from capital assignments and security transfers. (iv) Clarifies that commission paid to distributors of multi-level selling companies are fully deductible. Bonus and life insurance premiums for employees are deductible if the benefits are documented in either the employment contracts or the company's policy. However, the provisioning for severance allowance is not deductible for companies required to contribute to Unemployment Insurance. (v) new foreign contractor withholding tax rate under Decree 122; (vi) Tax incentives previously granted due to export ratio will be repealed from 1 January 2012. Taxpayers may instead adopt either the incentives available at the time of license or those effective from 31 December 2011.

Non-agricultural land use tax

On 1 January 2012, the Non-Agricultural Land Use Tax (per Decree 53/2011/ND-CP issued on 1 July 2011) came into effect. The new tax applies to land used for industrial, commercial, and residential purposes, including land under construction and land used for the exploitation of natural resources. Both enterprises and individuals will be subject to the new tax. In general, the entity responsible for paying the tax is the holder of the land use right certificate (or the legal representative of joint holders of a land use right). Where the holder of a land use right leases that land, the responsibility to pay is on the lessor unless otherwise specified in the lease agreement. The tax liability is on the land itself and not charged on any buildings/residences constructed on the land. The size of the land for the purposes of the tax calculation is defined as the land actually in use. Where there is a mixed-use building and/or multiple occupants, each user shall pay a proportionate amount of tax based on the proportion its part of the building bears to the total area of the building.

The standard tax rate is 0.03% of the land value (as determined by the local People's Committee and fixed for 5 years). If the area of residential land exceeds the residential quota allocated by the authorities to a household then the area in excess of the quota shall be subject to higher tax rates. Certain exemptions and reductions are available.

MALAYSIA – TREATY DEVELOPMENTS

The following tax treaty partners ratified the tax treaties with Malaysia: (i) Senegal, (ii) South Africa and (iii) Bahrain.

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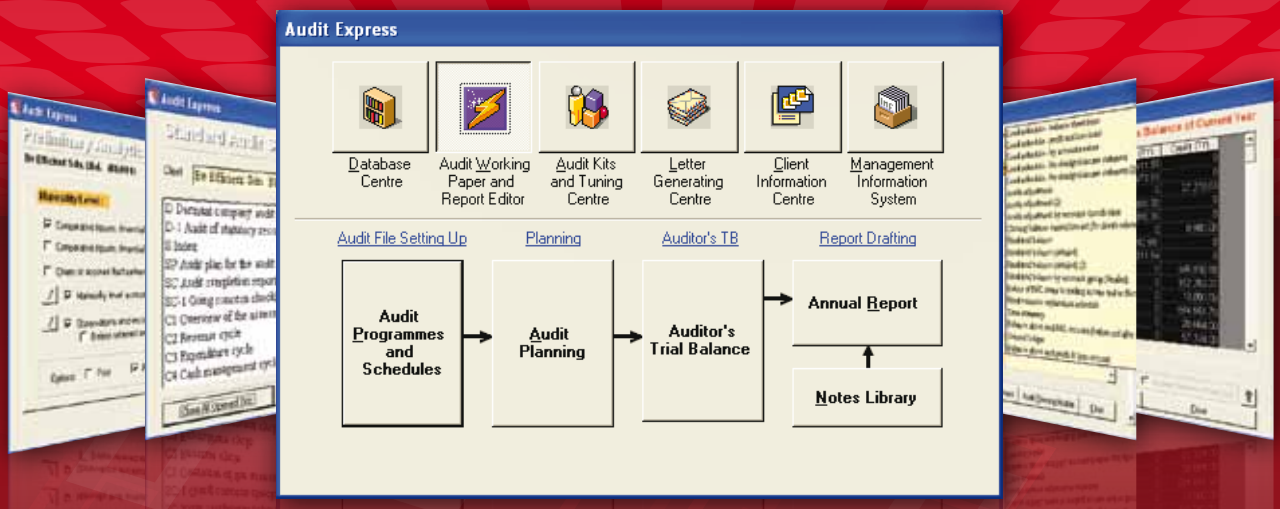

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GLOBAL EMERGING MIDDLE IS THE NEXT BIG MARKET

Globally, businesses are now looking at the 'Next 4 Billion' nations for growth, especially given the slowdown in growth in mature economies. This group, which includes India, China, Indonesia, parts of Africa and Latin America, is where over 4 billion of the world's 7 billion reside. In these markets businesses have traditionally focused on the middle and upper middle income tiers.

But the next big opportunity will come from the Global Emerging Middle (GEM) - just below the middle income segment, according to PwC's new report titled 'Profitable growth strategies for the Global Emerging Middle – Learning from the 'Next 4 Billion' markets'.

This market already accounts for 2.3 billion people globally and is growing fast as more people emerge from poverty. The report shows that globally it will represent annual spending power in excess of USD6 trillion by 2021. In India alone, it is expected to cross the USD1 trillion threshold by 2021. Companies seeking growth can't afford to ignore the opportunity offered by this Emerging Middle segment but need to innovate to meet customer requirements and serve them profitably.

Tony Poulter, Global Consulting Leader ,PwC said: "The research shows that once a company has established itself in the Emerging Middle, customers will carry their loyalty with them as they continue to increase their income. Companies

can also use the capabilities they have built in the Emerging Middle in one country to compete in other Next 4 Billion markets with similar segments. Innovations developed in the Next 4 Billion countries can also be exported to mature economies to spur growth and increase efficiency. Many companies will have to enter this increasingly important sector during the coming decade."

THIS MARKET ALREADY ACCOUNTS FOR **2.3 BILLION** PEOPLE GLOBALLY AND IS GROWING FAST AS MORE PEOPLE EMERGE FROM POVERTY.

PwC conducted in-depth interviews with a number of CEOs and leaders of major corporations, as well as grassroots organisations and innovation experts. Additionally, a structured consumer study was also conducted with individuals and families from the Emerging Middle class to develop a deep understanding of their needs and demands.

According to the report, companies seeking to succeed in this challenging environment, should consider three important factors:

VALUE PROPOSITIONS

They have to develop a nuanced understanding of the aspirations and tradeoffs of customers in this segment and develop solutions to meet these needs. While low-cost is important, solutions must be positioned beyond low cost. Companies must also design "platform" products which can be customised to cater to the wide diversity of the GEM.

INNOVATIVE BUSINESS MODELS

Companies need innovative business models and processes to address this segment profitably, to overcome institutional weaknesses and gaps - in everything from credit systems to supply chains. The report argues that while smart technology-based reach is essential to penetrate this market, businesses must still focus on offline interventions and achieving scale from the beginning..

SHIFT IN MINDSET

Companies need to adjust both in their external approach to the market, and internally. Often this requires a strong leadership presence, a bold approach that embraces disruptive solutions, and a willingness to adopt new values and metrics to drive growth and measure success.

OTHER BUSINESS DEDUCTIONS

continuation from vol.5/no.1

By Siva Subramaniam Nair

IN THE LAST ARTICLE WE HAD CONCLUDED OUR DISCUSSION ON EXPENDITURE THAT QUALIFIED FOR A DEDUCTION UNDER S34(6). THIS ARTICLE DEALS WITH RESEARCH AND DEVELOPMENT EXPENDITURE.

Section 2 of the Promotion of Investments Act 1986 defines research and development to mean any systematic or intensive study carried out in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes but does not include:-

- quality control of products or routine testing of materials, devices, products or produce
- research in the social sciences or the humanities
- routine data collections
- efficiency surveys or management studies
- market research or sales promotion

We shall start with S34(7) which deals with deduction for scientific research.

SECTION 34(7) – DEDUCTION FOR SCIENTIFIC RESEARCH

For expenditure to qualify under this subsection it must relate to scientific research. The salient features of this deduction are:-

- the scientific research expenditure must be incurred in relation to a business
- it must be of a revenue nature
- it can be undertaken directly by the taxpayer or on his behalf
- it specifically excludes capital expenditure incurred on:
  - plant & machinery
  - fixtures
  - land
  - premises
  - buildings structures or works of a permanent nature
  - alterations, additions or extensions thereof
  - acquisition of rights in or over any property
- No approval from the Minister is required to qualify for this deduction.

The next section relates to deductions for a wider range of research and development expenditure.

SECTION 34A- A SPECIAL DEDUCTION FOR RESEARCH EXPENDITURE

This section deals with deduction for an approved research project or activity i.e. it must be approved by the Minister. The Revenue has issued both, a guideline on applying for this special deduction and a Public

Ruling No 5/2004 (together with an addendum in 2008) and this can be viewed at the IRB's website. The definition of research is in line with the definition in the Promotion of Investments Act 1986 as stated above and the research undertaken must be in accordance with the needs of the country and bring benefits to the Malaysian economy

The special deduction here is that the expenditure qualifies for a double deduction. However those expenditure excluded in the definition above as stated below will only qualify for a single deduction i.e.

- quality control of products or routine testing of materials, devices, products or produce
- research in the social sciences or the humanities
- routine data collections
- efficiency surveys or management studies
- market research or sales promotion

As in the case of S34(7) capital expenditure does not qualify for a deduction at all. These include expenditure incurred on;

- plant & machinery
- fixtures
- land
- premises
- buildings structures or works of a permanent nature
- alterations, additions or extensions thereof
- acquisition of rights in or over any property

EXPENDITURE QUALIFYING FOR DOUBLE DEDUCTIONS

The public ruling details expenditure that would qualify for a double deduction and these are summarised below;

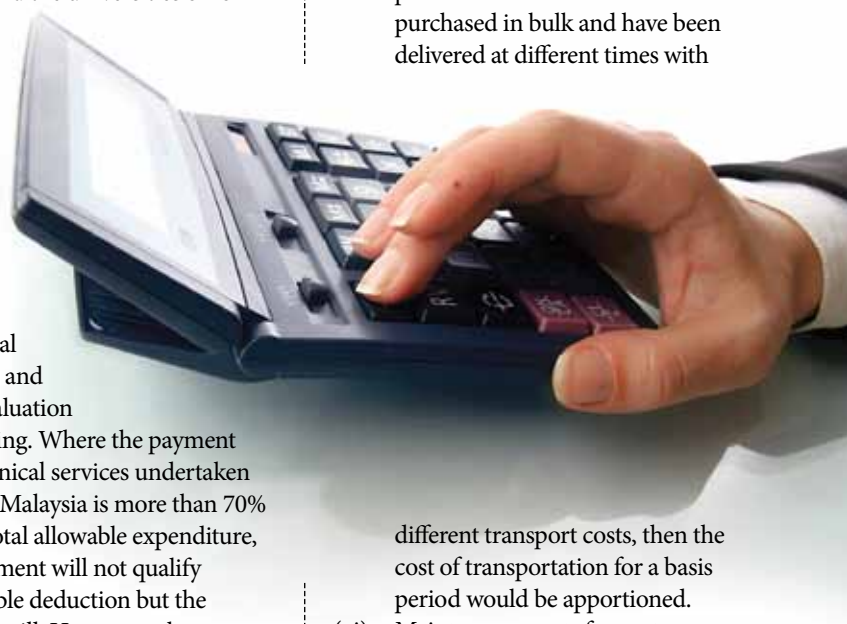
(i) Raw materials used directly in a research project excluding the purchase of fixed assets used in the research.

(ii) Basic salary of an employee directly involved in the research project. If not involved on a full time basis, apportioned based on the actual time spent substantiated by a time-sheet. However, expenditure such as EPF, SOCSO, bonus, medical fees and benefits-in-kind will only qualify for single deduction.

(iii) Consultancy fees paid to a particular research organisation or individual for obtaining information or advice pertaining to the research being undertaken, for the use of testing equipment such as those available in SIRIM, FRIM and the universities or for analytical services and data evaluation processing. Where the payment for technical services undertaken outside Malaysia is more than 70% of the total allowable expenditure, the payment will not qualify for double deduction but the balance will. However, where the expenditure for the technical services is obtained from overseas but undertaken in Malaysia, it will qualify for double deduction. Obviously, withholding tax provisions must be complied with where the payments are made to a non-resident.

(iv) Travelling cost incurred by research employees related to visiting research stations solely for the purpose of conducting research work or to attending courses or seminars (both local and overseas) relevant to research projects for the purpose of obtaining the latest scientific information which is directly relevant to the project. This includes daily expense for food and lodging restricted to a maximum of RM400.00 per person.

(v) Cost of transporting raw materials used directly in the research. It excludes expenditure such as cost of transporting fixed assets, end-products, postage for administrative purposes or others not related to research. Where the research uses the same type of raw materials as that used in manufacturing an existing product and the raw materials are purchased in bulk and have been delivered at different times with different transport costs, then the cost of transportation for a basis period would be apportioned.



(vi) Maintenance costs for motor vehicles, buildings, equipment and machinery used directly in a research project.

(vii) Rental of motor vehicles, buildings, equipment and machinery used directly in a research project. Where the buildings or machinery are also being used for other purposes apart from research, an apportionment must be made based on usage.

(viii) Other revenue expenditure incurred directly for research such as water and electricity, telephone, fax, courier, stationery,

photostating of research reports or schematic design, ink or toner used to print reports, lab coats and slides or photographs.

ADMINISTRATIVE ASPECTS

Commencing from year of assessment 2005, the DGIR will give approval for a research project. The application to obtain approval for a research project must be made for each year of assessment on the application form "Borang 1" and submitted with relevant supporting documents to the Technical Division, Inland Revenue Board, six months before the financial year-end of the business. Applicants are required to adhere to all conditions imposed and furnish correct information as required in the said form. The DGIR will then issue a letter of approval or rejection, as the case may be, to the applicant. Approvals given will be subjected to the terms stated in the letter. Where a rejection is received, a written appeal must be made to the DGIR within 30 days from the date of the rejection letter.

Upon receiving the approval of the research project, the applicant will claim the double deduction for expenditure incurred in the relevant income tax return form. The applicant is also required to prepare two copies of the supplementary worksheet "Borang 2"; one for audit purposes and the other is to be sent simultaneously to the Technical Division, IRB for record upon submission of the relevant income tax return form.

For a research project which requires five or more years to be completed, the DGIR can approve the research period for up to three years. Where a research project or activity has been approved by the DGIR for three years and that period has not expired, the applicant can directly claim the double deduction in the income tax return form for each relevant year of assessment without reapplying for the particular approved research project or activity. Applicants are then required to state in the supplementary worksheet the period and reference of the approval. After the expiry of the period of approval, a new application should be made to obtain further approval for the project.

Where an approved project is delayed, abandoned or ceased within the period of approval, the person should notify the DGIR. In the case of cessation or abandonment of the project, the approval is deemed withdrawn with effect from the date of cessation or abandonment.

KEEPING OF SUFFICIENT RECORDS

A person must maintain sufficient records of all activities pertaining to any research project including records of the research activity, records of the time spent (man-hours) by each research employee on each project and relevant documents supporting the expenditure claimed. Separate sets of records must be maintained for different projects. In addition, research expenditure records must be maintained independently from the overall production costing. In addition, documentation of step-by-step methodology, testing, investigation and results for each phase of the research project must be maintained. These would include logbooks or diaries maintained by each research employee which record the day-to-day research activities performed, raw materials used and man-hours spent for each research project.

CLAIM IN THE TAX COMPUTATION

The amount of deduction shall be twice the amount of expenditure, not being capital expenditure incurred in the basis period. If the research expenditure has been charged in the income statement, a further deduction of the expenditure will be allowed. However, if the research expenditure incurred is capitalised in the statement of financial position, a deduction of twice the amount of the expenditure will be allowed.

An interesting question illustrating this point can be seen in *ACCA Advanced Taxation (Malaysia) Paper 3.2 (MYS) December 2006 Question 4(c)*. (It can be viewed at the ACCA website).

Wemakeit Bhd ("Wemakeit") is a manufacturing company operating in Malaysia which is not entitled to any incentives under the Promotion of Investments Act 1986. Financial accounts are made up to 30 September each year. The company has applied for and been given approval for a project of research in the formulation and design of possible new products.

The following financial information relates to the company's basis period to 30 September 2006:

	RM
Basic salary of a researcher engaged full-time on the research project	72,000
Employer's EPF contributions in respect of the researcher	7,920
Cost of materials taken from stock for use on the research project	5,000
Fees to a foreigner for research consultancy services undertaken overseas. *(Tax was deducted at source and paid to the Inland Revenue within 30 days)*	10,000
Buildings expenditure on modifying the company's factory to make a research area	200,000
Adjusted income before taking into account the above items	300,000
Capital allowances before taking into account the above items	150,000

REQUIRED: Starting with the adjusted income, compute the chargeable income and the unabsorbed balances carried forward, if any, for the year of assessment 2006.

Since the question did not clearly indicate whether the research costs were capitalised or expensed to the income statement, the model answer was presented from both perspectives as illustrated below.

WEMAKEIT – YEAR OF ASSESSMENT 2006

FIRST PERSPECTIVE: All of the expenditure referred to has been capitalised and is not reflected in the income statement.

	RM
Adjusted income as given	300,000
Less: Expenditure qualifying for double deduction:	
Basic salary of a researcher - RM72,000 x 2	(144,000)
Cost of materials taken from stock - RM5,000 x 2	(10,000)
Fees to a foreigner - RM10,000 x 2	(20,000)
	126,000
Less: Expenditure qualifying for a single deduction:	
Employer's EPF contributions in respect of the researcher	(7,920)
Revised adjusted income	118,080
Capital allowances utilised (see working)	(118,080)
Chargeable income	NIL

Working – capital allowances	
As given	150,000
Initial allowance on building expenditure 10% x RM200,000	20,000
Annual allowance on building expenditure 3% x RM200,000	6,000
	176,000
Utilised	(118,080)
Unabsorbed allowances carried forward	57,920

SECOND PERSPECTIVE: All of the expenditure is expensed to the income statement.

	RM
Adjusted income as given	300,000
Less: Expenditure qualifying for an additional deduction:	
Basic salary of a researcher	(72,000)
Cost of materials taken from stock	(5,000)
Fees to a foreigner	(10,000)
	213,000
Less: Expenditure not qualifying for an additional deduction:	
Employer's EPF contributions in respect of the researcher	NIL
Revised adjusted income	213,000
Capital allowances utilised (see working)	(176,000)
Chargeable income	37,000

Capital allowances as above	176,000
Utilised	(176,000)
Unabsorbed allowances carried forward	NIL

In the next article we will continue our discussion on research and development expenditure by looking at double deductions under S34B of the Income Tax Act 1967.

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FURTHER READING

Choong, K.F. Malaysian Taxation - Principles and Practice, (Latest Edition) Infoworld,
Kasipillai, J. "A Comprehensive Guide to Malaysian Taxation under Self-Assessment", (Latest Edition), McGraw Hill.
Malaysian Master Tax Guide, (2011) CCH Asia Pte. Ltd
Singh, Veerinderjeet;: Veerinder on Taxation (latest edition) CCH Asia Pte. Ltd
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

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: April 2012 – June 2012

Month /Event	Details				Registration Fee (RM)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
APRIL 2012								
Workshop: Minimising on the Exposure of Withholding Tax & Effectiveness of Double Taxation Agreements in Cross Border Transactions	2 Apr	9a.m. - 5p.m.	Ipoh	Sivaram Nagappan	335	385	435	8 WS/ 028
Workshop: Minimising on the Exposure of Withholding Tax & Effectiveness of Double Taxation Agreements in Cross Border Transactions	10 Apr	9a.m. - 5p.m.	Melaka	Sivaram Nagappan	335	385	435	8 WS/ 029
Workshop: Analysing Tax Cases from the Commonwealth Courts in the Context of Malaysian Tax Practice	10 Apr	9a.m. - 5p.m.	Kuala Lumpur	Saravana Kumar	350	400	460	8 WS/ 035
Workshop: Analysing Tax Cases from the Commonwealth Courts in the Context of Malaysian Tax Practice	12 Apr	9a.m. - 5p.m.	Ipoh	Saravana Kumar	335	385	435	8 WS/ 036
Workshop: Reinvestment Allowance & Industrial Building Allowance	17 Apr	9a.m. - 5p.m.	Kuala Lumpur	Richard Thornton & Thenesh	350	400	460	8 WS/ 034
Workshop: Tax Planning for Companies (in collaboration with MAICSA)	18 Apr	9a.m. - 5p.m.	Kuala Lumpur	Vincent Josef	350	-	460	8 WS/ 027
Workshop: Minimising on the Exposure of Withholding Tax & Effectiveness of Double Taxation Agreements in Cross Border Transactions	18 Apr	9a.m. - 5p.m.	Johor Bahru	Sivaram Nagappan	335	385	435	8 WS/ 030
Workshop: Analysing Tax Cases from the Commonwealth Courts in the Context of Malaysian Tax Practice	19 Apr	9a.m. - 5p.m.	Melaka	Saravana Kumar	335	385	435	8 WS/ 037
Workshop: Minimising on the Exposure of Withholding Tax & Effectiveness of Double Taxation Agreements in Cross Border Transactions	25 Apr	9a.m. - 5p.m.	Penang	Sivaram Nagappan	335	385	435	8 WS/ 031
MAY 2012								
Workshop: Analysing Tax Cases from the Commonwealth Courts in the Context of Malaysian Tax Practice	3 May	9a.m. - 5p.m.	Penang	Saravana Kumar	335	385	435	8 WS/ 038
Workshop: Tax Audits Findings	-	9a.m. - 5p.m.	Kuala Lumpur	Ong Yoke Yew	350	400	460	8 WS/ 045
Workshop: Minimising on the Exposure of Withholding Tax & Effectiveness of Double Taxation Agreements in Cross Border Transactions	8 May	9a.m. - 5p.m.	Kota Kinabalu	Sivaram Nagappan	335	385	435	8 WS/ 032
Workshop: Minimising on the Exposure of Withholding Tax & Effectiveness of Double Taxation Agreements in Cross Border Transactions	9 May	9a.m. - 5p.m.	Kuching	Sivaram Nagappan	335	385	435	8 WS/ 033
Workshop: Submission of 2011 Returns	17 May	9a.m. - 5p.m.	Kuala Lumpur	Vincent Josef	350	400	460	8 WS/ 044
Workshop: Treatment of Entertainment Expenses and Provisions vs Accruals - Recent Update	To be advised	9a.m. - 5p.m.	Kuala Lumpur	Farah Rosley	350	400	460	8 WS/ 042
Public Holidays ***(1 May: Labour Day, 5 May: Wesak Day)***								
JUNE 2012								
Workshop: Analysing Tax Cases from the Commonwealth Courts in the Context of Malaysian Tax Practice	6 Jun	9a.m. - 5p.m.	Johor Bahru	Saravana Kumar	335	385	435	8 WS/ 039
Workshop: Analysing Tax Cases from the Commonwealth Courts in the Context of Malaysian Tax Practice	18 Jun	9a.m. - 5p.m.	Kota Kinabalu	Saravana Kumar	335	385	435	8 WS/ 040
Workshop: Analysing Tax Cases from the Commonwealth Courts in the Context of Malaysian Tax Practice	20 Jun	9a.m. - 5p.m.	Kuching	Saravana Kumar	335	385	435	8 WS/ 041
Workshop: Tax Treatment of Income and Expenditure	To be adviced	9a.m. - 5p.m.	Kuala Lumpur	Farah Rosley	350	400	460	8 WS/ 043
Public Holidays ***(3 June: DYMM Agong's Birthday)***								

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

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

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25 CPD POINTS

For more information, kindly contact:

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For Registration:
Ms Fadeah (ext 113), Ms Yus(ext 121), MrJason (ext 108)
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