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Tax Guardian

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Corporate Sustainability Tax Strategies: Taking Advantage of Tax Incentives in Malaysia

Tax Avoidance Provision & Safeguards for Taxpayers: An Analysis of the Port Dickson Power Case

TAXATION CHALLENGES IN A BORDERLESS ECONOMY

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

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Tax Guardian

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Tax Guardian

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OCTOBER 2012

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

The Budget 2013 shows that the Malaysian economy is underpinned by good economic fundamentals: 1st half year 2012 GDP growth of 5.1% and forecast in 2013 is between 4.5% to 5.5% ; the current account surplus in the balance of payments is expected to reach RM68.5 billion or 7.5% of the gross national income due to strong domestic activity ; external foreign currency reserves in August 2012 stood at RM431 billion ; inflation in 2012 is expected to be in the range between 2 % to 2.5 % and fiscal deficit is expected to move downwards from 4.5% in 2012 to 4% in 2013 . Overall our economy is still robust despite a worldwide slowdown.

The expected reduction in the budget deficit to perhaps 4 % in 2013 is largely due to the expected robust growth in the income tax collection by the IRB which should exceed the 2012 forecast of RM118 billion (RM110 billion in 2011). This increase in tax collection can be attributed to the strict application of the tax laws including the imposition of penalties and greater vigilance exercised by the IRB. The Royal Malaysian Customs (RMC) too has upped its forecast in 2012 to RM33 billion .

Ultimately the above actions by the IRB and RMC will have an impact on us, our clients and our employers. This is where CTIM has an important role to play in acting as an intermediary between the IRB/RMC and the taxpayers and to provide feedback to the IRB and RMC on some of their actions which may fall just outside the fringes of the law or be administratively cumbersome/ burdensome for the taxpayers to comply with. I am also concerned that in their desire to increase tax collections the taxpayer rights and the role played by tax agents are not eroded and left by the wayside.

In order to provide effective support to members I need our members to communicate what is happening around the country back to CTIM on your interactions with the IRB or RMC so that we can bring matters of concern to the attention of the authorities so that they help us amicably resolve such issues. We need far more feedback from members than we are receiving now in order for CTIM to communicate your concerns to the authorities with greater conviction.

A recent development by the IRB and I quote below the CEO of the IRB at the National Tax Seminar on 3 October 2012 *(the Star)*...

TAX DODGERS FACE JAIL TIME

Tax dodgers who have been getting away with civil suits and warnings will face criminal charges from next year, the Internal Revenue Board warned. Board chief executive officer Tan Sri Dr. Mohd Shukor Mahfar said that each year, 20% of the country's taxpayers, both individual and companies, fail to submit their return forms, putting them high on its suspicion list.

"Those who do not submit their return forms will be investigated and those who intentionally evade will face criminal charges. This means they run the risk of being jailed for the offence," Dr. Mohd Shukor told a press conference at the National Tax Seminar.

Tax evaders can face up to three years in jail or RM20,000 fine, or both, if found guilty under the Income Tax Act 1967, Evidence Act 1950 and the Criminal Procedure Code. Dr. Mohd Shukor said, however, while there were these provisions under the law, the board had not "really enforced" them. Other than 69 criminal cases investigated by the IRB since 2004, the board had only been taking civil action against tax evaders.

"However, we have found that civil action does not deter them from becoming repeat offenders.

The amount of money involved is a secondary consideration. The main issue to address is the criminal intention to avoid paying their dues," Dr. Mohd Shukor said. He added that many countries were already implementing similar measures.

"The burden of proof is on us to prove that the individual or company had the intention to avoid paying their dues. Of course, we will look at the individual or company's track record before deciding whether to take further action against them," he said, adding that only those who were found to have clearly contravened the laws would be charged.

CTIM needs to find out more from the IRB on the type of cases that will attract criminal charges. Where are the boundaries to be drawn between civil and criminal charges? Would a failure to file a tax return on time or meet any other compliance deadlines provided for in the law lead to criminal charges or will it be confined only to cases where there is a clear intent to evade taxes and/or where there is money laundering? When will the IRB be using the existing provisions in the Income Tax Act 1967 and when will the IRB invoke the Anti Money laundering (AMLA) provisions? Who decides? How will taxpayers and tax agents rights be protected? These are numerous unanswered questions to which CTIM needs answers. Again these are matters CTIM needs to raise with the IRB.

Editor'sNote

DATO' RAYMOND LIEW LEE LEONG

CAPITALISING ON CHALLENGES

Dear members,

It cannot be denied that volatility and complexity are now firmly part of the business landscape. The same is true of the tax profession both within and outside Malaysia, where practitioners face a host of challenges.

Many of these challenges are examined in our cover story on *Taxation Challenges in a Borderless Economy,* such as the bewildering implications of e-commerce and taxation, transfer

pricing and related party transactions, and the impact of financial reporting standards on taxation. Currently, the taxation implications of e-commerce are still a green field area which both the authorities and the profession are grappling with. Over in the complex area of transfer pricing arrangements, more stringent regulations are placing higher expectations on tax practitioners to provide commercial justification and create proper documentation and audit trails to satisfy regulators and stakeholders. While we can relate to the need to prevent accounting and tax fraud through transparent and justifiable TPAs, there is still the need to balance higher collection of tax revenues through TPAs with the stimulation of international trade and investment. There is also the need to align financial reporting standards with taxation – what are the implications of IFRS on taxation and how will regulators, the profession and business deal with these?

Another ongoing challenge is the perennial issue of tax compliance and evasion. Post the Global Financial Crisis of 2008, the combined problems of weak fiscal management and slow or even negative economic growth are forcing sovereign nations to zero in on taxation as a means to combat financial stress. Like other sovereign nations, the government has identified more efficient collection of tax revenues as a key strategy to help fund the national budget and manage the deficit. However, collection efforts continue to be hampered by taxpayers' non-compliant and evasive behaviour. The recent landmark study on *Malaysian Professionals: Tax Compliance and Evasion* offers some insights into why taxpayers may want to evade tax and what measures can be taken to encourage compliance, which could even include tougher enforcement of more severe laws. Nevertheless, while we understand government's rationale for becoming more stringent in the matter of non-compliance and tax evasion, CTIM will continue to engage with the government to ensure that taxpayers' rights are upheld and that the country's framework for taxation remains competitive and attractive to business and investors.

Other highlights in this issue revolve around the ongoing theme of encouraging businesses to become more innovative and sustainable. Tax practitioners as business partners and consultants to companies play a key role in devising effective and optimal tax structures and processes for their clients to promote business efficiency. In *Corporate Sustainability Tax Strategies: Taking Advantage of Tax Incentives in Malaysia,* we advise how readers can better capitalise on Malaysia's various tax incentives to run a more sustainable business. On a related note, in *All about Data,* we look at how companies that disclose sustainability data or ESG (environmental, social and governance data) are rewarded by investors and markets, therefore granting them a licence to operate in the longer term and making them more sustainable.

I hope that the topics covered in this issue will offer ample food for thought and enable our members to make the most of the knowledge provided and turn challenges into opportunities. If you have any suggestions for future topics that you might like to see or feedback for improvement, do feel free to write in to us at *Tax Guardian.*

Sincerely,

Editor

~A Big Thank You~

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE 2012

17 & 18 JULY 2012 (TUESDAY & WEDNESDAY) | KUALA LUMPUR CONVENTION CENTRE

The Chartered Tax Institute of Malaysia (CTIM) would like to express its appreciation to the following persons in making the National Tax Conference 2012 a success.

Co-Organising Partner from the Malaysian Tax Academy

[illegible]
(Co-Organising Chairman, [illegible])

[illegible]

[illegible]

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Welcoming Speech

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

National Tax Conference 2012 – Taxation Challenges in a Borderless Economy
17 & 18 July 2012, Kuala Lumpur Convention Centre

YB Dato' Seri Haji Ahmad Husni Mohamad Hanadzlah, Finance Minister II, YBhg. Tan Sri Dr. Mohd. Shukor Hj. Mahfar, Chief Executive Officer, Lembaga Hasil Dalam Negeri, Malaysia, Co-organising Chairman of the National Tax Conference 2012 - Encik Adzhar Sulaiman, Director of the Malaysian Tax Academy, and Mr. Lim Kah Fan, Deputy President of the Chartered Tax Institute of Malaysia, Distinguished Guests, Tan Sri-Tan Sri, Puan Sri-Puan Sri, Dato'-Dato, Datin-Datin, Honoured Participants, Ladies and Gentlemen,

It gives me great pleasure to wish all of you a good morning and a warm welcome to the National Tax Conference 2012 which is jointly organised by the Lembaga Hasil Dalam Negeri and the Chartered Tax Institute of Malaysia.

We are indeed honoured and grateful to YB Dato' Seri Haji Ahmad Husni Mohamad Hanadzlah, Finance Minister II, for his presence this morning and for taking time off his busy schedule to open the National Tax Conference 2012.

This is the twelfth consecutive year CTIM has partnered with the Inland Revenue Board to co-organise the National Tax Conference and this reflects the strong ongoing relationship between CTIM and the IRB. I would like to take this opportunity to inform you that, very recently, the CEO of the Inland Revenue Board was awarded the Darjah Panglima Setia Mahkota by Duli Yang Maha Mulia Sri Paduka Baginda Yang DiPertuan Agong for his contributions to the nation; please join me in congratulating Tan Sri Dr. Mohd. Shukor Hj. Mahfar on his award.

The theme for this year's conference is "Taxation Challenges in a Borderless Economy", and it brings together local and foreign thought leaders in taxation, dealing with issues such as:

E-commerce, which is still a green field territory to the tax authorities, practitioners and the nation as a whole. As the tax laws evolve, questions arise, such as "Who is taxable?", "Where are such activities taxable?", "What is the value that should be brought to tax in Malaysia?" and "Will Malaysia or any other country be able to bring to tax such activities?" …challenging questions for the speakers to deal with!

NEXT, WILL BE THE FRSs

International Financial Reporting Standards, (IFRSs) have already been adopted in Malaysia; and the session on FRS provides the opportunity for the speakers to highlight its impact on taxation, and the participants to hear views expressed regarding the alignment /convergence of accounting and taxation aspects of FRSs. Where do we stand today? This is something on which we'd like to hear the speaker's views.

Besides, Malaysia, being an open economy, is exposed to transfer pricing issues. This is an area where Malaysia has to delicately balance the need to encourage the growth of international trade whilst protecting Malaysia's right to its share of taxes from the international trade undertaken by both local and foreign conglomerates.

Ladies and gentlemen, let us turn our attention to the co-host of the conference, the IRB. 2011 has been a remarkable year of transformation and achievement, with the IRB achieving a record tax collection of RM109.67 billion. I must say it was a super effort. Congratulations to the IRB! We understand that this year, the IRB may achieve a number that is even higher, due to their improved and increased efforts to enhance the tax collection machinery.

Whilst attempting to collect an even greater amount of taxes, we only request that the IRB constantly keep in mind that the taxpayer should be allowed to exercise his rights, and that it is extremely important that the taxpayers' views are given a fair hearing, bearing in mind the need to balance this with encouraging companies to invest and grow their businesses within Malaysia and to attract foreign direct investment.

In the process of higher revenue collection, inevitably, it is expected that differences of opinion will arise between the taxpayer and the authorities; it would not be surprising to find that because of these differences of opinion, it would cost the taxpayer both time and money to defend his position. Simply put, it can lead to an unwarranted and unnecessary increased painful tax burden on the taxpayer. This needs to be addressed; otherwise it will affect the cost of doing business in Malaysia, and the sentiments of taxpayers

In this context, as a body that is totally dedicated to taxation, CTIM is well placed to play an extremely active and important role… to assist the authorities. It is absolutely necessary to have greater collaboration between the IRB and CTIM to help work out the differences in opinion between the taxpayers and the tax authorities. Hopefully, this can be achieved through more frequent IRB-CTIM engagements:

1) where we share the practical problems and issues with regard to compliance;
2) where we bring up and resolve taxpayers' grievances in an amicable manner; and
3) where greater clarity is obtained with regard to the issues at hand, all for their mutual benefit, leading to greater improvement in efficiency of the tax administration.

On a similar note, CTIM, which has thousands of members, has effectively played its role in dialogues and meetings during the year with the relevant authorities including the IRB, the Royal Malaysian Customs Department, the Ministry of Finance - particularly the Tax Analysis Division, the Tax Review Panel, Ministry of International Trade and Industry, Companies Commission of Malaysia, PEMANDU, PEMUDAH, and MASB.

We have run the mandatory post-budget seminars since 2006. We have provided feedback to the Companies Commission of Malaysia on taxation matters relating to LLP – Limited Liability Partnerships. CTIM is constantly providing feedback to the IRB on its proposed public rulings and guidelines and operational matters. CTIM has also, through the joint tax working group on FRS, submitted our joint views, and subsequently have had dialogues with the MOF and the IRB.

Moving forward, CTIM certainly wishes to carry on engaging the authorities on current issues and, more importantly, to: (1) increase the frequency of engagements particularly with the Inland Revenue Board and Royal Malaysian Customs, and (2) be involved in formulating tax policies with the MoF. To our members, we will continue sending our regular and invaluable e-CTIMs which provide breaking tax news and updates on the Institute's activities, and support on both technical and operational issues. Our Journal, the *Tax Guardian,* remains the only journal in Malaysia that dedicates itself to taxation matters. CTIM will continue to invest in promoting the tax profession to our upcoming graduates across the country.

I would like to inform you , ladies and gentlemen , that finally the Malaysian Tax Research Foundation sponsored by CTIM has commenced its activities under the able Chairmanship of YBhg Datuk Aziyah Bahauddin and we are extremely grateful to the Minister and the Ministry of Finance for the grant of RM1 million given to the Foundation. The Foundation is committed primarily towards encouraging, promoting and advancing the field of tax research in Malaysia, the output from which will benefit the country at large.

In conclusion, on behalf of CTIM, I would like to extend my sincere thanks and appreciation to our joint organisers, the Inland Revenue Board, for making this conference possible. Further, no conference can succeed without chairpersons, speakers and panellists and of course, the delegates. To each and every one of you, thank you very much.

I am deeply appreciative of many corporations and businesses that have come forward to support this event. Here, I wish to thank the gracious sponsors of this conference, and they are: Diamond Sponsor-CIMB Bank Berhad; Platinum Sponsor-UEM Group Berhad; Gold Sponsors-Permodalan Nasional Berhad, Pos Malaysia Berhad, Maybank Berhad and Bank Islam Malaysia Berhad; Silver Sponsors -Sage Software Sdn. Bhd., Perodua and Century Software (M) Sdn. Bhd.; Bronze Sponsors-Axiata Group Berhad, Telekom Malaysia Berhad and AXP Solutions Sdn Bhd.

Our thanks also go to the following supporting sponsors: Commerce Clearing House (CCH), Hans Advisory & Trust Co Ltd., Superior Professional Consultancy, Bizztax Alliance Sdn. Bhd., Lembaga Kemajuan Tanah Persekutuan (FELDA), YGL Multimedia Resources Sdn. Bhd., Direct Access, EA-Link/ Brasstax, Public Bank Berhad, IBFD, Nasharuddin & Wong, Public Mutual Berhad and Iskandar Investment Berhad.

I would also like to acknowledge various professional bodies for their support. They are ACCA, CIMA, CPA Australia, MAICSA, MIA, MICPA, Malay Chamber of Commerce, Institut Bank-Bank Malaysia, IIAM, MFPC and MICCI.

My thanks also go to *The EDGE* for agreeing to be our Media Partner and for giving us a special advertisement package in their Business and Investment Weekly and for supplying complimentary copies of the *Edge Financial Daily.*

Last but not least, my thanks to the Co-organising Chairpersons of the Conference, namely Encik Adzhar Sulaiman from the Malaysian Tax Academy and Mr. Lim Kah Fan from CTIM, the Secretariat staff, conference assistants and CTIM council members for their untiring efforts to make this conference a success. To all of you present here today, thank you for your presence and for being part of this prestigious national tax conference.

Once again, I would like to thank YB Dato' Seri Ahmad Husni Mohamad Hanadzlah for his gracious presence here today. I wish you all a fruitful and beneficial conference.

Thank you.

CTIM MALAYSIAN TAX PORTAL

Puan Nor Azian Dato' Haji Yahya (Member of Customs Appeal Tribunal) greeting the CEO of IRB, Tan Sri Dr. Mohd Shukor Hj. Mahfar when the CEO stopped by at the CTIM booth

CTIM's exhibition booth at the NTC 2012 which was held at the KL Convention Centre from 17 - 18 July 2012 was shared together with the CTIM Malaysian Tax Portal and The Customs Appeal Tribunal. Many NTC participants stopped at the CTIM booth to purchase magazines and budget booklets. More than 150 participants registered for the weekly e-mail alerts at the CTIM Malaysian Tax Portal section.

This first-of-its-kind web tax portal provides daily updates of the latest local tax information: news, legislation, judgments, SCT rulings, public rulings, technical guidelines, events, books and articles and is accessible free of charge by the public. The headlines of the Portal can be viewed on the CTIM website.

The Portal sends out weekly e-mail alerts (compiling the headlines of the week) to registered users. To register for free, go to *http://malaysiantax.com/email.aspx.* The Portal also allows its users to search its newly established archives.

There are limited sponsorship / advertisement opportunities available on the Portal at *http://malaysiantax.com/aboutmt/sponsorshipoptions.aspx.* Please contact Muttath Knowledge Management Services Sdn Bhd at *adverts@muttath.com.*

CESSATION OF MEMBERSHIP

The following members have been excluded from the Membership Register on 27 July 2012 in accordance with Article 28 of the Articles of Association of the Institute:-

	NAMES	MEMBERSHIP NO.
1	Quek Hong Hoon	284
2	Lawrence Mon Fok Seng	309
3	Ng Yew Hoon	553
4	Teh Khye San	592
5	Loo Lean Yeong	635
6	Chan Sin Yik	683
7	Chung Lee Foong	714
8	David Lee Chee Ming	977
9	Kung Kim Ming	1583
10	Valsala Krishnan A/P K. Chandrasegaran	1753
11	Yeoh Hoon Theng	1911
12	Shalet Marian	2061
13	Mohd Nawawi Hasan	2105
14	Mokhtar Mahmud	2128

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19	Shahilah Daiman	2420
20	Kay Kimkana	2518
21	Fazilla Rushalina Ahmad Nadzri	2581
22	Yong Chung Sing	2690
23	Norsiah Ahmad, Dr	2699
24	Riddhi Doshi A/P Pankaj Kumar	2789
25	Jogeswari A/P V.S.Pillai	2856
26	Mohd Azlee Md Ideris	2999
27	Ho Onn	3127
28	Salihuddin Mohamed	3225

Career Talk by CTIM Staff and Council Member

The Institute was invited by UTAR branch campus, Sg Long to conduct a career talk on 13 July 2012. Ms. Nancy Kaaur represented the Institute in promoting the CTIM Professional Examination. The presentation was well received by many students who expressed an interest in the examination .

On 12 September 2012, CTIM was invited for a career talk organised by Akademi Percukaian Malaysia (APM). The Chairman of the Education Committee, Ms. Seah Siew Yun, represented the Institute in promoting a career in taxation and encouraged students to take up the CTIM Professional Examinations towards achieving this goal. The talk was attended by approximately 200 Lower Six students from all over Malaysia. APM conducts their annual 'Kem Cerdik Cukai' to encourage the younger generation to consider a career in taxation.

Obituary

Mr. Wee Hock Seng

(Former Branch Chairman of Melaka Branch)

Passed away peacefully on 5 August 2012 at age 74.
The Institute extends its heartfelt condolences
to the family of Mr. Wee.

From

The Council and Secretariat of CTIM

CPD EVENTS

On 4 September 2012, CTIM organised a seminar on "The Law, the Practice & You" at the Renaissance Hotel, Kuala Lumpur. The seminar was conducted by various distinguished speakers as follows:

- Mr. Sudharsanan Thilainathan (Partner, Shook Lin & Bok)
- Ms. Theresa Goh (Executive Director, Deloitte KassimChan Tax Services Sdn Bhd
- Mr. Christopher Low (Executive Director, BDO)
- Ms. Farah Rosley (Executive Director, PricewaterhouseCoopers Taxation Services Sdn Bhd)

The seminar was chaired by Mr. Lim Kah Fan and Mr. K.Sandra Segaran; both of whom are CTIM Council Members.

A series of workshops were conducted in the 3rd quarter 2012 as follows:

1. New Public Rulings 2011/2012
2. Maximising on Tax Incentives
3. Tax Responsibilities of Directors, Managers and Employers

The workshop on "New Public Rulings 2011/2012" was conducted by Mr. Chow Chee Yen, a regular CTIM speaker who discussed the tax treatment for foreign nationals working in Malaysia, tax exemption on employment income of non-citizen individuals working for certain companies in Malaysia and compensation for loss of employment.

The workshop on "Maximising on Tax Incentives" was conducted by Mr. Sivaram Nagappan at all the major cities where CTIM branches are located. The speaker provided a thorough overview on how tax incentives can save money or reduce the cost of doing business in Malaysia by strategising and maximising on the available incentives.

The numerous issues relating to the duties and responsibilities of directors and managers were discussed through case law, case studies and working examples by the speaker, Mr. Vincent Josef at the workshop on "Tax Responsibilities of Directors, Managers and Employers".

The Institute has financially supported CTIM members from small and medium firms to attend a 5-day course on "Principles of Transfer Pricing" organised by the International Bureau of Fiscal Documentation (IBFD) from 10 – 14 September 2012 in Kuala Lumpur. This financial support was made available with a grant given by the Government for the specific objective of helping the practitioners face the forthcoming liberalisation of the services sector.

National Tax Conference 2012

TAXATION CHALLENGES IN A BORDERLESS ECONOMY

The 12th National Tax Conference, co-hosted by the Chartered Tax Institute of Malaysia (CTIM) and the Inland Revenue Board (IRB) Malaysia, was held on 17 and 18 July, 2012 at the Kuala Lumpur Convention Centre recently, and it encompassed seven sessions over two days. YB Dato' Seri Haji Ahmad Husni Mohamad Hanadzlah, Minister of Finance II of Malaysia was the Guest of Honour.

In his welcoming speech, CTIM President, SM Thanneermalai, said the Conference "brings together local and foreign thought leaders in taxation, dealing with issues such as E-commerce, which is still a green field territory to the tax authorities, practitioners and the nation as a whole; FRS, which provides the opportunity for the speakers to highlight its impact on taxation; and transfer pricing issues, an area where Malaysia has to delicately balance the need to encourage the growth of international trade whilst protecting Malaysia's right

to its share of taxes." He stated that, as a body that is totally dedicated to taxation, CTIM is well placed to play an extremely active and important role in assisting the authorities, through frequent dialogue and amicable resolution of grievances, particularly with regard to differences of opinion which arise between the taxpayer and the Revenue authorities. "Indeed, the Institute has been proactive in getting feedback from its members, conducting training programmes and workshops, and holding discussions."

CHALLENGES OF BORDERLESSNESS

Because borderless trade is both a blessing and a curse to any economy, many areas need attention and understanding in order that they may be managed effectively. The IRB's main task is to protect the nation's tax revenue, and this it does by being proactive. In his opening address, Tan Sri Dr. Mohd Shukor Haji Mahfar, CEO of IRB said that in order to facilitate better understanding, officers go on exchange programmes with other countries to ensure constant updates of procedures and practices. Domestically, he said, IRB's proactiveness in collecting taxes in 2011 netted an increase of RM33 billion in revenue, pushing taxes collected past the psychological RM100 billion mark for the first time ever. "To be exact, the total amount collected in 2011 for Year of Assessment 2010 was RM109.67 billion," he announced. "IRB has taken many steps to tighten collection; this is the result."

KEYNOTE ADDRESS BY THE GUEST OF HONOUR

The keynote address, delivered by Dato' Seri Haji Ahmad Husni Mohamad Hanadzlah, Minister of Finance II of Malaysia, on behalf of the Prime Minister, also stressed the country's reliance on tax revenue for development. "The turnout at every National Tax Conference indicates the level of interest in taxation issues," the Minister said. "The global economy is growing more interconnected, and

The global economy is growing more interconnected, and the world is shrinking. Geographical distance has reduced because of technology but, with facilities like Internet trading, come even more challenges.

Dato' Seri Haji Ahmad Husni Mohamad Hanadzlah, Minister of Finance II of Malaysia

the world is shrinking. Geographical distance has reduced because of technology but, with facilities like Internet trading, come even more challenges. Money laundering and tax fraud are still major issues and present a daunting task. Many innovations have been introduced by IRB for the proper monitoring of the taxpayer base. The government is well aware that it has to maintain the balance between fiscal policy and national development, and be more accountable and transparent. We hope to be able to reduce the fiscal deficit to three per cent of GDP by 2020."

WHAT THE FUTURE HOLDS- MALAYSIAN ECONOMIC OUTLOOK IN THE NEXT 18 MONTHS

The first session was an overview of the country's economic outlook for the next 18 months, presented by Mohd Esa Abd Manaf, Deputy Under-Secretary of the Economic & International Division (Macro) of the Ministry of Finance.
He said that overall, world growth had slowed in the three months prior to July 2012, and was expected to be slow at least until 2013. "Malaysia is expecting moderate growth in 2013, about 4.7%, down from 5.1% in 2011," he said. "Oil prices are affecting export revenue, and by extension, government revenue. We expect oil revenue to decrease next year, but so will inflation. Generally, inflation in the region will increase, although this is not the case in the EU, where it is stable. Rating agencies have projected a 4.5% increase in GDP for Malaysia in 2012, and 5.3% in 2013."

He said that per capita income now stood at US$9,693 but rising household debt may indicate problems looming

in the future. Malaysia's economy has been sustained and dynamic so far. Inflation is manageable and the banking system is strong. Manufacturing made the biggest contribution to the economy – about 30% of GDP, while mining made up about six to seven per cent. Palm oil prices had slowed recently and commodity prices are expected to moderate in 2013. "There have been strong investment activities," Mohd Esa continued. "And the private sector is driving the economy, with exports rebounding year-on-year. However, imports are growing too – about ten per cent annually, reflecting a robust domestic economy. But we do have strong international reserves of about US$134 billion."

This amount, he said, could cover nine months' worth of imports.
The labour market was stable, with unemployment at about 2.9% as at April 2012. "Based on current statistics, Malaysia's deficit is expected to reduce by 4.7% annually," he remarked. "At this point, federal debt stands at 53.4% of GDP but the focus is on domestic demand. The government is actively promoting productivity and innovation in order to drive the economy."

THE CHALLENGES

Mohd Esa's presentation was followed by comments from Manokaran Mottain, Chief Economist with Alliance Bank Malaysia Bhd, who provided a private sector perspective of the outlook for Q3 2012. Mottain's presentation was not as upbeat as Mohd Esa's but Mottain was unapologetic, preferring, he said, to give a less positive picture rather than an overly optimistic one.

"Things are not changing yet," Mottain said. "There is a global slowdown. China is slowing down; new orders have dropped. Greece is in trouble. The Euro is in trouble, and US recovery is fading, while the German economy contracted slightly due to declining levels of demand. All over the world, the Purchasers' Manufacturing Index (PMI) is declining. Economic measures taken by the EU are expected to start only in January 2013, and the US economy will only recover when job or unemployment data shows an improvement, and housing loan debts start being repaid". He sees global growth being supported primarily by regional expansion, with global dependence on China still persisting. The outlook for the Asian region, fortunately, does not appear as bleak as the European and American ones.

"Although China is slowing down, it will still be able to provide fiscal and monetary stimulus to ensure a 'soft landing' but the impact of this will only be seen in the second half of 2012," he pointed out. "In Malaysia, we seem to be looking to the Economic Transformation Programme (ETP) projects to support growth. But the Malaysian economy cannot detach itself from the economies of Europe and the US; this is another area which gives cause for concern. However, inflation in the region is easing, which is a good thing. In Malaysia, it is about 1.7%, and internally, there are 130 basis points which can be lowered in a pinch, if there is a slowdown, to spur the economy. Even with these buffers, we will be affected if there is another global recession, although we are resilient overall."

There is a global slowdown. CHINA is slowing down; new orders have dropped. GREECE is in trouble. The EURO is in trouble, and US recovery is fading, while the GERMAN economy contracted slightly due to declining levels of demand. All over the world, the Purchasers' Manufacturing Index (PMI) is declining.

Manoharan Mottain,
Chief Economist,
Alliance Bank Malaysia Bhd.

The second and third quarters of 2012 look set to be the year's worst. Mottain said he did not expect pickup until Q4. While GDP will decline to 4.2% (5.2% in 2011), the manufacturing and services sectors will see growth, and there will be more attention to construction. "Economic crises can no longer be considered cyclical," he stated. "We cannot say that they will happen once every ten years or so; indeed, they are becoming more frequent and can happen anytime, so we need to be prepared. Expect short-term uncertainty to continue. Also, considering that electric and electronic products, which make up 39% of our exports, are usually purchased by consumers in the EU and US, if the main buyers are experiencing a recession, we can expect a slowdown in demand. People have no money to spend."

"Retail spending is decreasing all over the world, Malaysia included," he added. "While the GST is an alternative form of revenue, the government will have to reduce tax in other areas, if it wants to implement the GST at this time.

Real GDP is expected to improve on the back of rising domestic demand but debt-to-GDP ratio of 55% is not an imposed cap that needs parliamentary consent to be exceeded," he cautioned. "Anything new will come from the ongoing ETP projects that the government hopes will stimulate the economy. At present, there is still about RM20 billion or so of excess funds that can be released, but crude palm oil prices are on a downward trend – although the Ringgit is expected to close higher against the Dollar at the end of the year. If the GST is indeed an issue for the lower income group, the government can institute a rebate system for those who qualify."

ELECTRONIC COMMERCE TRANSACTIONS

E-Commerce also came under scrutiny in the course of the proceedings on the first day of the Conference. The second session was on Taxation of E-Commerce Transactions, with Abdul Aziz Kechik, Director of Tracking and Audit of Monthly Tax Deduction Division, IRB, presenting. Session Chair, K. Sandra Segaran, introduced the topic with the remark that e-transactions bring with them many complications. "The goods supplied through electronic transactions are GST-chargeable," he clarified. "In the places where this has been instituted, the government has collected a lot of revenue. But the transactions take place in cyberspace, and the physical set-up and transacting parties are in different locations – so who pays tax? E-Commerce transactions are liable to take place anywhere, across borders, at any time."

The speaker's presentation covered the rise of E-Commerce in Malaysia, the challenges that have come with it, cyberlaws, the scope of taxation; incentives, deductions and capital allowances; E-Commerce models; royalties; and double taxation and tax treaties. "E-Commerce started in the mid-90s and saw tremendous growth because of the infrastructure established by the government, the Multimedia Super Corridor (MSC)," said Abdul Aziz. "These facilities attracted foreign businesses. There are currently 197,846 .my domains registered – although we cannot determine exactly how many people are actually doing business because there are foreign users as well. The major contributors to E-Commerce have been airlines with e-ticketing, hotels with online reservation facilities and travel services, and Internet banking."

Market size is impressive. In 2010, E-Commerce transactions totalled RM1.8 billion, and is expected to rise to about two or three billion Ringgit by the end of 2012. By 2014, online transactions may rack up almost RM5 billion, a sizeable chunk of GDP. "But almost half of this was spent on foreign websites," divulged Abdul Aziz. "The bulk of it went to the purchase of airline tickets, followed by books. RM22 million worth of bills were paid online as well." "One of the main challenges", he continued, "was the development of Cloud Computing, which can provide facilities like online trading platforms and applications as and when required by the user. With these facilities, enterprises can set up virtual infrastructure in another country, and be able to avoid paying tax".

LAWS AND THEIR IMPLICATIONS

In recognition of the growing complexity of the e-marketplace, the IRB set up an E-Commerce division in 2009, whose main functions were to develop and maintain the E-Commerce database, and select E-Commerce businesses for field audit. The Law has also caught up with several aspects of the virtual world. Eight Cyberlaws have been passed in Malaysia from 1997 to 2000. These include Acts pertaining to Digital Signatures, Computer Crimes, Copyrights, and Telemedicine in 1997; Communications & Multimedia in 1998 and the Electronic Commerce Act 2006, which defines commercial transactions and contracts within the electronic context. Currently, under incentives and deductions, RM500 is provided annually as tax relief for broadband users, and cost of website development is tax deductible.

IMPACT OF FRS ON TAXATION

Session 3 of the Conference covered FRS and its impact on Taxation. The session was chaired by Phan Wai Kuan, Senior Executive Director at PricewaterhouseCoopers; the speaker was Halijah Bulat, Director of IRB's Tax Policy Department while the panellist was Lim Kah Fan of Ernst & Young's Tax Department. Remarking that the Malaysian Financial Reporting Standards (MFRS) framework issued in November 2011 marked a significant milestone for Malaysian companies where compliance with international standards was concerned, Phan said that MFRS was now applicable to all corporations except private entities. Grey areas still abound, and convergence with international reporting standards has given rise to many hitherto unanticipated tax implications. "The Joint Tax Working Group is still engaged in discussion on these issues with the IRB and Ministry of Finance," she confirmed.

"Since 2006, IRB has had several discussions with stakeholders but only one guideline has been issued," Halijah said. "Three draft guidelines – on FRS 5, 123 and 140 – have been submitted to CTIM for comments. IRB acknowledges MFRS as a formal accounting system that gives a more realistic picture of a company's health; it shows fair value instead of cost of purchase. Investors, too, have a better picture of the company and how it is utilising their investments. The IRB, on the other hand, is only interested in a firm's profits." Her presentation covered several areas, including:

- imputed interest on sale and what could be considered for taxable income
- how to classify payments such as dividends and preference shares, and whether these are deductible
- impairment losses or gains
- contracts for services and whether these are taxable when rendered or at point of accrual
- how comparables are selected for transfer pricing.

Rounding off her presentation, she cautioned that issues may arise if other countries have not yet adopted IFRS, or have modified FRSs. Acknowledging that adjustments in various statements may cause items to look different with the implementation of IFRS, Lim Kah Fan singled out FRS 121 (on changes in exchange rates) as having been a bone of contention for many years. "The main issue is the two levels of translation," Lim explained. "For instance, the original cost of purchase may be in Ringgit Malaysia but the final figure has to be quoted in US Dollars because of international standards. The difference in pricing may mean a profit or loss of millions. When tax adjustments are made, many items may be translated twice."

For local accounting purposes, however, he said that the Companies Commission of Malaysia accepts audited accounts in presentation currency. "Many Malaysian MNCs deal in US Dollars to the extent that the company adopts it as functional currency," commented Halijah. "But their operating expenses locally are in Ringgit Malaysia, so there

can be losses or gains when translation is made. It is worth remembering that translation loss is not allowable while translation gain is not taxable." Lim pointed out that this sort of situation could end up in the preparation of two sets of accounts; one in functional currency, and another in presentation currency. From the legal standpoint, however, there is no ruling on what currency audited accounts have to be in.

FRS 5 was also laid out for discussion, albeit a short one. Lim said that in the case of the carrying amount of assets held for sale, the sale itself must be highly probable, ie, it must be in the process of being actively marketed, and expected to be completed within one year. But uncertainty still remains over what happens when the sale value differs from the market value. Also to be considered is the asset's reuse value. "If the asset is to be sold, can it still be used? It is necessary to define what the asset is," Halijah clarified. "Under what circumstances is the item being reclassified? This has to be made clear." FRS 139 – "The Mother of all Standards" – came at the end of the session, with Lim stating that measurement of this should be at fair value as at the date of the acquisition.

On the matter of interest-free loans given to subsidiaries, these have to be considered as equity. "The Joint Tax Working Group has been in discussion on many of the outstanding issues relating to convergence," Lim said. "There are still areas which pose practical difficulties, and in some cases, companies have had to revert to former methods for computation of rates. There have been no changes to tax laws, but MFRS has caused some difficulties although overall, some elements contribute to transparency and are good for tax purposes." Confirming that Malaysia had fully converged with international standards except for FRS 141 on Agriculture, he queried when clarity on guidelines could be issued, to which Halijah responded that these guidelines could be issued as soon as CTIM sent in its comments or feedback. "CTIM gave feedback yesterday," Lim concluded.

ANTI-AVOIDANCE - SUBSTANCE VERSUS FORM

Day Two of the Conference opened with a presentation on Substance vs. Form in the context of Anti-Avoidance, by speaker Bart Kosters, Senior Principal Research Associate with the International Bureau of Fiscal Documentation (IBFD) of the Netherlands. Quoting several instances of substance over form, session Chairperson Khoo Chin Guan, a Council Member of CTIM, stated flatly, "Schemes with no other purpose than the avoidance of paying taxes, are to be avoided. CTIM views this very seriously, particularly among its members." At the start of his presentation, Kosters expressed his surprise at the Wikipedia definition of substance over form, clarifying that substance over form is in fact, an accounting principle and has to be treated with the appropriate gravity.

"The IBFD's definition of it is as an anti-avoidance doctrine under which the legal form of an arrangement or transaction is ignored, tax being levied in accordance with the law," he said. "It is generally associated with common law in the UK and US, and applied in the Netherlands. It is sometimes explicit in law, but sometimes it is not. Substance over form in the US is applied when tax motivation outweighs the business purpose or profit objective, as in the case

of *Gregory v. Helvering* (1935), where the Court looked at what had been economically achieved, and ruled that it was an elaborate and devious form of conveyance masquerading as a corporate reorganization, and nothing else. The taxpayer's appeal was thrown out and payment adjusted. This structure is foreseeably negative for the taxpayer."

Kosters' presentation covered the application of tax treaties as well. He said the OECD Model Tax Convention took into account the improper use of conventions, treatment of interest as dividends, interest and royalties exceeding arm's length rates, and the meaning of the term "employer," among other areas. Conceding that double taxation conventions increase the risk of abuse by facilitating the use of artificial legal constructions that allow the taxpayer to avoid paying taxes, he cautioned, "Anti-abuse provisions don't always act in good faith. They can sometimes be applied to tax treaties. Substance over form has been allowed to be applied under tax treaties – this has been upheld by the Dutch government." He also urged that the OECD Convention Model on dividends be applied when there was uncertainty, stating that when a loan was seen as equity, it then outweighed any other contribution to the enterprise's capital.

AVOID EXPLOITATION; STICK TO THE LAW

On the issue of who a legal or economic employer was, he said special criteria had been developed to govern this. Generally, however, the laws of the State determine whether the services rendered by an individual have been provided in an employment relationship or not, and what rules should apply. In most cases, the state deems the user of the services as the employer. On the UN Double Taxation Convention 2011, he said that the text follows the OECD model verbatim in some places. Returning to the matter of substance over form, if the taxpayer could use substance over form to avoid paying tax, Kosters clarified that in France and Finland, taxpayers could apply this doctrine to themselves. "Substance over form can be applied under double taxation conditions, but some countries don't accept it," he said.

Commenting on the presentation, panellist Adzhar Sulaiman, Director of the Malaysian Tax Academy cautioned that efforts to evade tax were generally frowned upon and the Income Tax Act imposes strict liability penalties that were prohibitive in nature. In his summation, the Chairperson, Khoo, put it succinctly: "Whatever the case, the substance has to be there. Tax authorities are working very hard to close loopholes and ensure that taxpayers do not avoid paying their dues. There is a general tightening of measures and guidelines that reflect this. The courts too are coming down hard on tax evasion cases; businesses are under closer scrutiny. Transactions are undertaken on a commercial basis, so we should not be advising clients to either avoid or evade taxes."

CASE LAW DEVELOPMENTS

The Law was also at the centre of the subsequent presentation by Abu Tariq Jamaluddin, Director of the IRB's Tax Appeal Division under the Legal Department. Chaired by Datuk Abdul Karim Abdul Jalil, Director-General of the Malaysian Department of Insolvency, this session had as its panellist, S. Saravana Kumar, Partner of Lee Hishammudin, Allen & Gledhill. "In the past six months, the Special Commissioners have dealt with 60 cases, while the High Court and Court of Appeal have handled 21 and 18 cases respectively," Abu Tariq said. "Special Commissioners can sit in on any case at any time – this helps to expedite the disposal of cases." His presentation covered several areas including interest on income derived abroad, income compensation for land acquisition, deduction of franchise fees and entertainment fees, capital/forest allowance, reinvestment allowance, "best judgement" cases, penalties and judicial review.

SOMETIMES THE TAXPAYER IS RIGHT

The Courts don't always rule in the IRB's favour. "In the case of *KPHDN vs Cardinal Health Malaysia,* IRB's appeal was dismissed when the Court ruled that the interest received was from outside the country," he said. "The source of the income depends on the facts and nature of the transaction, ie, what the taxpayer did to earn the interest." *KPHDN vs Metacorp Development Sdn Bhd* was the case discussed under Income Compensation for Land Acquisition, where Metacorp, the taxpayer, was a property developer which purchased two parcels (of land for development) which were subsequently acquired by the government for development. The issue was whether gains arising from compulsory acquisition were subject to tax; the Court of Appeal upheld the High Court's decision that in this case, the compensation for the land was not subject to tax because the element of compulsion vitiated the intention to trade.

There have been instances where court rulings have been overturned in favour of the taxpayer, but it is generally incumbent upon the taxpayer to prove unfair taxation. "If incorrect returns were done in good faith, the penalty cannot be imposed by the Director General of Inland Revenue," explained Abu Tariq. He urged delegates to think before filing for judicial review, as it can be a lengthy and expensive process. He conceded, however, that this has not deterred taxpayers from filing for judicial review, and in all probability, there will be many more such cases in the future. It is advisable to take the Form Q approach, and only apply for judicial review when all other avenues have been exhausted. "There is a need for more transparency, and the public – and tax agents – need to know the consequences of filing for judicial review," he concluded.

TRANSFER PRICING – THE FUTURE LANDSCAPE

The Chairperson, YBhg Tan Sri Dr. Mohd Shukor Haji Mahfar, Chief Executive Officer of IRB, indicated that in line with international tax practice, transfer pricing (TP) will be the new emphasis in future tax compliance. Tan Sri described the TP Evolution in IRB Malaysia: The first TP Guidelines were drawn up in 2003. Thereafter, with the introduction of Sections 140A and 138C, ITA, 1967, the IRB established its Multinational Department, and has since then participated in International TP forums and OECD meetings. New TP Guidelines and Advance Pricing Arrangement (APA) Guidelines have been prepared in connection with the TP Rules and the APA Rules which were both gazetted on 7 May 2012.

The speaker for the session was Mr. Joseph L. Andrus, the Head of Transfer Pricing, Organisation for Economic Co-operation and Development (OECD). The panellist was SM Thanneermalai, President of Chartered Tax Institute of Malaysia.

Joseph L. Andrus briefly went through the keys to sound transfer pricing policy. He advised that the authorities should establish clearer rules on difficult issues like intangibles while adopting a simpler approach to more routine matters. In addition, a mechanism should be developed to resolve transfer pricing disputes fairly, quickly and efficiently.

IMPORTANCE OF INTANGIBLES IN TRANSFER PRICING

In many instances, the perception of income shifting by multinationals is a result of press reporting. Recognising this is a problem, OECD is currently engaging in a diagnosis of how base erosion and profit shifting occur and current work on intangibles is part of the base erosion / profit shifting project.

The profitability of MNEs today is highly dependent on intangibles, such as patents, trademarks, market position, etc. It is often difficult to determine whether income is reported in the jurisdiction making economic contributions. Marketing intangibles is a good example. Joseph L. Andrus went on to analyse the issues relating to intangibles, including defining "intangible", entitlement to intangible-related returns, identifying and characterising transactions involving intangibles, valuation of intangibles, etc.

SIMPLIFICATION OF TRANSFER PRICING GUIDELINES

Finally, Andrus informed that OECD is working on a simplification project on transfer pricing guidelines (TPG). The scope of the project includes revising Chapter IV (Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes), simplifications of TP documentation requirements and APA processes, improving guidance on headquarters costs/low value-added services, etc. It will include a more positive approach for using safe harbours and developing memoranda of understanding (MoU) templates for use by competent authorities in negotiating bilateral safe harbours.

Panellist Thanneermalai touched on sharing knowledge, and TP as an "art versus science". He made comments on the recently gazetted TP Rules: the retrospective effect of the Rules; TP Rules versus domestic law; contemporaneous documentation – timing and the use of multiple year data; recharacterisation of transactions; documentation required in connection with intra-group services; and interest on financial assistance. His comments also covered OECD developments on Safe Harbour, and implications in respect of revision to Intangibles.

ISSUES OF CONCERN TO BOTH IRB AND TAXPAYERS – A ROUNDTABLE DISCUSSION

The closing session was a roundtable discussion moderated by YBhg Dato' Syed Amin Aljeffri, Executive Chairman of Aljeffridean. The two panellists were YBhg Dato Mohammad Sait Ahmad, Deputy CEO (Tax Operations), IRB, and Poon Yew Hoe, Chairman of the Technical Committee–Direct Taxation of CTIM. The discussion was on how to overcome issues of concern to both IRB and taxpayers.

SIMPLIFYING TAX LAWS

Dato Mohammad Sait's opening remarks touched on improving compliance. "Taxation is neither simple nor easy", and "IRB has been simplifying, and will continue to simplify the tax laws". While IRB will continue to simplify the tax laws, Dato Mohammad Sait said that "taxation cannot be taken for granted".

Poon noted that over the last five to six years tax law has become more and more complicated. With self-assessment, "we are expected to do our work very well; we must calculate the tax ourselves. But in order to calculate the tax properly and accurately, the law must be clearer and simpler and the practice must be more transparent so as to reduce the uncertainties (or issues) faced by the taxpayers".

Poon cited some examples including capital allowance calculation, the "tiny rules" in P.U.(A) 111/2009, the Public Rulings and Guidelines and new laws; and the issue of "deemed disposal" under FRS 5. Moving forward, Poon hoped the IRB would consider reviewing the whole income tax law when simplifying the tax system, which would be good for the whole country.

PENALTY

The issue of penalty imposition, including penalty on late submission of returns, was discussed at great length.

Poon pointed out that, at the moment, penalty for late return depends on the amount of tax payable. "It does not take into account whether it is one day late or one year late. It does not take into account the amount of tax that has been paid; e.g. a person has already paid full taxes except that he has not filed his tax return or is late in filing his tax return; he will be penalised on the same amount". It was argued that the law needs to be changed because the law must be fairer to the taxpayer. The amount of loss to the IRB may not be very much. Besides, due to the work load, there are some practitioners out there who inevitably file late, due to last minute (extenuating) circumstances. Poon wondered whether special consideration would be given.

Dato Mohammad Sait said, "We don't like to impose penalty'; he touched on the default in furnishing returns under Section 77, ITA; how "offenders" kept committing the same "late filing" and described the 'old penalty structure". He further went on to talk about the penalties applicable under Section 113(2) of the ITA 1967.

Dato Mohammad Sait agreed that, for late-filing cases, the IRB will consider waiving the late-filing penalty if the delay is due to good reasons. However, the appeal will be considered on a case-by-case basis.

RETROSPECTIVE APPLICATION OF THE LAW

With regard to the issues involving retrospective application of the law, Dato Mohammad Sait said that there will be no penalty for cases where the Public Rulings are applied retrospectively resulting in additional tax payable due to a difference in tax treatment in the relevant years.

MALAYSIAN PROFESSIONALS: TAX COMPLIANCE AND EVASION – A RECENT STUDY

Ms. Tee Dee Theng *and*
Dr. Nakha Ratnam Somasundaram[1]

This article is based on a rare Malaysian study on the perception of tax evasion by selected professionals in Malaysia. It briefly summarises the basis and findings of a recently completed research study[2]. Essentially, it seeks to find out what goes on in the minds of professionals, who are respected individuals in the community, when declaring their income for income tax purposes, and explores why these professionals choose to comply, not to comply or may be, comply but not fully comply, to the country's tax laws.

PREVIOUS STUDIES ON TAX COMPLIANCE – A BRIEF LOOK

Compliance to income tax laws had occupied the minds of researchers the world over, because of the serious consequences non-compliance has on the economy[3]. The revenue authorities and the governments of the respective countries too, worry about lost revenue and tax leakage[4].

Why a person chooses to comply or not to comply with the tax laws was found to be a function of several factors (variables), one being a reaction to perceived fairness of the tax system; or it could be an ethical conduct or in the final analysis, sheer incompetency and ignorance (Ho, et. al., 2006).

Ethical conduct implies that an individual has given the matter of tax compliance some rational thought and weighed the matter against a perceived moral benchmark (McGee, 2006; Ho et. al., 2006).

Some would give the matter (of tax compliance) serious thoughts and would choose to comply by contributing their share of the tax – and are not affected by what their neighbours do or how these neighbour's perceive the government's spending of the tax money (Nickerson, Pleshko, McGee, 2009).

Then, there are others who are to some extent affected by the tax evasion actions of their neighbours – and then choose to evade tax on the grounds that since 'everybody is doing it', it cannot be that wrong after all (McGee & Ho, 2006).

Of course, there are also some who would do the same i.e. evade tax, but without much laboured thoughts on the ethics of the matter (McGee, 2006).

Then, again the matter of tax compliance gets muddled up with ethical issues and legal issues – it may be ethically fine to evade tax (on some perceived moral grounds) but legally wrong (according to the written law) and therefore, some finally decide that it is fine if you evade a 'little bit' (morally right) but otherwise you have complied with the tax laws (legally right) (Song & Yarbrough, 1978).

ETHICAL CONDUCT IMPLIES THAT AN INDIVIDUAL HAS GIVEN THE MATTER OF TAX COMPLIANCE SOME RATIONAL THOUGHT AND WEIGHED THE MATTER AGAINST A PERCEIVED MORAL BENCHMARK (MCGEE, 2006; HO ET. AL., 2006).

How much that 'little bit' would be is another matter altogether. This 'little bit' is very much dependent on the taxpayer's perception of tax evasion – the ethically inclined tend to be more likely to comply while those with the legally correct view seem to see it otherwise (Welch, Xu, Bjarnason, Petee, O'Donnell, & Margo, 2005).

PROFESSIONALS AND TAX EVASION PERCEPTION

The professionals take this issue of evasion to a whole new level. These are people who can think through their action – and against the background of their high social status, and professional practice and integrity (professional code of ethics), their perception of tax evasion, the justification for evasion and tax compliance pattern becomes significant.

Studies have indicated that there is some relationship between the professional's code of ethics and the ethical decision-making behaviour (O'Fallon & Butterfield (2005). It is generally assumed that their decision is determined more by factors other than self-interest – a critical factor for tax legislation and administration (Oglesby, 2004).

[1] Ms. Tee Dee Theng is an M. Phil. student with the Multimedia University, Melaka Campus, while Dr. Nakha Ratnam Somasundaram is a Tax Specialist with the Multimedia University, Cyberjaya Campus. He was formerly with the Inland Revenue Board for 30 years and retired in 2001 as the State Director of Kelantan.

[2] The study was conducted for an M. Phil. degree and the thesis was submitted to the Multimedia University in August 2012.

[3] The current Euro crisis for example is partly blamed on the high incidence of tax avoidance and evasion in Greece.

[4] In Australia, the revenue authorities have estimated that taxes lost through avoidance and evasion to be USD345 billion in 2006 – this amounted to 16.3 per cent of estimated actual tax collectible (Slemrod, 2007). In 2009, the Malaysian authorities collected RM3.05 billion through tax audits and another RM844 million from tax investigations (IRB Annual Report, 2009).

THE MALAYSIAN STUDY

The Malaysian study used a 15 items survey on tax evasion based on that developed by McGee, a renowned researcher in the United States. The survey was designed to understand the Malaysian professional's perception towards tax evasion from both a psychological and moral perspective, and attempted to find the moral reasoning that justifies their tax evasion decision against the background of their code of professional ethics.

The target professionals were the accountants, medical doctors, lawyers, and engineers. These professionals were randomly selected from the Klang Valley. Factors (or variables) that were taken into account in the study included age, gender, work experience, as well as awareness of the ethical code of the respective profession.

SOME FINDINGS FROM THE SURVEY

Profession and ethical perception

The findings of this Malaysian study are compared with some similar studies in other countries to see the similarities and differences – thus giving it a global comparative look.

The study found that the Malaysian professionals do not perceive tax evasion as being always unethical – and depending on the circumstances, it can be sometimes ethical, and at other times not ethical.

This finding compares reasonably well with studies done in Turkey on accounting practitioners in that country, where the accountants are of the view that 'tax evasion is sometimes ethical' (McGee, Benk, Halil Yıldırım, Murat Kayıkçı, 2011).

This finding in Turkey compares sharply with the finding of tax evasion perception among Chartered Accountants across the Atlantic Ocean. In the United States the accountants are quite clear on the issue: Tax evasion is never ethical (Oglesby, 2009) – and to think that these are the accountants from the country that refused to pay tax on tea imposed by King George of England, and went to war to obtain independence[5].

The selected Malaysian professionals who took part in the study were happy to confirm that tax evasion is alright in the following circumstances:

- If a significant portion of the tax money collected winds up in the pockets of corrupt politicians or their family and friends;
- If the tax system is perceived to be unfair ; or
- If the tax money is wasted on white elephant projects.

On the other hand a hint of selfish motives could be detected when some of the professionals thought that tax evasion is fine if you cannot afford the tax payments, or alternatively if the chances of being caught for non-compliance or tax evasion are rather slim.

One's profession apparently also has an impact on the tax evasion perception of an individual. For example, among the professionals, the ethical issue is very strong with the accountants who thought that it is morally wrong to evade tax (quite similar to those accountants in the United States), whether it is their own act or of that of others. This could be explained by the fact that the accountants have some professional training and understanding as well as exposure to the tax system as compared to the other professions like the engineers. (Eriksen & Fallan, 1996).

Not surprisingly, the revenue authorities expect some responsibility and 'loyalty' from practicing accountants because of the close relationship of the profession to taxation (Brody & Masselli, 1996).

On the other hand, engineers seem to have a greater inclination to consider tax evasion as 'not wrong ethically'.

[5] The findings in this study by Oglesby must be taken, with a pinch of salt because the sample size for the study was only 39. Talking about salt, it is interesting to note that Mahatma Gandhi in India went to 'war' with the British colonialists because the British imposed tax on salt. The Governor-General of India at that time could not believe the notion, then suggested by one of his advisors, that Gandhi could bring down the British rule in India with a 'pinch of salt'!

Personal characteristics and professional attributes

The personal characteristics and the professional attributes also have an impact on the taxpayer's attitude and perception towards tax evasion as found in a study by Chan, Troutman, and O'Bryan, (2000).

In Malaysia, the older and experienced members of the profession were found to be more compliant to tax laws. This is in line with findings by Hall (1976) who attributed this to the fact that the older professionals are more concerned with their personal growth, dignity, reputation and public image that comes with their age and social position in society. Wealth accumulation, particularly accumulation of wealth in an unethical way (that includes tax evasion), therefore takes a back seat.

The female professionals were found to be more ethical because they were more risk averse and so tend to comply with the tax laws (Jackson & Milliron, 1986). Females also tend to be more sociotropic and are more concerned with social spending that would prove beneficial to society and accordingly, are less selfish (Eckel & Grossman, 2001). The Malaysian study by Baldry (1987) and Shaub (1994) also confirms this view.

This attitude contrasts with the younger male professionals who are more egocentric and are concerned with benefits they would derive if a payment is made – the 'what is in it for me' syndrome. Gilligan (1982) for example found in her study that males conceive morality as primarily consisting of rights and impartiality, while females would view moral requirement as related to the needs of others in a social context.

The impact of professional code of ethics among professionals

All professions have a code of ethics by which the professionals are expected to abide, and in situations of conflict, to be guided by the rules laid out in the code (Higgs-Kleyn & Kapelianis, 1999). One of the objectives of the current study was to find out to what extent this professional code of ethics had an impact on Malaysian professionals' perception towards tax evasion.

The mere presence of a code of ethics or code of professional behaviour, of course, does not make much difference (Valentine & Barnett, 2003), if it is also not properly made aware of, and communicated to the professionals, to be practiced when carrying out their responsibilities as respected professionals (Oliverio, 1989).

There is also an element of experience – the older professionals with a longer working experience acquire greater exposure and therefore make better quality judgement as compared to the younger professional (Pflugrath, 2007). These older professionals are familiar with the professional code of ethics and thus more ethical in their decision-making. Accordingly, they exhibited a greater aversion to tax evasion.

STUDY'S CONTRIBUTION

If the tax evasion perception is to some extent determined by the professional's code of ethics and the tax evasion decision by the professionals are perceived to be justified by some moral grounds (other than selfish interest), then it may be necessary for the professional bodies to take a second look at their professional code of ethics for any moral and ethical gaps; and for the revenue authorities to review their helpful public education and training programmes to assist taxpayers, particularly professionals.

The study shows that tax evasion for example could be prevented by improving the tax ethics and one's perception of fairness of the tax system, including its administration and its administrators. The approach should be more skewed towards emphasising ethical values and upgrading the moral perception on tax evasion (Eriksen & Fallan, 1996).

CONCLUSION In the self-assessment environment, it becomes critical for professionals particularly, to have an ethically correct perception of tax compliance and tax evasion. Positive compliance could therefore be achieved and enhanced by the revenue authorities by understanding first the perception of the professionals as regards the tax law, its administration and its administrators – and then rectifying any of the undesirable perceptions, attitudes and behavior through tax ethics education, as well as underlining the importance of ethical value (Kasipillai et. al., 2003).

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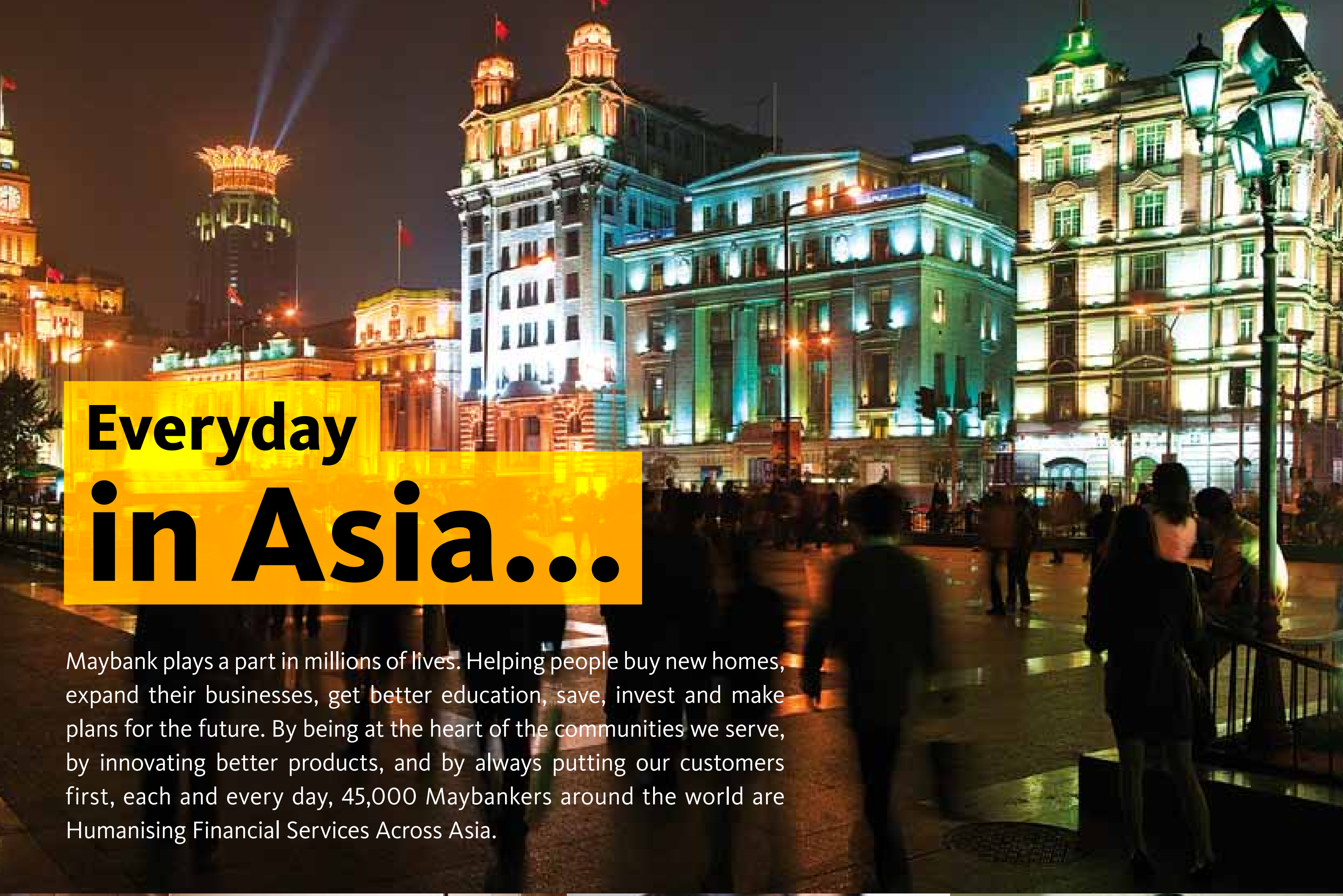

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SUBSTANCE VS. FORM IN THE CONTEXT OF ANTI-AVOIDANCE

Khoo Chin Guan

Substance and form are something we as tax practitioners often talk about particularly in the context of transactions or arrangements. In practice, substance and form may be considered in the context of tax planning, both on a domestic front and also on an international front.

DUKE OF WESTMINSTER'S CASE

An early landmark case where substance and form received judicial attention is the House of Lords decision in the UK case of *IRC vs. Duke of Westminster 1935*. In the Duke of Westminster's case, the Duke instead of paying his gardener a salary made a covenanted donation to him. The covenanted donation was tax deductible; in contrast the Duke would not have obtained a tax deduction for salary payments. The UK Inland Revenue sought to disallow the Duke a deduction for these payments on the grounds that these were in effect payments for services. The House of Lords by a majority held in favour of the Duke. In an often quoted passage, Lord Tomlin stated that:

> *"Every man is entitled if he can, to order his affairs so that the tax attaching under the appropriate Act is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, however unappreciative the Commissioners of the Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax. This so-called doctrine that the court may ignore the legal position and regard "the substance of the matter" seems to me to be nothing more than an attempt to make a man pay notwithstanding that he has so ordered his affairs that the amount of tax sought from him is not legally claimable".*

JUDICIAL RESPONSE TO TAX AVOIDANCE

An apparent rigid adherence to form over substance facilitated in the UK and elsewhere, an industry centred around the promotion of schemes that were primarily tax driven, not commercially driven. In the 1980's a number of high profile tax based schemes were heard by the

UK courts with several of these going to the House of Lords.

These schemes varied but were generally circular and consisted of a number of steps which invariably could only be explained by reference to fiscal advantages rather than being for commercial purposes, or put another way – there was a lack of substance. It was essential to these schemes that each step should have its intended legal consequences i.e. that form be observed. On this basis and in line with the form not substance approach recognised in the Duke of Westminster's case, the schemes appear to have proceeded on the basis that, however, artificial the schemes might be the tax position should follow the form.

From a current day perspective, perhaps unsurprisingly, the schemes failed. Initially the UK courts did wrestle with the earlier Duke of Westminster's decision. However, what emerged was a progressive distinguishing of the Duke of Westminster's case. In *W T Ramsay vs. IRC 1981,* Lord Wilberforce in relation to form over substance stated:

> *"This is a cardinal principle but it must not be overstated or over extended. While obliging the court to accept documents or transactions found to be genuine, as such it does not compel the court to look at a document or a transaction in blinkers isolated from any context to which it properly belongs…".*

In the subsequent case of *IRC vs. Burmah Oil Co Ltd 1982,* Lord Diplock stated that:

> *"It would be disingenuous to suggest and dangerous on the part of those who advise on elaborate tax avoidance schemes to assume that Ramsay's case did not mark a significant change in the approach, adopted by this House in its judicial role…".*

Therefore, although not expressly overruling the form over substance doctrine as in the Duke of Westminster's case, the House of Lords in *IRC vs. Burmah* stated that there were limits to its application in cases of tax avoidance. You will note the emphasis on tax avoidance.

SECTION 140 OF THE INCOME TAX ACT 1967

Malaysia, unlike the UK, has within its tax legislation a general anti-avoidance provision. This is found in Section 140 of the Income Tax Act 1967 and a comparable

section in Section 25 of the Real Property Gains Tax Act 1976. Notwithstanding this, there is very much a parallel between the UK approach in relation to substance and form and the Malaysian general anti-avoidance provision. I would submit that both approaches recognise there is an acceptable / unacceptable boundary to tax planning and provided this boundary is not crossed, legitimate tax planning is allowed. This boundary has been defined in a number of more recent tax cases which has resulted in the distinction between tax avoidance and tax mitigation.

TAX MITIGATION

Tax mitigation formed the basis for the decision of the Privy Council in the case of *CIR vs. Challenge Corporation Ltd 1986.* This decision centred around the New Zealand general anti-avoidance provision which is not dissimilar to our Section 140. In drawing the distinction between tax avoidance and tax mitigation, Lord Templeman said that the latter involves actual expenditure which results in a tax advantage. This would appear to connote a degree of substance and not merely form. This is echoed in the [subsequent] decision in *Ensign Tankers vs. Stokes 1992* where Lord Templeman again noted that tax mitigation occurs where a taxpayer "suffers a loss or incurs expenditure in fact as well as appearance". Could this be rephrased as "substance over form"?

SABAH BERJAYA CASE

While I have discussed the concepts of "substance vs. form" and "tax avoidance vs. tax mitigation" primarily by reference to decisions of UK

courts, it is important to recognise that these concepts have found their way into the Malaysian tax framework. In this respect, the leading tax case is the Malaysian Court of Appeal's decision in *Sabah Berjaya Sdn Bhd vs. Ketua Pengarah Jabatan Hasil Dalam Negeri 1999.* In that case, the Court of Appeal followed the decision in Challenge Corporation and held that the Inland Revenue Board (IRB) could only invoke Section 140 of our Income Tax Act where there was tax avoidance not merely tax mitigation. Gopal Sri Ram JCA defined tax mitigation as occurring where a taxpayer "… reduces his income or incurs expenditure in circumstances which reduce his assessable income or entitles him to a reduction in his tax liability".

On the facts of the case, Gopal Sri Ram JCA noted "… there was a payment that reduced the [taxpayer's] income in circumstances in which the Act… clearly affords a reduction in tax liability. The [taxpayer] here was not engaging in tax avoidance. For, it did not do anything which did not reduce its income or suffer a loss, nevertheless resulting in it obtaining a reduction in its liability to tax as if it had. Accordingly in my judgement this is not a case to which Section 140 of the Act applies".

I would stress that implicit within the notion of tax mitigation is a degree of substance. Given that tax mitigation is a defense to Section 140 being invoked, it would therefore follow that substance is a key defense to any attempt by the IRB to challenge the tax position using the general anti-avoidance provision.

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CONCLUDING REMARKS

TO FUEL THE DEBATE AND PARTICULARLY FROM A MALAYSIAN PERSPECTIVE, I WOULD LIKE TO MAKE THE FOLLOWING REMARKS:

- Artificial tax schemes, or schemes with really no commercial purpose other than the avoidance of tax are subject to review under Section 140 of the Act.
- However, this is to be contrasted with tax planning in the context of a commercial transaction where the IRB cannot invoke Section 140 simply because the taxpayer could have undertaken the transaction in a less tax efficient manner. This is tax mitigation not tax avoidance.
- Through the distinction between tax mitigation and tax avoidance, the courts have recognised the right of a taxpayer to tax plan within the context of a commercial transaction and this should be respected by all parties.

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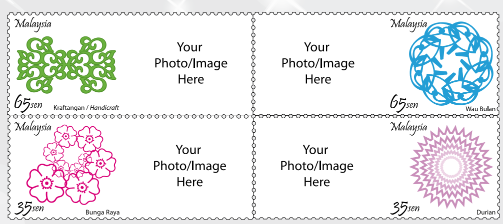

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CORPORATE SUSTAINABILITY TAX STRATEGIES: TAKING ADVANTAGE OF TAX INCENTIVES IN MALAYSIA

M. Nirmala Devi and Dr. Paul N.C.Tiong

The tax expense of a company can be substantial and it makes an impact on the company's financial performance, effectively reducing the amount of distributable income of the company. Therefore, it is in the company management's interest to devise tax strategies that minimise the company's tax expense. Corporate sustainability has become an increasingly important issue to management and is now an agenda in the boardroom of many companies. This article highlights some of the sustainability tax incentives in Malaysia that companies can take advantage of in devising their tax strategies.

CORPORATE SUSTAINABILITY IN MALAYSIA

Traditionally, the objective of a company has been to maximise the wealth of its shareholders. However, due to changing societal expectations at the turn of the 20th century, the notion of corporate accountability to all stakeholders and sustainability practices have begun to be the norm of doing business for many companies around the world.

To address increasing deterioration of the human environment and natural resources, the United Nations in 1983 established the Brundtland Commission. It was chaired by the then Prime Minister of Norway, Gro Harlem Brundtland. The mission of the Brundtland Commission was to encourage countries to pursue sustainable development. In 1987, the Brundtland Commission in its report entitled "Our Common Future" defined sustainable development as the 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'[1] In applying sustainable development into commercial aspects, Dyllick and Hockerts (2002) later defined corporate sustainability as "a process by which companies fulfil the needs and rights of their stakeholders without jeopardising their ability to contribute to future generations in economic, environmental, and social factors.[2]

Corporate sustainability, unlike the traditional concept of corporate social responsibility which focuses more on corporate social philanthropy, emphasises on the creation of long-term stakeholder values by conveying the image of business practices that are supported by the pillars of economic, environmental, and societal conscientiousness as shown in **Diagram**

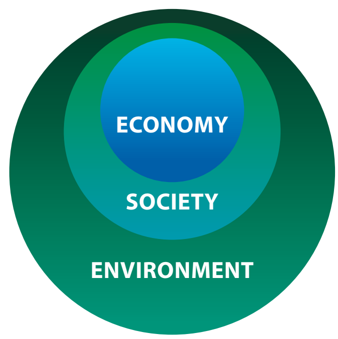

DIAGRAM 1 *The three pillars of corporate sustainability whereby the economic and society functions are embraced by the environmental function.* ***SOURCE*** *Scott Cato. M. (2009) Green Economics, London: Earthscan, pp. 36-37*

1. Corporate sustainability, therefore, is not limited merely to donations to charities; it requires companies to consider the economic, environmental, and social impacts of their operations on all their stakeholders.

Corporate sustainability in Malaysia has gained prominence in recent years. In 2006, Bursa Malaysia launched a corporate sustainability framework for all public-listed companies.[3] This is further enhanced in 2007 by a mandatory requirement for all public-listed companies to disclose their corporate sustainability initiatives in the annual report.[4]

In 2009, the Prime Minister of Malaysia, YAB Dato' Sri Haji Mohd

[1] *United Nations' World Commission on Environment and Development. (1987). Our Common Future.*

[2] *Dyllick, T. and Hockerts, K. (2002), Beyond the business case for corporate sustainability. Journal of Business Strategy and the Environment 11; 130-141.*

[3] *Bursa Malaysia. (2010) Bursa Malaysia Sustainability Portal. Retrieved April 6th, 2012 from Bursa Malaysia: http://www.bursamalaysia.com/website/bm/listed_companies/sustainability.html.*

[4] *Bursa Malaysia. (2012, January 3rd) Main Market Listing Requirements. Retrieved April 6th, 2012 from Bursa Malaysia: http://www.bursamalaysia.com/website/bm/regulation/rules/listing_requirements/main_market.html.*

Najib bin Tun Haji Abdul Razak, announced that the corporate sustainability concept would be incorporated in the New Economic Model. Subsequently, the Ministry of Energy, Green Technology and the Water and Ministry of Natural Resources and Environment were established in the same year to govern matters concerning green practices in the country. Policies such as the National Green Technology Policy and the Second National Communication, Vulnerability and Adaptation (V&A) Plan of Action, which were also launched in 2009, have since been formulated to achieve the national green objective.

As a result of the above initiatives, the number of corporate sustainability programmes and reporting activities has seen an increase among public-listed companies in Malaysia in recent years.

CORPORATE SUSTAINABILITY AND TAX

As corporate sustainability becomes more widely accepted by companies, corporate managers are increasingly involved in making decisions concerning the implementation of sustainability initiatives in their companies. Research shows that corporate sustainability programmes can result in bottom-line benefits. For example, the KPMG (2011) International Survey of Corporate Responsibility Reporting shows that around 50 per cent of the top 250 companies listed on the Fortune Global 500 List and about 33 per cent of the largest 100 companies by revenue in 34 countries reported an increase in financial value from their corporate responsibility programmes.

The integration of corporate sustainability practices into company tax planning policies has been facilitated by the Malaysian government in the form of tax incentives for companies which contribute to the country's economic, environmental, and social well-being.

Many tax incentives have been granted to companies in order to achieve the national green objective. To facilitate the provision of tax incentives to companies, Section 34(6) was specially enacted. This Section allows certain expenses incurred by the companies to be tax-deductible against business income. Other than the Income Tax Act 1967 (as amended), there are other laws that provide incentives, such as, the Promotion of Investment Act 1986, and Sales Tax Act 1972. Therefore, companies could take advantage of the tax incentives given for their sustainability activities as part of their tax strategies.

CORPORATE SUSTAINABILITY TAX INCENTIVES IN MALAYSIA

The government has provided a range of tax incentives to companies over the years. The tax incentives cover the three pillars of corporate sustainability, that is, economic, environmental, and social as illustrated in **Diagram 1.** The following discussion highlights some of the tax incentives that companies could take advantage of under each pillar mentioned.

I.ECONOMIC TAX INCENTIVES

The economic interests of companies may not always be in the best interests of the environment and society. Sometimes, corporate commercial decisions have undesirable impacts on nature and the community. For example, companies often decide to go ahead with projects that are profitable; however, some of these projects may pollute the environment which, in turn, may harm the community. As a developing country, the government is supportive of trade activities that increase the economic position of the country without jeopardising its environmental and social interests. The Income Tax Act 1967 (as amended) allows a deduction for certain expenditure incurred against the gross income from business. Here are some examples:

a. Malaysian resident companies that participate in the International Organisation for Standardisation's activities which are approved by the Department of Standards Malaysia for the purpose of getting accreditation will be granted tax deduction with effect from Year of Assessment (YA) 2004. The activities covered under this Section includes seminars, workshops, conferences and meetings held outside Malaysia. [Section 34(6)(o) of the Income Tax Act 1967]
b. The revenue expenditure incurred to attain certification of recognised quality systems and standards or halal certification from approved certification bodies will be given a double deduction with effect from YA 2005. [Section 34(6)(ma) of the Income Tax Act 1967]
c. The costs incurred in agricultural business for crop replanting exercises are given a revenue deduction. 'Replanting' is defined in Section 18 of the Income Tax Act 1967 (as amended) as the 'replacement of the crop of any product on any area of land by taking such action as is calculated to produce on the same area of a crop of a same product and includes afforestation of timber.' [Section 34(6)(d) of the Income Tax Act 1967]
d. The operating expenses incurred by companies for the use of information technology for the improvement of production or management processes are tax deductible. [P.U. (A) 51/2000 Income Tax (Deduction for Information Technology-Related Expenditure) Rules 2000]
e. Incorporation expenses for companies with an authorised capital of not more than RM2.5 million are tax deductible from the business income with effect from 13 September 2003. [P.U. (A)

475/2005 Income Tax (Deduction of Incorporation Expenses) (Amendment) Rules 2000]

The above tax incentives contribute toward the economic pillar of corporate sustainability by supporting companies in increasing their sales, lowering their costs, and minimising the impact of their operations on the environment by, for example, encouraging companies to raise the standards of their products and services and to make use of information technology.

II.ENVIRONMENTAL TAX INCENTIVES

In view of global warming and climate change, the government has introduced several tax measures to promote environmental conscientiousness among companies in Malaysia. These measures include the following:

a. The qualifying plant expenditure incurred by companies to acquire control equipment for the purpose of monitoring and recording pollution, collecting waste, and increasing the efficiency of business equipment usage are granted 40% initial allowance and 20% annual allowance as capital allowance with effect from YA 1996. [P.U.(A) 295/98 Income Tax (Qualifying Plant Allowances) (Control Equipment) Rules 1997]
b. Manufacturing companies that acquire equipment for waste recycling or for further processing of waste materials into finished goods are allowed to treat the expenditure as qualifying plant expenditure with effect from YA 2001. They are entitled to claim 40% initial allowance and 20% annual allowance. However, this incentive is not extended to companies that have opted for investment tax allowance, reinvestment allowance, or pioneer status. [P.U.(A) 505/2000 Income Tax (Accelerated Capital Allowances) (Recycling of Wastes) Rules 2000]
c. Companies that undertake forest plantation projects are granted two tax incentive options. For companies with pioneer status, the statutory income will be 100% tax exempted for ten years. However, for companies without pioneer status, 100% investment tax allowance is granted on the qualifying capital expenditure incurred. This allowance can be set-off against the total statutory income for each year of assessment within a five-year period. [Promotion of Investments Act 1986][5]
d. Companies that are involved in water recycling activities that use high technology are granted either pioneer status or investment tax allowance. Under the pioneer status, 70% (100% for companies operating in the promoted areas) of tax exemption is allowed against the statutory income for a period of five years. For companies which are not under pioneer status, however, 60% (100% for promoted areas) of investment tax allowance can be claimed on the qualifying capital expenditure incurred within a five-year period. This amount can be used to set-off against 70% (100% for promoted areas) of the statutory income for each of the five Years of Assessment. [Promotion of Investments Act 1986][6]
e. To encourage companies to source for and use the best global technology on energy efficiency, the expenditure incurred in the acquisition of energy efficiency equipment from overseas is exempted from import duty and sales tax. [Section 14(2) of Customs Act 1967 and Section 10 of Sales Tax Act 1972][7]

The above tax incentives contribute toward the environmental pillar of corporate sustainability by encouraging companies to be environmentally conscientious by using the appropriate equipment and technology, and also, be involved in activities that minimize environmental pollution.

III.SOCIAL TAX INCENTIVES

The social contributions of companies can be categorised as follows:

i. *contributions to the company's internal community i.e. the employees and others in the company; and*
ii. *contributions to the company's external community i.e. the society in which the company operates and carries out its business.*

In the following paragraphs, we highlight some of the tax incentives that are available in each of the above categories.

i. *Tax incentives for contributions to the internal community:*

Many tax incentives provided to companies relate to the government's mission to develop a skilled and productive workforce which will help Malaysia to progress into a developed nation. Below are some of the tax reliefs for employee relation programmes:

a. The revenue expenses for approved employee training with the sole objective to develop their skills and productivity are granted double deduction in computing the adjusted income of the business. [P.U.(A)61/92 Income Tax (Deductions for Approved

[5] *Malaysian Investment Development Authority (MIDA). (2012) Invest in Malaysia. Retrieved April 6th, 2012 from MIDA: http://www.mida.gov.my/env3/index.php?page=incentives-for-environmental-management*
[6] *Malaysian Investment Development Authority (MIDA). (2012) Invest in Malaysia. Retrieved April 6th, 2012 from MIDA: http://www.mida.gov.my/env3/index.php?page=incentives-for-environmental-management*
[7] *Malaysian Investment Development Authority (MIDA). (2012) Invest in Malaysia. Retrieved April 6th, 2012 from MIDA: http://www.mida.gov.my/env3/index.php?page=incentives-for-environmental-management*

Training) Rules 1992]

b. To fulfil employees' needs for basic amenities in the workplace, companies are allowed to treat any additional building expenditure on the existing area of industrial building to provide for employees' welfare facilities (such as canteen, washrooms, recreation rooms etc.) as industrial building expenditure and therefore, entitled to claim for the industrial building allowance. [Paragraph 65(1) of Schedule 3 Capital Allowances and Charges of the Income Tax Act 1967]
c A tax deduction is given for revenue expenses incurred by employers in providing and maintaining a childcare centre for the benefit of employees. [Section 34(6)(i) of the Income Tax Act 1967]
d. Companies that construct an additional building in order to provide their employees who are not in the management, administration or clerical positions with living accommodation benefits are entitled for the industrial building allowance on the additional building. [Paragraph 42(1) of Schedule 3 Capital Allowances and Charges of the Income Tax Act 1967]
e. A full tax deduction is granted for companies that employ disabled employees. It covers all the costs incurred in providing the said employees with the essential equipment and reconditioning the business premises to be disabled-friendly. [Section 34(6)(e) of the Income Tax Act 1967]

The above tax incentives contribute toward the social pillar of corporate sustainability by supporting companies in developing the skills, productivity, and the welfare of their employees.

ii. Tax incentives for contributions to the external community

Companies operate in society and the failure of companies to conform to the expectations of society may affect their reputation which, in turn, may have a negative impact on their financial performance. For example, Toyota had to recall their nearly 7 million cars worldwide due to faulty brakes and electric windows. This had a negative impact on their reputation because society expects cars to be safe and of good quality. Thus, many companies engage with the community that they operate in, by way of social contributions. Companies can also take advantage of the tax incentives that are given for the following contributions:

a. Corporate donations are given tax deduction in calculating the company's total income. The maximum deductible amount is restricted to 10 per cent of the company's aggregate income for the year of assessment. [Section 44(6) of the Income Tax Act 1967]
b. Social responsibility expenses, either in cash or benefits-in-kind, made by companies to public beneficiaries are given full revenue deduction. The expenses incurred can be for the contribution of approved community-interest projects within the ambit of education, health, public housing, income-enhancement for the poor, public infrastructure, information and communication technology, and nature conservation and preservation programmes. [Section 34(6)(h) of the Income Tax Act 1967]
c. Corporate contributions, whether in cash or in the form of library facilities, to public libraries, school libraries or the libraries of other educational institutions will be given a maximum of RM100,000 as tax deduction. [Section 34(6)(g) of the Income Tax Act 1967]
d. Corporate scholarships given to full-time students who do not have the financial means to pursue tertiary education are deemed to be tax deductible. [Section 34(6)(l) of the Income Tax Act 1967]
e. To further increase corporate involvement in improving the skills of unemployed graduates, especially in information and communication technology (ICT) and English, the government has granted companies that take part in government-approved training schemes a double tax deduction on the allowances paid to the trainees. [P.U.(A) 172/2007 Income Tax (Deduction for Allowances under the Capital Market Graduates Training Scheme) Rules 2007]

The above tax incentives also contribute toward the social pillar of corporate sustainability. More specifically, the incentives encourage companies to be engaged with the community by, for example, supporting them in donating to charities and being involved in activities that benefit the community in which they operate in.

CONCLUSION

Corporate sustainability has now become an important part of business activities. The Malaysian government has introduced many tax incentives for companies to become more sustainable in their operations. These sustainability tax incentives also contribute towards achieving the country's sustainability objectives. The various sustainability tax incentives support the three pillars of sustainability, namely, economic, environmental, and social. When companies devise tax strategies, they should also take advantage of sustainability tax incentives introduced by the government, as good tax strategies will lead to improved financial performance.

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TAX AVOIDANCE PROVISION & SAFEGUARDS FOR TAXPAYERS: AN ANALYSIS OF THE PORT DICKSON POWER CASE

Datuk D.P. Naban and S. Saravana Kumar

The general anti-avoidance rule in Malaysia is contained in Section 140 of the Income Tax Act 1967 ("ITA"). It was largely modelled after the then Australian general anti-avoidance rule i.e. Section 260 of the Australian Income Tax Assessment Act 1936. Although the Australian anti-avoidance law has seen major changes in recent years, such has yet to happen in Malaysia save for the enactment of Section 140A in 2009, which introduced transfer pricing and thin capitalisation provisions. Neither has the Inland Revenue Board ("IRB") issued a Public Ruling or Guidelines to clarify when nor how the anti-avoidance provision will be applied. The operation of Section 140 has always been shrouded in mystery. Likewise, until the Port Dickson Power case[1], no concerted efforts had been initiated to explore whether Section 140 contains any meaningful safeguards to taxpayers. The Port Dickson Power case is a landmark case that has revealed that Section 140 is not an absolute power available to the IRB. More importantly, this case had developed the law on anti-avoidance in Malaysia by recognising two fundamentals that are essential in safeguarding the rights of taxpayers, which are discussed in detail in this article. The two fundamentals are the IRB's reason to believe why Section 140(1) should be invoked and the IRB's mandatory statutory duty under Section 140(5).

[1] The authors alongside Siti Fatimah Mohd Shahrom appeared for the taxpayer in the Port Dickson Power case.

THE PORT DICKSON POWER CASE

FACTS

The taxpayer was an independent power producer licensed by the government to exclusively supply electricity to Tenaga Nasional Berhad. The taxpayer was required to finance, design, construct, commission, own and operate a power plant and other relevant facilities in Port Dickson ("the Project"). The Project was amongst the first generation of independent power plants in Malaysia and there was an element of substantial risk on the viability of the Project. The Project needed a sum in excess of RM600million. The taxpayer appointed financial advisers to advise on the capital structure of the taxpayer and in procuring financing for the Project.

Upon the recommendation of the financial advisers, the taxpayer raised funds for the Project by way of (a) equity amounting to RM300,000.00, (b) shareholders' borrowings by way of loan stock amounting to RM149.7 million and (c) third party borrowings for the remaining sum. Besides raising some of the required financing, the loan stock also paved the way for the taxpayer to obtain third party borrowings as they served as collateral for the external financiers. The loan stock was subordinated, unconvertible, redeemable and unsecured against the third party borrowings so as to assure the external financiers that they will be paid first before the loan stock holders. Under the loan stock instrument, the taxpayer had an obligation to pay interest at the rate of 12% per annum to the subscribers of the loan stock and had the right to redeem the loan stocks. Interest was incurred by the taxpayer in servicing the loan stock, which was deducted by the taxpayer under Section 33(1) of the ITA as expenses wholly and exclusively incurred in the production of its income.

The IRB invoked Section 140(1) of the ITA and disallowed the interest paid by the taxpayer to its loan stock holders in the years of assessment 2004 and 2005. According to the IRB, there was an issue of thin capitalisation and the loan stock instrument was a scheme to avoid tax by incurring interest expenditure. Consequently, the IRB raised notices of additional assessment with penalty. The taxpayer challenged the IRB's decision by way of a judicial review application and argued that the IRB's decision was without any legal basis and thus, the IRB's decision was illegal.

ISSUES

The main issues before the High Court were:

- Whether the IRB lacked the jurisdiction to invoke Section 140(1) of the ITA; and
- Whether the IRB had breached its statutory duty under Section 140(1) and Section 140(5) of the ITA.

DECISION

According to the High Court, the crux of the taxpayer's case was concerned with the issue surrounding the proper, or rather the improper, invocation of the Section 140(1) of the ITA by the IRB. First, the notices of additional assessment issued by the IRB were bad in law because it had not specified or particularised which of the limbs under that subsection the IRB had resorted to. Second, the IRB had not shown its ground for believing that was necessary for the IRB to invoke Section 140(1) of the ITA.

The High Court held that the ability of the IRB to ascertain the grounds for entertaining the necessary belief would greatly assist the Court in identifying under which particular paragraph under Section 140(1) of the ITA that the taxpayer had committed the impugned act of understating its assessments for the years 2004 to 2005.

The other ground that was noted by the High Court was that the IRB had failed in its statutory duty to give particulars of adjustment concurrently with the notices of additional assessment. In the Port Dickson Power case, the particulars were only given to the taxpayer on 21 April 2011 which was well beyond and distinct from the service on the taxpayers of the impugned notices of additional assessment dated 30 December 2010. Relying on the decisions of the superior courts such as *DGIR v. Hup Cheong Timber (Labis) Sdn Bhd [1985] CLJ (Rep) 107 and DGIR v. Rakyat Berjaya Sdn Bhd [1984]1 MLJ 248*, the High Court ruled that the failure to comply with the mandatory provision as contained under Section 140(5) of the ITA had rendered the decision of the IRB, null and void.

The High Court also found that the IRB had misconceived or otherwise misconstrued the agreement that had become the basis upon which the taxpayer was required to pay the interest of 12% for the loan stocks. There was no suggestion that the loan stock agreement was a sham that was designed to facilitate the applicant in avoiding paying tax to the IRB. The High Court endorsed the following passage in *Westmoreland Investment Ltd v. Macniven (Inspectors of Taxes) [2001] 1 All ER 865:*

> *"Money raised by borrowing belongs to the borrower; it is as much his money as any other money of his. Expenditure is incurred by the taxpayer whatever the source of his finance with which he intends to meet it."*

The High Court observed that the mere reason the taxpayer in Westmoreland Investment Ltd had to borrow in order to pay for the interest that accrued did not mean that the payment of the interest was not genuine. According to the High Court, the financiers were local companies of good repute and there was nothing in the evidence of the IRB to suggest it was otherwise. If the whole financial structure that was put in place that had provided for the apparent obligation on the taxpayer to service the interest was indeed a sham, then the burden or the onus ostensibly rests with the IRB to prove that it was indeed a sham. In the absence of any such proof put forth by the IRB to the effect that the interest payments were not what the taxpayer had made them out to be, then, the High Court is not entitled to disregard their legal effect and treat them as something else.

The High Court added that the law was also clear in that a taxpayer is entitled to mitigate his incidence of tax as long as he does not in so doing, evade or avoid having to pay the necessary tax. Cases are replete in that regard in that it is never the province of either the IRB or even the courts to tell people how to conduct their business. The law is settled too in that there is no room for an official or public body to commit an error of law. If it does so, it exceeds its jurisdiction and its purported act becomes *ultra vires.*

In these circumstances, the High Court granted an order of certiorari to quash the impugned notices of additional assessment and declared that the taxpayer was entitled to deduct the interest expenditure arising from the issuance of loan stock under Section 33(1)(a) of the ITA.

ANALYSIS OF THE PORT DICKSON POWER CASE

REASON TO BELIEVE

Section 140(1) of the ITA prescribes four circumstances under which the IRB may invoke Section 140(1) and disregard or vary a transaction. The four circumstances arise where the IRB has reason to believe that any transaction has the direct or indirect effect of:

- altering the incidence of tax which is payable or suffered by or which would otherwise have been payable or suffered by any person;
- relieving any person from any liability which has arisen or which would otherwise have arisen to pay tax or to make a return;
- evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on any person by the ITA; or
- hindering or preventing the operation of the ITA in any respect.

In the Port Dickson Power case, the IRB had failed to state which subparagraph of Section 140(1) which it was relying on in invoking the said section. The premise of the taxpayer's argument was that Section 140(1) was a powerful provision which may be open to abuse on and thus, it was incumbent for the IRB to state the subparagraph of Section 140(1) that it was relying when raising the impugned notices of additional assessment. On this point, it is pertinent to note that the Parliamentary Debates establish that the phrase "he has reason to believe" was inserted with the view that the IRB should not exercise its jurisdiction arbitrarily as such may allow the IRB to have dictatorial powers. The phrase "reason to believe" or its similar variance has been judicially considered by Courts in other Commonwealth jurisdictions including our Courts. In Malaysia, it has been held that the exercise of a power conferred to a public authority was subject to the objective, which was reviewable by the Courts.

THE IRB'S CONTENTIONS FOR INVOKING SECTION 140(1)

The IRB's contentions for invoking 140(1) of the ITA in the Port Dickson Power case were:

- The financing of the Project by way of loan stock was planned at the inception of the taxpayer;
- The long duration of the unsecured loan stock was more of a capital/ equity injection and that the taxpayer should have financed the Project by way of equity rather than debt funding;
- The loan stock holders consisted of shareholders who have control over the taxpayer and that the proportion of holding is at the

ratio of 1 Ordinary Share: 1 Preference Share: 998 Loan Stocks;

- That the interest rate of 12% was too high and the form of claiming interest expenses on the loan stock was a mechanism applied by the taxpayer to under-declare its real income which resulted in the reduction of the amount of actual tax payable; and
- That the payment of interest on the loan stock was more of a dividend distribution to the shareholders.

The taxpayer argued successfully that it may mitigate its tax incidence by utilising the tax relief schemes granted by Parliament as it does not amount to tax avoidance. Reference is made to the Court of Appeal's decision in *Sabah Berjaya Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [1999] 3 CLJ 587,* which had the occasion to endorse the following paragraph in *Commissioner of Inland Revenue v Challenge Corporation Ltd [1986] STC 548:*

> *"The material distinction in the present case is between tax mitigation and tax avoidance. A taxpayer has always been free to mitigate his liability to tax. In the oft quoted words of Lord Tomlin in IRC v Duke of Westminster [1936] AC 1 at 19 'Every man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Act is less than it otherwise would be'. In that case however the distinction between tax mitigation and tax avoidance was neither considered nor implied..."*

Further, the manner in which the taxpayer conducted its business including the manner in which it raised its financing was up to the commercial judgment of the taxpayer and not for the IRB to dictate. In *Zeta Estates Ltd v Commissioner of Inland Revenue (FACV No. 15 of 2006),* the Court of Final Appeal in Hong Kong held:

> *"The Board appears, in paras 17 and 18 of the case stated, to have concentrated on the question whether "fresh working capital was needed..." (emphasis added). This was the wrong question. Whether fresh working capital was needed, and whether or not a dividend should be declared out of accumulated net profits, were questions for the commercial judgement of the directors. They were no possible concern of the Commissioner, or the Board of Review, or the courts. The question relevant to Zeta's tax liability and to the deductibility of the interest paid on the borrowings to raise the fresh working capital is why the capital was raised. If the fresh capital was raised by Zeta in order to retain, or maintain its profit-earning assets, the interest on the borrowings would, in my opinion, in principle be deductible unders. 16(1)(a) whether or not the Commissioner or the Board, or anyone else, approves of the commercial judgement of the directors in deciding to raise the fresh working capital."*

The taxpayer submitted the payment of interest was a genuine payment which was incurred consequent to the issuance and servicing of the loan stock instrument and by virtue of which, the taxpayer obtained a reduction in its liability to tax by way of statute. It is trite law that Section 33(1)(a) of the ITA allows for the deduction of interest expenditure where it has been wholly and exclusively incurred in the production of the income.

STATUTORY DUTY UNDER SECTION 140(5)

The taxpayer successfully argued that the IRB had breached its mandatory statutory duty by failing to comply with the requirements in Section 140(5) of the ITA. The Supreme Court in *Hup Cheong Timber (Labis) Sdn Bhd* (supra) held when the IRB invokes Section 140 of the ITA to make an adjustment with a view to counteracting the effect of a transaction, the IRB should under Section 140(5) of the ITA give to taxpayers "particulars of adjustment together with the notice of assessment". A similar emphasis was made by the Federal Court in *Rakyat Berjaya Sdn Bhd* (supra).

It must be noted that in giving effect to Parliament's intention, a taxing statute must be read strictly without any room for intendment as enunciated by the Supreme Court in *National Land Finance Cooperative Society Ltd v Director General of Inland Revenue [1993] 4 BLJ 33.* The wordings in Section 140(5) must be conjunctively as one is not at liberty to treat words in a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, one must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded.

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CONCLUSION

Section 140(1) of the ITA grants vast power to the IRB to disregard or vary any transaction. However, in the same breath, the IRB does not enjoy unfettered power to arbitrarily invoke Section 140(1) of the ITA. In a functioning parliamentary democracy such as ours, every legal authority is subject to legal limitation. A careful study of the Section 140(1) and Section 140(5) in the Port Dickson Power case has demonstrated that those provisions contain fundamental safeguards for taxpayers. It is clear from the Port Dickson Power case that the IRB had failed to demonstrate that it had "reason to believe" so as to justifiably invoke Section 140(1) in disregarding the interest expenditure incurred by the taxpayer and by doing so, the IRB had exceeded its jurisdiction. The IRB had also disregarded its mandatory statutory duty under Section 140(5) of the ITA when it failed to issue the particulars of adjustment together with the impugned notices of additional assessment. By failing to appreciate and comply with those provisions, the IRB had committed an error of law which had resulted in the impugned notices of additional assessment being raised without any legal authority and jurisdiction.

Income tax matters involve balancing the need of the government to realise tax collection and the need of the taxpayer to be protected against arbitrary or incorrect assessments. It must be appreciated that any statutory power including the powers of the IRB to invoke Section 140(1) of the ITA must be exercised reasonably and with due consideration. In conclusion, the authors welcome the fundamental safeguards that received judicial recognition in the Port Dickson Power case as this will ensure that the balance of protecting the rights and needs of the government and taxpayers is achieved.

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The technical updates published here are summarised from the selected government gazette notifications published between 1 May 2012 and 30 August 2012 including Public Rulings and guidelines issued by the Inland Revenue Board (IRB), the Royal Customs Department and other regulatory authorities.

INCOME TAX

Public Ruling No. 2/2012: Foreign nationals working in Malaysia – Treaty relief

Public Ruling No. 2/2012 issued on 3 May 2012 explains the application of a tax treaty to foreign nationals exercising an employment in Malaysia pursuant to a secondment by their non-resident employers.

Public Ruling No. 3/2012: Appeal against an assessment

Public Ruling No. 3/2012 issued on 4 May 2012 explains the procedure in respect of appeals against assessments made or deemed made and the requirements to be complied with when making appeals.

Public Ruling No. 4/2012: Deduction for loss of cash and treatment of recoveries

Public Ruling No. 4/2012 issued on 1 June 2012 (to replace Public Ruling 5/2005) explains the conditions that must be fulfilled in order to obtain a deduction for loss of cash caused by theft or embezzlement in the course of carrying on a business and the treatment of subsequent recoveries.

Public Ruling No. 5/2012: Clubs, Associations or Similar Institutions

Public Ruling No. 5/2012 issued on 25 June 2012 provides the guidance on the application of Section 53A of the Income Tax Act 1967 (ITA), a specific provision introduced for the tax treatment of clubs, associations and other similar institutions with effect from the year of assessment (YA) 2009. Prior to YA 2009, common law principle of mutuality was applicable for the taxation of such bodies.

Income Tax (Deduction of Expenditure incurred for the Provision of an Approved Internship Programme) Rules 2012

The Income Tax (Deduction of Expenditure incurred for the Provision of an Approved Internship Programme) Rules 2012 [P.U.(A)130] was gazetted on 7 May 2012 and will take effect from YA 2012 until YA 2016. The Rules provide a double deduction on expenses incurred by companies that implement a structured internship programme that must be conducted for a minimum period of 10 weeks. It must be approved by Talent Corporation Malaysia Berhad (TalentCorp) in collaboration with the Ministry of Higher Education.

Income Tax (Deduction for Participation in an Approved Career Fair) Rules 2012

The Income Tax (Deduction for Participation in an Approved Career Fair) Rules 2012 [P.U.(A)129] was gazetted on 7 May 2012 and will take effect from YA 2012 until YA 2016. The Rules provide a double deduction on expenses (specified in the Rules) incurred in participating in career fairs abroad, organised or endorsed by TalentCorp and approved by the Minister of Finance.

Tax deduction for contributions to places of religious worship under Section 44(6) of the ITA

The Income Tax (Amendment) Act 2012 gazetted on 22 June 2012 includes a new definition of "organisation" under Section 44(7) of the ITA. With the amendment, contributions to religious places of worship where the funds are used for the management of religious worship activities or the provision of facilities for such activities will be allowed a deduction under Section 44(6) of the ITA. Previously, contributions to religious places of worship would only qualify for a deduction if the funds were for the construction, improvement or maintenance of a building.

◆ Income Tax (Deduction for the Sponsorship of Scholarships to Students of Higher Educational Institutions) Rules 2012

The Income Tax (Deduction for the Sponsorship of Scholarships to Students of Higher Educational Institutions) Rules 2012 [P.U.(A) 228] was gazetted on 26 July 2012 and are deemed to have effect from YA 2011 until YA 2016. The Rules provide a double deduction for companies who award scholarships to full-time students of a higher educational institution for any course of study that leads to a diploma or degree (including Masters or Doctorate level).

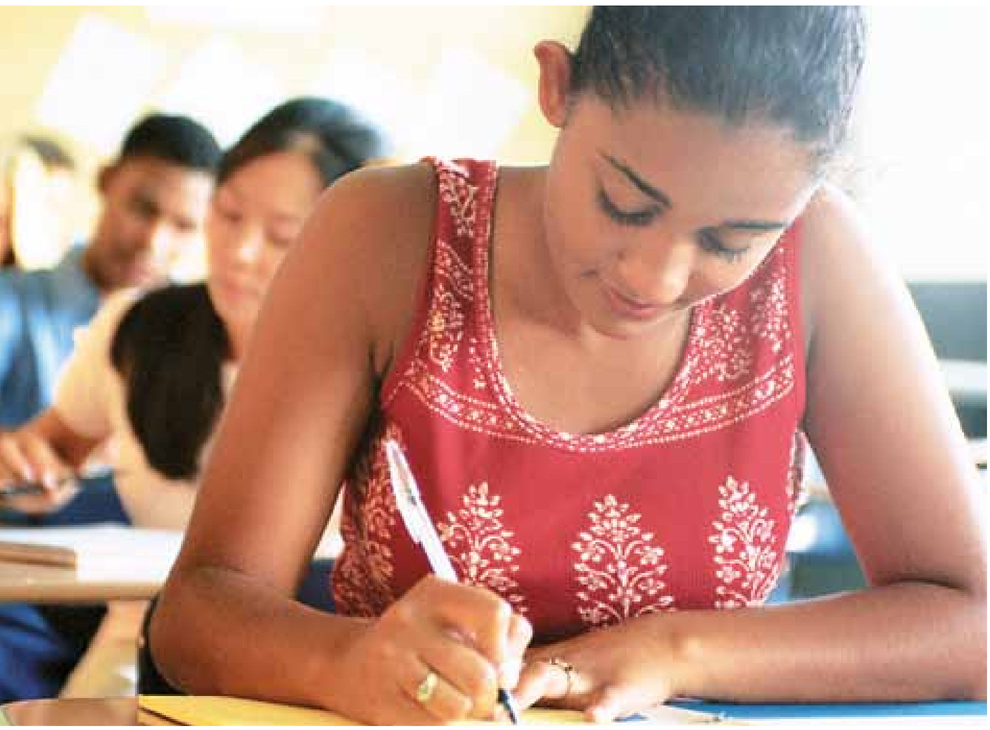
◆ Income Tax (Determination of Approved Individual and Specified Year of Assessment under the Returning Expert Programme) Rules 2012

The Income Tax (Determination of Approved Individual and Specified Year of Assessment Under the Returning Expert Programme) Rules 2012 [P.U.(A)151] was gazetted on 24 May 2012 and will take effect from YA 2012. The returning expert programme is to encourage professional Malaysian citizens working overseas to return and work in Malaysia.

◆ Income Tax (Exemption)(No. 2) Order 2012

The Income Tax (Exemption)(No. 2) Order 2012 [P.U.(A)167/2012] was gazetted on 4 June 2012. The Order confirms that the 100% income tax exemption for income derived from the operation of Malaysian ships under Section 54A of the ITA will continue to apply for YAs 2012 and 2013.

◆ Tax incentives for Treasury Management Centres (TMC)



◆ Income Tax (Exemption) (No.3) Order 2012

The Income Tax (Exemption)(No.3) Order 2012 [P.U.(A)184], gazetted on 19 June 2012 exempts a non-citizen individual employed by a TMC from the payment of income tax on income derived from an employment exercised outside Malaysia. The order is effective from YA 2012.

◆ Income Tax (Exemption) (No.5) Order 2012

The Income Tax (Exemption) (No.5) Order 2012 [P.U.(A) 240] gazetted on 6 August 2012 will take effect from YA 2012. The Order provides a 70% tax exemption on the statutory income arising from qualifying services rendered by the TMC to its related companies for a period of five (5) years.

◆ Income Tax (Exemption)(No.6) Order 2012

The Income Tax (Exemption) (No.6) Order 2012 [P.U.(A) 241] gazetted on 6 August 2012 will take effect from YA 2012. The Order exempts a non-resident person from income tax in respect of interest income derived from funds lent to a TMC.

◆ Income Tax (Exemption)(No.4) Order 2012

The Income Tax (Exemption)(No.4) Order 2012 [P.U.(A)209] gazetted on 10 July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2012 and that takes effect retrospectively from 11 February 2010 exempts from income tax any gains or profits falling under paragraph 4(f) of the ITA that are derived by a non-resident from a Labuan entity.

Double deduction incentives revoked with effect from YA 2016

INCENTIVES	GAZETTE ORDER	REVOKED BY
Freight charges incurred by a manufacturer of rattan and woodbased products (excluding sawn timber and veneer) for export	Income Tax (Deduction for Freight Charges) Rules 1990 [PU.(A)422/1990]	Income Tax (Deductions of Freight Charges) (Revocation) Rules 2012 [P.U.(A)218]
Insurance premium for exported cargos that are insured with an insurance company incorporated in Malaysia	Income Tax (Deductions of Insurance Premiums for Exporters) Rules 1995 [P.U.(A)79/1995]	Income Tax (Deductions of Insurance Premiums for Exporters) (Revocation) Rules 2012 [P.U.(A)219]
Insurance premium for imported cargos that are insured with an insurance company incorporated in Malaysia	Income Tax (Deductions of Insurance Premiums for Importers) Rules 1982 [P.U.(A)72/1982]	Income Tax (Deductions of Insurance Premiums for Importers) (Revocation) Rules 2012 [P.U.(A)220]

Technical guidelines issued by the IRB

The IRB has issued the following technical guidelines:

- Deduction of expenditure under Section 34(6)(m) and (ma) of the ITA – issued on 13 March 2012 and made available on 6 June 2012.
- Gross income recognition for property developers using 10/90 scheme under the build-then-sell method – issued on 31 May 2012 and made available on 6 June 2012.
- Tax treatment of property maintenance and management fees received by developers, joint management bodies and management corporations – issued on 21 May 2012 and made available on 4 June 2012.
- Guidelines and procedures for the computation of tax exemption on statutory income equal to the qualifying expenditure incurred for green building index certification and the computation of stamp duty exemption taking into account such expenditure – issued on 21 May 2012 and made available on 4 June 2012.
- Guidelines on treatment of single-tier dividends in actuarial surplus transferred to shareholders' fund – issued on 27 July 2012.
- Guidelines on application for approval under Section 44(6) for public contribution to schools – issued on 31 July 2012.
- Guidelines to clarify the non-application paragraph in the Accelerated Capital Allowances (ACA) Rules – issued on 9 August 2012.

Minutes of Post-2012 Budget Dialogue

The IRB published the minutes of the Post-2012 Budget Dialogue on 15 June 2012 and some of the issues clarified are as follows:

- Particulars of payment made to an agent, dealer or distributor.
- Compensation for over-payment of tax.
- Incentives for TMCs.

Guidelines to encourage small Malaysian service providers to merge into larger entities

The above guidelines were released by the Malaysian Industrial Development Authority (MIDA) on 3 July 2012 to encourage small service providers to merge into larger entities and become more competitive. Applications for the incentive must be submitted to the IRB and received within 3 years from 3 July 2012.

Income Tax (Transfer Pricing) Rules 2012

The Income Tax (Transfer Pricing) Rules 2012 [P.U.(A)132] was gazetted on 11 May 2012 and will apply retrospectively from 1 January 2009. The Rules prescribe how related companies should determine and apply the arm's length principle. The TP


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Rules also give the Director General of Inland Revenue wide powers to disregard any arrangement that does not reflect the commercial reality of a transaction between independent parties dealing at arm's length.

Income Tax (Advance Pricing Arrangement) Rules 2012

The Income Tax (Advance Pricing Arrangement) Rules 2012 [P.U.(A)133] was gazetted on 11 May 2012 and will apply retrospectively from 1 January 2009. The Rules prescribe the application process and the timelines from the pre-filing meeting with the IRB to the issuance of the advance pricing arrangements (APA) for cross-border transactions. The 'covered period' under the APA rules is between 3 to 5 years of assessment.

Guidelines for transfer pricing and advance pricing arrangement

The Transfer Pricing (TP) Guidelines 2012 issued on 20 July 2012 replaces the TP Guidelines issued in 2003, where it explains the administrative requirements pertaining to Section 140A of the ITA and TP Rules 2012.

The Advance Pricing Arrangement (APA) Guidelines 2012 issued on 20 July 2012 explain the procedural and administrative requirements pertaining to Section 138C and APA Rules 2012.

Refund of tax credit for defunct companies

As stated in the IRB's letter dated 14 May 2012 to the professional associations, an application for the refund of tax due to a company that has been dissolved pursuant to Section 308 of the Companies Act 1965 must be submitted to the IRB through the Companies Commission of Malaysia (CCM).

List of updated certification bodies

An updated list of approved certification bodies was issued by the IRB on 15 June 2012 and is available on its website. Section 34(6)(ma) of the ITA permits companies to claim a double deduction on expenses incurred on quality systems and standards or *halal* certification.

Recognition of MYCoID by the IRB

According to IRB's press statement on 19 June 2012, with effect from 1 July 2012, companies registered with CCM are allowed to use the MyCoID number when dealing with the IRB on income tax matters.

Tax cases posted on the IRB's website

The IRB has introduced a 'tax cases' page on its website with the aim of providing guidance to the public and the IRB officers on the status of tax cases.

Code of ethics for tax agents

The IRB has issued a code of ethics for tax agents on 4 July 2012.

Free RSS feeds from IRB

The Really Simple Syndication (RSS) feed subscription was launched on 9 August 2012 where registered subscribers can receive tax news and updates from the IRB through their email addresses for free. Registration guidelines are available on the IRB website.

Incentive claim forms need not be submitted to the IRB

With effect from 17 August 2012, the "Incentives Claim Form" need not be submitted to the Tax Policy Department of the IRB. However, the original copy of the form must be kept by the claimant company together with the supporting documents for audit purposes.

STAMP DUTY

Stamp Duty (Exemption) (No. 2) Order 2012

The Stamp Duty (Exemption) (No. 2) Order 2012 exempts loans and service agreements executed between 8 October 2011 and 31 December 2016 by TMCs for the conduct of their qualifying activities from the payment of stamp duty.

Stamp Duty (Remission)(No. 2) Order 2012

Stamp Duty (Remission)(No. 2) Order 2012 [P.U.(A) 258] was gazetted on 14 August 2012. The Order provides that stamp duty under Schedule 1 Paragraph 22(1)(b) of the Stamp Act 1949 on unsecured loan instruments for sums of money that are repayable on demand or in a single bullet repayment in excess of 0.1%, is remitted.

Stamp Duty (Exemption) (No.3) Order 2012

The Stamp Duty (Exemption) (No.3) Order 2012 [P.U.(A) 268] gazetted on 27 August 2012 takes effect from 11 February 2010 and revokes the Stamp Duty (Exemption) Order 2000 [P.U.(A)9/2000]. The Order exempts instruments involving a Labuan entity from stamp duty.

CUSTOMS AND EXCISE DUTIES

Service Tax (Amendment) Regulations 2012, Service Tax Act 1975 [P.U. (A) 244/2012]

Effective from 31 January 2012, the amended Item q of the "Taxable Service" in the Second Schedule to the Service Tax Regulations 1975 is as follows:-

"q. provision of hire-and-drive car or hire-car services with or without chauffeur in Peninsular Malaysia licensed under the Land Public Transport Act 2010 and the Commercial Vehicles Licensing Board Act 1987 for Sabah and Sarawak excluding provision of hire-and-drive car as defined under the Tourism Vehicles Licensing Act 1999 as operated by tourism operators registered under the Tourism Industry Act 1992."

Please see P.U. (A) 244/2012 for details.

Customs (Prohibition of Imports) (Amendment) (No. 3) Order 2012, Customs Act 1967 [P.U. (A) 192/2012]

Effective from 1 January 2013, importation (from all countries) of hydroclorofluorocarbons gas covered under the Montreal Protocol, Annex C – Group 1 with HS heading 2903.45 is to be accompanied by a licence issued by the Department of Environment.

Please see P.U. (A) 192/2012 for details of the HS tariff codes for the goods involved.

Customs (Prohibition of Imports) (Amendment) (No. 2) Order 2012, Customs Act 1967 [P.U. (A) 174/2012]

Effective from 15 June 2012, importation (from all countries) of flat-rolled products of other alloy steel of a width of 600 mm or more (under HS heading 72.25) is to be accompanied by import licence from the Ministry of International Trade and Industry (MITI).

Please see P.U. (A) 174/2012 for details of the goods involved.

*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.*

Foong Pui Chi and Cynthia Lian

CASE 1

***MN Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*[1]**

FACTS

The Director General of Inland Revenue ("DGIR") conducted a field audit on MN Sdn Bhd ("MN") and thereafter raised Notices of Additional Assessment for years of assessment 2002, 2003 and 2004 (collectively "Assessments") against MN on 7 August 2007.

Under Section 99(1) of the Income Tax Act 1967 ("ITA"), if a taxpayer is aggrieved by an assessment raised by the DGIR, he may appeal to the Special Commissioners of Income Tax ("SCIT") against the same by filing a notice of appeal in the "prescribed form" to the DGIR within 30 days after the service of the notice of assessment.

On 29 August 2007, MN filed a letter of objection to the DGIR to object to the Assessments. Almost 12 months after the Assessments were raised, MN filed its Forms Q on 5 August 2008 to appeal against the Assessments and the Forms Q were then forwarded to the SCIT on 27 October 2009 (more than 12 months after the DGIR had received them).

During the hearing of the appeal, the SCIT raised the preliminary issue as to whether the appeal ought to be struck out as an invalid appeal as MN had failed to lodge its appeal using the prescribed Form Q within 30 days from the date of receipt of the Assessments. Both parties contended that the appeal was valid and in compliance with Section 99(1) of the ITA and was not disputed between the parties. The parties submitted that MN's letter of objection had complied with Section 99(1) of the ITA as it was in accordance with Paragraph 3.3.3 of the Public Ruling No 3 of 2001[2] ("PR 3/2001"), which provides that:

> *"An appeal made by way of a letter is also acceptable, and will be dealt with as if Form Q had been received. If it subsequently becomes necessary to forward the case to the SCIT, the Appellant will be requested to complete Form Q accordingly."*

MN contended that the DGIR had prescribed two types of "prescribed form", being the Form Q and the letter of objection, and since it had filed one of them within the stipulated time, it had therefore complied with Section 99(1) of the ITA.

MAJORITY DECISION OF THE SCIT

Two out of the three SCIT ("Majority SCIT") held that there was no valid appeal before them and consequently struck out the appeal.

PR 3/2001 is a delegated or subsidiary legislation

The Majority SCIT referred to Section 23(1) of the Interpretation Acts 1948 and 1967, case law and various administrative law textbooks and held that as the PR 3/2001 is a delegated or subsidiary legislation[3], which is enacted by the DGIR (an entity other than Parliament) under Section 138A(1) of the ITA (under the authority of the parent or enabling Act, the ITA), the PR 3/2001 must conform with, and cannot go beyond, the legislative powers conferred by the ITA, failing which it would be ultra vires the ITA and void.

In particular, the Majority SCIT referred to and relied upon the judgement of the Federal Court in *Palm Oil Research And Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd*[4].

Section 99(1) of the ITA does not allow any other substitutes for Form Q

Upon a close scrutiny of Section 99(1) of the ITA, the Majority SCIT found that other than the "prescribed form" i.e. Form Q, the wording of that provision does not allow any other substitute for Form Q. Hence, Paragraph 3.3.3 of PR 3/2001, which provides that a letter of objection can be a substitute for Form Q, was held to be ultra vires the ITA, invalid and of no effect.

Section 100(1) of the ITA has been bypassed

The Majority SCIT held that by relying on Paragraph 3.3.3 of PR 3/2001, the parties had bypassed Section 100(1) of the ITA pursuant to which a taxpayer may apply to the DGIR for an extension of time to file Form Q under Section 99(1) of the ITA.

Section 143(1) of the ITA could not assist MN

The Majority SCIT also considered Section 143(1) of the ITA which provides that:

> *"No assessment, notice or other document purporting to be made or issued for the purposes of this Act shall be quashed or deemed to be void or voidable for want of form, or be affected by any mistake, defect or omission therein, if it is in substance and effect in conformity with this Act or in accordance with the intent and meaning of this Act…"*

---

[1] *(2011) MSTC 811*

[2] *This ruling was made by the DGIR under Section 138A of the ITA*

[3] *In the book by D.J. Gifford and K.H. Gifford, How to Understand an Act of Parliament, (1991), (7th Ed), Law Book Company, the term "delegated legislation" is defined as "law which is made by some person other than Parliament and acting under the authority of an Act of Parliament"*

[4] *[2004] 2 CLJ 265*

The Majority SCIT was of the view that Section 143(1) could not assist MN as Paragraph 3.3.3 of PR 3/2001 is not in substance and in effect in conformity with, or in accordance with, the intent and meaning of Section 99(1) of the ITA, which expressly stipulates that an appeal can only be made by using Form Q.

Section 152(1) of the ITA also could not assist MN

Although Section 152(1) of the ITA provides that the DGIR "may authorise the use of a suitable substitute for any form so prescribed", the Majority SCIT concluded based on the affidavit and exhibits tendered that there was no proof that MN had used all reasonable diligence to procure and use the prescribed form as required by Section 152(2) of the ITA. It therefore follows that Section 152(1) too could not assist MN.

No additional time is allowed under Section 102 of the ITA

The Majority SCIT also pointed out that Section 102 of the ITA only allows the DGIR 12 months to review the assessment, with a further six months with the approval of the Minister of Finance, upon application. As such, if the letter of objection is to be treated as equivalent to Form Q, this would mean that the DGIR has arrogated unto himself an extra timeframe (beyond the 12 or 18 months provided under Section 102) to review the Assessments and this is not sanctioned by Section 102 of the ITA.

Consent of the parties could not confer jurisdiction upon SCIT

Relying upon the decision of *Paramount Malaysia (1963) Sdn Bhd v Pesuruhjaya Khas Cukai Pendapatan & Anor*[5], the Majority SCIT emphasised that where the Court has no jurisdiction to hear the appeal as the Forms Q were not filed within the 30 days stipulated in Section 99(1) of the ITA, no amount of consent of the parties can confer jurisdiction upon it.

Dissenting decision of the SCIT

The remaining SCIT ("Dissenting SCIT") disagreed with the Majority SCIT and held that Section 99(1) of the ITA must be read together with Sections 138A, 143 and 152 of the ITA as all these provisions form part of the same Act and as such must be read as a single, integral and inseparable legislation. Accordingly, the Dissenting SCIT was of the view that the letter of objection and the subsequent Forms Q filed by MN constituted valid notices of appeal under the ITA.

The Dissenting SCIT referred to the facts in the Supreme Court case of *Government of Malaysia v Jasanusa Sdn Bhd*[6] ("Jasanusa") and concluded that Section 99(1) is only directory in nature and not mandatory. In Jasanusa, the notices of assessment were issued in January 1990 and the Forms Q were filed more than two years later in February 1992.

The Dissenting SCIT also said that Section 102 of the ITA had been complied with in this case because in the case of Jasanusa, although the Form Q was not forwarded to the SCIT within 12 months, the Supreme Court did not rule the assessment to be null and void.

CONCLUSION

We understand that MN has appealed against the decision of the Majority SCIT to the High Court and it remains to be seen whether the High Court would agree with the construction of the applicable provisions of the ITA taken by the Majority SCIT or the Dissenting SCIT on whether a letter of objection is a sufficient substitute for Form Q under the ITA.

CASE 2

***Galaxy Energy Technologies Sdn Bhd v Timbalan Pemungut Duti Setem, Malaysia & Anor*[7]**

FACTS

On 17 January 2007, Galaxy Energy Technologies Sdn Bhd ("the Company") entered into a sale and purchase agreement ("SPA") with Tennessee Builders Products Sdn Bhd ("Vendor") to purchase a piece of land for RM2,280,000.00. Pursuant to the SPA, the Company paid earnest money and a further sum as a deposit to the Vendor. The balance of the purchase price was to be paid by the Company within a period of 90 days from the unconditional date, as defined under the SPA.

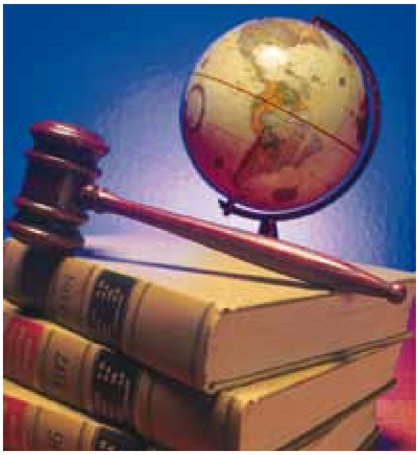
Subsequently, the memorandum of transfer, Form 14A ("MoT"), was executed on 18 July 2007. The Collector of Stamp Duties ("Collector") acting under Section 36(1) of the Stamp Act 1949 ("SA") assessed the duty chargeable on the MoT at RM78,600.00 which was duly paid by the Appellant.

However, the Company was unsuccessful in obtaining the financing to pay the balance of the purchase price as the Company's applications to three different financial institutions were rejected. As a result, the SPA was

[5] *(2002) MSTC 3,908*
[6] *[1995] 2 CLJ 701*
[7] *[2011] 5 CLJ 829*

terminated and the earnest money and deposit were forfeited. The MoT and original document of title were all returned to the Vendor.

The Company then applied to the Collector for a refund of the stamp duty paid on the instrument of transfer



pursuant to Section 57(f)(iii) and/or (iv) of the SA. The Collector rejected the Company's application for refund on the ground that the inability to obtain financing to pay for the balance of the purchase price was not a ground within the meaning of Section 57(f)(iii) of the SA for a refund of stamp duty.

Aggrieved, the Company filed an application for a judicial review for an order of certiorari to quash the decision of the Collector and for an order of mandamus to direct the Collector to refund the stamp duty paid on the MoT.

The High Court dismissed the application for judicial review and held that the inability to pay the balance purchase price which resulted in the termination of the SPA was due to an inability to comply with a term of the contract. Therefore, this was not an inability within the meaning of Section 57(f)(iii) of the SA.

DECISION

On further appeal to the Court of Appeal, the Company's appeal was allowed.

The crux of the issue in this appeal concerns the construction of Section 57 of the SA which reads as follows:

> *"S57. Allowance for spoiled stamps*
>
> *Subject to any rules which may be made under this Act and to the production of such evidence by statutory declaration or otherwise as the Collector may require, allowance shall be made by the Collector for stamps spoiled in the following cases*
> *(f) the stamp used for any of the following instruments*
> *(iii) an instrument executed by any party thereto, which has not been made use of for any purpose whatever, and which by reason of the inability or refusal of some necessary party to sign the same or to complete the transaction according to the instrument is incomplete and insufficient for the purpose for which it was intended;*
> *(iv) an instrument executed by any party thereto, which <u>by reason of the inability or refusal of any person to act under the same</u>, or for want of registration within the time required by law, fails of the intended purpose or becomes void;" [emphasis added]*

Having scrutinised the language of the SA, in particular the phrase "by reason of the inability or refusal of any person to act under the same" in Section 57(f)(iii) of the SA, the Court held that it is a question of fact whether a person comes within the meaning of the word "inability" in Section 57(f)(iii) and is to be determined in the light of the particular case. On the facts of this case, the inability by the Company to complete the sale of the land due to its proven inability to obtain financing is an "inability" within the meaning of Section 57(f)(iii). The inability to complete the sale in this instance was not self-induced.

Further, "any person" in Section 57(f)(iii) is wide enough to include the party to the instrument, that is the Company, and it was not the intention of the legislature to interpret the word "any person" as "any other person".

The MoT was stamped under item 32(a) of the First Schedule to the SA with the heading "Conveyance, Assignment, Transfer or Absolute Bill of Sale". In this regard, "conveyance on sale" is defined in the SA to include "every instrument whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser or any other person on his behalf or by his direction".

The MoT was the relevant "conveyance on sale" in this case. As the purpose of the MoT was to transfer or vest the property in the Company, due to the Company's inability to pay the balance purchase price which resulted in the termination of the SPA, there was clearly no "conveyance on sale" within the meaning of the SA.

The Court of Appeal held that the case falls squarely within Section 57(f)(iv) of the SA which empowers the Collector to give allowance in respect of spoiled stamps. As such, the Company was entitled to a full refund of the stamp duty paid on the MoT.

This is the first reported case on the provision for allowance of spoiled stamps under Section 57 of the SA and reiterates an important principle of stamp duty that stamp duty is chargeable on instruments and not transactions. As the MoT was not capable of transferring the property to the purchaser, there was therefore no conveyance on sale and no instrument chargeable to stamp duty.

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International News

The column only covers selected developments from countries identified by CTIM and relates to the period 16 May 2012 to 15 August 2012.

CHINA (PEOPLE'S REP.)

Transfer pricing adjustment to share transaction by related domestic company

China Taxation Newspaper reported on 16 May 2012 on a case in which a district tax bureau of Suzhou (Jiangsu province) made a tax adjustment to a share transaction of a related domestic company. According to the report, a listed company within the jurisdiction of the district tax bureau transferred its shares in a listed domestic company to its individual shareholder at 50% of the average price of the listed company for the most recent five trading days. The transaction resulted in capital gains which amounts to CNY64.06 million, upon the basis of which the selling enterprise paid the tax. However, the district tax bureau was of the opinion that the transfer price did not conform to the fair market value and applied the comparable uncontrolled price to adjust the price. After a 10-month negotiation, the selling enterprise accepted the adjustment of the district tax bureau and made the extra tax payments. In determining the adjusted price, the district tax bureau applied a discount rate taking into account that the shares were not publicly tradable (restricted) at the time of disposal.

Note. The case merits attention since it concerns a transfer pricing (TP) adjustment to a disposal of shares that is not a cross-border transaction.

Largest tax revenue from indirect share transfer collected

It has been reported (by China Taxation News) that the Jincheng State Tax Bureau in the Shanxi province collected the largest single amount of tax revenue ever on an indirect share transfer since Notice 698 on the taxation of indirect share transfers by non-residents was implemented.

According to the report, a BVI company sold its shares in its 100% Hong Kong subsidiary, which held a 56% interest in a Chinese coal energy company, to another Hong Kong company. The transaction worth USD669 million was discovered by the Jincheng tax bureau in March 2011. The Chinese coal company, established in 2000, is the first Sino-foreign joint venture engaged in coal energy in China and attracted the attention of the local tax authority.

The tax bureau requested the representatives of the acquiring company to contact the BVI company, and started a discussion on the amount of gains and the cost price of the transaction with the tax intermediaries and representatives of the BVI company which initially rejected the tax bureau's position. The tax bureau directly required the acquiring company to withhold the tax from the unpaid sum due to the BVI company, and finally, the BVI company conceded and paid the tax. Note. The case indicates that the Chinese tax authority is determined to continue and intensify the implementation of Notice 698 despite the Vodafone case in India, which some had hoped would persuade the Chinese tax authority to think otherwise.

Deduction of advertising and promotion expenses clarified

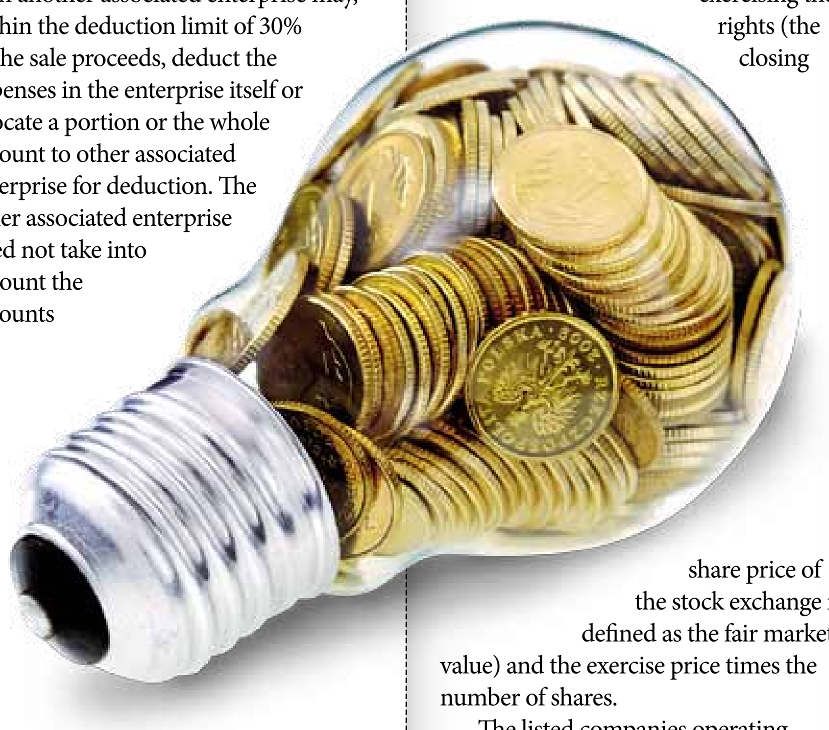
The MoF and SAT jointly issued a Notice on 30 May 2012 (Cai Shui [2012] No. 48) regarding the deduction of advertising and promotion expenses. The Notice applies for the period from 1 January 2011 to 31 December 2015. The content of the Notice is summarised below:

The advertising and promotion expenses relating to manufacturing and sales of cosmetic products and to pharmacy and beverage (non-alcoholic) manufacturing are deductible up to 30% of the sale proceeds of the current year. The excess of 30% can be carried over to the following years for deduction.

The Implementation Rules of Enterprise Income Tax provide for 15% deduction of such expenses for all industries and the Ministry of Finance and SAT issued a Notice in 2009 (Cai Shui [2009] No. 72) to increase this deduction from 15% to 30% for cosmetic, pharmacy and soft drink industries. However, Cai Shui [2009] No. 72 ceased to apply on 31 December 2010. The

Notice [2012] No. 48 extends the 30% deduction to 31 December 2015.

An associated enterprise that has concluded a cost-sharing arrangement on advertisement and promotion expenses with another associated enterprise may, within the deduction limit of 30% of the sale proceeds, deduct the expenses in the enterprise itself or allocate a portion or the whole amount to other associated enterprise for deduction. The other associated enterprise need not take into account the amounts



allocated in determining its own deduction limit of 30%. Further, the Notice provides that the advertisement and promotion expenses incurred by tobacco industries are excluded from deduction for enterprise income tax purposes.

Tax treatment of equity incentive plan clarified

The SAT issued an Announcement on 23 May 2012 (Gong Gao [2012] No. 18) addressing the tax treatment of the equity incentive plan for the purposes of enterprise income tax. The Announcement applies from 1 July 2012; its content is summarised below:

The equity incentive plan refers to the granting of restricted shares or stock options or other legal ways of remuneration in the form of shares to board directors, senior managers and other employees. According to the Announcement the deductible expense relating to an equity incentive plan amounts to the difference between the fair market value of shares at the time of exercising the rights (the closing share price of the stock exchange is defined as the fair market value) and the exercise price times the number of shares.

The listed companies operating such plan may deduct the incentives as employment costs in cases where the rights can be exercised immediately after the grant. However, if the exercise is contingent on the duration of services or performance of duties, the listed companies may not deduct the incentives before the exercise of rights takes place.

The provisions contained in this Announcement apply equally to resident companies listed outside China and unlisted companies which operate such plan according to the relevant regulation and comply with the Chinese accounting standards.

Further rules on determination of beneficial owner published

The SAT issued an Announcement on 29 June 2012 (Gong Gao [2012] No. 30) providing further rules on determination of beneficial owner under tax treaties. The Announcement applies from the same date as the issue date of this Announcement and its content is summarised below:

According to the Announcement whether or not a resident of a contracting state is the "beneficial owner" may not be decided merely on certain adverse factors or the absence of the intention of tax evasion or reduction and shifting or accumulation of profits as provided for in article 2 of the Guo Shui Han [2009] No. 601 which addresses identification of the beneficial owner. It must be determined on the basis of an analysis of the factors mentioned in Guo Shui Han [2009] No. 601 as a whole and the analysis must be made by reference to the following documents:- (i) article of association; (ii) financial statements; (iii) statement of cash flow; (iv) minutes of Board of Directors; (v) allocation of human resources and assets; (vi) related expenditures; (vii) function and risk analysis; (viii) loan contracts; (ix) agreements on use or transfer of intellectual properties; (x) certificate of the patent registration; (xi) certificate of the ownership of author's right; and (xii) contract on agency or designated nominee.

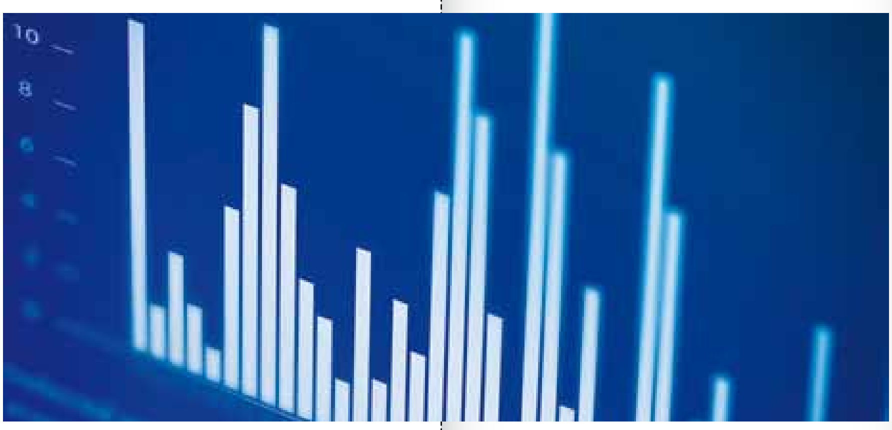
If the applicant of the tax treaty benefit for the dividends derived from China is a listed company of the contracting state, the applicant is per definition the beneficial owner. The same applies to 100% subsidiaries directly or indirectly owned by the listed company of the contracting state (the intermediate indirect shareholding in a third country is excluded) provided that the dividends are stemmed from the shareholding of the listed company.

In cases where an agent or a designated nominee receives payments on behalf of the beneficial owner, whether or not the agent or nominee is a resident of the contracting state is irrelevant for determination of the applicant's beneficial owner status. However, the agent or nominee must declare that it is not the beneficial owner itself. The information on the agent or nominee who is located in a jurisdiction having a tax treaty or an agreement of exchange of information with China can be acquired through the exchange of information.

The competent tax authority which is, due to the complexities of the case, unable to make a decision on the beneficial owner status may suspend the granting of treaty benefits. After the status of beneficial owner is ascertained, the overpaid taxes must be refunded to the applicant.

As provided for under the Guo Shui Fa [2009] No. 124 on the Administration of Granting Treaty Benefits to Non-Residents, the local tax bureau may only deny the beneficial owner status upon the approval of the tax authority at the provincial level. The provincial tax authorities must file all the denying cases with the SAT international tax department.

If an applicant has to apply for recognition of the beneficial owner status on similar cases to the different tax bureaus, the different tax bureaus are required to consult each other and make a consensus. In the absence of a consensus, the tax bureaus have to report the case along with the information on the consultation among the tax bureaus to the higher authority for the settlement.



VAT pilot programme extended

On 25 July 2012, the State Council decided to extend the pilot programme of the transition from business tax to value added tax to Beijing, Tianjin, Xiamen and Shenzhen municipalities and Jiangsu, Zhejiang, Anhui, Fujian, Hubei and Guangdong provinces in the period between 1 August 2012 and the end of 2012. The pilot programme will subject transportation and part of so-called contemporary services such as leasing and design services to VAT instead of business tax. Currently, Shanghai is the sole municipality carrying out this pilot programme. It is expected that more municipalities and provinces will be permitted to join the programme next year and some of the "business tax" services will be selected to be subject to VAT nationwide.

Supplementary circular on VAT pilot programme published

The Ministry of Finance and State Administration of Taxation (SAT) jointly issued a Circular on 29 June 2012 (Cai Shui [2012] No. 53) providing supplementary rules on the VAT pilot programme. The Circular is concerned with the transformation of business tax liabilities to VAT liabilities for international transportation, animation and leasing businesses. The content of the Circular is summarised below:

From 1 January 2012, the enterprises or individuals from foreign countries or regions, which have not concluded a tax agreement with China to exempt taxes on international transportation services, are subject to 3% VAT on international transportation services provided within China in the trial period of the VAT pilot programme. The withholding agent of the foreign enterprise or individual must calculate the withholding tax amount imposed on international transportation as follows: total amount of payment of service recipient/103 x 3%

Services supplied by an animation enterprise qualified as a general taxpayer for the pilot programme (including drafting script, designing images, background music, subtitles and so on) and the transfer of the copyright are subject to 3% according to the simplified method of VAT collection in the period between 1 January 2012 and 31 December 2012. Once the taxpayer elects to be taxed in this way, the choice cannot be changed halfway. The simplified method means that the taxpayer is subject to a reduced rate of VAT and will be denied the input tax deduction.

Agencies of shipping services and vessels are subject to VAT at the same rate as that is applicable to services provided by harbours.

From 1 July 2012, a general taxpayer in the pilot programme may elect to apply the simplified method and therefore to be subject to 3% VAT for leasing tangible and movable properties which were purchased or self-made prior to 1 January 2012, the commencing date of the VAT pilot programme.

Tax treatment of employment income under tax arrangements with Hong Kong and Macau clarified

The State Administration of Taxation (SAT) issued an Announcement on 26 April 2012 (Gong Gao [2012] No. 16) allowing a Hong Kong or Macau tax resident

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working in China to calculate the tax liability of the employment income on a time apportionment basis. The Announcement applies to employment income derived on and after 1 June 2012.

According to the Announcement, the employment income derived by a Hong Kong or Macau tax resident from Mainland China is subject to individual income tax (IIT) on the portion which is attributable to the working period in China. The calculation of the IIT payable is as follows:

IIT = (total employment income from in and outside China x the applicable tax rate – the quick calculation deduction) x the number of days of the China presence /the total number of days of the current tax period

However, the portion of the employment income which satisfies the conditions provided for under paragraph 2 of the employment income article of the arrangements (see China (People's Rep.) - Hong Kong Income Tax Agreement (2006) and China (People's Rep.) - Macau Income Tax Agreement (2003)) will not be taxable in China. The portion of the employment income which does not meet the conditions mentioned above is subject to IIT in China and calculated as follows:

IIT = (total employment income from in and outside China x the applicable tax rate – the quick calculation deduction) x the number of days of the China presence / the total number of days of the current tax period x (gross salaries borne by Chinese enterprises or a permanent establishment of the foreign employer / total amount of gross salaries from in and outside China)

The formulas are based on the "current tax period" which is, in the case of employment income, a calendar month.

The IIT liability on bonuses received by a Hong Kong or Macau tax resident and attributable to more than one tax period (including any kind of bonuses, overtime payment and profit distributions to employees) may be calculated on the same time apportionment basis.

VAT pilot programme – Circular for extension published

Following the decision of the State Council on 25 July 2012 on the extension of the VAT pilot programme to other municipalities, the MoF and the SAT issued a Circular on 31 July 2012 (Cai Shui [2012] No.71) on the implementation of the Decision. There are eight municipalities or provinces to which the pilot programme is extended. From 1 August 2012, Beijing, Tianjin, Jiangsu, Anhui, Zhejiang (including Ningbo), Fujian (including Xiamen), Hubei, Guangdong (including Shenzhen) may start preparatory work such as training of the tax officials and providing information to taxpayers.

The commencement dates of the programme for the different provinces/ municipalities are as follows:

PROVINCE/ MUNICIPALITY	COMMENCEMENT DATE
Beijing	1 September 2012
Jiangsu and Anhui	1 October 2012
Fujian and Guangdong	1 November 2012
Tianjin, Zhejiang and Hubei	1 December 2012

From these dates the circulars relating to the VAT pilot programme in Shanghai apply to the relevant provinces and municipalities. These circulars are:

– Cai Shui [2011] No. 111
– Cai Shui [2011] No. 131
– Cai Shui [2011] No. 132
– Cai Shui [2011] No. 133; and
– Cai Shui [2012] No. 53.

INDIA

The Indian Income Tax Appellate Tribunal (ITAT) delivered the following rulings:

i. Ruling on benchmarking for interest-free loan

The ITAT delivered a ruling dated 30 April 2012 in the case of *Tata Autocomp Systems Ltd. v. ACIT [ITA No. 7354/Mum/2011]* wherein it held that interest-free loans would be regarded as international transaction and will have to satisfy the arm's length price guidance.

ii. Ruling on "resident but not ordinary resident"

The ITAT delivered a ruling dated 31 May 2012 in the case of *Dr. Sarmishtha Mukherjee v. ITO (ITA No. 743/Kol/2010)* wherein it held that the residential status of the taxpayer returning from United Kingdom (UK) to India remains the same for the entire year.

iii. Indian ruling on the use of resale price method

The ITAT delivered a ruling dated 25 April 2012 in the case of *ITO v. L'Oreal India Private Limited (ts-293-itat-2012)* wherein it held that the resale price model (RPM) is the most appropriate method in case a taxpayer buys product from an associated

enterprise and sells the same to an unrelated third party without further processing.

iv. Ruling on benchmarking for advertisement expenditure

The ITAT delivered a ruling dated 10 May 2012 in the case of *ACIT v. Genom Biotech Private Limited [TS-326-ITAT-2012(Mum)* wherein it held that the mean of advertising spend of comparable companies cannot be the measure of arm's length for advertising expenditure incurred by the taxpayer.

v. Ruling on composite contracts

The ITAT delivered a ruling dated 22 June 2012 in the case of *Dongfang Electric Corporation (ITA.No:833/Kol/2011)* dealing with the taxability of composite contracts in India.

The ITAT discussed the applicability of the "look at" approach, adopted by the Authority of Advance Rulings (AAR) in its advance ruling in the case of *Alstom Transport SA (Alstom)* ruling dated 7 June 2012

vi. Ruling on taxability of gains arising from the buy-back of shares

The AAR delivered a ruling dated 27 February 2012 in the case of *RST (AAR No 1067 of 2011)* where it held that the exemption under Sec. 47 (iv) of the Indian Income Tax Act 1961 (ITA) was not available for the buyback of shares by an Indian subsidiary from its parent company. (Note: Section 47 of the ITA provides an exemption from capital gains in certain types of transfers and subsection iv, specifically exempts the transfer of capital assets by a company to its subsidiary in certain situations.)

Supreme Court decision on judicial reviews of advanced rulings

The Supreme Court of India (SC) issued a decision dated 30 July 2012, in the Special Leave Petition (SLP) filed under Article 136 of the Constitution of India (Constitution), in the case of *Columbia Sportswear Company (Petitioner) (AAR no. 862 of 2009 dated 8 August 2011)* dealing with the maintainability of SLPs filed against the rulings pronounced by the Authority for Advance Rulings (AAR) under the Indian Income Tax Act 1961 (ITA).

INDONESIA

Tax debt nullification

The Ministry of Finance has issued Regulation of Ministry of Finance No. 68/PMK.03/2012 concerning the procedure of tax debt nullification for both individual and corporate taxpayers.

Tax debts that could be nullified include tax debt stipulated by a tax collection letter, tax assessment letter, notification of tax due as well as a decision letter for rectification, an objection, appeal and judicial review.

Other than the statute of limitations, there are several conditions where tax debt could be forgiven: (i) for individual taxpayers : - the taxpayer has passed away and leaves neither wealth nor any inheritance; and the taxpayer including the tax guarantor could not be found; (ii) for corporate taxpayers: the taxpayer has been dissolved, liquidated or bankrupt; (iii) documents for tax debt collection could not be found and optimal efforts have been made according to tax law; and (iv)under certain conditions due to changes of policy and/or other considerations stipulated by the Ministry of Finance.

The regulation is effective since its issuance date on 2 May 2012.

Export tax on raw minerals

Regulation of the Minister of Trade No. 29/M-DAG/PER/5/2012 regarding rules on the export of mining products imposed tax on the export of raw minerals and simultaneously introduced a strict procedure on the export of raw minerals. The Regulation is effective from the issuance date on 7 May 2012.

The Minister of Energy and Mineral Resources disclosed that the export tax, which could be around 20%, applies mainly to the export of various raw minerals, as follows: (i) copper; (ii) gold; (iii) silver; (iv) tin; (v) lead(metal) and zinc; (vi) chromium; (vii) molybdenum; (viii) platinum; (ix) bauxite; (x) iron ore; (xi) iron sand; (xii) nickel and/or cobalt; (xiii) manganese; and (xiv) antimony.

Further, it is noted that the 14 raw materials above are the minerals classified as "metal" in the Regulation of Minister of Energy and Mineral Resources No. 07/2012 regarding adding value on minerals through a smelting process, dated 6 February 2012.

MIDDLE-EAST

Jordan – Changes to tax rates to be introduced

On 26 May 2012, the government proposed some amendments to the Income Tax Law (Law 28 for 2009). The main change provides for the increase of income tax rates as follows: (i) from 14% to 25% for mining companies; and (ii) from 30% to 35% for banks and financial institutions.

In addition, on 17 June 2012, the Parliament approved an amendment to the General Sales Tax Law (Law 6 for 1994) as amended in 2009. A special rate is to be introduced for 12 types of items including mobile phones, perfumes and cosmetics, diamonds, pearls and other gemstones, musical instruments and leather garments.The special rate has not been disclosed yet.

SINGAPORE

The Inland Revenue Authority of Singapore (IRAS) issued the following e-Tax Guides in respect of the Budget 2012:

Non-taxation of gains from equity investments - details

Gains derived by companies from the disposal of certain equity investments on or after 1 June 2012 will not be taxable. Details of this rule have been issued by the IRA via an e-Tax Guide published on 30 May 2012. Pursuant to the Guide, gains derived by a divesting company from its disposal of ordinary shares in an investee company during the period 1 June 2012 to 31 May 2017 (both dates inclusive) are not taxable if, immediately prior to the date of share disposal, the divesting company had held at least 20% of

the ordinary shares in the investee company for a continuous period of at least 24 months. The rule is applicable regardless of whether the investee company is incorporated in Singapore, and regardless of whether it is listed.

However, the rule does not apply to the following scenarios:- (i) disposals that do not meet the conditions above; (ii) a divesting company whose gains or profits from the disposal of shares are included as part of its income based on normal income tax rules; (iii) an investee company that is in the business of trading or holding Singapore immoveable properties (other than the business of property development); (iv) where a divesting company had held at least 20% of the ordinary shares in an investee company for a continuous period of at least 24 months and incurs losses from the disposal of ordinary shares in the investee company; and (v) where a divesting company makes gains or losses from the disposal of non-ordinary shares in an investee company.

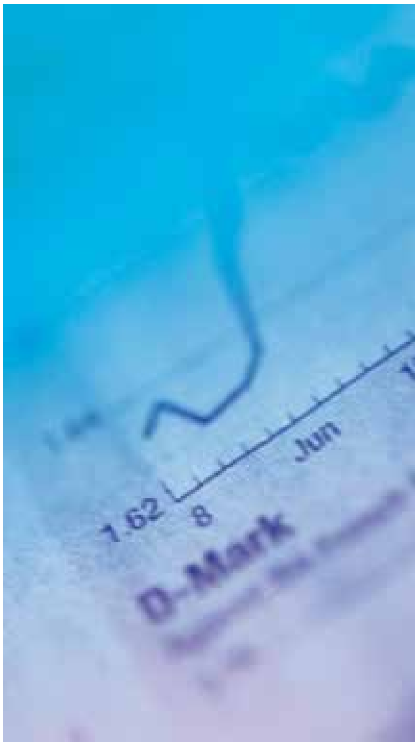
Whether gains or losses derived in the scenarios above are income or capital in nature will continue to be determined based on the facts and circumstances of each case.

Tax deduction for renovation and refurbishment works – details

The tax deduction for capital expenses incurred for the renovation and refurbishment of business premises is doubled to SGD300,000.00 for every 3-year period, from the year of assessment (YA) 2013 onwards. Further details have been issued by the Inland Revenue Authority of Singapore via an e-Tax Guide published on 6 June 2012.

Pursuant to the Guide, the deduction is given over a period of 3 consecutive years, on a straight-line basis, starting from the YA for which the expenses are incurred. The deduction is given so long as there is the carrying on of a trade, business or profession for which the costs were incurred during the basis period. Any unabsorbed deduction is subject to the normal tax treatment for tax losses.

The following expenses generally qualify for the deduction, if they do not affect the structure of the business premises: (i) general electrical installation and wiring to supply



electricity; (ii) general lighting; (iii) hot/cold water system (pipes, water tanks, etc.); (iv) gas system; (v) kitchen fittings (sinks, pipes, etc.); (vi) sanitary fittings (toilet bowls, urinals, plumbing, toilet cubicles, vanity tops, wash basins, etc.); (vii) doors, gates and roller shutters (manual or automated); (viii) fixed partitions (glass or otherwise); (ix) wall coverings (such as paint, wall-paper, etc.); (x) floorings (marble, tiles, laminated wood, parquet, etc.); (xi) false ceilings and cornices; (xii) ornamental features or decorations that are not fine art (mirrors, drawings, pictures, decorative columns, etc.); (xiii) canopies or awnings (retractable or non-retractable); (xiv) windows (including the grilles etc.); (xvi) fitting rooms in retail outlets

The following expenses are disallowed:- (i) any designer services or professional services; (ii) any antique; and (iii) any type of fine art including painting, drawing, print, calligraphy, mosaic, sculpture, pottery or art installation.

Mergers and Acquisitions Scheme – Details

The mergers and acquisitions allowance and stamp duty relief scheme (“M&A scheme”) will be enhanced. Pursuant to an e-Tax Guide issued by the Inland Revenue Authority of Singapore (IRAS) on 28 June 2012, the existing M&A scheme will be enhanced as follows: (i) the requirement that a wholly-owned acquiring subsidiary must be directly owned by the acquiring company is removed. The acquiring subsidiary may now be directly or indirectly wholly owned by the acquiring company. Where the wholly-owned acquiring subsidiary is indirectly owned by an acquiring company through any intermediate company, each intermediate company must: (a) not carry on a trade or business in Singapore or elsewhere on the date of the share acquisition;(b) be wholly owned by the acquiring company on that date; and (c) not claim any deduction provided under the M&A Scheme; (ii) the requirement that the conditions to be met by the target company can only be met by a wholly and directly-owned operating subsidiary of a target company is removed. With this, the conditions can be satisfied by an operating subsidiary, whether directly or indirectly, wholly owned by the target company.

Budget 2012 also introduced a double tax deduction (“DTD”) scheme for qualifying transaction costs incurred on qualifying share acquisitions made during the period 17 February 2012 to 31 March 2015. The DTD is applicable to transaction costs, net of government grants or subsidies, subject to an expenditure cap of SGD100,000.00 per year of assessment (YA). Transaction costs include legal fees, accounting or tax advisor’s fees, valuation fees and such other professional fees that are necessarily incurred for a qualifying share acquisition but do not cover professional and incidental fees in respect of a loan arrangement. The DTD of transaction costs is given in the YA in which M&A allowance for the qualifying share acquisition is claimed. Transaction costs incurred in relation to share acquisitions that took place before 17 February 2012 remain non-tax deductible.

MALAYSIA

- Australia and Malaysia signed a free trade agreement (FTA) on 22 May 2012.
- The amending protocol, signed on 14 October 2010, to the Bahrain - Malaysia Income Tax Treaty (1999), entered into force on 20 February 2012. The protocol generally applies from 22 March 2012.

*By **Lee Joo Fong**. Joo Fong was formerly a Research Associate at the International Bureau of Fiscal Documentation (IBFD). The International News reports have been sourced from the IBFD’s Tax News Service. For further details, kindly contact the IBFD at ibfdasia@ibfd.org.*

All about data

ACCORDING TO A RECENT JOINT REPORT ON LEVERAGING XBRL FOR VALUE IN ORGANISATIONS BY **ISACA**, THE SINGLE INTERNATIONAL SOURCE FOR TECHNOLOGY CONTROLS, AND IFAC, XBRL IS DEFINITELY HERE TO STAY. **MAJELLA GOMES** CONDENSES THE REPORT.

XBRL, or eXtensible Business Reporting Language, the common (computer) language for the electronic communication of business and financial data, is already in use in China, Italy, Japan, Singapore, and the US. An increasing number of public authorities are beginning to demand that companies submit their reports and other financial data in XBRL format.

But what exactly does XBRL do? It allows metadata, i.e. data about data, to be embedded in electronic business reports, thus allowing business information from information providers to flow to information consumers in a consistent and reliable manner. XBRL uses Internet technology for efficient, effective, reliable and secure information flow.

FAST AND FUNCTIONAL

While some XBRL functions can be applied to SMEs, others are more suitable for larger, public-listed corporations –

depending on the kind of information consumers an organisation has to cater for. Information consumers come in many forms: managers, regulators, information intermediaries, shareholders, analysts, financial institutions and anyone else who falls into the stakeholder category. When XBRL is used within an organisation, it is usually to bind together disparate information systems, providing a means for units within organisations to transfer transactional data and management information from one system to another using a common internal taxonomy or classification system. This information may include purchase orders, logistics data, invoices, monetary information, text and statistics, or be about financial performance, risks, sustainability and compliance.

XBRL is the business reporting equivalent of the Universal Product Code, or UPC. The UPC is intended to uniquely identify a product such as a book or laptop through title, characteristics, price, weight or dimensions. Similarly, the XBRL "bar code" identifies unique chunks of information, providing data on elements such as the meaning of the data item, the type of data, time period, organisation etc. When users elect to use XBRL, they often improve the efficiency and effectiveness of the reporting supply chain, as the implementation of XBRL is designed to be beneficial in terms of consumption and dissemination of information. It is quite possible that the near future will see more companies expecting information to be provided in XBRL.

It has been ten years since the introduction of XBRL, and the standard for its use is available from the XBRL international consortium. It is not the property of software vendors, nor is it restricted to any computer system or language. It is platform-independent and can be understood and generated by an increasing array of software packages; but XBRL is not software. While information is good, there is little value to information for consumers if individual information providers use different definitions and technologies that do not work together. Standardisation makes such information more useful, and XBRL can provide such standards. To enhance effectiveness, for instance, organisations can embed XBRL within internal processes to improve the effectiveness, efficiency and reliability of management communication. Using the same technology for generation and transmission of information inside the organisation as is used for external compliance can further reduce costs, and employing the same definitions will help align external and internal communications.

XBRL is not a solution to all information transfer problems, however. It is designed explicitly to support business reporting, and has limitations. Some of its enhanced functionality is also relatively recent. Organisations may also see it as just another compliance activity which will inevitably incur costs that will benefit the regulator, not the organisation itself. This opinion aside, clarity about XBRL may be improved if we look at where it has already been implemented. It has reduced business reporting burdens through harmonisation of business-to-government reporting, for instance, and it supports internal audit and internal control functions within organisations. Dispersed reporting and accounting systems can be integrated, and financial statements consolidated. It allows for convergence between different accounting principles such as IFRSs and local GAAPs.

While it offers workable internal and external solutions, XBRL is a boon particularly to SMEs, as it has been shown to reduce their regulatory burden. These companies usually have to report similar or identical information to a host of regulators and agencies like tax offices, local authorities, financial institutions and statistics offices, which creates a burden that these usually small businesses with limited resources can scarcely afford. In the Netherlands, Australia and

WHY USE XBRL?

Multi-industry multinational Fujitsu Group has used XBRL with great success. The Japanese giant has 63 different reporting systems, over one million product codes and 1,200 interfaces, supported by 167,000 employees and 430 companies. With such a complex organisational structure, the company decided to integrate its dispersed systems, determining that the total cost of ownership needed to be more visible, and standard reporting practices had to be implemented to enable better performance verification and measurement. Fujitsu chose XBRL to achieve better data management, improve internal processes and enhance business data integrity. Its stakeholders found that the use of open standards made relevant data more accessible and more supportive of business and financial processes.

Singapore, the use of XBRL has reduced the cost of compliance, and is known as Standard Business Reporting (SBR). SMEs can take advantage of the standard definitions of key measures within SBR to align and improve internal processes, and may even be able to improve the structure of their chart of accounts.

IMPLICATIONS OF XBRL USE

Users can automate the handling of data received electronically in XBRL. This saves time by avoiding the re-entry of information, and software can immediately validate the data, analyse, select and process it for reuse. Human resources can be applied at higher levels where analysis, review, reporting and decision-making will increase the value of the data. Lenders can reduce costs and speed up their dealings with borrowers; and regulators and government departments can assemble, validate and review data more efficiently – thereby enhancing their regulatory vigilance functions. Eventually, even financial statements prepared under one standard format may only need to be filed once, to be accessed by multiple regulatory agencies. For instance, a bank could file its financial information with just the Central Bank, and have it accessed by other agencies such as the Inland Revenue Board.

We are likely to see more XBRL initiatives in the near future. As its use becomes more widespread, software and standard business processes can be expected to develop in tandem, and will likely improve the underlying technology and taxonomies that support it. The ability of XBRL to communicate an array of types of data will spur performance and sustainability reporting, particularly non-financial reporting, under the guidelines of the Global Reporting Initiative. Sustainability reporting often involves many different types of metrics that are peculiar to particular industries; XBRL allows the construction of interlocking sets of internal, industry and global sustainability reporting taxonomies. Its use has already resulted in reduction of reporting burdens on organisations, increased data quality, elimination of duplicated data, increased speed of processing, creation of streamlined reporting processes and reductions in the cost of reporting.

The main challenge for organisations will be how to integrate XBRL into their processes, and at their respective governance levels, each company will have to decide how to address issues pertaining to the assigning of rights, managing value and risk, and integrating XBRL into strategic and tactical plans. Management will have to consider the aspects that could affect the current reporting processes and systems, and the attendant risks. Because XBRL provides a means of describing and defining business and financial information, and enabling its transfer and enhanced analysis, it may also affect existing auditing and assurance processes. Risks include manual vs automatic data preparation, metadata mapping, data validation and integrity of information as it moves to information consumers.

Many organisations send their data to external providers of XBRL. This outsourcing strategy is a quick and expedient one but it will not allow organisations to leverage on the benefits of integrating it into the wider internal reporting processes. Organisations need to take time to review and understand the taxonomies.

AREAS OF CONCERN

Controls across three areas are necessary to manage risk: selecting, maintaining and testing taxonomies; accurately mapping and tagging data; and enforcing change management for XBRL processes. Selecting inappropriate taxonomy can result in errors in organisational data being reported.

Taxonomies should therefore be updated regularly and controls should be put in place to ensure the use of the most appropriate version. Business managers should review and approve the accuracy of tagged data, and watch for consistency within the selected taxonomy. The multi-step process of generating XBRL documents must be appropriately managed. Adequate change management procedures are critical to the production of financial reports, and must also be carefully handled.

Many organisations send their data to external providers of XBRL. This outsourcing strategy is a quick and expedient one but it will not allow organisations to leverage on the benefits of integrating it into the wider internal reporting processes. Organisations need to take time to review and understand the taxonomies. Regulators or receivers of XBRL information may experience significant changes to processes and procedures, and filers or preparers of reports according to XBRL format may find their task greatly increased. Most XBRL implementations have been put in place by regulators and information intermediaries, but it is not up to the regulator to mandate the use of XBRL within the organisation. It is up to the organisation to realise that the benefits of XBRL can go beyond compliance and transparency.

OTHER BUSINESS DEDUCTIONS

continuation from vol.5/no.3

Siva Subramanian Nair

With the discussion on S34B in the last article, we have already looked at all the permissible deductions under S33 and S34 of the Income Tax Act 1967. Now we shall move forward to deductions prescribed in precedents established in tax cases, by way of a gazette order or through detailed descriptions in Public Rulings.

We shall start with pre-commencement expenditure. One of the fundamental rules that we had seen in discussing deductibility of business expenditure is that it must be related to the production of business income. Therefore, generally pre-commencement expenditures do not rank for a deduction in ascertaining the adjusted income from a business source. However, there are certain exceptions and these are highlighted in **Public Ruling 2/2010 ALLOWABLE PRE-OPERATIONAL AND PRE-COMMENCEMENT OF BUSINESS EXPENSES**. As to what constitutes operations and commencement of business, students can make reference to the *Tax Nasional* Quarter 3/2003 and Quarter 2/2004 respectively.

Details of such expenses are discussed here. Students should note that all the expenses incurred shall be deemed to have been incurred on the day the business commences, i.e. a claim is made in the first basis period subsequent to commencement.

INCOME TAX (DEDUCTION FOR INCORPORATION EXPENSES) RULES 2003

Every company incurs incorporation expenses and obviously the incurrence is prior to the commencement of operations and business. However, a special deduction is awarded for such expenses to companies that fulfill the following conditions:

- the company is incorporated in Malaysia on or after 13/09/2003 (rarely exam questions will go back so far back).
- the authorised capital of the company is NOT MORE THAN RM 2.5 million (note exactly RM 2.5 million still qualifies – a common exam error!).
- the company must have a business source.(for e.g. an unlisted investment holding company will not qualify).

The Public Ruling also highlights what types of expenses qualify for a deduction and these are detailed below:

- the cost of preparing and printing the memorandum of association, the articles of association and the prospectus, and of circulating and advertising the prospectus;
- the cost of registering the company and the statutory documents, together with fees and stamp duties payable thereon;
- the cost of drawing up the preliminary contracts and stamp duties payable thereon;
- the cost of printing debentures and stamp duty (if any) payable thereon and of share certificates and letters of allotment;
- the cost of the seal of the company; and
- underwriting commission.

EXAMPLE 1

Sapphire Sdn Bhd was incorporated in Malaysia in June 2011 with an authorised capital of RM2,500,000 and incurred incorporation expenses of RM9,500. It commenced business on 1/9/2011 and prepared its first accounts to 30/9/2012.

The RM9,500 can be claimed in the basis period for first year of assessment in which it commenced business i.e. in this case for year of assessment 2011.

The same applies where a sole-proprietorship or partnership is converted to a private limited company i.e. the incorporation expenses as mentioned in the above order will qualify provided all the conditions are met.

INCOME TAX (DEDUCTION OF PRE-COMMENCEMENT OF BUSINESS TRAINING EXPENSES) RULES 1996 [P.U. (A) 160/1996]

A company which provides training to its employees prior to the commencement of its business can be allowed a single deduction on such training expenses in ascertaining its adjusted income from the business.

The conditions to be fulfilled are:

- the training is to impart basic skills to enable the company to commence its business;
- the training expenses are incurred within one year prior to the commencement of the business; and
- the training expenses are of the kind that is allowable under S33 of the Income Tax Act 1967.

Although the order does not specify the type of business undertaken, these rules are usually used by companies involved in non-manufacturing activities or those in manufacturing where the pre-commencement training expenses does not qualify for a double deduction as will be discussed in No. 7 below.

A company cannot qualify for a deduction under these Rules if:

- it is receiving training grants from the government; or
- it is claiming double deduction of training expenses under the Income Tax (Deductions for Approved Training) Rules 1992 and the Income Tax (Deductions for Approved Training) (Amendment) Rules 1995.

INCOME TAX (DEDUCTION OF PRE-COMMENCEMENT OF BUSINESS EXPENSES RELATING TO EMPLOYEE RECRUITMENT) RULES 2008 [P.U.(A)

Any person who incurred expenses in respect of recruitment of employees prior to the commencement of his business can be allowed a deduction of such expenses against his gross income in ascertaining his adjusted income from the business.

The types of expenses that qualify for a deduction are:

- expenses on the recruitment of employees to enable the person to commence his business;
- expenses of the kind allowable under S33 of the Income Tax Act 1967 relating to the recruitment of employees; and
- expenses incurred within the period of one year prior to the commencement of his business.

These include expenses incurred in participation of job fairs, payment to employment agencies and headhunters and advertisement in local newspapers for various positions. However, where a recruited staff is employed prior to commencement of business and paid remuneration, this would not be deductible here because although the expense is of a kind allowable under S33 of the Income Tax Act 1967, the said expenses are not part of the recruitment expenses.

INCOME TAX (DEDUCTION FOR EXPENDITURE ON FRANCHISE FEE) RULES 2012 PU (A) 76/2012

This expenditure is not covered in the Public Ruling 2/2010 as it was introduced only recently.

The government, in recognising that franchising local businesses will strengthen the Malaysian brands, has awarded a deduction be given on franchise fee for local franchise brands in order to further develop local product brand and to ensure that they not only become strong in the domestic market, but are also accepted in overseas market.

Generally the expenses imposed upon a franchisee are franchise fee, royalty, promotion and advertisement fee, training fee and service fee. However, franchise fee is an expenditure incurred before commencing the franchise business and hence is not deductible against the income for a franchising business.

The rectify this, expenditure incurred on the franchise fee paid to the franchisor for his franchise business prior to the commencement of that business shall be allowed as deduction in ascertaining the adjusted income of a qualified person from his business for the basis period for a year of assessment. However, the franchise fee paid by the qualified person to the franchisor for his franchise business shall not be refundable.

DEFINITIONS

"franchise fee" means a fee paid by a qualified person to the franchisor for the right to use a mark, trade secret, confidential information, intellectual property or system of franchise owned by that franchisor in accordance with the terms of a franchise agreement but shall not include royalty payment or other periodical payments;

"local franchise brand" means a trademark or service mark that is registered under the Trade Marks Act 1976 [Act 175] by a franchisor whose franchise business is registered under Section 6 of the Franchise Act 1998;

"qualified person" means a person who is resident in Malaysia and is a franchisee within the meaning of Section 4 of the Franchise Act 1998;

"franchisor" means a franchisor within the meaning of Section 4 of the Franchise Act 1998 who wholly owns the local franchise brand and in relation to a company incorporated under the Companies Act 1965 [Act 125], at least 70% of the issued share capital of the company is owned by Malaysian;

"franchise business" means a business carried out by a qualified person using a local franchise brand.

INCOME TAX (DEDUCTION FOR ESTABLISHMENT EXPENDITURE OF REAL ESTATE INVESTMENT TRUST OR PROPERTY TRUST FUND) RULES 2006 [P.U.(A) 135/2006]

A Real Estate Investment Trust (REIT) or Property Trust Fund (PTF) which has incurred establishment expenditure can claim a deduction of such expenditure against its gross income in ascertaining the adjusted income of its business for the basis period for a year of assessment.

DEFINITIONS

A ***REIT*** or ***PTF*** is a unit trust that is approved by the Securities Commission.

Establishment expenditure that can be allowed as a deduction are

- legal
- valuation and
- consultancy fees

for purpose of establishing the unit trust prior to approval by the SC.

INCOME TAX(DEDUCTION ON EXPENDITURE FOR ESTABLISHMENT OF AN ISLAMIC STOCKBROKING BUSINESS) RULES 2007 [P.U.(A) 65/2007] INCOME TAX (DEDUCTION ON EXPENDITURE FOR ESTABLISHMENT OF AN ISLAMIC STOCKBROKING BUSINESS) (AMENDMENT) RULES 2009 [P.U.(A) 401/2009].

An Islamic stockbroking company resident in Malaysia which has incurred establishment expenditure can claim a deduction of such expenditure against its gross income in ascertaining the adjusted income of its business for the basis period for a year of assessment

DEFINITION

An Islamic stockbroking company is a company incorporated under the Companies Act 1965 and is a company licensed under the Securities Industry Act 1983. The company operates an Islamic stockbroking business approved by Bursa Malaysia.

The conditions to be fulfilled are:

- an application for approval of the Islamic stockbroking business is made to Bursa Malaysia from 2.9.2006 until 31.12.2009; and
- the company commences its Islamic stockbroking business within 2 years from the date of approval by Bursa Malaysia.

Establishment expenditure which can be claimed are:

- consultancy and legal fees;
- cost of feasibility study;
- cost of market research and cost of obtaining license and business approval for the purpose

of establishing an Islamic stockbroking business.

In addition to the above single deductions in ascertaining the adjusted income from a business source, one pre-commencement expenditure even qualifies for a double deduction!

INCOME TAX (DEDUCTION FOR APPROVED TRAINING) RULES 1992 [P.U.(A) 61/1992] AND INCOME TAX (DEDUCTIONS FOR APPROVED TRAINING) (AMENDMENT) RULES 1995 [P.U.(A) 111/1995]

A manufacturing company is allowed a double deduction in respect of expenditure incurred on approved

training in computing its adjusted income for the year of assessment in which the gross income first arises.

The conditions to be fulfilled are:

- it has incurred the said expenditure during the period of pre-commencement of its business;
- the expenditure is in respect of training its employees for the acquisition of crafts, supervisory or technical skills which will contribute directly to the future production of its products;
- the training is provided under a training programme approved by the Malaysian Industrial Development Authority (MIDA) or a training programme conducted by a training institution approved by the Minister of Finance; and
- the said employees are Malaysian citizens.

The expenditure qualifying for the double deduction is the amount paid by the company to the training institution in respect of the said training programme. Therefore, stipends paid as travelling and other allowances paid to the participants would not qualify for double deduction as they do not constitute "amounts paid to the training institutions". Similarly, training outside Malaysia probably would not be approved by MIDA nor the Minister of Finance, therefore, no claim can be made under this order.

However, a claim can be made under the Income Tax (Deduction of Pre-Commencement of Business Training Expenses) Rules 1996 [P.U. (A) 160/1996] as seen above

The claim must be supported by a letter of approval from MIDA or a letter from the approved training institution certifying details of the training programme (including the amount paid) and that the employees of the company have attended the training programme. Also, companies that contribute to the Human Resource Development Fund (HRDF) do not qualify for the deduction under these Rules since they would qualify for a training grant from HRDF to fund the training expenses to enhance the skills of their employees.

All the above expenditures are claimed in arriving at the adjusted income from a source. However there is one pre-commencement expense that is deducted from the aggregate income in ascertaining the total income of a person. This is discussed below.

SCHEDULE 4B - QUALIFYING PRE-OPERATIONAL BUSINESS EXPENDITURE INCURRED FOR APPROVED BUSINESS VENTURE OUTSIDE MALAYSIA

This relates to a deduction for pre-operational business expenditure in relation to a proposal to undertake investment in a business venture in a country outside Malaysia.

The conditions to be fulfilled are:

- the company is resident in Malaysia; and
- the business venture has been approved by the Minister of Finance.

The types of expenses that qualify for a deduction are:

- expenses which are directly attributable to the conduct of feasibility studies, including the cost of employing consultants;
- expenses which are directly attributable to the carrying out of market research or survey or the obtaining of market information, including the cost of employing consultants;
- expenses incurred on fares for travel to a country outside Malaysia by a representative of the company for purposes

of conducting feasibility study or market survey; and

- actual expenses not exceeding RM400 per day for accommodation and sustenance for the whole period commencing with the representative's departure from Malaysia and ending with his return to Malaysia.

ADJUSTED INCOME	
SINGLE DEDUCTION	• *Incorporation expenses* • *Business training* • *Recruitment of employees* • *Franchise fee* • *Establishment expenditure of REIT or PTF* • *Establishment of an Islamic Stockbroking Business*
DOUBLE DEDUCTION	• *Approved Training – Manufacturing companies*
AGGREGATE INCOME	• *Qualifying pre-operational business expenditure*

Chart 01

The qualifying pre-operational business expenses shall be allowed as a deduction against the aggregate income after deducting current year business losses and Schedule 4, abortive prospecting expenditure. Any unabsorbed expenses can be carried forward to the following years of assessment until the whole amount of the deduction has been made.

A summary of the above is presented below. **(Example 2)**

This concludes our discussion on pre-commencement expenditures that rank for a deduction. Heartiest best wishes to all candidates undertaking examinations at the end of this year.

EXAMPLE 2

Emerald Sdn Bhd (year ended 31/12/2012) has obtained approval for a proposed business venture in Tasmania in 2012. Before embarking on this venture, the company sends two managers for five days to conduct a survey. The following expenditure was incurred in respect of this venture:

	RM
Airfare	5,000
Hotel accommodation	3,000
Food	4,000
Market research	10,000
Feasibility studies	20,000

The amount that can be deducted in determining the total income of Emerald Sdn Bhd for year of assessment 2012 is as follows:

	RM	
Full deduction		
Airfare	5,000	
Market research	10,000	
Feasibility studies	20,000	**35,000**
Partial deduction		
Hotel accommodation	3,000	
Food	4,000	
	7,000	
Restricted to RM400 X 2 X 5days		**4,000**
		39,000

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FURTHER READING

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CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: October 2012 – December 2012

Month /Event	Details				Registration Fee (RM)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
OCTOBER 2012								
2013 Budget Seminar	11 Oct	9a.m. - 5p.m.	Kuala Lumpur	Ministry of Finance & Various Speakers	330	400	430	10 BS/001
2013 Budget Seminar	17 Oct	9a.m. - 5p.m.	Johor Bahru	Various Speakers	330	400	430	10 BS/002
2013 Budget Seminar	17 Oct	9a.m. - 5p.m.	Kuantan	Various Speakers	330	400	430	10 BS/003
2013 Budget Seminar	18 Oct	9a.m. - 5p.m.	Melaka	Various Speakers	330	400	430	10 BS/004
Taxation of Supply Chain Management and Business Restructuring (organised by IBFD)	22-24 Oct	9a.m. - 5p.m.	Kuala Lumpur	IBFD	1,560 *(after 50% training subsidy)*	-	-	NA JV/009
Workshop: Tax Responsibilities for Directors, Managers and Employers	23 Oct	9a.m. - 5p.m.	Johor Bahru	Vincent Josef	335	385	435	8 WS/071
2013 Budget Seminar	23 Oct	9a.m. - 5p.m.	Penang	Various Speakers	330	400	430	10 BS/005
2013 Budget Seminar	23 Oct	9a.m. - 5p.m.	Kuching	Various Speakers	330	400	430	10 BS/006
2013 Budget Seminar	24 Oct	9a.m. - 5p.m.	Kota Kinabalu	Various Speakers	330	400	430	10 BS/007
2013 Budget Seminar	24 Oct	9a.m. - 5p.m.	Ipoh	Various Speakers	330	400	430	10 BS/008
2013 Budget Seminar	30 Oct	9a.m. - 5p.m.	Kuala Lumpur	Various Speakers	330	400	430	10 BS/009
Workshop: Tax Responsibilities for Directors, Managers and Employers	30 Oct	9a.m. - 5p.m.	Kota Kinabalu	Vincent Josef	335	385	435	8 WS/072
2013 Budget Seminar	31 Oct	9a.m. - 5p.m.	Petaling Jaya	Various Speakers	330	400	430	10 BS/010
Workshop: Tax Responsibilities for Directors, Managers and Employers	31 Oct	9a.m. - 5p.m.	Kuching	Vincent Josef	335	385	435	8 WS/073
Public Holiday *(26 Oct: Hari Raya Aidiladha)*								
NOVEMBER 2012								
Goods & Services Tax (GST) Training Course	1 Nov	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Business, Trade & Professions (in collaboration with MAICSA)	1 Nov	9a.m. - 5p.m.	Kuala Lumpur	Vincent Josef	350	NA	450	8 JV/002
Structuring Tax Efficient Investments via Holding Companies	1 - 2 Nov	9a.m. - 5p.m.	Kuala Lumpur	Various Speakers	1,200 *(after 50% training subsidy)*	2,400	2,400	16 JV/007
Goods & Services Tax (GST) Training Course	3 Nov	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Principles of International Taxation (organised by IBFD)	5 – 9 Nov	9a.m. - 5p.m.	Kuala Lumpur	IBFD	2,160 *(after 50% training subsidy)*	-	-	JV/010
Seminar: Introducing the New Transfer Pricing & APA Rules	6 - 7 Nov	9a.m. - 5p.m.	Kuala Lumpur	Various Speakers	Early Bird 800 Normal 900	Early Bird 900 Normal 1,000	Early Bird 1,000 Normal 1,140	16 SE/002
Workshop: Criminal Tax Investigation	6 Nov	9a.m. - 5p.m.	Penang	Saravana Kumar	335	385	435	8 WS/074
Workshop: Criminal Tax Investigation	7 Nov	9a.m. - 5p.m.	Melaka	Saravana Kumar	335	385	435	8 WS/075
Goods & Services Tax (GST) Training Course	8 Nov	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Employment Income (in collaboration with MAICSA)	8 Nov	9a.m. - 5p.m.	Kuala Lumpur	Vincent Josef	350	NA	450	8 JV/003
Goods & Services Tax (GST) Training Course	10 Nov	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Goods & Services Tax (GST) Training Course	17 Nov	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Goods & Services Tax (GST) Training Course	19 Nov	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Maximising Capital Expenditure for the Year End 2012	21 Nov	9a.m. - 5p.m.	Penang	Sivaram Nagappan	335	385	435	8 WS/081

Month /Event	Details				Registration Fee (RM)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
Goods & Services Tax (GST) Training Course	22 Nov	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Allowances & Deductions (in collaboration with MAICSA)	22 Nov	9a.m. - 5p.m.	Kuala Lumpur	Vincent Josef	350	NA	450	8 JV/004
Workshop: Income from Letting Real Properties-for Investment Holding Companies and other Investors	22 Nov	9a.m. - 5p.m.	Kuala Lumpur	Richard Thornton & Thenesh	350	400	460	8 WS/088
Goods & Services Tax (GST) Training Course	24 Nov	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Maximising Capital Expenditure for the Year End 2012	26 Nov	9a.m. - 5p.m.	Johor Bahru	Sivaram Nagappan	335	385	435	8 WS/082
Workshop: Special Topics I (in collaboration with MAICSA)	28 Nov	9a.m. - 5p.m.	Kuala Lumpur	Vincent Josef	350	NA	450	8 JV/005
Goods & Services Tax (GST) Training Course	29 Nov	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Maximising Capital Expenditure for the Year End 2012	29 Nov	9a.m. - 5p.m.	Kota Kinabalu	Sivaram Nagappan	335	385	435	8 WS/083
Workshop: Maximising Capital Expenditure for the Year End 2012	30 Nov	9a.m. - 5p.m.	Kuching	Sivaram Nagappan	335	385	435	8 WS/084
Public Holidays ***(13 Nov: Deepavali, 15 Nov: Awal Muharram)***								
DECEMBER 2012								
Goods & Services Tax (GST) Training Course	1 Dec	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Criminal Tax Investigation	3 Dec	9a.m. - 5p.m.	Kota Kinabalu	Saravana Kumar	335	385	435	8 WS/076
Workshop: Special Topics II (in collaboration with MAICSA)	4 Dec	9a.m. - 5p.m.	Kuala Lumpur	Vincent Josef	350	NA	450	8 JV/006
Workshop: Criminal Tax Investigation	5 Dec	9a.m. - 5p.m.	Kuching	Saravana Kumar	335	385	435	8 WS/077
Goods & Services Tax (GST) Training Course (Revision Session)	6 Dec	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Withholding Tax – the basics and the advanced	6 Dec	9a.m. - 5p.m.	Kuala Lumpur	Richard Thornton & Thenesh	350	400	460	8 WS/089
Workshop: Maximising Capital Expenditure for the Year End 2012	7 Dec	9a.m. - 5p.m.	Ipoh	Sivaram Nagappan	335	385	435	8 WS/085
Goods & Services Tax (GST) Training Course (Revision Session)	8 Dec	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Criminal Tax Investigation	10 Dec	9a.m. - 5p.m.	Johor Bahru	Saravana Kumar	335	385	435	8 WS/078
Workshop: Criminal Tax Investigation	11 Dec	9a.m. - 5p.m.	Kuala Lumpur	Saravana Kumar	350	400	460	8 WS/079
Workshop: Maximising Capital Expenditure for the Year End 2012	11 Dec	9a.m. - 5p.m.	Melaka	Sivaram Nagappan	335	385	435	8 WS/086
Workshop: Criminal Tax Investigation	12 Dec	9a.m. - 5p.m.	Ipoh	Saravana Kumar	335	385	435	8 WS/080
Workshop: Maximising Capital Expenditure for the Year End 2012	13 Dec	9a.m. - 5p.m.	Kuala Lumpur	Sivaram Nagappan	350	400	460	8 WS/087
Goods & Services Tax (GST) Training Course (Revision Session)	13 Dec	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Goods & Services Tax (GST) Training Course (Examination)	15 Dec	9a.m. - 5p.m.	Kuala Lumpur	Royal Malaysian Customs	3,800 *(fee for 14 days)*	4,200 *(fee for 14 days)*	4,500 *(fee for 14 days)*	JV/008
Workshop: Real Property Gains – the Tax Implications and the Planning Opportunities	20 Dec	9a.m. - 5p.m.	Kuala Lumpur	Richard Thornton & Thenesh	350	400	460	8 WS/090
Public Holiday ***(25 Dec: Christmas)***								

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, Ally or Nur at 03-2162 8989 ext 113, 121, 108, 123 and 106 respectively or refer to CTIM's website ***www.ctim.org.my*** for more information on the CPD events.