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NATIONAL GST CONFERENCE 2017

The Challenges and Opportunities of Digital Free Trade Zone (DFTZ)

Gratuities From an Employment: The Income Tax Treatment

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CHARTERED TAX INSTITUTE OF MALAYSIA

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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contents

VOL.10/NO.3/2017/Q3
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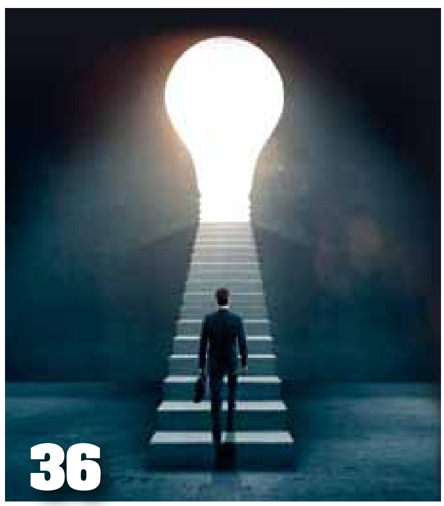

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INVITATION TO WRITE

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

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

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From the **President's Desk**

SEAH SIEW YUN

CHANGING LANDSCAPES

Greetings! The first CTIM Council Meeting was held immediately after our 2017 Annual General Meeting (AGM) on 17 June 2017 to elect the incoming President and Deputy President for the term 2017/2018. I am pleased to report that I have been elected as the new President with Ms. Farah Rosley as my Deputy President. I would like to thank the CTIM Council Members for entrusting us with the mandate to take the Institute forward.

Our 2017 AGM saw Mr. Nicholas Anthony Crist and Ms. Yeo Eng Ping being re-elected to serve a 2nd four-year term in the CTIM Council, and Ms. Leow Mui Lee and Dr. Zulfahmy Ibrahim being elected to serve a four-year term in the CTIM Council for the first time. My heartiest congratulations to them for their successful appointment to the CTIM Council.

The outgoing President, Mr. Aruljothi Kanagaretnam and Ms. Renuka Thuraisingham, upon completion of their four-year term in the CTIM Council, have not sought to stand for re-election to serve in the CTIM Council at the above-mentioned AGM. I would like to thank them for their years of invaluable and selfless service to the Institute while they were in the CTIM Council. Mr. Aruljothi was the CTIM President for three continuous terms from 2014/2015 to 2016/2017. He was instrumental in bringing about the overall stability of the Institute and continuity in terms of the Institute's rapport and engagements with various stakeholders and governmental agencies. Renuka has been a key member of the CTIM Technical Committee on Direct Taxation. She also headed the CTIM Technical Committee on Direct Taxation II [TC-DT(II)] for four continuous terms from 2013/2014 to 2016/2017.

Forthcoming Tax Audit and Investigation

Under the Self-Assessment-System, taxpayers are required to retain documentations to support their income tax return declarations which could be subject to a tax audit by the IRBM. Members should equip themselves in assisting their clients to be better prepared in the event of a tax audit or investigation, and can refer to articles on taxation such as 'The Anatomy of a Persuasive Written Tax Appeal" (Tax Guardian, Quarter 2 of 2017), "Understanding Judicial Doctrine of General Anti-Avoidance Rules" (Tax Guardian, Quarter 3 of 2017) and attend our workshops on Customs Audit and Investigations and Managing Tax Audits & Investigations (CPD Events Calendar, Tax Guardian, Quarter 3 of 2017).

Happenings in the Preceding Quarter

The CTIM Silver Jubilee Dinner was successfully held at the One World Hotel in Petaling Jaya on 5 May 2017, to celebrate the Institute's 25th Anniversary. The Guest of Honour was YBhg Datuk Sabin Samitah, Chief Executive Officer of the IRBM. Other key dignitaries who joined the grand celebration included YBhg Dato' Indera Subromaniam Tholasy, Director General of the Royal Malaysian Customs Department. Approximately 280 people attended the dinner which also saw the launching of the CTIM lapel pin to commemorate the occasion.

The Institute represented by several CTIM Council Members and myself met with En. Mohd Jaafar Embong, Director of the IRBM Tax Compliance Department and his senior officers on 19 June 2017 to discuss on members' concerns on the IRBM Tax Audit Framework 2017. Members will be updated on any developments via e-Circular.

On 20 June 2017, several CTIM Council Members and I, together with representatives from other professional bodies attended the

The sessions for this year's NTC are topical and current on matters such as the Economic Outlook for 2017 & 2018, LHDNM: Strategies & Initiatives, Tax Incentives – Issues and Challenges, Taxation of Royalties and Services & Withholding Tax Issues – Different Perspectives, Trending International Tax Issues, Tax Cases Updates and Tax – Current Concerns & Conflicts.

DESIRE Meeting No. 1/2017 with the IRBM to discuss on operational and compliance issues submitted by CTIM and other professional bodies. The Meeting was chaired by En. Mahmood Daud, Deputy CEO (Tax Operation). The minutes of the Meeting will be circulated to members as soon as they are made available by the IRBM.

Members' Dialogues

Following the positive responses from the Members' Dialogues covering various technical and operational tax matters at the CTIM Branches in Ipoh, Penang and Kuantan in the first quarter of 2017, more Members' Dialogues were initiated by the CTIM Public Practice Committee (PPC). They were organised by the CTIM Southern Branch at the Koho Hotel in Johor Bahru on 10 April 2017 and by the CTIM Malacca Branch at the Ramada Plaza Hotel in Melaka on 29 May 2017. I am happy that the Members' Dialogues were well received by members based outside the Klang Valley.

CPD Events

By the time you read this, the National Tax Conference (NTC) 2017 scheduled on 25th and 26th of July 2017 at the Kuala Lumpur Convention Centre with the theme "Managing Tax Issues for Growth and Nation Building" would just be a few days or weeks away. The sessions for this year's NTC are topical and current on matters such as the Economic Outlook for 2017 & 2018, LHDNM: Strategies & Initiatives, Tax Incentives – Issues and Challenges, Taxation of Royalties and Services & Withholding Tax Issues – Different Perspectives, Trending International Tax Issues, Tax Cases Updates and Tax – Current Concerns & Conflicts. I hope many have signed up for this major event in the Institute's calendar. If you have not, I would encourage you to do so as soon as possible.

Members are also encouraged to look into the CPD Events Calendar for Quarter 3 of 2017 which can be found in this edition of *Tax Guardian*. Several CPD workshops and seminars have been lined up on GST Impact on Accounting and Tax Issues for Property Developers, JMB/MC & Property Investors, Transfer Pricing & BEPS, Tax Optimisation on Capital & Industrial Building Allowances, Withholding Tax and Double Tax Agreements, Understanding the Legal and Practical Aspects on Deductibility of Expenses Based on Public Rulings, Customs Audit and Investigations, GST – Practical Issues & Recent Developments, Managing Tax Audits & Investigations and Critical Legal Review of the Section 4A(ll) Withholding Tax on Services and Other Emerging Front-Page Issues.

Membership

The Institute's membership comprising of fellow members and associate members currently stands at 3,460. I would like to thank my predecessor, CTIM Council Members and all those involved for their efforts in encouraging eligible individuals to apply for membership in the Institute. I look forward to the continuing growth of our membership.

The CTIM Council and I would like to express our thanks to each and every one of you for your assistance and involvement in the Institute's activities and events which have contributed significantly in making the Institute, the premier body for tax professionals in Malaysia.

Editor'sNote

YEO ENG PING

The CTIM Annual General Meeting recently on 17 June saw two new faces join the Council; welcome wishes to Ms. Leow Mui Lee and Dr. Zulfahmy. The first Council Meeting held immediately after that saw two women take the helm of CTIM's leadership, we congratulate Ms. Seah our new President and Ms. Farah Rosley our new Deputy President. It's a time for fresh perspectives, higher aspirations, reflections on the way forward.

Clearly the challenges we face in our profession are greater than ever, when well-accepted technical positions and interpretations are being revisited, when powers of tax authorities are being enlarged and the limits of such powers are being tested. Read the reported cases in this edition of *Tax Guardian* to get a flavour of what I refer to. We need to look no further than our newspapers which in the past months have carried stories about large assessments and tax enforcement actions, including the use of powers under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001. There is also anecdotal evidence of a trend towards investigations and growing investigative-style interactions and behaviour by tax auditors. This seems consistent with the recently issued updated tax audit framework - for example, introduction of "surprise audits" and the exercise power to gain full access and carry out a search during an audit visit.

In a period where tax authorities are displaying a refreshed approach to tax administration and enforcement, it's certainly the right time for tax professionals to step up both in terms of providing quality advice but also in upholding the dignity of the profession through well-reasoned dialogue with the tax authorities. It is hoped that through continued open and intelligent exchanges between the profession and the tax authorities, sensibility, common sense and fairness will continue to prevail. Tax audits should hopefully resume as compliance checks without presumptions of wrongdoing on the taxpayers' part, and accorded the necessary decorum and respectability in the process without disruption to the taxpayers' daily business operations. Disputes and litigation through the Court system on common issues should perhaps be reduced, and our tax appeal and Court process should (as much as possible) be burdened only with our most pressing and technical of issues. In the exercise of powers, the usual principles of restraint and careful consideration should continue to be practised. Both sides of the house must have more opportunities for discourse, debate and hopefully agreement to balanced technical positions, without resorting to using the tax Courts as the arbiter in all cases. In this way we can have a better overall system of tax that supports our nation's fiscal needs and provides the right environment for strengthening investor confidence.

"In a period where tax authorities are displaying a refreshed approach to tax administration and enforcement, it's certainly the right time for tax professionals to step up both in terms of providing quality advice but also in upholding the dignity of the profession through well-reasoned dialogue with the tax authorities."

25TH ANNUAL GENERAL MEETING CTIM COUNCIL MEMBERS 2017/2018

The Chartered Tax Institute of Malaysia (CTIM) held its 25th Annual General Meeting (AGM) on 17 June 2017 at the Seri Pacific Hotel Kuala Lumpur. A total of 59 members attended the AGM.

Pursuant to Article 59, Yeo Eng Ping and Nicholas Anthony Crist were re-elected to the Council.

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

1) Leow Mui Lee 2) Dr. Zulfahmy Ibrahim

The first Council Meeting for the 2017/2018 term was held on the same day. Pursuant to Article 63, the Council has elected from amongst the Council Members as listed for the term 2017/2018, the President and the Deputy President.

President

Seah Siew Yun
National Tax Practice Leader
SJ Grant Thornton

Deputy President

Farah Binti Rosley
Partner, Ernst & Young Tax Consultants Sdn Bhd

Council Members

Poon Yew Hoe
Managing Partner,
Crowe Horwath KL Tax Sdn Bhd

Nicholas Anthony Crist
Executive Director,
KPMG Tax Services Sdn Bhd

Yeo Eng Ping
Partner, Asian Tax Leader,
Ernst & Young Tax Consultants Sdn Bhd

Goh Lee Hwa
Partner, Deloitte Tax Services Sdn Bhd

Datuk Harjit Singh Sidhu A/L Bhagwan Singh
Chief Executive Officer,
HSS Advisory Sdn Bhd

Koong Lin Loong
Chief Executive Officer, Reanda LLKG International

K. Sandra Segaran A/L Karuppiah
General Manager, Group Tax, Petroliam Nasional Berhad

Lai Shin Fah @ David Lai
Tax Executive Director, BDO

Phan Wai Kuan
Senior Executive Director, PwC Taxation Services Sdn Bhd

Mohd Noor Bin Abu Bakar:
Partner, Imran Chartered Accountants

Chow Chee Yen
Executive Director, Advent MS Tax Consultants Sdn Bhd

Chow Tuck Him
Executive Director, YYC KK Chow Tax Sdn Bhd

Leow Mui Lee
Managing Director, Axcelasia Taxand Sdn Bhd

Dr. Zulfahmy Bin Ibrahim
Executive Chairman, Zulfahmy & Co

Seah Siew Yun is the National Tax Practice Leader of Grant Thornton Malaysia with 30 years of experience in Malaysian taxation. She has been acting as the Council Member of CTIM since July 2009 with two years as Deputy President before the current role as the Institute's President

Farah Rosley is a Partner in the business tax services practice of Ernst & Young Malaysia. She has more than 19 years of taxation experience. She has been a Council Member of CTIM since 2014 before the current role as the Deputy President.

CPD EVENTS

A number of CPD workshops were conducted in the 2nd Quarter 2017 at all major cities where CTIM branches are located. The workshop topics were as follows:

- New Tax Implications on Cross Border Transactions in 2017
- Transfer Pricing Documentation & BEPS
- Tax Audits & Investigations
- GST Impact on Accounting and Tax Issues for Property Developers, JMB/MC & Property Investors

Mr. Sivaram Nagappan conducted a series of workshops on "New Tax Implications on Cross Border Transactions in 2017." The speaker touched on the latest changes in 2017 in terms of the applicability of withholding tax on services performed outside Malaysia by a non-resident, expansion to the definition of royalty, redefinition of public entertainer, etc. and how to mitigate them besides being tax compliant. The effectiveness of using double taxation agreement (DTA) in cross border assignments and its impact on withholding tax, corporate tax and individual tax obligations.

Workshops on the following topics were conducted by Mr.Harvindar Singh:

- Transfer Pricing Documentation & BEPS
- Tax Audits & Investigations

In the workshops on "Tax Audits & Investigations", the speaker shared his experience and provided key insights into what triggers an audit / investigation, risk areas for taxpayers, typical issues identified, the Malaysian penalty regime, taxpayers' responsibilities, preparing for a tax audit / investigation, computation of understated income and the negotiation process and reaching a settlement.

The workshops on "GST Impact on Accounting and Tax Issues for Property Developers, JMB/MC & Property Investors" was conducted by Dr. Tan Thai Soon. These workshops covered many aspects of GST including the scope of GST and its treatment; input tax claim and issues; adjustment for mixed suppliers; accounting for GST and its current development.

CTIM 'S 25TH SILVER JUBILEE

CTIM celebrated its 25th Silver Jubilee Anniversary on 5 May 2017 at the One World Hotel in Petaling Jaya. The Chief Executive Officer of the IRBM YBhg Datuk Sabin Samitah was the Guest of Honour. The Director General of the Royal Malaysian Customs Department YBhg Dato' Indera Subromaniam Tholasy were among the key dignitaries who attended the grand celebration. CTIM launched the lapel pin to commemorate the occasion and about 280 tax professionals were present at this memorable event.

NATIONAL GST CONFERENCE 2017

THE **NATIONAL GST CONFERENCE 2017** WAS HELD FROM 28 FEBRUARY TO 1 MARCH 2017 AT THE KUALA LUMPUR CONVENTION CENTRE. THE YEAR 2017 MARKS THE THIRD EDITION OF THIS JOINT EFFORT BY CTIM AND THE ROYAL MALAYSIAN CUSTOMS DEPARTMENT (RMCD). THE 2017 CONFERENCE ATTRACTED 1,200 PARTICIPANTS AND FEATURED THE THEME "MANAGING THE GST ECOSYSTEM".

Kenneth Yong Voon Ken

WELCOME ADDRESS BY CTIM PRESIDENT MR. ARULJOTHI KANAGARATNAM

The President acknowledged the close working relationship between CTIM and the RMCD as exemplified by this event and other joint training courses which have assisted tax professionals in their GST work. By the 23rd month of GST implementation, signs of public acceptance towards GST is starting to emerge.

The President also commended the RMCD for its continuous efforts towards ensuring the successful implementation of GST and to provide avenues for stakeholders, tax practitioners and the public to raise issues and concerns. He highlighted the importance of having the RMCD and the private sector coming together to understand the challenges faced by each other.

The President also extended his thanks to YBhg Dato' Wira Othman Aziz (honourable Deputy Minister of Finance I) for his gracious presence and wished everyone a fruitful conference.

OPENING ADDRESS BY YBHG DATO' SRI KHAZALI HAJI AHMAD, DIRECTOR GENERAL OF THE RMCD

YBhg Dato' Sri Khazali Haji Ahmad thanked the guest of honour YBhg Dato' Wira Othman for officiating the event, and also thanked the President of CTIM and the Committee for organising the event. The DG of RMCD also extended his thanks to all present in the hall for their support given to the RMCD in implementing GST thus far. Some of his key points are presented below.

INFORMED COMPLIANCE

According to Dato' Sri Khazali, the RMCD realised that punitive action alone was not fully effective in achieving compliance. Thus, the RMCD has changed its strategy – by adopting an "informed compliance" strategy carried out at premises of GST registrants to provide advice on GST matters. The objective is to make registrants more informed and responsive towards GST compliance and payments.

CUSTOMS BLUE OCEAN STRATEGY

Towards this, the RMCD had recently launched Operation "Customs Blue Ocean Strategy" (or

"CBOS") to conduct auditing and verification on GST registrants, to ensure they are well aware and compliant with GST laws and regulations.

Phase One of CBOS was launched from 1 September to 31 December 2016 involving 50,000 randomly selected companies, uncovering undeclared taxes of RM800 million, of which over RM500 million has already been recovered.

Dato' Sri Khazali pointed out other initiatives undertaken by the RMCD which include:

- Amending the GST Act to meet industry needs;
- Establishing a risk assessment programme for profiling GST registrants; and
- Enhancing strategic partnerships with other government agencies such as Inland Revenue Board Malaysia (IRBM), Companies Commission of Malaysia (SSM) and the Ministry of Domestic Trade, Co-operatives and Consumerism (KPDNKK).

GST REVENUE AND REFUNDS

Dato' Sri Khazali also highlighted that the biggest impact of GST implementation is that it has increased government revenue from indirect taxation. In 2014, Sales and Services Tax collections amounted to RM17 billion, whereas the nine months of 2015 saw GST collections of RM27 billion, while 2016 yielded RM41.2 billion, and the 2017 forecast is RM42 billion.

KEYNOTE ADDRESS BY GUEST OF HONOUR, YBHG DATO' WIRA OTHMAN AZIZ, DEPUTY MINISTER OF FINANCE I

The Deputy Minister of Finance I congratulated the RMCD for its GST collections. He also thanked the RMCD and CTIM for organising the Conference – which he described as a "strong collaboration" between the two in supporting GST implementation. He also shared the following information below.

Rolled out two years ago, GST implementation was very timely in meeting the oil price slump and other challenges. Malaysia's GST implementation has also gained international recognition: the International Monetary Fund (IMF) has recommended Malaysian GST as a case study for future implementers.

Dato' Wira Othman cited that while there was initial hue and cry towards GST, the government had created the right atmosphere, the right infrastructure and the right facilities to get everyone involved in business, create growth and raise disposable incomes.

The Ministry of Finance recently established the Collection Intelligence Arrangement – dubbed "CIA" – to integrate information possessed by the RMCD, the IRBM and SSM, and boost efficiency of tax collection while enhancing compliance.

TOPIC 1 MEETING GST CHALLENGES HEAD ON – A PERSPECTIVE BY THE RMCD

Moderator
MR. SM THANNEERMALAI
Managing Director
Crowe Horwath KL Tax Sdn Bhd

Speaker
YBHG DATO' INDERA SUBROMANIAM THOLASY
Deputy Director General of Customs (Enforcement & Compliance)
Royal Malaysian Customs Department

Panel Member
MR. BERNARD YAP
Indirect Tax Leader
Ernst & Young Tax Consultants Sdn Bhd

Foreword by Mr. SM Thanneermalai

After introducing the speaker and panel member, Mr. SM Thanneermalai

congratulated Dato' Indera Subromaniam and his team for their "exemplary" effort. He also highlighted that Dato' Subromaniam has now been invited to share insights on GST implementation with governments in the Middle East and India who are slated for future GST rollouts.

Challenges in meeting higher GST targets

Mr. Thanneermalai emphasised that GST collection is proportional to domestic consumer spending, whereby 2016 has been a difficult year, with much uncertainty looming in 2017. In view of the RMCDS's expectations of higher GST collections in 2017, Mr. Thanneermalai posed the question of whether the additional GST collections will come from the tax collectors in the middle of the supply chain.

Mr. Thanneermalai appealed to the RMCD not to impose penalties on technical errors as there was still uncertainty on treatment of certain GST items. He also cited that most companies who act as middleman tax collectors are "honest people", though they may not always be updated with the latest changes in GST developments. Penalties should only be imposed on tax evaders.

Presentation by YBhg Dato' Indera Subromaniam Tholasy

Dato' Subromaniam highlighted numerous matters. Some of these are presented below.

CBOS

Dato' Subromaniam explained that if the old model of audits were relied on, the RMCD officers will take too long to achieve sufficient coverage and enforcement. To address this, the RMCD changed strategy in the last quarter of 2016 by introducing 'CBOS' (Customs Blue Ocean Strategy) with the primary aim of educating taxpayers. Under CBOS, the RMCD will visit business premises, examine records on a sample basis and highlight issues, if any. Taxpayers are given 30 days to rectify errors. The RMCD views this as a 'friendlier' approach and a preferred alternative to taking evaders to Court. In general, there is a shift from 'enforced compliance' to 'voluntary compliance' / 'informed compliance'.

CBOS is also accompanied by the RMCD-organised handholding programmes (where registrants can contact local RMCD officers to seek assistance), but according to Dato' Subromaniam, the take-up of the latter by registrants "has not been encouraging". Another RMCD initiative is the 'GST clinic' located at every state.

The findings from CBOS was "shocking". Initially, 30%-35% of taxpayers visited were non-compliant. More recently, this has dropped to about 25%, but 'one in every four' is still a high rate, given that these were serious non-compliance cases.

Dato' Subromaniam went on to describe a real example of a CBOS operation on a retail outlet and the events that transpired.

Under CBOS, Dato' Subromaniam highlighted that about 25,000 GST registrants had already been visited, and he assured the floor that every GST registrant will be visited by the end of 2018. The RMCD is targeting 200,000 visits a year in 2017 and 2018.

Dato' Subromaniam also urged tax professionals to advise their clients to make amendments to their GST returns, thus, promoting 'informed' compliance.

GST non-compliance

Non-compliance amongst small business is generally very high, with error rates of 40% in some countries. Since GST is transactional, uncorrected errors get repeated and add up. Issues are more prevalent in B2C (business-to-consumer) type transactions.

The law is equipped with "best judgement" provisions which empower the RMCD to use estimates to collect GST from errant registrants. Before deploying this, RMCD will use CBOS to promote voluntary compliance as a preferred long term strategy. Dato' Subromaniam requested all businesses to take up this opportunity to declare GST correctly.

Under the RMCD's risk profiling, GST registrants are classified under 'red' (recidivist), 'yellow' (ambivalent) and 'green' (compliant) zones. Most traders in Malaysia are in the 'yellow' zone, whereby the RMCD plans to deter them from being delinquent and to assist them in compliance.

GST refunds

On refunds, Dato' Subromaniam explained that more than 67% of refunds were made within 14 days – something not achieved elsewhere. With time, Dato' Subromaniam assured that this will improve further.

Dato' Subromaniam also touched on a misconception held by the public that for the first two years, the RMCD would only conduct advisory audit without collecting unpaid GST. This was untrue as any GST shortfall must be paid, and there would not be any amnesty or 'discount' on unpaid GST.

A difficult GST model

According to Dato' Subromaniam, Malaysia's GST is a very "difficult model"

where the list of zero-rated and exempt items occupy an entire booklet, something unseen in other countries. This lengthy list has led to Malaysia's RM500,000 GST registration threshold which imposes heavy cost of compliance on smaller taxpayers, leading to some businesses deliberately 'failing' to register. To minimise compliance cost, the government has rolled out reduced income tax rates, tax incentives and GST software vouchers.

Dato' Subromaniam also highlighted the difficult areas in GST faced by taxpayers, including the areas with higher risk of errors. He also offered some suggestions to address these issues.

Furthermore, Dato' Subromaniam encouraged registrants to carry out GST reviews and seek professional assistance, before the CBOS teams come for a visit. This will help GST registrants cope with the recent changes to GST rules.

Comments by Mr. Bernard

Mr. Bernard pointed out that GST registrants are collecting agents, and therefore, 'partners' of the RMCD. In line with this, Mr. Bernard urged the RMCD not to view GST registrants as evaders, as some GST registrants may struggle with technical interpretations and have to commit a lot of resources to manage GST reporting.

Mr. Bernard also praised the RMCD's handholding programmes as being very helpful to smaller companies who cannot afford consultants. Mr. Bernard suggested that the RMCD find ways to collaborate with taxpayers on sharing best practices. He also suggested that the RMCD consider Singapore's method of funding the ACAP (Assisted Compliance Assurance Program) so that taxpayers can obtain guidance and best practices on GST compliance and build trust with the RMCD.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED)

Type of non-compliance

Mr. Bernard questioned whether the 25% of non-compliance amongst registrants was due to technical interpretation issues, to which Dato' Subromaniam responded that it was due to non-payment of GST.

Dato' Subromaniam commented that towards the end of 2017, the RMCD will be focusing on two specific types of businesses. The RMCD will also cross-check information with the IRBM and SSM. Furthermore, the RMCD is working on a pilot project of installing a tracking device for retailers. Once successful, this project will be extended.

Problems with input tax and simplified invoices

It was brought out that the RMCD had rejected certain claims for Input Tax Credit on grounds that the simplified tax invoice was not earlier approved by the RMCD. How were taxpayers to know whether or not a simplified tax invoice was approved by the RMCD?

Dato' Subromaniam explained that if the taxpayer believe there was unfair treatment, the taxpayer can appeal higher up i.e. to the officer's superior.

Mr. Bernard suggested that if the RMCD could verify that the issuer of the erroneous tax invoice had already reported / paid the GST, and that the error was merely a formatting error, then the RMCD could be more accommodative and not penalise the claimant.

Delays in GST refund

Another question raised was one that relates to a delayed GST refund of more than 120 days (amounting to RM200,000) without reasonable grounds. Dato' Subromaniam explained that the RMCD needs time to do risk management and reliability checks. For exporters, the RMCD can refer to their import/export database. For restaurants and sundry shops, there is no such available database, so delays may happen; however, the system is 'learning' through taxpayer profiling. The process will improve over time, but familiarisation may take months or years.

Voluntary audits and faster refunds

Mr. Thanneermalai proposed that those companies that invite the RMCD to do a GST audit should be given faster refunds. Dato' Subromaniam quipped that not many taxpayers would do that as errors may attract a 'love letter' (presumably, referring to penalties).

Mr. Bernard then added that should the taxpayer pass the test, the RMCD could consider giving that taxpayer speedy refunds for say the next two years.

Penalty

If during a GST audit, a company is found to have made mistakes and given 30 days to rectify, will there be any penalty if the mistakes are rectified within 30 days?

Dato' Subromaniam replied that it depends on the case. The law provides that the DG may waive penalties, so there is this possibility if the taxpayer has come forward voluntarily, and there is no fraudulent claim etc., the RMCD will not open an investigation paper and will not take the taxpayer to Court. Remission of penalty will be viewed at favourably, but it will still be on a case by case basis. However, only compound penalty may be reduced; late-payment penalty is compulsory by law.

Mr. Thanneermalai queried if a taxpayer found a mistake through a self-review and voluntarily came forward to the RMCD, would there be penalty? Dato' Subromaniam suggested that there will be leniency.

Difficulties in voluntary registration

Why did the Johor Bahru branch of the RMCD declined to do voluntary registration of businesses in one case?

Dato' Subromaniam replied that for voluntary registration, the RMCD has every right to request for documents and clarification; and this process, including verification, can cause delays. The RMCD also wishes to advise ignorant taxpayers on filing and other administrative costs upon GST registration, so that these taxpayers are better aware of the implications of registration.

TOPIC 2 MEETING GST CHALLENGES HEAD ON - PERSPECTIVES FROM THE PRIVATE SECTOR

Moderator

MR. MOHD RITHAUDDEN MAKIP
Senior Director of Business Advisory & Support Division, SME Corporation Malaysia

Panel Members

YBHG DATO' KHODIJAH ABDULLAH
Undersecretary, Tax Division, Ministry of Finance

MR. TAN ENG YEW
GST Executive Director, Deloitte KassimChan Tax Services Sdn. Bhd.

MR. BHUPINDER SINGH
Vice-President, Group Tax, Petronas

FOREWORD BY MR. MOHD RITHAUDDEN MAKIP

Mr. Rithaudden introduced the session emphasising it was to learn about the private sector viewpoints, assessments, challenges and relevant information regarding implementation of GST.

In the first quarter of 2016, a GST survey carried out by SME Corporation found that two thirds of respondents said GST implementation brought "negative impact", largely from increased business costs such as recruiting additional staff and GST software cost. The onus of GST implementation falls upon the respective businesses as they are responsible for collection and reporting of GST.

PRESENTATION BY DATO' KHODIJAH

Dato' Khodijah listed out several high-level challenges of GST administration. Some of these are presented below:

Human resource

As at 21 February 2017, there were 435,809 GST registrants. This was much more than what the MoF had forecasted, necessitating a larger number of administrators and RMCD auditors. In line with this, there was a need for reassignment and deployment of human resources, together with obtaining the latest audit tools, continuous training and education because GST is highly technical.

E-commerce

In terms of e-commerce, especially for services, overseas suppliers can conduct business without having a presence in Malaysia, making it difficult to scope imported services in for GST. These need to be monitored very closely, so more information is required for tracking.

Fraud

In terms of fraud activities, Dato' Khodijah pointed out that conventional fraud and new types of fraud activities have to be identified and mitigated through collection of comprehensive information, especially for syndicated fraud.

MoF initiative

To address these, the laws are updated and adapted for new business developments to ensure full-proofing of the GST administration and collection, while making sure the interest of the taxpayer is being observed.

Dato' Khodijah highlighted that the Ministry of Finance emphasises compliance of GST law, while recognising that in developing countries, compliance of tax laws is expected to be moderate.

Policy review is needed constantly to ensure emerging issues can be addressed for improvement. The MoF welcomes private sector proposals, such as through annual budget proposals, to achieve this improvement.

Some changes in the pipeline include fine-tuning: penalty on late payment based on remaining balance only; refinement in conditions for voluntary registration; harmonizing GST and income tax treatment; issues on services performed on exported goods; e-commerce etc.

Other efforts by the government in addressing GST include rulings, handholding programme and continuous engagement with industry stakeholders.

PRESENTATION BY MR. TAN ENG YEW

Mr. Tan praised the RMCD for their helpful initiatives such as specialised divisions, hot lines, diligent and responsive officers. However, certain challenges remain: high compliance cost;

and relative impact of GST, including technical issues. Some of these issues are presented below.

Voluntary registration

Mr. Tan highlighted the ongoing difficulties of voluntary registration. A lot of proof (e.g. sales invoice, purchase invoice, rental and other documents) were requested before registration could be considered. Without registration, such businesses cannot claim their input taxes. Even if registered, such businesses claim the input tax but cannot recover the GST refund due to lack of output tax, resulting in massive cash flow problems.

Monthly reporting

The monthly reporting of GST is also burdensome as the finance functions of companies often rush during monthly GST filing without having sufficient time for more thorough checking. Mr. Tan urged the RMCD to take into account all these difficulties during their audits.

Cash flow problems

Mr. Tan also highlighted that some businesses are disgruntled that they need to get approval from the RMCD before they can carry forward GST credit balances to offset future taxes.

GST becomes a cost

Mr. Tan also pointed out some issues where GST becomes a "cost", namely Sales Tax refunds and bad debts.

Actual Sales Tax refunds by the RMCD (under the Special Refund scheme) are sometimes much lower than the amount claimed. This is something which is worrying, especially since much of the application and checking procedures are pre-agreed.

The new rule, that bad debt relief can only be claimed if the customers are GST registered, continues to have widespread implications. For the case of telecommunication companies, many of their customers are end consumers. Any bad debt arising therefrom does not qualify for bad debt relief, causing the tele-communication companies to suffer the unrecovered GST.

Comments by Mr. Bhupinder

Mr. Rithaudden posed to Mr. Bhupinder the question: "what is the impact of GST on the supply chain of the company and what are the operational impacts?"

To get their transactions correctly treated for GST, Mr. Bhupinder shared that Petronas had to deal with: the movement of goods; the declarations to be made; the invoices to be issued; and the different commercial arrangements made with different customers.

Non-standardised practices

A major frustration faced was that different RMCD branches sometimes did not have standardised procedures or forms to be used. Mr. Bhupinder urged the RMCD to issue standardised procedures to prevent back tracking when different RMCD officers held different opinions as this created business inefficiencies.

Mr. Bhupinder highlighted that some foreigners hold negative perceptions of Malaysia because of the difficulties in registering for GST for joint ventures and other non-incorporated arrangements.

Comments by Dato' Khodijah

Mr. Rithaudden directed this question to Dato' Khodijah: How has GST affected Malaysia's economic wellbeing?

The amount collected under GST is more than under the previous Sales / Service Tax as leakages are plugged. So GST has raised government revenues.

On delays in GST refunds, Dato' Khodijah suggested that the procedures are intended for transparency. However, the MoF can consider reviewing the process if the approach is not "productive".

Dato' Khodijah insisted that the treatment for bad debts will remain for the time being, and may be reviewed in future.

Furthermore, the right forms must be used for declaring transactions. However, forms will be streamlined and perhaps, explained in a webpage, for better guidance in future.

Comments by Mr. Tan

Mr. Rithaudden directed this question to Mr. Tan: Are businesses ready to do GST reporting for e-commerce?

E-commerce is very broad. If a trader is merely selling goods and services through a portal instead of through a physical shop, then the same existing GST rules apply.

However, digital services (e.g. overseas apps by Apple, Google etc.) are more complicated, as they are 'imported services' but they are not being charged any GST at the moment.

Comments by Mr. Bhupinder

Mr. Bhupinder shared some insights on how Petronas' vendors coped with GST regulations.

According to him, Petronas has many vendors, large and small. Education is very important. Smaller vendors may not fully understand how GST works, and because of that, they may not be able to claim their Input Tax. Consequently, they load up the 'GST cost' into their selling prices.

Petronas monitors price spikes to pick out vendors passing on the 'GST cost' to the next level.

QUESTION FROM THE FLOOR: Blocked items

Mr. Tan, a tax practitioner from the floor, asked: For 'blocked' Input Tax, the taxpayer needs to add back the tax deduction (under Income Tax) until the 'blocked' item has been verified by the RMCD. But waiting for an audit may take time, making this process impractical. How can this be resolved?

Mr. Bhupinder suggested that since Income Tax is on Self-Assessment, the taxpayer should take a stand and claim a deduction if that is the situation. The IRB can resolve it with the RMCD.

Dato' Khodijah concurred with Mr. Bhupinder's views. Since income tax is under Self-Assessment, she affirmatively confirmed that the IRBM can communicate with the RMCD to obtain the list of 'blocked' items.

DAY 2

TOPIC 3 **GST AUDITS**

Moderator

MR. ALAN CHUNG

Executive Director – GST, SJ Grant Thornton

Speaker

YBHG DATO' ABDUL LATIF ABDUL KADIR

Director of Customs (Compliance Management Division), RMCD

Panel Member

MR. SURIN SEGAR

Group Head, Performance Reporting, Enterprise Information Management & Tax, Maybank

FOREWORD BY MR. ALAN CHUNG

Mr. Alan highlighted that GST has been a journey of struggles. By comparison, 2016 was "lacklustre" versus the rush faced in implementing GST in 2015. The next level of GST implementation is GST audits.

Alan opined that, very simplistically, taxpayers can be categorised into:

"Fully compliant" – they go all out to get clarity to comply with GST
"Don't care" – they do not care about registration, collection or compliance
"In-betweens" – they are complacent, and will only address GST when visited by the RMCD. It is this group that will be targeted for GST audits.

PRESENTATION BY YBHG DATO' ABDUL LATIF ABDUL KADIR

Dato' Abdul Latif touched on various key issues involving GST audits. Some key highlights are presented below.

- Taxpayers can appeal within 30 days against a decision made by the GST audit officer where the RMCD has received many such appeals.
- The RMCD has received many cases of GST refunds which seem "not so reliable" and this has prompted the RMCD to verify, consequently causing the delays in refund.
- There were lots of issues for Special Refund (of Sales Tax). Most of the appeals relate to the registrants' dissatisfaction with the refund amount approved by the RMCD officers.
- The certified GST software have been useful and at the same time the RMCD did not object if the GST registrants choose to use any other software. He opined that the use of GST software that could generate the GST Audit File (GAF) would "make it easier".
- The Customs Blue Ocean Strategy (CBOS) is a collaboration between Compliance, Enforcement and

GST departments, with a 2017 target of visiting 200,000 GST registrants.

PRESENTATION BY MR. SURIN SEGAR

Mr. Surin shared some insights on GST implementation by a large company, namely Maybank. Some of these are:

He highlighted that GST implementation involved interpretation of the GST Act, as well as managing people, process and technology.

Human error

He informed that Maybank had a robust system of handling GST, but nonetheless, even large organisations are occasionally susceptible to human errors, what more for smaller business entities with far lesser resources to cope with human errors. Mr. Surin also raised the question of how the RMCD would view human error considering that no organisation in Malaysia can totally avoid human error.

GAF

Mr. Surin shared that Maybank did not use the GST Audit File (GAF) system of recording GST. Instead, it has a data warehouse to store customer information. He queried if this would be an issue with the RMCD.

Mr. Surin also requested the RMCD not to treat all GST registrants as tax evaders and appealed to the RMCD not to penalise GST registrants during the first GST audit.

ACAP

Mr. Surin also shared Maybank's Singapore experience whereby the latter implemented the ACAP (Assisted Compliance Assurance Program) in Singapore. This is where their GST controls and processes were reviewed by an approved tax agent. Maybank Singapore qualified as 'gold' registrant, and as a result, would not be GST audited by the authorities for five years.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED):

Timeframe to reply

Some RMCD officers request for information within a short timeframe. Is this the standard approach?

Mr. Alan highlighted that under the GST Audit Framework, there is no timeline for taxpayers to respond.

Dato' Abdul Latif stated that the RMCD officers have an internal KPI of 90 days to complete an assignment, thus, prompting officers to request registrants to respond speedily.

Surprise audits / visits

Can the RMCD officers turn up at the registrant's doorstep without notice?

According to Dato' Abdul Latif, RMCD will normally give 14 days notice to registrants. However, if there are wrongdoings by the registrant, then the RMCD may carry out a raid or surprise visit. This only applies to special cases.

Tax code

Is there any penalty for using the wrong GST tax code?

According to Dato' Abdul Latif, no penalty will be imposed on genuine mistakes, human factor or lack of knowledge. Registrants can approach the RMCD front desks at various branches to seek clarification. Penalty is imposed only on malicious / deliberate fraud.

Dato' Subromaniam added that if the use of the wrong tax code did not affect the GST liability, then there is no penalty. However, if the wrong usage of tax code results in difference in GST, then penalty will be imposed.

GAF

Is the GAF file mandatory?

GAF is not mandatory, but encouraged. If a registrant is not using GAF, then the registrant must provide documents / data which allow GST auditors to understand the transaction.

Mr. Alan highlighted that the GST Guide on GAF (version 1.0) had been withdrawn since August 2016 and a revised version has not t been issued yet. In light of this, Mr. Alan requested the RMCD to reissue the revised guide.

TOPIC 4 GST – INTERNATIONAL TRENDS & PRACTICES

Moderator

MR. RAJA KUMARAN

Executive Director, PricewaterhouseCoopers Taxation Services Sdn. Bhd.

Panel Member

YBHD DATO' ZULKIFLI YAHYA

Deputy Director General of Customs (Customs/GST) RMCD

Speaker

MS. ROSIE CICCHITTI

Director, Case Leadership & International, Australian Taxation Office

PRESENTATION BY YBHD DATO' ZULKIFLI YAHYA

Dato' Zulkifli's presentation covered

the digital models of business and GST challenges. Some of these are presented below.

Digital business models

Dato' Zulkifli explained the two e-commerce models in Malaysia, namely the 'inventory based model' (where the seller directly sells online) and the 'marketplace model' (i.e. platforms such as Lelong.my, Lazada, 11 Street etc.).

Both models presented challenges to the authorities, in particular, the 'marketplace model' as it involved rendering services from remote locations outside of Malaysia.

Registration of online businesses

Many Malaysian online businesses were unaware that they needed to register their business with the Companies Commission of Malaysia (SSM). Since 2012, only 30,000 online businesses have registered with SSM. As at January 2016, legal action has been taken against 478 individual online businesses.

GST for online businesses

Many Malaysian online businesses were unaware that they needed to register for GST when their sales exceeded the GST threshold of RM500,000. Statistics quoted: Since April 2015, only 770 out of 30,000 online businesses have registered with GST.

Avoidance of GST by overseas businesses

Overseas companies which did not have an office or shop in Malaysia could circumvent Malaysian income tax rules. Quoted example: Google Asia Pacific (based in Singapore) did not have a Permanent Establishment in Malaysia. All advertisement revenue earned by Google Singapore from Malaysian companies engaging Google advertisement services were not taxable in Malaysia due to gaps in the Double Tax Agreements covering digital services.

Challenges abound in gathering sufficient data to track the value of transactions in the digital economy. This presented difficulties in triangulating the presence of foreign business entities 'deriving' income from Malaysia.

Although Malaysia's GST law provided for 'imported services' to tax foreign service providers such as those in the digital economy, implementing such rule was difficult. Quoted example:

Uber drivers were not regulated by the Land Public Transport Commission, and thus, it was difficult to enforce the rule on 'imported services' upon Uber drivers.

PRESENTATION BY MS ROSIE CICCHITTI

Ms. Rosie emphasised that community demands have shifted towards the digital economy / e-commerce, and this has encouraged governments to collaborate at an international level.

Simplification

Ms. Rosie highlighted that GST can be highly technical. In Australia, when business transactions increase, so does the propensity for more errors to occur. It was thus necessary to simplify GST rules, especially for small businesses.

Australia's approach is:

- To make use of 'big data' by getting as much data as possible through new systems, risk profiles, new digital infrastructures, and to tailor-make the system for different taxpayer groups.
- Understanding the tax gap – i.e. how much GST has not been paid. Example of some tax gaps: Australia (5%), UK (15%), Greece (40%).
- Improving transparency in dealings with taxpayers by working collaboratively.
- Working internationally with other jurisdictions.

Global trends

Ms. Rosie shared some trends seen in business and in VAT / GST:

- Simplification of GST rules to enhance business compliance
- Changing business models in the digital economy
- Greater emphasis on taxing rights of different jurisdictions
- Fraud and evasion, such as refund fraud. In Australia, there is greater tolerance for refunds, and only 2% of refunds end up as audits.

In implementing change, the Australian Tax Office (ATO) took the following approach:

- Keep the rules simple so that taxpayers can understand their obligations and execute accordingly.
- Make information accessible and easily understandable.
- Enhance compliance through use of electronic platforms.
- Provide certainty and consistency in rules that align with the OECD guidelines and international business practices.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED):

Uber

Mr. Raja Kumaran posed some questions to Ms. Rosie, including:

In Australia, the Federal Court made a decision on the case of Uber. What was the decision?

Ms. Rosie explained that the Australian Tax Office won, whereby the Court held that Uber was a taxi company (something Uber said they were not). Accordingly, they were brought to VAT.

Simplification in Australia

How is ATO simplifying the VAT system?

Ms. Rosie shared that the ATO was looking at technology such as Point-of-Sale, cloud technology, and pre-filling tax returns. When a company registers through the official portal, the system will spot trends versus the previous reporting period, and highlight to the taxpayer if there are major variance.

Simplification in Malaysia

How is the RMCD simplifying the GST system?

Dato' Zulkifli explained that RMCD also received requests from business associations to reduce the number of labels / boxes on the GST return. However, our GST is unique because we have exempt supplies and zero rated supplies, and these information need to be filled into the return. Temporarily, the RMCDs conclusion is not to reduce the existing 35 boxes, but the RMCD can review this in future.

Penalties in Malaysia

Malaysia's penalties appear to be on the harsh side. A lot of mistakes are due to wrong understanding, and not due to deliberate cheating. However, Malaysian GST law does not have voluntary disclosure provisions.

ATO has a voluntary disclosure practice (i.e. reduced penalties). Does this help with compliance?

The ATO acknowledges that GST is a transaction tax where mistakes can easily occur. ATO does not impose penalties when voluntary disclosures are made, and the ATO intends to remove more penalties. However, having implemented GST for 17 years, Australia is at a more mature stage of the GST cycle.

Voluntary disclosure

Is Malaysia considering voluntary disclosure?

Dato' Zulkifli stated in the affirmative. Section 62 of the Malaysian GST Act empowers the Director General to reduce / remit penalties, so voluntary disclosure may be one factor that the DG may consider. However, on the other hand, two registrants have been charged in Court for falsely claiming Input Tax Credits. So the RMCD must be cautious with the issue of penalties.

Mr. Raja highlighted that if reduction of penalties was not automatic, but dependent on the DG's decision on a case-by-case basis, this may not be "helpful" in a more broad-based sense.

Comment from the floor

A participant, Mr. Lee Si Long (tax manager from Shell) made the following suggestions towards GST improvements:

- Simpler laws and rules on GST.
- More guidelines to facilitate compliance.
- The RMCD and the MoF can consider offering 'interim solutions' for businesses, especially where issues are complex and require extended study time for the RMCD to come out with a 'full solution'. This is important because businesses are ongoing and cannot stop operations while awaiting the 'full solution'.
- Provision of more transitional time for adoption of new GST guidelines / laws.

TOPIC 5 GST TAX CASES UPDATES - MALAYSIAN VIEW POINT

Moderator
MS. ASLINA JONED
Chairman, GST Appeal Tribunal

Speaker
MR. S. SARAVANA KUMAR
Partner, Lee Hishamuddin Allen & Gledhill

Panel Member
MS. ALMIRULITA MOHD YUSOF
Senior Assistant Director of Customs I, RMCD

FOREWORD BY MS. ASLINA JONED

Ms. Aslina introduced that the GST Appeal Tribunal was established on 1 April 2015 and to date, has already heard 31 cases in 2015, 76 cases in 2016, and in 2017, two appeals were heard with 36 pending cases.

Ms. Aslina stressed that since GST was new in Malaysia, there are no precedents to draw reference from. Thus, the importance of the knowledge sharing in this event.

PRESENTATION BY MR. S. SARAVANA KUMAR

Mr. Saravana highlighted five cases in relation to various aspects of GST.

Case No. 1: *Commissioner of Inland Revenue v New Zealand Refining Co Ltd [1997] 18 NZTC 13, 187 (Court of Appeal, New Zealand)*

Issue: Whether compensation paid by a government to a taxpayer was regarded as a link between consideration and supply.

The government had earlier encouraged expansion of business and gave assurances as to profit levels to the company. A decade later, government policy shifted, resulting in increased competition to the company. The government and the company came to an agreement whereby the government would pay the company a certain sum of money (compensation) over three years. The law required that there must be a linkage between the supply and the consideration before GST could be imposed.

The High Court and the Court of Appeal both ruled that the compensations were not payments for any supply. Thus, the compensation was not GST-chargeable.

Case No. 2: *Trustees of the Nell Gwynn House Maintenance Fund v Customs and Excise Commissioners [1999] BVC 83*

Issue: Whether salaries paid to maintenance staff of a maintenance fund is regarded as disbursement or reimbursement?

Maintenance trustees (trustees) were appointed to administer a maintenance trust which was applied for certain purposes including for salaries of maintenance staff.

The UK House of Lords held that the trustees supplied the services of staff (i.e. reimbursements) as the salaries were not paid out in the name / account of the tenants (i.e. not disbursements). The key factor was that the trustees entered into contracts of employment directly with the individual maintenance staff, and thus, the trustees were seen as supplying services. The staff were not independent contractors, nor employees of the landlords or the tenants.

Case No. 3: *National Transport Authority v Mauritius Secondary Industry Limited [2010] UKPC 31*

Issue: Does supplier or customer bear VAT in case of uncertainty where contract was silent?

The National Transport Authority leased office space from a company. The negotiations were carried out at a time when VAT was just being introduced in the country. The contract did not make express provisions as to responsibility for VAT and whether or not the consideration was inclusive of GST. Evidence suggested there was no discussion of the issue of VAT throughout the negotiation.

The Privy Council held that "it is the person making the supply who is liable for VAT on the value of the supply that he makes."

Case No. 4: *Sunchen Pty Ltd v Commissioner of Taxation [2010] FCAFC 138 (Federal Court, Australia)*

The taxpayer purchased residential property which had development approval, and subsequently claimed input tax on the purchase. The commissioner disallowed the input tax claim on the basis that the property was for residential premises (exempt supply). The taxpayer argued that the property was purchased with the intention of developing it in the future.

The case tested whether input tax claim was dependent on (a) the subjective use to which the purchaser intends to apply on the property; or (b) the objective characteristics of the property.

The Court held that the test should be determined objectively by reference to the physical characteristics of the property at the time of acquisition. Therefore, input tax was not allowed.

One peculiarity of the case was that the taxpayer allowed an existing tenant to complete his tenancy as a residential premise, then rented the property to another tenant again as a residential premise; this action was at odds with the purported intention of the taxpayer claiming to be a developer.

Case No. 5: *Westley Nominees Pty Ltd & Anor v Coles Supermarkets Australia Pty Ltd [2006] FCAFC 115 (Federal Court, Australia)*

Issue: Does an opportunity to review 'part' of the contract give rise to a "review opportunity"?

Coles (supermarket operator) was a tenant in a shopping centre owned by Westley. Under the lease agreement, Coles is required to pay:

- The base annual rent;
- The annual percentage rent; and
- Operating expenses, after-hours charges and promotional fund contributions.

Only the base amount of rent was subject to review to the market rate, while the other elements were not.

The issue is whether or not this gave rise to a "review opportunity" which could cause the supply to become GST-free.

The Court held that there was no "review opportunity" because the contract only provided for review of 'part' of the consideration and not a 'general review' of the consideration (which requires a complete or almost universal review). Therefore, there was no review opportunity.

PRESENTATION BY MS ALMIRULITA MOHD YUSOF

Ms. Almirulita stated that for the five cases presented by Mr. Saravana, the decisions were generally consistent with Malaysia's GST law and the RMCD's policy.

She also expressed that it was unfortunate that within 23 months of GST implementation, the RMCD has already detected fraud in Malaysia.

In 2015, most of the appeal cases in GST tribunal related to registration, returns and Input Tax credit. In 2016, one case involved definition of zero-rate, whereas the remaining cases were "simple" cases involving the aforementioned registration, returns and Input Tax credit.

The RMCD has a debt collection enforcement unit in Putrajaya which will prevent errant taxpayers from leaving Malaysia. There has been one case whereby this RMCD unit has claimed defaulted GST from a third party (Maybank) instead of directly from the errant company.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED)

Publication of tribunal cases

Would cases that have appeared before the tribunal be published by the RMCD for purposes of educating other taxpayers?

Ms. Almirulita said that it is for the Tribunal, not the RMCD, to upload all the cases. She conceded that it was "useful" to do so, but it was not under her department.

Ms. Aslina expressed a problem faced was that the RMCD was not allowed to disclose the identity of the parties involved. Thus, the RMCD would need to think about how to proceed with this.

Payment in kind

Section 11(4) provided that any payment received before the basic tax point is subject to GST. Does this include payments "in kind"?

Mr. Saravana suggested that although the word "payment" was not defined, he opined payment in kind would be included.

Tax advisers

Can tax advisers or accountants be charged in court for tax avoidance or incorrect GST advice rendered to their clients?

Mr. Saravana opined that tax avoidance is not a criminal offence, and so, there would merely be a tax assessment which needs to be settled. However, if one was involved in tax evasion, then you would be charged under Section 89(2) as a person who assisted in causing understatement of GST (unless the Court can be satisfied such assistance was given with reasonable care).

Mr. Saravana also shared other technical details on how the rules affecting tax payers were different from those affecting tax advisers.

TOPIC 6 GST IMPACT ON DOMESTIC DEMAND: BUDGET IMPLICATIONS

Moderator

YBHG DATO' PADDY ABD HALIM

Assistant Director General of Customs (Enforcement), RMCD

Speaker
MR. WAN SUHAIMIE WAN MOHD SAIDIE
Head, Economic Research, Kenanga Investment Bank Bhd

Panel Member
MR. DAVID LAI
Council Member / Chairman of Technical Committee – Indirect Tax, CTIM

PRESENTATION BY MR. WAN SUHAIMIE WAN MOHD SAIDIE

Mr. Wan Suhaimie gave a brief overview of the economic benefits of GST and explained that additional tax collections from GST would offset revenue loss from petroleum income tax, and more importantly, bring an eventual reduction in tax rates which would spur economic development. GST also goes towards boosting operating expense (such as subsidies and BRIM) and boost development expenses (such as long-term infrastructure and job creation).

According to Mr. Wan Suhaimie, the "side effect" of GST would be lower consumption, rising inflation and administrative costs. However, GST has a side benefit of reducing incidents of tax dodging due to heightened transparency.

Mr. Wan Suhaimie also explained that increase in nominal GDP growth would result in higher business profits, which would fuel consumption and raise indirect taxes through higher excise tax and customs duty. Increase in nominal GDP growth would also raise employment and wages, which would encourage higher private consumption and investment. This would then raise indirect taxes such as GST.

Mr. Wan Suhaimie also shared some statistics on implementation of GST in other countries in Southeast Asia.

COMMENTARY BY MR. DAVID LAI

Dato' Paddy raised the question: Does GST create jobs?

Mr. David Lai explained that the impact of GST on the economy is complex and multi-dimensional. There can be erroneous assumptions about how GST affects another economic factor. For instance, 'anticipated' price increases prompt consumers to hoard, thus causing the price-rise which may then be attributed to the effect of GST.

Nonetheless, GST is a more efficient collection system than Sales and Service Tax. GST generates a lot more administrative work for accountants, advisors and administrative workers.

Furthermore, Mr. David opined that the current GST system (while still new) was too complex. He favoured more simplicity and more certainty similar to Australia.

QUESTION AND ANSWERS (ONLY A SELECTION IS PRESENTED):

Utilisation of GST collections

How has the government used the money collected from GST thus far?

Mr. Wan Suhaimie answered that Malaysia has one of the largest allocations on education and social spending in relation to GDP.

Price increases

Due to a busier lifestyle, consumers may dine out more often, which is GST-chargeable. Nonetheless, even for those consumers who cook at home, there is still an impact: price increases due to transport and that some foodstuff is GST chargeable, and get embedded into selling prices.

Mr. David Lai noted that this as an interesting observation. The intention behind zero rating foodstuff is good. However, sometimes there are side effects. Certain types of noodles are zero rated but other types (e.g. pasta) are standard rated. Unintentionally, this affects purchasing decisions. Thus, the authorities may need to be careful and be fair when selecting items for zero rating.

Penalty for late payment

There is no penalty for amendment of GST returns. Is there any penalty for late payment?

Dato' Paddy commented that penalties can be remitted by the DG on a case-by-case basis as provided in the law. However, according to the law, there is late-payment penalty to be levied.

Mr. David prompted that it was important to have clarity, especially on GST penalties. With more clarity, more taxpayers may be motivated to come forward, and this would facilitate collections. Taking a pointer from the Income Tax Audit Guide, a GST Audit Guide can specify the types of penalty to be imposed for voluntary disclosures.

Dato' Paddy proposed the CTIM to write officially to the RMCD on this matter of penalty.

Voluntary registration problems

The RMCD disallowed property developers to register for GST because there is no supply for 12 months. What can be done about this?

Mr. David explained that it is important to relook at the spirit of GST – it is meant to be a tax on consumers. By disallowing early registration (and consequently, disallowing claims on Input Tax of the non-registrant), it turns GST into a tax on businesses. As a result, it causes upward pressure on prices and inflation. It is important for the authorities to be mindful of such cases when fine-tuning the rules moving forward.

[This write-up presents some highlights and selected points of interest that transpired during the National GST Conference 2017 (NGC).]

BEPS PROJECT AND INCLUSIVE FRAMEWORK

Wan Ramiza Wan Ghazali

During the Organization for Economic Cooperation and Development (OECD) Committee on Fiscal Affairs Inclusive Framework (IF) Meeting held from 25 - 27 January 2017 in Paris, Finance Minister II, Datuk Johari Abdul Ghani announced Malaysia's commitment to the IF on base erosion and profit shifting (BEPS). The intention is to move forward on equal footing with the OECD countries as well as to have direct influence in shaping the international tax rules to further tackle BEPS issues. The IF is a set up consisting of OECD, G20 countries and interested countries. Other countries within the Asia Pacific region that have signed up as a BEPS Associate are Singapore, Hong Kong and Indonesia.

The BEPS project was initiated by the OECD and the G20 countries in 2013 due to changes in ways of doing business as a result of globalisation, as well as changes in the political environment. Changes in these conditions led to the need for existing international tax rules to be updated in order to address gaps and mismatches which resulted in double non-taxation as well as double taxation. As quoted by the OECD, it was conservatively estimated that USD100 to USD240 billion is lost in annual revenue due to BEPS, which was a high stake for governments around the world[1].

As a result of the above concern, in October 2015 a comprehensive package of policy tools consisting of 15 Action Plans was delivered. The OECD member countries, G20 countries, together with more than 100 other jurisdictions including Malaysia and tax organisations such as the International Monetary Fund (IMF), World Bank, United Nations (UN), regional tax bodies such as African Tax Administration Forum (ATAF) and Inter-American Centre for Tax Administration (CIAT), sat together to provide inputs directly or indirectly in coming up with the BEPS package. The aim was to have updated rules which will bar the shifting of profits away from where the economic activity and value creation took place. The package provided rules and policies to improve the coherence of tax rules across borders, reinforcing existing standards that emphasised on substance requirements, and enhanced transparency and certainty.

The current phase of BEPS project is the implementation of the BEPS package where support from experienced countries, i.e. OECD/G20 countries, is needed. This is achieved through the above mentioned IF set up.

BEPS Action Plan from the Inland Revenue Board of Malaysia (IRBM) Perspective

Among the mandates of the IF is to monitor and support the implementation of the BEPS package with the four BEPS minimum standards as a starting point. These four Action Plans have been agreed as the minimum standards to be complied with by member countries in order to tackle issues whereby no action by certain countries can lead to negative impacts on other countries. The monitoring and support will be given to the member countries through the peer review process to ensure that all member countries comply with the standards and at the same time allowing them to review their own tax systems and correct the rules or practices which may lead to BEPS.

Below is a brief description of the four minimum standards and other BEPS Action Plans:

ACTION PLAN 5: Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance

Under Action Plan 5, for a preferential regime to be considered not harmful, it must ensure the presence of substantial activity and that 'ring fencing' does not exist. The preferential regime is also required to exchange rulings with countries where party to a transaction is located. In cases where tax exemption is granted, the information will be shared with the Competent Authorities of the respective countries where the involved parties in the transaction are located. Examples of such information include, exemption from PE status, incentives provided for special kind of activities or incentives under Section 127 of the Income Tax Act 1967 and Advance Pricing Arrangement agreed with the IRBM.

Currently Malaysia is being reviewed on the preferential tax and incentives offered to taxpayers by the IF Committee to ensure that these are not harmful to other jurisdictions.

ACTION PLAN 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

Treaty abuse, in particular treaty shopping is one of the most important sources of BEPS' concerns. It happens when treaty benefits allocated to entities that transact between two treaty countries are manipulated and which results in benefits awarded to an entity in a third country, thus depriving that country of their tax revenue. To circumvent this treaty abuse, an anti-abuse provision will have

[1] *Background Brief Inclusive Framework on BEPS – January 2017*

to be stated in all the tax treaties together with the minimum standard to counter treaty shopping. The minimum standard to counter treaty shopping can either be in the form of Limitation of Benefit (LoB) or Principle Purpose Test (PPT).

Malaysia will update its existing tax treaties with the new preamble and is expected to adopt PPT as the treaty anti-abuse mechanism. The treaties will be revised through multilateral instrument (MLI) or bilateral negotiation.

ACTION PLAN 13: Transfer Pricing Documentation and Country-by-Country Reporting (CbCR)

This Action Plan requires the development of rules with regard to transfer pricing documentation to enhance transparency for tax administration. It is a three tiered standardised approach to transfer pricing documentation, which includes preparation of a master file, a local file and Country by Country Reporting (CbCR). The content of a master file will be high level information with regard to a multinational company's global business operation, while a local file contains specific information pertaining to the local entity's operation focusing on the transaction with related parties. The CbCR requires Multinational Groups with high revenue threshold to provide information on their global allocation of income, location where their economic activities take place, taxes paid among countries and other information as required in a standard template.

CbCR is a high level information of the MNC group which is useful for risk assessment and will be exchanged between relevant tax administrations. To be parties to the exchange, countries are required to be part of the Convention on Mutual Administrative Assistance in Tax Matters (CMAA), a comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance. Member countries who participate in the CMAA are encouraged to also be part of the Multilateral Competent Authorities Agreement (MCAA) to facilitate the exchange. In cases where a country that

is a party to the CMAA but not a party to the MCAA, the exchange is still viable through bilateral arrangement between interested parties. Malaysia has signed the CMAA and the MCAA in 2016 and is in the process to activate the exchange relationship. The exchange will be with partner countries having tax treaties with Malaysia and members to the CbCR-MCAA.

Under the Malaysian CbCR Rules which was issued late last year, a Malaysian ultimate holding company that has cross border transactions with a total consolidated group revenue of at least RM3 billion for financial year ending in 2016 is required to prepare a CbCR for the financial year 2017 onwards. It is expected that the first CbCR for exchange will commence at the end of 2018. Malaysia is in the midst of preparing a system to receive and transmit the CbCR through the Common Transmission System (CTS) for exchange with partner countries.

The interpretations and requirements under the CbCR Rules are in line with the requirements of Action Plan 13. The Malaysian headquartered MNCs may report based on the requirements in the Malaysian Financial Reporting Standard (MFRS).

The expected content of the master file and local file will be addressed in the Transfer Pricing Guidelines. In general, the Malaysian headquartered companies that need to prepare the CbCR will also need to prepare the master file.

ACTION PLAN 14: Making Dispute Resolution Mechanisms More Effective

The objective of having dispute resolution as one of the action plan is to provide an effective and efficient mechanism to solve double taxation issues which is independent of domestic legal remedy. The mechanism, Mutual Agreement Procedure (MAP) is a discussion between Competent Authorities of countries involved to resolve treaty related issues such as interpretation and application of DTA, transfer pricing adjustment that lead to economic double taxation, characterisation or classification of income and Permanent Establishment issues.

The Malaysian MAP Guidelines was issued in 2015. Generally, a taxpayer can apply for MAP within three years from the date when dispute arises subject to the requirements in the tax treaties. It varies as some treaties require MAP application to be submitted within two years from the date of dispute. There will be amendments to the Guidelines in order to be consistent with current practices and to incorporate the minimum requirements of Action Plan 14. It is expected to be consistent with the amendments in the treaties with the hope to be updated through MLI under Action Plan 15.

To date Malaysia has received quite a number of MAP applications, with issues concerning transfer pricing, withholding tax and interpretation of DTAs.

OTHER BEPS ACTION PLAN

ACTION PLAN 1: Addressing Tax Challenges of the Digital Economy

Nowadays, business transactions are just a fingertip away. There is no need to have business premises to operate a business with transactions performed online; right from placing purchase orders to deliveries and payments. These transformations have increased efficiencies and reduced costs in doing business. Nevertheless, the challenges from tax perspective will involve rules that need to be enhanced in order to establish the nexus and physical presence to attribute profits to location where value is created.

Malaysia is also gearing up to address the challenges in taxing the digital economy. The amendment in Section 15A of the Income Tax Act 1967 last year was a starting point to address this. Services can be performed anywhere with the intent to gain profits from targeted consumers in a specific jurisdiction; therefore services regardless of where they are performed, as long as the income from the service is derived from Malaysia, should be taxed in Malaysia, subject to the treaty arrangement between countries.

Action Plan 1 has suggested general rules in dealing with the digital economy. A Task Force on the Digital Economy (TFDE) was established in which Malaysia is also a participant. The mission of the TFDE is to reach a consensus on a provision to curb leakage of tax from activities under the digital economy. Countries such as the United Kingdom and Australia have implemented the Diverted Profit Tax (DPT) while India has adopted the Equalization Levy, which are amongst the proposals of the task force. The DPT among others, is aimed to tackle the digital sector. Cases such as taxpayers trying to avoid taxable presence or cases where payment made to a low tax jurisdiction which has no economic substance will be the type of arrangements catered for under the DPT.

ACTION PLAN 4: Limiting Base Erosion Involving Interest Deduction & Other Financial Payments

One way of shifting profits and lower tax burdens among MNCs is by adjusting the debt structure within the group. There are three methods commonly practiced among the MNCs which raise the BEPS risks:

1. Group placing higher level of third party debt in high tax countries
2. Groups using intragroup loans to generate interest deductions in excess of the group's actual third party interest expense
3. Groups using third party or intragroup financing to fund the generation of tax exempt income.

There are specific sections in the Income Tax Act 1967 that deal with interest expenses. Subsection 33(2) allows interest claim that is exclusively incurred in the production of income whereas Section 140A deals with arm's length interest. Subsection 140A(4) is on thin capitalisation, although, its implementation has been deferred until end of 2017. In addition, Rule 8 of the Transfer Pricing Rules 2012 provides for recharacterisation or disregarding of a transaction if the substance and form are not the same, or where the substance and form are the same but the arrangements are not normally found in independent party situations. For example, a subsidiary receives a loan from its parent overseas and the payment of the loan only involves interest without paying the principal amount, the IRBM may, in this case, recharacterise the loan as an equity to the subsidiary. In a different example, the IRBM may disregard an interest claim if it relates to a promissory note provided by related party which does not have an arm's length feature such as absence of a maturity date.

Action Plan 4 recommends the use of threshold to limit interest claims. This recommendation would be relatively easier to implement as compared to other available methods such as comparing year-end balances of a loan which has the risk of being manipulated, or to work on an average balance throughout the year which may be problematic.

ACTION PLAN 8 – 10: Aligning Transfer Pricing Outcome With Value Creation

The arm's length principle is used globally as the basis for transfer pricing rules. It is embedded in all Malaysian tax treaties under the Article of Associated Enterprise. The principle requires that transactions between associated enterprises are priced as if the transactions are between independent parties. Adjustment to the price or margin will be imposed on the associated enterprise if there are differences in price or margin resulting from the comparison with companies having comparable transactions under similar conditions and economic circumstances.

Malaysian transfer pricing is governed by Section 140A of the Income Tax Act 1967, together with the Transfer Pricing Rules 2012 and Guidelines. BEPS Action Plan 8-10 consists of guidance which reinforces the existing standard and can be adopted to enhance the existing Malaysian Guidelines. Among the areas that will be emphasised is risk analysis. Based on the risk analysis framework provided in the Action Plan, the risks have to be analysed with specificity by first identifying all the risks that exist in the business operation. It involves identifying who has control over the risks and how the entity which is located outside Malaysia that has control over the risks, monitors and administers the risks. It is also important to understand who has that financial capacity and how it relates to the risks, whether the entity having control over the risks has the financial capacity to take on the risks, or whether the entity providing financial assistance to its related party only assumes risk similar to a bank.

Action 8-10 elaborates further on intangibles from the transfer pricing perspective by providing guidance in identifying intangibles, explanations on ownership of intangibles incorporating the importance of entity providing development, enhancement, maintenance, protection, and exploitation (DEMPE) activities. Having a legal ownership with minimal functions, assets and risks (FAR) will not qualify the owner to earn extra margin but will be compensated based on the FAR it performs.

Action Plan 8-10 also provides guidance in analysing Commodity Transactions on the term of quoted price and the application of the Comparable Uncontrolled Price (CUP) method to the transactions. It contains a provision that allows the tax authority to impute, under certain conditions, the shipment date or any other dates that can be evidenced as the pricing date for the transaction to prevent taxpayers from using pricing dates in contracts that enable the adoption of the most advantageous quoted price.

Action Plan 8-10 also provides guidance on achieving the necessary balance between appropriately allocating to MNC group members charges for intragroup services in accordance with the arm's length principle and the need to protect the tax base of payer countries. Malaysia may opt to allow this expenses with a threshold to limit the claim. However, claims without substance will definitely be disregarded. Currently, a study on the appropriate threshold for Low Value Adding Intragroup Services (LVAS) is being carried out. LVAS relates to routine services provided by the parent or associated enterprises.

ACTION PLAN 7: Preventing the Artificial Avoidance of Permanent Establishment Status

Permanent Establishment (PE) is addressed in the tax treaties under Article 5 on PE. Action Plan 7 is a reinforcement of the existing International Standard to make it clearer in order to avoid artificial avoidance of PE. This can happen through commissionaire arrangements, abuse on the exemption clause (relates to Article 5(4) in the Model Tax Convention) and also through the splitting of contracts to avoid stated period that qualifies for a PE status.

However, the work on attribution of profit is still under progress at the OECD Working Party 6 level.

ACTION PLAN 15: Developing a Multilateral Instrument (MLI) to Modify Bilateral Tax Treaties

Multilateral Instrument (MLI) was developed in order to enable countries wishing to implement measures in BEPS Action Plan to be more efficient in a shorter period of time. Rather than bilaterally amending the tax treaties which may take a longer time, the MLI is supposed to provide an innovative approach in concluding international tax matters between countries.

Malaysia is expected to sign the MLI, adhering to the three minimum standards; which is the new preamble, treaty abuse rule (LoB/PPT) and MAP article.

ACTION PLAN 2: Neutralise the Effects of Hybrid Mismatch Arrangements
ACTION PLAN 3: Strengthen CFC Rules
ACTION PLAN 12: Mandatory Disclosure Rules

The three Action Plans above are still under study and observation.

In conclusion, it is hoped that by being part of the IF, Malaysia will be on par with other countries in governing international tax rules, being more transparent and at the same time, increasing the acceptance level of the country's tax legislations, rulings and practices, especially among the multinational taxpayers.

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UNDERSTANDING JUDICIAL DOCTRINE OF GAAR (PART 1)

Dr. Benjamin Poh Chee Seng

Part I of this article will review the earlier common law judicial doctrine of GAAR (General Anti-Avoidance Rules) developed in the US and UK which has been adopted by the Court today in interpretation of the statutory GAAR in some leading common law countries including Malaysia to combat against aggressive international tax planning or avoidance schemes with questionable commercial justifications and economic substances. In Part II of this article, two recent hallmark cases on Malaysia GAAR are cited for further discussion on the application of judicial doctrine of GAAR by the Court and the issues arise when interpreting Malaysia statutory GAAR. Armed with the knowledge and understanding of judicial doctrine of GAAR will enable any aspiring tax accountant or lawyer to argue their cases persuasively before the Inland Revenue Board Malaysia and the Court in genuine tax planning case with commercial justifications and economic substances.

INTRODUCTION

The financial crisis in year 2008 has severely impacted tax revenue of major advanced countries that has prompted the United States and major western European countries to undertake substantial tax reforms and austerity programmes to regain their financial standing. One of the key implementation measures in the international taxation arena taken by the OECD (Organization for Economic Cooperation and Development) countries was through the project of BEPS (Base Erosion and Profit Shifting) to combat against MNE (Multinational Enterprises) international tax planning or avoidance schemes to collect their fair share of tax revenue so that to improve their national fiscal position.

OECD defines BEPS as "tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. Although some of the schemes used are illegal, most are not. This undermines the fairness and integrity of tax systems because businesses that operate across borders can use BEPS to gain a competitive advantage over enterprises that operate at a domestic level. Moreover, when taxpayers see multinational corporations legally avoiding income tax, it undermines voluntary compliance by all taxpayers." BEPS project advocated 15 Action Plans to tackle international tax planning or avoidance scheme. The 15 Action Plans are similar to any domestic SAAR (Specific Anti-Avoidance Rule) and GAAR(General Anti-Avoidance Rules) enacted in income tax law and regulations used to tackle tax avoidance or planning scheme without commercial justification and economic substance.

Historically, SAAR has been employed by every government in the world to tackle issues on international tax avoidance but the results of employing SAAR was not as satisfactory as expected, as business and financial practices are changing fast that detailed tax rules could not anticipate and cover every eventualities. The rising of tax planning industry armed with smart and creative tax lawyers, accountants and private bankers trying to exploit the tax loopholes within the SAAR was relatively successful even though sometime the tax planning schemes are questionable in terms of their commercial and economic substances. The GAAR if properly employed and invoked by the governments could be an effective weapon to complement SAAR to defeat aggressive international tax avoidance schemes with questionable commercial justifications and economic substances.

However, judicial interpretation of statutory or common law GAAR has been controversial in cases involving tax avoidance and planning schemes. Nevertheless, understanding the the trends and controversial of judicial doctrine of GAAR will enable any aspired tax accountant or lawyer to argue its cases persuasively before the Inland Revenue Board and the Court in genuine tax planning case with commercial justifications and economic substances.

THE ORIGIN OF THE US ECONOMIC SUBSTANCE DOCTRINE

The US "economic substance" doctrine was well founded in the hallmark case *Gregory v. Helvering (1935) 293 U.S. 465.* The facts in this case were that the taxpayer was the sole owner of a corporation (United). This corporation owned stock in another company (Monitor). The taxpayer subsequently incorporated a new company (Averill) and transferred the securities to the new corporation to convert ordinary income on the securities into capital gains. The former corporation distributed the stock of the latter corporation, and subsequent to that the new corporation was liquidated and the securities sold immediately. The taxpayer argued that the gain from the sale was a capital gain.

The Commissioner of Internal Revenue argued that in terms of economic substance , there really was no "business reorganisation" as Mrs. Gregory who controlled all three corporations, was simply following a legal form to give the appearance of a reorganisation so that she could dispose of the Monitor shares without having to pay a substantial income tax on the gain that otherwise would have been deemed to have been realised.

The Supreme Court concluded as follows:

> "Putting aside, then, the question of motive in respect of taxation altogether, and fixing the character of the proceeding by what actually occurred, what do we find? Simply an operation having no business or corporate purpose — a mere device which put on the form of a corporate reorganisation as a disguise for concealing its real character, and the sole object and accomplishment of which was the consummation of a preconceived plan, not to reorganise a business or any part of a business, but to transfer a parcel of corporate shares to the petitioner. No doubt, a new and valid corporation was created. But that corporation was nothing more than a contrivance to the end last described. It was brought into existence for no other purpose; it performed, as it was intended from the beginning it should perform, no other function. When that limited function had been exercised, it immediately was put to death.
>
> In these circumstances, the facts speak for themselves and are susceptible of but one interpretation. The whole undertaking, though conducted according to the terms of [the statutory provision], was in fact an elaborate and devious form of conveyance masquerading as a corporate reorganisation, and nothing else. The rule which excludes from consideration the motive of tax avoidance is not pertinent to the situation, because the transaction upon its face lies outside the plain intent of the statute. To hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose."

THE UK CHOICE PRINCIPLE DOCTRINE

Four months later, a similar problem faced the UK House of Lords in *IRC v. Duke of Westminster (1936), AC 1.* The facts in this case were, The Duke of Westminster had a number of household servants. The then British Income Tax Act did not allow a deduction of wages of household servants, but allowed a deduction of annual payments made in pursuance of a legal obligation other than remuneration of servants. The Duke accordingly entered into deeds of covenant with each of his servants under which he undertook to pay each of them annual sums for a period of seven years. The payments were to be made irrespective of whether any services were performed by the promisee, and were without prejudice to the promisee's entitlement to remuneration if he or she did perform any services to the promisor. However, it was established by evidence that the understanding between the Duke and his servants was that they would rest content with the provision made for them by deed, and would not assert any right to remuneration. In this way, the Duke converted his non-deductible wages obligation into a deductible annuity obligation.

Lord Tomlin's famous dictum:

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

THE MODERN APPROACH TO STATUTORY GAAR INTERPRETATION TODAY

Gregory v. Helvering (1935) 293 U.S. 465 laid down the US substantive, purpose-based, anti-tax avoidance principle, whereas *Duke of Westminster (1936) AC 1* pronounced a narrow and literal approach to tax statute interpretation towards anti-tax avoidance. Nevertheless, the subsequent development of anti-tax avoidance principle in most of the leading common law countries seems to be in line with the US substantive and purpose-based approach.

Following is a discussion on judicially developed doctrines of

GAAR which are well recognised by most of the leading common law countries and some of these doctrines are routinely employed by common law Courts in interpretation of their country's statutory GAAR.

SHAM TRANSACTION DOCTRINE

The sham transaction doctrine is applied when a taxpayer claims tax benefits based on having taken certain steps but did not complete those steps or legal transactions do not accurately reflect or capture the transactions' underlying economic reality. It is sometimes considered by the tax authorities or the Courts as "artificial transactions" arranged for the purpose of obtaining tax benefits where legal transaction, as documented, is in fact different to the implemented legal transaction which the parties adhere to. This doctrine is not easily employed to defeat tax avoidance plan in the modern day as the Courts are reluctant to frustrate a legal transaction and declare it to be "artificial" since legal effects of a transaction should be well respected even though some features of the transaction may seem abnormal but in fact reflecting unique commercial requirements between the parties concerned.

SUBSTANCE-OVER-FORM DOCTRINE

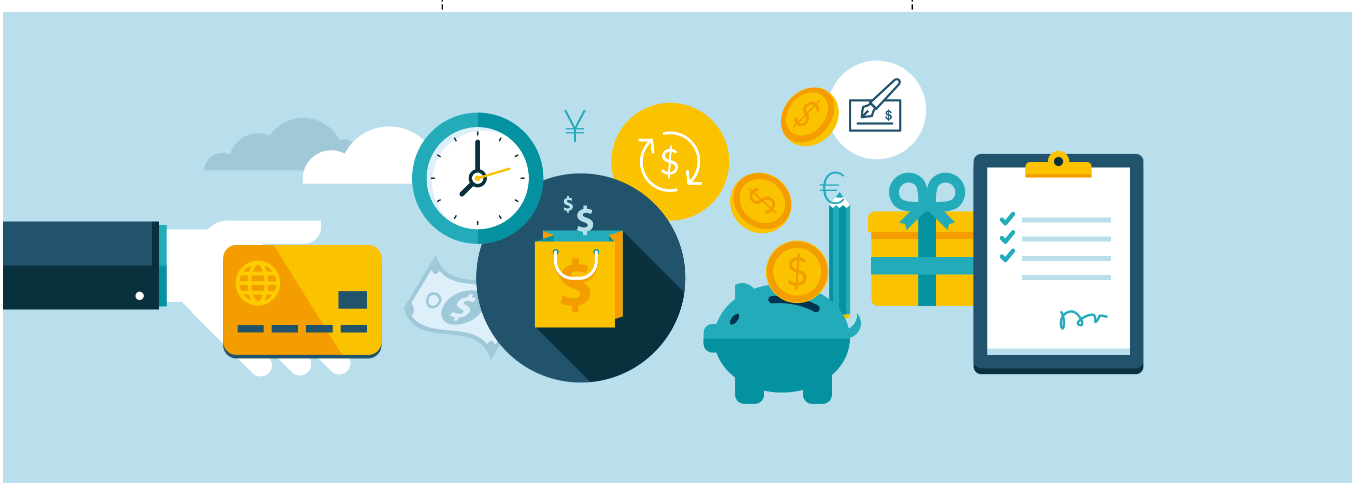
Under the substance-over-form (or legal substance) principle, the facts must be assessed according to commercial substance and not just is legal form. In other words, the substance of the transaction, rather than its legal form, is the main determinant of the tax consequences. What this method and the step transaction doctrine discussed below have in common is enable the Court to look beyond its legal form and to apply it to facts in a proper and realistic manner. When assessing the validity of a transaction and its tax effects, it is important to consider the underlying commercial and economic reality of the transaction.

BUSINESS PURPOSE DOCTRINE

The business purpose doctrine (or bona fide purpose doctrine) is employed by the Court to seek an understanding of the motivations behind the transactions whether the main purpose of the transactions is for tax avoidance or other commercial justifications. In other words, Courts require that transactions are mainly driven by business or commercial justifications rather than by tax considerations. This doctrine will always be employed with the substance-over-form and step transaction doctrine to assess whether a series of transactions are pre-arranged and inserted into a composite transaction without any economic and commercial substance other than with the main purpose of tax avoidance.

STEP TRANSACTION DOCTRINE

The step transaction doctrine was developed by common law judges to enable them to assess a series of interconnected transactions as a single composite transaction. Under the step transaction principle, even if one or more of the whole series of transactions are bona fide, these transactions may be disregarded



and several related transactions can be treated as a single composite transaction. The doctrine is intended to prevent the possibility that two transactions might achieve the same financial result, but be taxed differently, solely due to the form that the legal steps have taken.

Usually the Courts employ three tests for purposes of determining whether or not it is appropriate to invoke the step transaction doctrine and only one of the three tests is required to be satisfied. The three tests are as follows:

(1) The "binding commitment test" examines if at the time the first step was entered into, there was a binding commitment to undertake the later step. The purpose of this test is to promote certainty in tax planning. As it is the most rigorous limitation test of the step transaction doctrine, it is seldom used and applies only where a substantial period of time has passed between the steps that are subject to scrutiny. It is important to note that if there is a time in the series of transactions during which the parties are not under a binding obligation, the steps cannot be examined using the binding commitment test, regardless of the parties' intent.

(2) The "end result test" examines whether or not separate steps constitute pre-arranged parts of a single transaction intended to reach an end result. This test is most often invoked in connection with the step transaction doctrine.

(3) The "mutual interdependence test" examines whether or not separate steps are so interdependent that the legal relations created by one step would have been fruitless without a completion of the series of steps. In other words, this test concentrates on the objective relationship between steps, rather than on their "end result". Accordingly, it can be considered that in a certain way the mutual interdependence test and end result test supplement each other.

In the UK case *Ramsay Ltd v I.R.C [1982] AC 300,* Lord Wilberforce applied the step transaction doctrine and stated that:-

> " 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. If it can be seen that a document or transaction was intended to have effect as part of nexus or series of transactions, or as an ingredient of a wider transaction intended as a whole, there is nothing in the doctrine to prevent it being so regarded; to do so is not to prefer form to substance, or substance to form. It is the task of the Court to ascertain the legal nature of any transaction to which it is sought to attach a tax or a tax consequence and if that emerges from a series or combination of transactions, intended to operate as such, it is that series or combination which may be regarded."

ECONOMIC SUBSTANCE DOCTRINE

Doctrine of economic substance is the latest and advanced concept developed by common law Court to attack sophisticated tax avoidance plan involving independent third parties which act as an intermediate indifferent parties in the whole plan. In the context of GAAR, economic substance doctrine requires the Court to perform economic analysis of the transactions to discern whether the transactions undertaken by the parties involved make economic and commercial sense other than for the main purpose of tax savings.

Besides looking at the legal substance in determining whether the legal arrangements are effective and executed as planned, the Court would look at whether the economic position of the taxpayer would be altered as a result of the transactions, in other words, a transaction lacks economic substance if it did not expose the taxpayer to any economic risk or offer the taxpayer any opportunity for profit, that was meaningful in relation to the resulting tax benefit.

The Court will consider several critical factors when invoking this doctrine, such as whether there will be a reasonable expectation of pre-tax profit when the transactions were undertaken. Whether there are any supervening market forces such as market risk or other non-tax considerations that could intervene the planned execution of the transactions involved.

Whether there are any tax indifferent intermediary involved, observed by Lord Diplock in *IRC v Burmah [1982] STC 30, at 32 (HL)*:-

> "The kinds of tax-avoidance schemes that have occupied the attention of the Courts in recent years...... involve interconnected transactions between artificial persons, limited company, without minds of their own but directed by a single mastermind."

Whether the transactions have all usual commercial features and is clearly an "ordinary business transaction" with economic substance. Economic substance doctrine is effective in commercial tax shelter plan where the transactions intend to produce a pre-tax loss (e.g. pre-tax profit minus transaction costs) and no commercial person would enter into the transaction without the tax benefit.

CONCLUSION

For years, the tax fraternity and the Courts in common law countries have fought with difficulties and challenges in interpreting statutory GAAR whenever a case involved tax avoidance and planning scheme. Malaysia inherited with a English common law system is without exception to these difficulties and challenges. In Part II of this article, the author will review two recent hallmark cases brought before the Court of Appeal on Malaysia GAAR.

The two cases are *Sabah Berjaya Sdn Bhd v. Ketua Pengarah Jabatan Hasil Dalam Negeri. (2000) MSTC 3771* and *Syarikat Ibraco-Peremba Sdn Bhd (SPS) v DGIR (2014) MSTC 30-084* which will be analysed and critically commented along with the key judicial doctrines developed over the years by the Court above. Finally the issues arise when interpreting Malaysia statutory GAAR. Armed with the knowledge and understanding of the application and limitations of the judicial doctrine of GAAR, any aspired tax accountant or lawyer will be more prepared to argue its cases persuasively before the Inland Revenue Board and the Court in genuine tax planning cases with commercial justifications and economic substances. Lastly, for the tax reform on Malaysia GAAR to align with the international tax jurisprudence and trends especially in the post implementation of the OECD BEPS (Base-Erosion and Profit-shifting) project that international tax avoidance has significantly eroded government tax revenue and at the same time tax competitiveness has prompted countries to compete with each other in attracting sufficient foreign and private investments for economic growth.

- *US: CA, 2002, Andantech L.L.C. v. Commissioner, 83 T.C.M. (CCH) 1476, 1504, 2002 T.C.M. (RIA) P 2002-097, at 543-44*
- *Y. Keinan, Rethinking the Role of the Judicial Step Transaction Principle and a Proposal for Codification, 22 Akron Tax J. pp. 45-47 (2007).*
- *Dr Patricia Lampreave, An Assessment Of The Anti-Tax Avoidance Doctrines In The United States And The European Union, IBFD Bulletin For International Taxation March 2012, pg 155.*
- *Jinyan Li, Economic Substance: Drawing The Line Between Legitimate Tax Minimization and Abusive Tax Avoidance, Canada Tax Journal (2006) Vol 5, No.1, pg 45. Ibid, pg 46-51.*
- *Long Term Capital Holdings v United States, 330 F.Supp. 2D 122, at 139 (D. Conn. 2004).*

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THE CHALLENGES AND OPPORTUNITIES

OF DIGITAL FREE TRADE ZONE (DFTZ)

LL Koong

What is crucial now is a 21st century version of globalisation-there's an old saying "the world is changing, and changing fast! If you don't embrace these rapid timescales, you will be buried by this new phenomenon. "

The adapting of new thing is so fast that you can't help but be swept away in a tidal wave of progress-whether you're ready for it or not. As you may or may not realise, the invention of lighters has caused the distinction of matches. Calculator has faded away the abacus, and now, we prefer to send e-card instead of traditional season's greeting card! Our conventional mobile SMS becomes stone-age communication tool with the existence of new-age messaging Apps such as WeChat, WhatsApp and etc.

We have entered a time of unprecedented changes in the world. Malaysia from a staple foodstuff agriculture society, to Industrial Revolution shifted the centre of economic activity from agriculture to industry and manufacturing. Today, in the era of scientific and technological revolution, the rapid growth of e-commerce is coupled with the increasing of mobile Apps usage. Technology has transformed human life and it has literally changed every aspect of

the way any business operates. The business environment is becoming increasingly complex.

It is a time when countries and international organisations are looking to the world stage and re-examining the role they want to play in its future. Faced with such a situation, we must ask ourselves a question: "If internationalism defined the 20th century, what will define the 21st century? Globalisation? Or the borderless e-commerce world?" E-commerce has emerged as a new force of global commerce. In a bid to help the e-commerce sector in Malaysia achieve its full potential, Malaysia introduced the National e-Commerce Strategy Roadmap in 2016. The aim is to double the nation's e-commerce growth and increase the GDP contribution to RM 211 billion by year 2020.

Recently, Malaysia and the Alibaba Group launched the Digital Free Trade Zone (DFTZ), which is the first digital free trade zone outside of China. The DFTZ will be a boost to Malaysia's e-commerce roadmap. With the launch of DFTZ, Malaysia will serve as a regional e-fulfilment centre and become the regional hub for SMEs, marketplaces and monobrands. Malaysia Airports Holdings Berhad (MAHB) will work with Cainiao Network, the logistics arm of e-commerce giant Alibaba Group to develop a regional e-commerce and logistics hub in the KLIA Aeropolis, the planned integrated airport city, as part of the DFTZ.

Prime Minister Dato' Sri Najib Tun Razak announced that DFTZ will start its operations in early October, after his recent visit to Alibaba Group head office in Hangzhou during the Belt and Road Forum in May. A total of 1,500 SMEs, with suitable products and services, will be chosen to participate in this new platform. DFTZ is expected to offer various incentives to help SMEs expand their markets, mainly to Chinese market.

In Hangzhou, Najib also witnessed the signing of a memorandum of understanding (MoU) among three parties to connect China (Hangzhou) Comprehensive E-Commerce Pilot Zone with Malaysia's DFTZ, which will facilitate global trade for SMEs around the world. The MoU seeks to enable the building of infrastructure for seamless cross-border e-commerce trade between Malaysia and China, and we hope that the world at large is Malaysia SMEs' e-market place ultimately!

A vibrant small and medium-sized enterprise (SMEs) sector is a vital ingredient for a healthy economy. SMEs are essential for maintaining an economic balance in a transition country. A greater number of SMEs with higher value-added activities, will empower and establish a formidable middle class of which may eliminate the middle income trap in Malaysia. Although SMEs make up over 90% of the total number of Malaysia's businesses, collectively their contribution are well below its potential, i.e. only 36% of the GDP. While the government has set a target of 41% by 2020 in the 2012-2020 SME Blueprint.

From the Alibaba's proposal, DFTZ will encourage, especially traditional brick-and-mortar businesses by SMEs, a seamless transition into the e-commerce sphere and it is also to enable young people and SMEs to have more opportunities to trade. Eventually, this digital economy would help to increase GDP contribution from SMEs in Malaysia to at least 60% - 80%.

Slower and decreased numbers of hiring have had a wider impact on the economy, affecting particularly the youth and new jobseekers. In 2015, the unemployment rate among youths was estimated to have reached 10.7%. This is equivalent to more than threefold of national unemployment rate of 3.1% according to Bank Negara in its 2016 annual report.

There are notable factors and issues that are worrying the ordinary Malaysian currently – higher unemployment rate among youths, rapid rise of property prices, slowdown in the rate of economic growth, high dependency on foreign workers, etc. The main factors why so many Malaysian youths and fresh graduates are now jobless could be the low level of R&D and innovation of business sectors and high reliance on low skill cheap labour and low value added activities.

But the reality is that trade and world economic integration and globalisation have suffered setbacks for one big reason: lack of shared economy or shared benefits. Hence, this proposed e-hub would empower and provide a platform for young entrepreneurs and SMEs with creative business ideas to venture overseas. Additionally, it will help the economic transformation of the country. DFTZ is expected to create 60,000 jobs by 2025, and Alibaba's e-talent development unit will help local entrepreneurs and startups to train and develop e-talents. It will attract more highly skilled talents from within and outside the country to work in Malaysia.

At the local front, there is now a new impetus of growth. With the DFTZ, the digital economy will become the catalyst to spearhead the country's economic development. However, DFTZ offers a unique trove of opportunities as well as challenges.

From a tax point of view, the establishment of the DFTZ, could potentially result in some loss of tax revenue in the immediate future.

In order to ensure a successful DFTZ implementation, a number of benefits, including speedier Customs clearance procedures, tax incentives and tax exemptions are expected to be granted. These facilities are aimed to reduce tax barriers to enable Malaysians to play an active role in e-commerce not only in the country but also at the international level.

Before the launch of the DFTZ, the Second Malaysian International Trade and Industry Minister, Datuk Seri Ong Ka Chuan mentioned that duty free concession and GST Relief will be given to DFTZ for the purchase of goods via internet, or e-commerce valued at RM1,200 and below. However, the current GST Act allows any person importing goods using air courier services with total value not exceeding RM500 per consignment and imported via specified international airports in Malaysia be granted GST relief. In addition, there may be tax exemptions of between 70%-100% of statutory income

for a period of 5-10 years.

In Malaysia, taxable income comprises all earnings derived from Malaysia. On the other hand, most foreign-source incomes are exempted. Often enough, the imposition and collection of tax on online transactions can be subjective and difficult. This can potentially result in a major gap in tax collections.

As we push forward with our mandate to make this DFTZ a success story in this region, it is imperative that this project is implemented with a critical eye with the aim to ensure sustainable income arising from this investment. Let's imagine, should there be no provision for Alibaba Group to have an establishment in Malaysia, as the DFTZ expands, there could be a significant loss of tax revenue as Alibaba could have potentially operated outside of Malaysia.

One of the concerns of this free-trade zone is the issue of cheaper duty-free Chinese imports to DFTZ. There is risk of DFTZ becoming a "dumping ground" for China goods. Consequently, our supply chain which mainly consists of local wholesalers, retailers, manufacturers, etc. especially the SMEs at large can be adversely affected. Our SMEs with annual turnover of less than RM500,000, cannot register for GST and as a result any supply made by these SMEs will be much more costly as no input tax can be claimed on their acquisitions or purchases. This illustrates just some of the potential threats and challenges of local businesses with this emerging free-trade zone. The question then becomes- what do we do about it?

"The world is changing, our mindset and way of doing business has to be changed. We either grow, or be left behind in this ever-changing world!"

We'd encountered numerous challenges and issues at the implementation stage of GST. According to the Survey on the GST Implementation carried out by the Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM), 63% of the respondents indicated that they have problems to operate the GST software. One of the reasons that certain businesses are adversely affected is that they are not technology savvy and incapable to adapt to new trend.

From a macro perspective, the emergence of DFTZ is a game changer and as we embark on this journey, this initiative will help the nation to succeed economically. While DFTZ is expected to create more jobs, on the contrary, it may also result in some job losses due to closure of conventional businesses. DFTZ, will create demand for new skillsets and potentially boost certain sectors, in particular, logistics services, production and processing services and professional services, i.e. legal, accountancy and real estate industry.

The underlying factors for national economic well-being are closely correlated with one another. If Malaysia can achieve breakthrough in this aspect, there will be more earning opportunities which enlarge the middle class and widen the national tax base. The rise of new industries could potentially attract more talents from outside Malaysia to work, stay and spend in Malaysia. These factors will stimulate the economic growth as well as raise property values and rents. In turn, income tax and GST collection would increase.

Looking forward, the main concern of the world now is the Fourth Industrial Revolution, and how artificial intelligence (AI) will change the world. With the topic of “A New Era of Intelligence”, the 2017 China (Shenzhen) IT Leadership Summit, which was held on 1 and 2 April brought together BAT, i.e. Founder and Chairman of Baidu, Mr. Li Yanhong, Chairman of Alibaba Group, Mr. Jack Ma and Chairman cum CEO of Tencent, Mr. Ma Huateng, to joint together to discuss this future development trend in the coming decades.

Back in Malaysia, I was recently invited as the moderator of “2050 National Transformation (TN50) Town Hall in Selangor” to gather feedback from youths regarding Malaysia’s aspiration to be a top 20 country in the world by 2050 and also the issues that young people believe will occur 30 years down the road. This TN50 Town Hall mainly covered the issues of digital and technology transformation to guide us to 2050. Through TN50, we aim to set a new “vision” for the nation.

Gartner’s predictions is that by 2025, which is halfway through our TN50, every industry will be transformed by digital business. Based on Jack Ma’s concept, DFTZ is one of the bigger stepping stones towards this predictions. Furthermore, Alibaba Cloud’s Southeast Asian data centre - a platform for big data under Jack Ma’s plan will be set up in Malaysia later this year to provide SMEs in Malaysia and the region with powerful, scalable and cost-effective cloud capabilities to support their global expansion.

The planned data centre, set to become the first global public cloud platform in Malaysia, will add to Alibaba Cloud’s data centre in 14 locations worldwide, covering mainland China, Hong Kong, Singapore, Japan, Australia, the Middle East, Europe and the United States. This data centre is aimed at helping Malaysian SMEs succeed in the digital age through technology such as big data and the Internet of Things.

DFTZ’s shared value can take many forms. We must strike a balance and prepare ourselves so that no one is left behind! The question we need to ask ourselves is are we ready to adapt to this new changing era?

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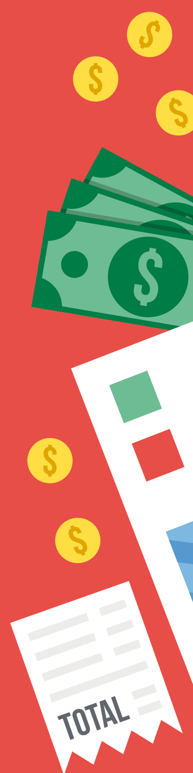
GRATUITIES FROM AN EMPLOYMENT

THE INCOME TAX TREATMENT

Kularaj K. Kulathungam



This article will examine the taxability of gratuity as well as compensation for the loss of employment and also examine the exemptions available. A payment of gratuity is generally a method employers use to attract and retain employees with an organisation. The process of attracting and retaining good employees has always been a challenge to most employers both in the private sector as well as in the public sector.

Any payment of gratuity by an employer may be either contractual or voluntary. It is generally accepted that the public sector employee would by virtue of his or her terms of service be eligible to receive payments in the form of gratuity when they retire from their service with the government. When it comes to the private sector, this form of payment may not be clearly stated in the terms of employment but would generally surface should there be a collective agreement between the employer and the employees union or in the event of a retrenchment exercise carried out by the employer. It must be stated that this form of payment would be entirely a voluntary payment from the employer.

Events over the last twelve months seems to indicate that in light of the higher cost of doing business in Malaysia as compared to other developing countries within the ASEAN region coupled with the perception of a slowdown in the Malaysian economy, that there may be more instances where employers may make lump sum payments in the nature of gratuity to the departing employees.

WHAT IS "GRATUITY"?

The term "Gratuity" could be defined as a gift by an employer to an employee in return for services. This is why gratuities could be paid when one employment contract ends even though there is a renewal of the contract with the same employer.

Section 13 of the Income Tax Act 1967 (as amended) provides the general provisions as to employment income whereas Schedule 6 paragraphs 14, 25, 25A, 25B, 25D and 30A would provide the specific exemptions available for gratuities. When income from an employment involves a payment of

gratuity, this income will fall to tax under Section 13(1)(a) of the Income Tax Act 1967 (ITA 1967) which reads as follows:

Section 13(1) Gross income of an employee in respect of gains or profits from an employment includes-

(a) any wages, salary, remuneration, leave pay, fee, commission, bonus, gratuity, perquisite or allowance(whether in money or otherwise) in respect of having or exercising the employment;

Unfortunately the Income Tax Act 1967 (ITA 1967) does not provide guidance in the form of a definition to the term "Gratuity". This lack of a specific definition oftentimes leads to a certain degree of difficulty in recognising and determining if the payment is a gratuity or if it is a payment of compensation for the loss of employment which would be taxed under Section 13(1)(e) ITA 1967 i.e. the tax consequences would be different. The difficulty will be compounded if the payment by the employer seems to be a combination of both a payment of gratuity and a payment for compensation for the loss of employment.

WHY AND HOW GRATUITIES ARE PAID?

A payment in the nature of gratuity could be made in a variety of circumstances such as retirement (either mandatory retirement or early retirement), a premature termination of a contract of service such as a retrenchment or voluntary separation or resignation from an employment.

When an employer considers the issue of redundancy or premature termination of employees, there are two main areas of consideration from a taxation perspective. These are whether the employer will provide the leaving employees with a lump sum payment (emphasis added) which could be in the nature of a gratuity or a payment in the nature of compensation for the loss of employment.

Employers may choose to reward past services or compensate for the loss of employment, or both but each methodology will have a differing impact to the employees receiving such payments from the employer. The ITA 1967 treats gratuity and compensation differently and as such the exposure to income tax in the hands of employees will also differ.

On the part of the employer or payer of gratuity or compensation for loss of employment, the impact from corporate income tax will be neutral as far as deductibility of the expenditure is concerned (the expenditure will be deductible provided it satisfies the provisions of Section 33(1) of the ITA 1967).

As the main impact would be on the leaving employees, it would be critical to fully understand the legal implications of such payments and the method of taxing this income.

GRATUITY - INCOME UNDER SECTION 13(1)(A) ITA 1967

Section 13(1)(a) of the ITA 1967 refers to the type of remuneration from an employment which is received by an employee and takes the form of cash or receipts convertible to cash. Any payments in the nature of gratuity will fall to be taxed on an employee under this provision.

The term "Gratuity" is not defined in the ITA 1967. Therefore, it is sometimes difficult to determine accurately what the real character of the payment is. As such, it would be prudent to examine carefully the circumstances and nature of the payment in order to determine the true purpose of the payment by the employer. Employers may term or label a payment to the departing employee in many ways but it should be recognised that mere form or labelling of a payment as ex-gratia payments or compensation will not be acceptable to the Director General of Inland Revenue (DGIR) as it must be the true character of the payment which should always be considered for income tax purposes.

Should the payment made by the employer be in reference to the past services of the departing employee with this employer, then this form of payment will generally fall to be treated as having the character of "Gratuity".

In cases where a payment is seen to have a mixed character i.e. having characteristics of both gratuity as well as compensation for loss of employment, the DGIR will clearly have to examine the circumstances behind the payment based on the normal practice of the employer in granting gratuities to leaving employees. The DGIR would base his decision on among others the normal amount or rate paid by the employer in the past or would request the examination of the employment contracts.

Example 1

Company A has a policy whereby any employee leaving the company having served the company for a continuous period of 10 years would be rewarded with a ex-gratia lump sum payment of RM20,000.

Though the payment made to the departing employee was labeled as "ex-gratia" it can be observed that the payment was computed based on the past services of the employee. This would be treated as a payment of gratuity.

The DGIR would also decide on an apportionment mechanism to determine the appropriate separation of the payment between gratuity and compensation for loss of employment. This cautious approach by the DGIR will prevent employees obtaining an unfair advantage from tax exemptions should the payment received by the employee be incorrectly categorised not as a gratuity but as a compensation from the loss of employment.

Example 2

Company A has a policy whereby any employee leaving the company having served the company for a continuous period of 10 years would be rewarded with a ex-gratia lump sum payment of RM20,000. Ali an employee who had served 15 years with the company had his employment terminated as the company was forced to undergo a rationalisation exercise. Ali received a severance payment amounting to RM70,000.

In this scenario there is a payment made to a departing employee which has a mixed character and based on the company's stated policy it can be determined that of the RM70,000 paid, an amount of RM20,000 should be attributable to gratuity and the balance of RM50,000 would be treated as compensation for loss of employment.

TAX TREATMENT OF GRATUITIES

All forms of retirement benefits or payments such as gratuities or pensions are taxable benefits unless they are specifically exempted under Schedule 6 of the Income Tax Act 1967 or via Statutory Exemption Orders issued by the Minister of Finance.

With effect from the year of assessment 2016 in accordance with Section 25(1) of the ITA 1967 all employment income which was received in a particular period will be taxed in the year the payment was received regardless of the fact that the income received was for a different period or year of assessment. Though this is a deviation from the tax treatment prior to the year of assessment 2016 where the payment received from gratuity would be taxed in the respective periods i.e. taxes will be adjusted retrospectively up to a maximum of five years of assessments, this new treatment, from a tax administration stand-point is more efficient both for the tax authority as well as taxpayers.

With effect from the year of assessment 2016, a partial exemption of gratuities has also been made available for employees who receive sums by way of gratuity on the retirement from an employment or termination of a contract of employment. This exemption is in accordance with Schedule 6 paragraph 25D of the ITA 1967 where an exemption of RM1,000 for each completed year of service is provided. Nevertheless it must be noted that as the law stands today there are no provisions which permits periods of employment with companies in the same group to be taken into account for the purpose of the exemption. Any balance of gratuity payment received by an employee after taking the exemption into consideration will be fully taxed in the year the gratuity was received.

Gratuities could be fully exempted from income tax under certain specific situations in accordance with Schedule 6 paragraph 25 of the ITA 1967. These situations or conditions are as follows:

(i) An employee receiving a payment of gratuity upon retirement if the DGIR is satisfied that the retirement was due to ill-health.

(ii) The retirement occurs on or after reaching the age of 55 years, or on reaching the compulsory age of retirement from employment specified under any written law, and in either case from an employment which has lasted 10 years with the same employer or with companies in the same group.

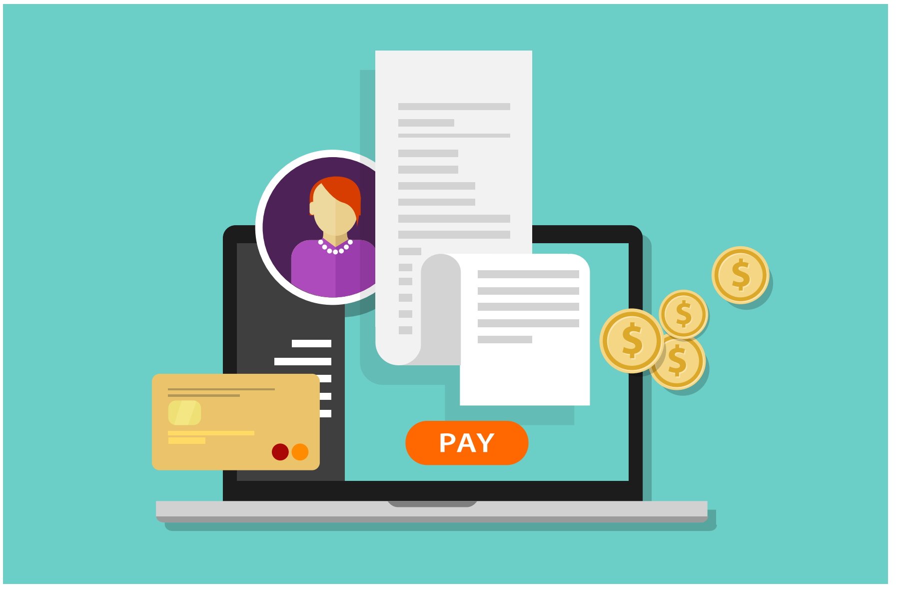
(iii) The retirement takes place on reaching the compulsory age of retirement pursuant to a contract of employment or collective agreement at the age of 50 years but before 55 years and that employment has lasted 10 years with the same employer or companies in the same group.

There are various terms in the above exemption conditions which would require closer examination namely the term retirement as well as the meaning of companies in the same group.

The term retirement as used in the ITA 1967 is very closely related to the age of the employee. Retirement cannot and does not mean a case where an employee leaves an employment only to take on a new employment with another employer. In these cases, the DGIR will not treat the any lump sum payment received by the employee as a retirement gratuity and the payment will be taxed in full as the exemption available under Schedule 6 of the ITA 1967 will be denied. Nevertheless, retirement also does not mean the person who has achieved the mandatory age for retirement is not allowed to seek employment elsewhere. It is submitted that as long as the mandatory age of retirement has been reached, the tax exemption must be given.

In addition, it must be noted that Schedule 6 paragraph 25 recognises service with companies in the same group of companies as employment with the same employer whereas Schedule 6 paragraph 25D does not. This can be implied from the construction of paragraph 25D which only applies to an individual if paragraph 25 does not apply to that individual. In other words, retirement from an employment under any written law or termination of a contract of employment as found in paragraph 25D can be deemed to imply that the employment referred to is the last employment before retirement.

As this article mainly examines the issues surrounding the payment of gratuities but these payments may have some elements of compensation for the loss of employment, it would be beneficial to briefly visit the tax treatment for compensation for the loss of employment.



COMPENSATION FOR LOSS OF EMPLOYMENT - INCOME UNDER SECTION 13(1)(E) OF THE ITA 1967

Section 13(1)(e) of the ITA 1967 specifically includes compensation from the loss of employment as gross income from an employment. Payments which could constitute payments of compensation from a loss of employment would include the following:

(i) Salary or wages in lieu of notice;
(ii) Compensation for a breach of a contract of service;
(iii) Payments to obtain release from a contingent liability i.e. an employer's obligation, under a contract of service;
(iv) Ex-gratia or contractual payments such as severance payments or redundancy payments which are made to employees who have become redundant for reasons beyond their control; or
(v) A payment in consideration of a covenant or similar agreement restricting the departing employee from engaging in an employment of a similar kind after the termination.

Payments as compensation for the loss of employment, similar to the case of payment of gratuity, may be made at the discretion of an employer. This form of payment could be triggered by takeovers, mergers or the reorganisation of a business. It could also be as result of a court action for wrongful dismissal or it could be a payment for the extinguishment of any right of an employee which could be actionable.

Similar to gratuity, the characteristics and nature of the payment has to be examined and the substance of the payment will prevail over the label attached to the payment or the form the payment takes. In general, the DGIR would give consideration to the normal practice by the employer in granting such payments to employees who are departing services with the employer in the determination of the character of the payment.

TAX TREATMENT OF COMPENSATION FOR LOSS OF EMPLOYMENT

Payments made by an employer to an employee as compensation for the loss of employment or payments for restricting the employees rights could be either given a full exemption from income tax or a partial exemption in accordance with Schedule 6 paragraph 15 of the ITA 1967.

The exemptions under Schedule 6 paragraph 15 of the ITA 1967 are as follows:

(i) Full exemption if the DGIR is satisfied that the payment is made due to ill health of the employee;
(ii) For payments made in connection with a period of employment with the same employer or companies within the same group, an exemption of RM10,000 is given for each completed year of service with the same employer of with the same group of companies.

It must be noted that in cases involving payments to employees for the loss of employment, it is important for the employer to not expressly state or imply that the departing employee will be re-employed with the same employer or any other employer as part of the agreement for the separation. Should this be stated expressly or be implied then the DGIR will correctly infer that the employee was not losing an employment but merely moving from one employment to another.

Should the above be seen to occur, the DGIR will not treat the payment as a payment of compensation for the loss of employment and the receipts by the employee will be fully taxed on the employee in the year the payment is received in accordance with Section 25(1) of the ITA 1967.

CONCLUSION

Though there are certain similarities between payments of gratuities and payments as compensation for the loss of employment, employers intending to make such payments must be clear that each of these payments have very distinct characteristics and as a consequence will have differences in their respective tax treatments.

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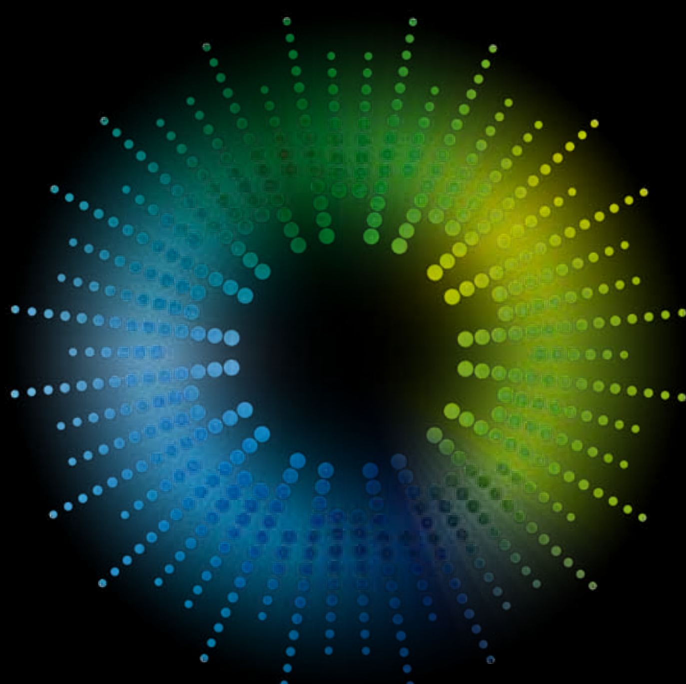


International Issues

The column only covers selected developments from countries identified by the CTIM and relates to the period 16 February 2017 to 15 May 2017.

BRUNEI

Tax audit framework – public ruling issued

The Ministry of Finance (MoF) issued Public Ruling (PR) No. 01/2017 – Tax Audit Framework, with the objective of assisting audit officers in carrying out their task more efficiently and effectively,

and assisting taxpayers in fulfilling their obligations. The ruling took effect from 1 March 2017. Details provided in the framework include:

- the objective of tax audits;
- the statutory provisions of the Income Tax Act (chapter 35) that are applicable to tax audits;
- explanation on types of tax audit carried out (i.e. desk audits and field audits);
- an increase in the years of assessments covered in tax audits to 6 years, however the statutory limitation on years covered will not be applicable for cases involving tax evasion or fraud;
- the method on selection of cases;
- the procedures in which tax audits are carried out;
- the rights and responsibilities of the audit officers, taxpayer and tax agent/representatives;
- the confidentiality of information obtained;
- offences and penalties;
- the payment or additional payment of tax; and
- the appeals against an assessment resulting from a tax audit.

Withholding of tax on specified nature of payments – public ruling issued

The MoF issued PR No. 04/2017 – Withholding of Tax on Specified Nature of Payments, with the objective of explaining the specified nature of payments that are chargeable to tax, the applicable tax rates and the method of payment of tax from these specified nature of payments. Other points in the PR include the change of withholding tax rates as follows:

- 2.5% for payments for interest, commission, fees or other payments in connection with any loan or indebtedness (previously 15%); and
- 10% for management fees (previously 15%).

All other rates remain unchanged from 2016, and the ruling is effective from 1 April 2017.

CHINA (PEOPLE'S REP.)

Amendment to Enterprise Income Tax Law passed by People's Congress

On 24 February 2017, the Standing Committee of the People's Congress passed the decision on the amendment to article 9 concerning the deductibility of charitable donations for the purposes of public welfare or interest under the Enterprise Income Tax Law (EITL). Charitable donations made for the purposes of public welfare or interest are deductible up to 12% of the enterprise's total annual profit. Donations in excess of 12% may be carried forward to the subsequent 3 years of assessment. The amendment is effective from 24 February 2017.

New administrative rules on special tax adjustment and mutual agreement procedure published

On 28 March 2017, the State Administration of Taxation (SAT) issued an announcement concerning new administrative rules for the special tax adjustment and mutual agreement procedures (SAT Gong Gao [2017] No.6). The Shanxi local tax bureau published the announcement on its website on 27 March 2017. The announcement is effective from 1 May 2017.

The announcement contains 62 provisions, also including the definitions of related enterprises, related transactions, contemporaneous documentation and profit level monitoring.

The announcement states that the focus of transfer pricing investigations will be on:

- enterprises engaged in related transactions with relatively large transaction amounts or involved in a variety of related transactions;
- enterprises having incurred losses for a considerable period of time and enterprises with low profit or fluctuating profitability;
- enterprises whose profitability is lower than that of other enterprises in the same industry;
- enterprises whose profit levels do not match the functions they

perform and risks they assume;
- enterprises having transactions with related parties located in countries with low tax rates;
- enterprises that fail to submit the statements on related transactions or fail to prepare contemporaneous documentation;
- the proportion between associated parties' debt investments received by enterprises and equity investments received by enterprises not being in compliance with the relevant regulation;
- the profits of enterprises set up by resident enterprises, or controlled by resident enterprises and Chinese residents, not being allocated or reduced distribution without reasonable business explanation if the enterprises are located in countries (regions) with an actual tax burden of less than 12.5%; and
- the implementation of other tax planning or arrangements that do not have a reasonable commercial purpose.

The announcement also clarifies that a comparability analysis must be conducted in order to select appropriate transfer pricing methods. A comparability analysis mainly covers the following five aspects:
- characteristics of assets transacted or services provided, including the physical characteristics, quality and quantity of tangible assets; characteristics and scope of services provided; as well as types, transactional forms, terms and scopes, and expected returns on intangible assets;
- functions performed and risks assumed by parties to transactions. Functions primarily include research and development, design, procurement, processing, assembly, manufacturing, inventory management, services and advertising, logistics and storage, financing, accounting and legal issues, and human resources management. The analysis of functions will focus on the similarity of the assets employed by the parties concerned in performing the functions. Risk analysis will include research and development risks, procurement risks, manufacturing risks, distribution risks, marketing risks, and management and finance risks;
- contractual terms, mainly including transaction subject matters, transaction amounts, prices, methods and conditions of charges and payments, delivery conditions, scopes and conditions of after-sale services, agreements on provision of additional services, the right to change and modify contracts, duration of contracts, and the right to terminate or renew contracts;
- economic circumstances, mainly including industry profiles, geographic locations, market scales, market segments, market shares, degree of market competition, consumers purchasing power, substitutability of products and services, prices of production factors, transportation costs, and government control; and
- business strategies, mainly including innovation and development strategies, business diversification strategy, risk avoidance strategies, and market share strategy.

New tax reductions announced

The Ministry of Finance (MoF) issued Public Ruling (PR) No. 01/2017 – Tax Audit Framework, with the objective of assisting audit officers in carrying out their task more efficiently and effectively, and assisting taxpayers in fulfilling their obligations. The ruling took effect from 1 March 2017. Details provided in the framework include:

On 19 April 2017, the premier held a meeting of the cabinet announcing a set of new tax reduction measures aimed at stimulating the economy. The new measures are set out below.

VAT

The number of value added tax (VAT) brackets applicable to general taxpayers will be reduced to three from 1 July 2017 onwards. The new VAT rates will be 17%, 11% and 6%. Agricultural products and natural gas will be subject to VAT at a rate of 11%.

Incentives for small and low-profit enterprises

The qualification threshold for tax incentives for small and low-profit enterprises will be increased from annual taxable income of CNY300,000 to CNY500,000.

Qualified enterprises will be taxed at a reduced rate of 20% on 50% of the enterprise's taxable income between the periods of 1 January 2017 to 31 December 2019.

Super-deduction for research and development (R&D) activities of small and medium-sized enterprises

The super-deduction (additional deduction) for R&D activities of small and medium-sized enterprises will be increased from 50% to 75% of R&D expenses for the period between 1 January 2017 and 31 December 2019.

Extension of other tax incentives

A number of existing tax incentives, such as incentives on urban land use tax granted to the logistics industry, and incentives for start-ups by disabled people, military personnel having completed their service and student graduates, will be extended to 31 December 2019.

Pilot tax policy on venture capital enterprises and individual investors released

Further to the tax reduction measures announced on 19 April, the Ministry of Finance (MoF) and the State Administration of Taxation (SAT) have jointly issued Cai Shui (2017] No. 38 dated 28 April 2017, announcing the pilot tax incentives for venture capital enterprises and individual investors investing in technology start-ups or venture investment enterprises. The notice applies from 1 January 2017 in respect of enterprise income tax and from 1 July 2017 in respect of individual income tax. The provisions are summarised below.

Special areas

Eight new innovation pilot hubs will be established in Beijing-Tianjin-Hebei region, Shanghai, Guangdong, Sichuan, Wuhan, Xi'an, Shenyang and Suzhou Industry Park, with technology start-ups are allowed to deduct 70% of the investment amount for enterprise income tax purposes. From 1 July 2017, this preferential policy will also be extended to individual investors.

Deductibility of commercial health insurance premiums

From 1 July 2017, payments of commercial health insurance premiums will be deductible up to CNY2,400 annually for nationwide individual income tax purposes.

Deduction

- A venture capital company or cooperative joint venture investment limited company that invests and holds a direct equity investment in qualifying technology start-ups for at least two years will be allowed a tax deduction of 70% of the investment amount from its taxable income once a holding period of two years has expired. If the allowable deduction cannot be fully utilised in a tax year, the balance amount may be carried forward to the following tax years.
- The same tax policy applies to individual investors for the purposes of individual income tax.

Qualifying conditions

Technology start-ups:

- the resident enterprises must be located in China and assessed on the basis of actual profit (as opposed to deemed profit);
- must have fewer than 200 employees (at least 30% of whom must have a university degree. In addition, their assets and annual revenue may not exceed CNY30 million at the time of investment;
- must have been in business for more than five years;
- not listed in the year in when the investment was made or in the following two years; and
- must have incurred at least 20% of total costs and expenses on research and development (R&D).

Venture investment enterprises:

- must be resident enterprises located in China which are assessed on the basis of actual profit and may not have set up technology start-ups;
- must register and operate in compliance of the provisions stipulated in the Administrative Measures on Venture Investment Enterprises (Order No. 39 of

the Development and Reform Committee);

- and their associated enterprises may only hold equity interests in technology start-ups which are less than 50% of the share capital of the technology start-ups; and
- must be registered in one of the designated areas (see below).

Individual investors:

- cannot be founders or employees of technology start-ups as described above. The same restriction applies to family members of individual investors; and
- cannot hold more than 50% of the share capital in such start-ups. Also, the technology start-up enterprises must be located in one of the designated areas.

Designated areas

- The eight pilot innovation (designated) areas include the Beijing-Tianjin-Hebei region, Shanghai, Guangdong, Sichuan, Wuhan, Xi'an, Shenyang and Suzhou Industrial Park.

HONG KONG

Amendments to Stamp Duty Ordinance gazetted

On 16 February 2017, Inland Revenue Department published the Inland Revenue (Amendment) (No. 2) Ordinance 2016 (the Amendment Ordinance), it aims clarify the stamp duty treatment in respect of regulatory

capital securities (RCSs) issued by financial institutions in compliance with the Basel III capital adequacy requirements.

The Basel III capital adequacy requirements are minimum standards promulgated by the Basel Committee on Banking Supervision, under which financial institutions must hold a certain amount of regulatory capital expressed as a percentage of their total risk-weighted assets. Financial institutions may seek to comply with the Basel III requirements by strengthening their capital base through, among other means, issuing specified securities.

Before the enactment of the Amendment Ordinance, the RCSs regarding interest on money borrowed from or lent to associated corporations were not treated as debt securities. Correspondingly, the Stamp Duty Ordinance (SDO) has been amended so that the transfer of RCSs is, as are other transfer transactions relating to debts, exempt from stamp duty. With these amendments, a contract note is not required to be executed or stamped for the sale or purchase of a RCS. Further, any other transfer of RCS is exempt from stamp duty under heads 2(3) and 2(4) of the First Schedule to the SDO.

Budget 2017-18 – proposal released

In the 2017-18 Budget, the Financial Secretary proposes the following tax measures which require legislative amendments before implementation.

Reducing profits tax, salaries tax and tax under personal assessment for the year of assessment (YA) 2016/17

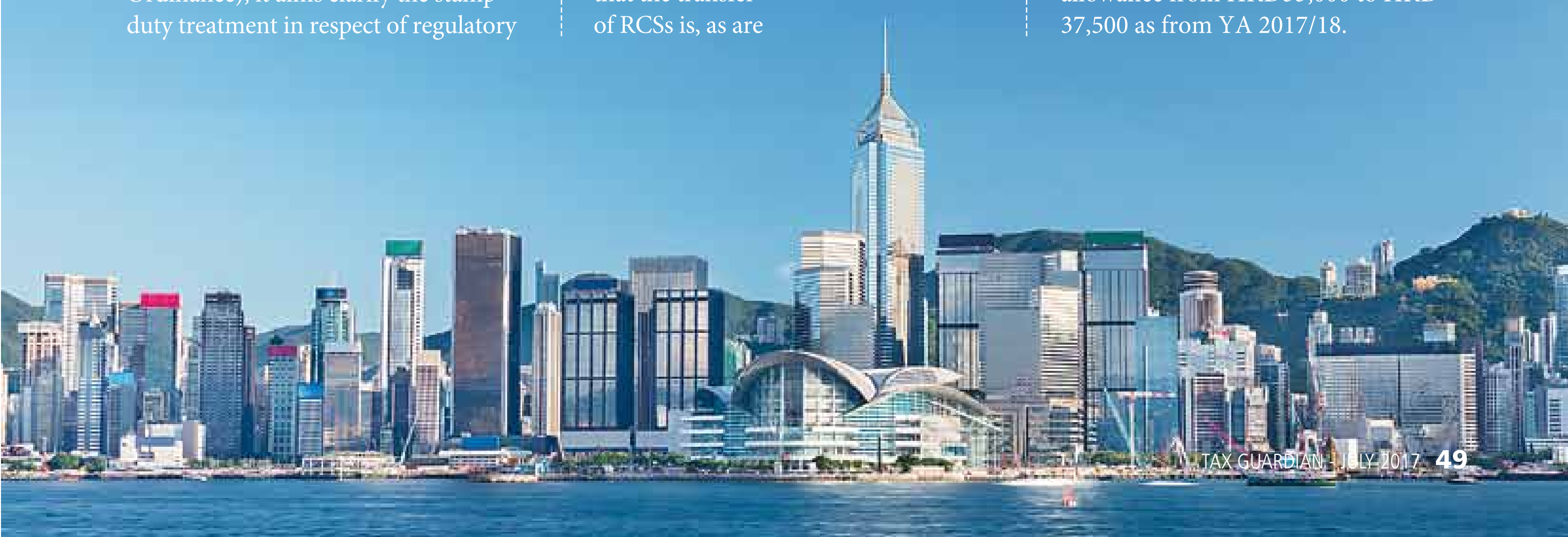
A one-off reduction of profits tax, salaries tax and tax under personal assessment for YA 2016/17 of 75% is proposed, subject to a HKD20,000 cap for each case.

Increasing the width of marginal tax bands

It is proposed to widen the marginal tax bands for salaries tax from HKD40,000 to HKD45,000 from YA 2017/18.

Increasing disabled dependant allowance and dependent brother or dependent sister allowance

It is proposed to increase the disabled dependant allowance from HKD66,000 to HKD75,000, and the dependent brother or dependent sister allowance from HKD33,000 to HKD 37,500 as from YA 2017/18.



Raising the deduction ceiling for self-education expenses

It is proposed to increase the deduction ceiling for self-education expenses from HKD80,000 to HKD100,000 as from YA 2017/18.

Extending the entitlement period for home loan interest deduction

The Financial Secretary proposes to extend the entitlement period for deduction for home loan interest from 15 to 20 years of assessment as from YA 2017/18, while maintaining the current annual deduction ceiling of HKD100,000.

Guidance on due diligence procedures for entity accounts updated

On 10 April 2017, the Inland Revenue Department updated the guidance on due diligence procedures required under the OECD's Common Reporting Standard for entity accounts.

For reporting purposes, an entity will be either a financial institution or a non-financial entity (NFE). With regard to pre-existing entity accounts existing as at 31 December 2016, the main content of the guidance is summarised below.

Threshold exemption

Unless so requested by the relevant reporting financial institution, a pre-existing entity account with an aggregate account balance or value not exceeding HKD1.95 million as at 31 December of a calendar year or the last day of any other appropriate reporting period is not required to be reviewed, identified, or reported as a reportable account.

Reportable accounts

A pre-existing entity account is a reportable account where the review procedures identify the account as held by one or more entities that are reportable persons or which are passive NFEs with one or more controlling persons that are reportable persons.

Account holder

The entity will be reportable if the information obtained by the reporting financial institution indicates that the entity is resident in a reportable jurisdiction. Such information will include, but is not limited to:

- a place of incorporation or organisation in a reportable jurisdiction;
- an address in a reportable jurisdiction; or
- where the entity is a trust, an address of one or more of the trustees in a reportable jurisdiction.

As for new entity accounts that are opened and maintained by reporting financial institutions on or after 1 January 2017, the due diligence procedures are broadly the same as those for pre-existing entity accounts, except that no de minimis threshold exists.

INDIA

Clarification on determination of POEM issued

The Central Board of Direct Taxes (CBDT) has issued Circular No. 8/2017 of 23 February 2017 clarifying that the existing provisions on place of effective management (POEM) will not apply to a company with turnover or gross receipts of INR500 million or less in a financial year.

The concept of POEM in determining the residential status of a company, other than an Indian company, was introduced by the Finance Act, 2015 and will take effect from 1 April 2017. The CBDT previously issued Circular No. 6/2017 of 24 January 2017 providing guiding principles for determining the POEM of a company.

Secondary adjustment to transfer pricing introduced

In the recent Budget for 2017-18, the government proposed to introduce a new transfer pricing provision under Section 92CE of the Income Tax Act, 1961 (ITA) stating that secondary adjustment will be made by a taxpayer to the following primary adjustment:

- suo motu adjustment made by the taxpayer in its tax return;
- an adjustment made by the tax authority which has been accepted by the taxpayer;
- an adjustment that was determined under an advance pricing agreement (APA);
- an adjustment arising as a result of a resolution made under a mutual agreement procedure (MAP); or
- an adjustment made as per safe harbour rules.

Furthermore, it was proposed that,

as a result of the primary adjustment to transfer pricing, a taxpayer is required to repatriate excess funds, if any, held by an associated enterprise (AE) to India within a prescribed period of time. If it fails to do so, the excess funds will be regarded as an advance granted by the taxpayer to its AE, with the interest on such advance being computed as per the transfer pricing provisions.

The proposed new transfer pricing provision under Section 92CE of the ITA will not apply if the amount

of primary adjustment made does not exceed INR10 million, or where primary adjustment is made in respect of an assessment year beginning on or before 1 April 2016. The amendment takes effect from 1 April 2017.

Lower House of Parliament passes Finance Bill 2017

On 22 March 2017, the Lower House of Parliament (Lok Sabha) passed the Finance Bill 2017. The key amendments to the Finance Bill 2017 are set out below:

- Proposed Section 94B of the Income Tax Act, 1961 (ITA) limiting the deduction of interest paid to non-resident associated enterprises has been amended. The phrase "pays interest or similar consideration" was changed to "incurs any expenditure by way of interest or of similar nature".
- Foreign institutional investors are excluded from the provisions of indirect transfer of shares as explained in Explanation 5 of Section 9(1)(i) of the ITA. This exclusion is applicable for assessment years from 1 April 2012 to 1 April 2015. Furthermore, Category I and II foreign portfolio investors are excluded from the provisions of indirect transfer of shares as explained in Explanation 5 of Section 9(1)(i) of the ITA, such exclusion being applicable from assessment years beginning on 1 April 2015.
- A new Section 139AA to the ITA was proposed, under which stating the Aadhaar number in tax returns is compulsory, as is applying for a permanent account number (PAN). Aadhaar is an identification number issued to Indian citizens by the Central government.
- Provisions concerning tax collection at source (Section 206C(1D) of the ITA) applies to cash sales for amounts exceeding INR200,000.
- The monetary limit for cash transactions proposed under Section 269ST of the ITA has been reduced from INR300,000 to INR200,000.
- Consequential amendment was made to the definition of "income" (under Section 2(24)) to provide reference to the proposed new Section 56(2)(x) of the ITA. Proposed Section 56(2)(x) extends the taxability of gifts, if received, to all taxpayers, i.e. companies, firms, etc. However, it was amended to exclude gifts received from an individual by a trust created for the sole benefit of his relative, or gifts received by or from a charitable trust.
- An amendment was made to the provision on minimum alternate tax which is applicable to companies preparing financial statements in accordance with Indian accounting standards. The definition of "transition amount" does not include an equity component of compound financial instruments.
- The amendment provides for a merger of tribunals and uniform appointment rules.

CGST and IGST bills passed by GST Council

On 4 March 2017, the GST Council approved the draft Central Goods and Services Tax (CGST) Bill and Integrated Goods and Services Tax (IGST) Bill.

Some of the salient points of the CGST and IGST Bills are as follows:

- A single state-wide registration for a taxpayer to file his returns, pay taxes and fulfil other compliance requirements. Most of the compliance requirements can be done online.

- A taxpayer has to file one single return state-wide to report all his supplies and pay the applicable taxes (i.e. CGST, IGST, Union Territory Goods and Services Tax (UTGST) and State Goods and Services Tax (SGST)).
- GST registration is not required for a business with an annual turnover of INR2 million or less. However, the taxpayer may choose to obtain a voluntary registration for input tax credit purposes. The annual turnover threshold for special category states will be INR 1 million.
- A composition scheme is available for all traders, selected manufacturing sectors and restaurants in the services sector with a turnover up to INR5 million. A qualified business entity may opt for this scheme where it can pay a lower rate of tax and fulfil very minimal compliance requirements.
- Input tax credit (ITC) would be admissible on all goods and services used in the course or furtherance of business, except on a few items listed in the Law.
- ITC can be used for the payment of taxes under federal and state law. Any ITC entitlement arising out of taxes paid under the IGST and CGST can be cross-utilised for paying taxes under the laws of the states or union territories. Similarly, credit of CGST/SGST/UTGST can be utilised for the payment of IGST. However, such payments must be made in a pre-defined order.
- The existing mechanism of Input Service Distributor (ISD) under the Service Tax Law has been retained to allow the flow of ITC in respect of input services within a legal entity.
- 90% of the claimed amount on a provisional basis will be refunded within seven days from the filing of the refund application by an exporter. The balance of 10% will be paid after verification of the refund claim is completed.
- To provide certainty in tax matters, a provision has been made for an Advance Ruling Authority.
- An anti-profiteering provision has been incorporated to ensure that the reduction of tax incidences will be passed on to consumers.
- Taxpayers undergoing financial hardship will be allowed to make payment of taxes in instalments, upon approval by the Commissioner.

The remaining State Goods and Services Tax (SGST) and the Union Territory Goods and Services Tax (UTGST) will be considered for approval in the meeting scheduled on 16 March 2017.

Note 1: The reason for having these different bills is because the Constitution of India has given both the federal government and states the financial powers to levy taxes. Therefore, the CGST and SGST will be levied by the federal government and respective states will levy goods and services that fall under their domain, meanwhile IGST will be levied on the supply of goods and services from one state to another. Under the UTGST Act, the details of GST rates payable against the movement of goods and services in Union territories are explained.

Note 2: Further to the GST Council's meeting on 16 January 2017, it has been announced that the implementation of GST will be postponed from 1 April 2017 to 1 July 2017.

SINGAPORE

Budget for 2017 presented to Parliament

The Budget for 2017 was presented to Parliament on 20 February 2017. The following provisions were presented:

a) Individual taxation

- A personal income tax rebate for tax residents will be introduced at a rate of 20%, with an annual cap of SGD500 for YA 2017.

(b) Corporate taxation

- The corporate income tax rebate will remain unchanged at 50%, with an increase in the annual cap from SGD20,000 to SGD25,000 for the year of assessment (YA) 2017. The rebate will be extended to YA 2018, granted at 20 % of tax payable, with a reduced annual cap of SGD

INDONESIA

Regulation on exchange of information

The Minister of Finance issued Regulation No. 39/PMK.03/2017 on 3 March 2017 on the exchange of information as required under the international agreements entered into by the government including tax treaties, tax information exchange agreements, the Convention on Mutual Administrative Assistance in Tax Matters, multilateral or bilateral competent authority agreements; and intergovernmental agreements.

The regulation sets out, inter alia, the information that could be released, conditions for the release of information requested and the reporting requirements of the reporting entities. The information could be exchanged through formal requests to the competent authorities, voluntarily or through automatic periodical reporting.

10,000.

- The WHT exemption on payments made to non-resident non-individuals for structured products offered by Financial Institutions (FI) will be extended until 31 March 2021.
- Taxpayers may opt to claim the tax deduction under Section 14D of the Income Tax Act (ITA) for 75% of the payments made under a cost sharing agreement (CSA) incurred for qualifying research and development projects under a new safe harbour rule, instead of subjecting the CSA payments to specific restriction rules which disallow certain categories of expenditure. The change will apply to CSA payments made on or after 21 February 2017. Further details are expected.
- The withholding tax (WHT) exemption on payments for international telecommunications submarine cable capacity under an Indefeasible Rights of Use agreement will be extended until 31 December 2023.

(c) Tax incentives

- Intellectual property (IP) income will be incentivised under the Intellectual Property Development Incentive (IDI) regime. The new regime incorporates the Base Erosion and Profit Shifting (BEPS) compliant modified nexus approach. Accordingly, IP income will be removed from the scope of Pioneer Services/Headquarters Incentive and the Development and Expansion Incentive Services/Headquarters for incentive awards approved on or after 1 July 2017. Existing incentive recipients will continue to have such income covered under their existing incentive awards until 30 June 2021. The IDI will take effect on or after 1 July 2017. Further details are expected.
- The Global Trader Programme (GTP) will be enhanced as follows:
- the requirement for qualifying transactions to be carried on with qualifying counterparts will be removed. Consequently, a concessionary tax rate will be granted to approved global trading companies (GTCs) on income derived from qualifying transactions with any counterparty;
- a concessionary tax rate will be granted to approved GTCs on physical trading income derived from transactions in which the commodity is purchased for the purposes of consumption in Singapore or for the supply of fuel to aircraft or vessels within Singapore; and
- a concessionary tax rate will be granted to approved GTCs on physical trading income attributable to storage in Singapore which adds value to commodities by any physical alteration, addition or improvement (including refining, blending, processing or bulk-breaking).
- The enhancements above will apply to qualifying income derived by approved GTCs from qualifying transactions on or after 21 February 2017.
- The existing package of tax incentive schemes for Project and Infrastructure Finance, with the exception of stamp duty remission, will be extended until 31 December 2022. The remission of stamp duty payable on the instrument of transfer relating to the transfer of qualifying infrastructure projects/ assets to qualifying entities listed, or to be listed, on the Singapore Exchange will be allowed to lapse after 31 March 2017. All other conditions of the schemes remain the same. Further details are expected. The Finance and Treasury Centre (FTC) scheme will be refined to streamline the

qualifying counterparties for certain transactions of approved FTCs to help ease the FTCs' compliance burden. The change will apply to new or renewal incentive awards approved on or after 21 February 2017. Further details are expected.

- The Aircraft Leasing Scheme (ALS) will be extended until 31 December 2022 and refined as follows:
- the scope of qualifying ancillary activities for approved aircraft lessors under Section 43Y of the ITA will be updated to cover incidental income derived on or after 21 February 2017 from the provision of finance in the acquisition of aircraft or aircraft engines by any lessee; and
- the concessionary tax rate on income derived from leasing of aircraft or aircraft engines and qualifying ancillary activities will be streamlined from 5% and 10% to a single rate of 8% for new or renewal incentive awards approved on or after 1 April 2017.
- The automatic WHT exemption regime will be extended to qualifying payments made on qualifying loans entered into on or before 31 December 2022. The EDB will release further details by May 2017.
- The Integrated Investment Allowance (IIA) scheme will be extended until 31 December 2022. In addition, one of the requirements is liberalised, i.e. the qualifying productive equipment may be used by the overseas company primarily, instead of solely, to manufacture products for the qualifying company under an approved project. The relaxation in the qualifying requirement will apply to expenditure incurred on qualifying productive equipment for a project approved on or after 21 February 2017.

The following incentives will be discontinued:

- The 250% tax deduction under the Computer Donation scheme will be withdrawn from 20 February 2017.
- The Accelerated Depreciation Allowance for Energy Efficient Equipment and Technology (ADA-EEET) scheme under Section 19A (6) of the ITA that was introduced in 1996 will be withdrawn after 31 December 2017. Accordingly, no ADA-EEET will be granted for equipment installed on or after 1 January 2018.
- The Approved Building Project scheme will be allowed to lapse after 31 March 2017.
- The International Arbitration Tax Incentive will be allowed to lapse after 30 June 2017.
- The accelerated Writing-Down Allowances for acquisition of IP rights for Media and Digital Entertainment (MDE) content will be allowed to lapse after the last day of the basis period for YA 2018.

(d) Goods and Services Tax

- The GST Tourist Refund Scheme (TRS) will be withdrawn for tourists departing by international cruise from cruise terminals and having made purchases on or after 1 July 2017. Tourists departing by international cruise from the cruise terminals will have until 31 August 2017 to claim refunds on purchases made before 1 July 2017. The TRS facilities at the cruise terminals will be removed after 31 August 2017.

Annual revenue threshold for filing Form C-S and criteria for ECI waiver – amended

On 7 March 2017, the Second Minister of the Ministry of Finance (MoF) announced in the MOF Committee of Supply Speech 2017 that the IRAS will increase the annual revenue threshold for filing Form C-S (simplified corporate tax return) from the current SGD1 million to SGD5 million. This will take effect from the year of assessment (YA) 2017. All other conditions will remain unchanged.

Further to the above, the Second Minister also announced the criteria for the waiver of the requirement to file estimated chargeable income (ECI) will be revised as follows:

- Companies with financial year end that is in or before June 2017, the annual revenue does not exceed SGD1 million for the financial year, and ECI is nil for the YA;
- Companies with financial year end that is in or after July 2017, the annual revenue does not exceed SGD5 million for the financial year, and ECI is nil for the YA.

Electronic filing of estimates of chargeable income

On 31 March 2017, the Income Tax (Electronic Filing of Estimates of

Chargeable Income) Rules 2017 were gazetted. The Rules state the effective year of assessment to which a class of companies must furnish the estimate of chargeable income using the electronic service provided by IRAS as follows:

- YA 2018 – Companies with revenue over SGD10 Million in YA 2017
- YA 2019 – Companies with revenue between SGD1 Million and SGD10 Million in YA 2017
- YA 2020 – All companies

The Rules entered into force on 31 March 2017.

THAILAND

Tax deductions and tax holidays – legislation released

The Revenue Department has released a number of laws granting tax deductions and tax holidays. They are summarised below.

- Royal Decree No. 631, gazetted on 11 February 2017 provides corporate entities corporate social responsibility tax deduction amounting to 200% of support donations provided to approved small and medium-sized enterprises. The deduction, which is subject to a maximum amount, is effective from 1 January 2016 to 31 December 2018.
- Royal Decree No. 638, gazetted on 13 February 2017 provides Corporate entities and resident individuals corporate social responsibility tax deduction amounting to 150% of donations made between 1 January 2017 and 31 March 2017 to southern area flood victims. The deduction will be subject to different caps depending on the corporate entities or resident individuals.
- Royal Decree No. 637, gazetted on 13 February 2017 provides start-up business incorporated between 1 January 2017 and 31 December 2017 a tax holiday for five financial years, subject to meeting the rules and conditions set out by the Thai Revenue Department.
- Ministerial Regulation No. 325 (B.E. 2560), gazetted on 17 February 2017 to provides tax exemption up to THB10 million worth of gifts received by athletes under Section 42 of the Revenue code. The exemption will apply retrospectively from 1 February 2016.

Additional tax deduction for employees aged over 60 years

Royal Decree No. 639, which effectively allows double tax reduction for corporate income tax deduction on the cost of hiring eligible employees aged over 60 years, was gazetted on 2 March 2017. The conditions to be eligible for the double deduction are as follows:

- he eligible employee must be a Thai national and must never have been a director or shareholder of the employer;
- the salary paid to an eligible employee must not exceed THB 15,000 per month; and
- the total number of eligible employees must not exceed 10% of the total number of employees in the company.

The deduction is effective from 1 January 2016.

VIETNAM

Transfer Pricing Decree No. 20/2017/ND-CP

On 24 February 2017, the government released the Transfer Pricing (TP) Decree No. 20/2017/ND-CP (TP Decree) to replace the existing TP regulation, Circular 66/2010/TT-BTC. The TP Decree will take effect on 1 May 2017. Some of the changes introduced in the TP Decree are set out below:

- Two entities would be regarded as related party if an entity owns at least 25% (previously, 20%) of the equity of the other entity.
- Guidance on the benchmarking exercise is provided in the TP Decree.
- Interest on total loans is capped at 20% of earnings before interest, taxes, depreciation and amortisation.
- If related-party services are rendered, the related parties must ensure, inter alia, that the services rendered are beneficial to the recipient and that such services are not duplicative in nature.
- A Vietnamese ultimate parent company with worldwide consolidated revenue in a fiscal year exceeding VND18,000 billion must prepare a master file, a local file and a country-by-country report. Other Vietnamese companies must prepare such documents if their ultimate parent companies are required to prepare the three-tiered TP documentation in their home tax jurisdiction.

The following taxpayers are exempt from preparing TP documents:

- taxpayers with annual total revenue below VND50 billion and total related-party transaction values below VND30 billion;
- taxpayers that have concluded advance pricing agreements (APAs) and submit annual reports for APAs; or
- taxpayers that has revenue below VND200 billion, perform simple functions and achieve the prescribed earnings-to-tax ratio.

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

The technical updates published here are summarised from selected government gazette notifications published between 16 February 2017 and 15 May 2017 including Public Rulings and guidelines issued by the Inland Revenue Board Malaysia (IRBM), the Royal Malaysian Customs Department and other regulatory authorities.

INCOME TAX

Income Tax (Exemption) Order 2017

Income Tax (Exemption) Order 2017 [P.U.(A) 52], gazetted on 15 February 2017, provides a 100% income tax exemption on all sources of income of a religious institution or organisation and absolves such an institution or organisation from any requirement to furnish an income tax return pursuant to Section 77 of the Income Tax Act 1967 (ITA). For the purpose of the Order, the "religious institution or organisation" must be established in Malaysia exclusively for the purpose of religious worship or the advancement of religion and is not operated or conducted primarily for profit. In addition, the institution or organisation must be registered with the Registrar of Societies Malaysia or under any written law governing it.

Income Tax (Exemption) (No. 2) Order 2017

Income Tax (Exemption) (No. 2) Order 2017 [P.U.(A) 117], gazetted on 10 April 2017, exempts a "qualifying person" from payment of income tax on an ascertained amount of chargeable income derived from the business source in the basis period for a year of assessment. The Order is effective for the years of assessment of 2017 and 2018 only. The Order formalises the Budget 2017 proposal to reduce the corporate income tax rate, based on incremental chargeable income as compared to the immediate preceding year of assessment. The reduction is available on chargeable income from business sources and does not apply to passive income such as interest income or non-business rental income. The Order will not apply in certain cases. For example, a company claiming the reinvestment allowance tax incentive or incentives under the Promotion of Investments Act 1986 or a company that has made a claim for group relief, would not be eligible for the tax reduction. A full "non-application" list is included in the Order.

Income Tax (Deduction for Expenditure in Relation to a Vendor Development Programme) (Amendment) Rules 2017

Income Tax (Deduction for Expenditure in Relation to a Vendor Development Programme) (Amendment) Rules 2017 [P.U.(A) 73], gazetted on 13 March 2017, extend the incentive provided under Income Tax (Deduction for Expenditure in relation to Vendor Development Programme) Rules 2014 [P.U.(A) 169].

The Rules provide a double deduction on qualifying expenditure such as product quality development, business process re-engineering and vendor skills training, for a period of three consecutive years of assessment (YAs), commencing from the YA in which the expenditure is first incurred. The total qualifying expenditure for each YA is capped at RM300, 000. The Rules are applicable to a qualifying resident anchor company that participates in the approved Vendor Development Programme (VDP) under a memorandum of understanding with the Ministry of International Trade and Industry signed between 1 January 2014 and 31 December 2016. The new amended rules extend the incentive to 31 December 2020.

Guidelines on Deduction for Expenses in Relation to Secretarial Fee and Tax Filing Fee

The IRBM has issued guidelines dated 8 February 2017 captioned "Garis Panduan Potongan bagi Perbelanjaan berhubung dengan Yuran Kesetiausahaan dan Yuran Pemfailan Cukai" to provide clarifications on the tax treatment of the secretarial and tax filing fees. The Guidelines provide an extremely restrictive interpretation of the Rules and seek to limit the tax deduction to very specific items. For example, other incidental expenses such as reimbursements and out-of-pocket expenses are excluded from the qualifying secretarial and tax filing fees. The Guidelines also state that fees for the preparation of income tax computation and/or tax advisory are excluded from the qualifying tax filing fee.

Guidelines on Estimate of Tax Payable

The IRB has issued an operational guideline dated 23 February 2017 captioned "Mengemukakan Anggaran Cukai Yang Kena Dibayar Di Bawah Seksyen 107C Akta Cukai Pendapatan 1967" to clarify the procedures for the submission of the tax estimation forms by companies, co-operative societies, trust bodies, limited liability partnerships and companies with paid-up ordinary share capital of RM2.5 million and less.

Deferment of Deadline for FATCA Reporting

The IRBM has announced that the date for submitting the 2014, 2015 and 2016 reportable information for the US Foreign Account Tax Compliance Act (FATCA) has been deferred to 30 June 2018, as the Malaysia-US Inter-Governmental Agreement (IGA) is still being finalised. The date for submitting the 2017 reportable information is also scheduled for30 June 2018.

STAMP DUTY

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2017

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2017 [P.U.(A) 78] was gazetted on 16 March 2017 and came into operation on 17 March 2017. The Order provides that any tax payable under the ITA and any stamp duty payable under the Stamp Act 1949 in relation to the following, shall be remitted in full:

- Medium Term Notes (MTN) issued by the National Savings Bank pursuant to the MTN programme in nominal values of up to RM1 billion;
- *Sukuk Murabahah* issued by the National Savings Bank pursuant to the *Sukuk Murabahah* programme in nominal values of up to RM1 billion; and
- Guarantee provided or to be provided by the government of Malaysia relating to the MTN and *Sukuk Murabahah.*

Stamp Act (Amendment) Bill 2016 Withdrawn

Stamp Act (Amendment) Bill 2016 (the "Bill"), tabled in Dewan Rakyat on 23 November 2016 for its first reading, and was scheduled for its second reading in March 2017. However, the Bill has been withdrawn from the second reading.

LABUAN

Labuan Business Activity Tax (Amendments) 2017 Bill

Labuan Business Activity Tax (Amendments) 2017 Bill was passed by the Dewan Rakyat on 5 April 2017. The Bill seeks to amend Section 21 of the Labuan Business Activity Tax Act 1990 (LBATA) to specifically provide for a fine not exceeding RM1 million or imprisonment for a term not exceeding two years or both, for any contravention or failure to comply with any regulations made under the LBATA.

CUSTOM & EXCISE DUTIES

Customs Duties (Exemption) (Amendment) (No.2) Order 2017

The Customs Duties (Exemption) (Amendment) (No.2) Order 2017 [P.U. (A) 79] was gazetted on 20 March 2017 and came into operation on 21 March 2017. This Order provides for an amendment in Part I of the Schedule in relation to item 66, in column (2), to include "(xxii) JX Nippon Oil & Gas Exploration (Deepwater Sabah) Limited."

Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2017

The Customs Duties (Goods of ASEAN Countries Origin) (ASEAN

Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2017 [P.U. (A) 100] was gazetted on 31 March 2017 and came into operation on 1 April 2017. This Order revokes the Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2012 [P.U. (A) 277/2012]. The new Order further clarifies the scope of import duties under ATIGA (ASEAN Trade In Goods Agreement signed on 26 February 2009), the interpretation of rates and the classification of goods in the Second Schedule..

Customs Duties (Amendment) (No 2) Order 2017

The Customs Duties (Amendment) Order 2017 [P.U. (A) 101] was gazetted on 31 March 2017 and came into operation on 1 April 2017. The new Order provides for amendments in the First Schedule to the Customs Duties Order 2017 [P.U. (A) 5/2017].

Customs Act 1967 (Prohibition of Exports) Order 2017

The Customs (Prohibition of Exports) Order 2017 [P.U. (A) 102] was gazetted on 31 March 2017 and came into operation on 1 April 2017. This Order revokes the Customs (Prohibition of Export) Order 2010 [P.U. (A) 491/2012]. The new Order introduces new Schedules which stipulate conditions for 'absolute prohibitions and conditional prohibitions'. . Other changes include new provisions which govern exemptions, the timing in which the export license and supporting documents are to be produced, amendments and cancellation of licenses, the application of other laws and the savings provision.

Customs Act 1967 (Prohibition of Imports) Order 2017

The Customs (Prohibition of Imports Order 2017 [P.U. (A) 103] was gazetted on 31 March 2017 and came into operation on 1 April 2017. This Order revokes the Customs (Prohibition of Import Order 2010 [P.U. (A) 490/2012]. The new Order revises the conditions for 'absolute and conditional prohibitions' stipulated in the First, Second, Third and Fourth Schedules of the Order. Other changes include new provisions which govern exemptions, form of the import license, amendments and cancellation of the license, application of other laws and the savings provision.

Customs Duties (Amendment) (No. 2) Order 2017

The Customs Duties (Amendment) (No.2) Order 2017 [P.U. (A) 118] was gazetted on 12 April 2017 and is deemed to have come into operation on 1 April 2017. This Order provides for amendments in the First Schedule in relation to subheadings 7204.10.00 00, 7204.29.00 00, 7204.30.00 00, 7204.41.00 00 and 7204.49.00 00 in column (6), by substituting the words "10%" with the words "0%" and for subheading 8527.91.90 00 in column (5), by substituting the word "15%" with "11%".

Safeguards Act 2006 & Customs Act 1967 (Definitive Safeguards Duties) Order 2017

The Customs (Definitive Safeguards Duties) Order 2017 [P.U. (A) 122] was gazetted on 13 April 2017 and came into operation on 14 April 2017. The Order will be effective up to 13 April 2020. This Order provides for amendments to definitive safeguard duties which shall be levied on and paid by the importers from countries specified in column (3).

Safeguards Act 2006 & Customs Act 1967 (Definitive Safeguards Duties) (No.2) Order 2017

The Customs (Definitive Safeguards Duties) (No.2) Order 2017 [P.U. (A) 123] was gazetted on 14 April 2017 and came into

operation on 15 April 2017. It is stipulated that this Order will be effective up to 13 April 2020. This Order provides amendments to definitive safeguard duties which shall be levied on and paid by the importers from countries specified in column (3).

Customs Duties (Exemption) (Amendment) (No.3) Order 2017

The Customs Duties (Exemption) (Amendment) (No.3) Order 2017 [P.U. (A) 136] was gazetted on 11 May 2017 and came into operation on 12 May 2017. This Order provides for an amendment in Part I of the Schedule in relation to item 66, in column (2), to include "(xxiii) EQ Petroleum Production Ltd."

Excise Duties Order 2017

The Excise Duties Order 2017 [P.U. (A) 92] was gazetted on 31 March 2017 and came into operation on 1 April 2017. This Order revokes the Excise Duties Order 2012 [P.U. (A) 350/2012]. The new Order makes reference to the general scope of excise duties and provides for the interpretation of rates shown in the Schedule of the Order. It is stipulated further that the interpretation of the Schedule is to be governed by the principles of the Customs Duties Order 2017 [P.U. (A) 5/2017]. In addition, it is noted that the provision for abbreviations and symbols used in the Schedule will have the same meaning as shown in the List of Abbreviations and Symbols in the Customs Duties Order 2017.

Excise Duties (Motor Vehicles) (Payment) Order 2017

The Excise Duties (Motor Vehicles) (Payment) Order [P.U (A) 93] was gazetted on 31 March 2017 and came into operation on 1 April 2017. This Order revokes the Excise Duties (Motor Vehicles) (Payment) Order 2012 [P.U. (A) 351/2012]. The new Order provides for the method of payment upon removal of motor vehicles from places of manufacture. The rates and type of goods manufactured are specified in columns (5) and (3) of the Schedule to the Excise Duties Order 2017 respectively. Securities which were given under the revoked Order shall be deemed to be given under the new Order. .

Excise Duties (Amendment) Order 2017

The Excise Duties (Amendment) Order 2017 [P.U. (A) 120] was gazetted on 12 April 2017 and came into operation on 13 April 2017. This Order provides for amendments to the Excise Duties Order 2017 [P.U (A) 92] by substituting for subheadings "2204.21.12 00" and "2204.21.13 00", the subheadings "2204.21.13 00" and "2204.21.14 00" respectively. Amendments were also made to subheading 8703.22.90 10 in column 5 by substituting the words "65%" with the words "60%" and for subheading 8703.22.90 in column 5, the words "65%" is substituted with the words "60%".

*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.*

CASE 1

CHANTIKA KELANG BERAS SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (APPEAL NO.: P-01(A)-357-09/2016) (COURT OF APPEAL) HEARD TOGETHER WITH UTARA SEEDS SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (APPEAL NO.: P-01(A)-356-09/2016) (COURT OF APPEAL)

BACKGROUND FACTS

The cases are income tax appeals from the High Court. The facts of the case are as follows:

(a) The principal activities of the taxpayers are as rice millers;
(b) The taxpayers received payments from the Ministry of Agriculture and Agro-Based Industry ("MoA") for rice and paddy seedlings which are clearly identified as subsidy ("Subsidy");
(c) It is an agreed fact the taxpayers received subsidy from the MoA;
(d) The MoA would pay the Subsidy after sending their officers to the taxpayers' premises to confirm that the taxpayers met their conditions;
(e) The taxpayers declared the Subsidy as gains and profits from their business under Section 4(a) of the Income Tax Act 1967 ("ITA") for years of assessment ("YA") 2008 to 2011;
(f) It is not disputed that the taxpayers did not make any deduction or allowance under the ITA or the Promotion of Investments Act 1986 in respect of the Subsidy received from the Ministry;
(g) The taxpayers then applied for relief by error or mistake under Section 131(1) of the ITA;
(h) The taxpayers took the stand that the Income Tax (Exemption) (No. 22) Order 2006 ("Exemption Order") exempts any person from the payment of income tax in respect of a grant or subsidy given by the Federal government or State government; and
(i) The Revenue rejected the taxpayers' application and extended the taxpayers' appeal to the Special Commissioners of Income Tax ("SCIT").

ISSUES

(a) Whether the Subsidy is exempted from income tax under the Exemption Order;
(b) Whether the taxpayers may apply for relief under Section 131 of the ITA to claim tax exemption granted vide the Exemption Order; and
(c) Whether the Revenue was correct in its decision to reject the taxpayers' application for relief under Section 131(1) of the ITA?

DECISION

The SCIT and High Court held in favour of the Revenue.

On appeal by the taxpayers before the Court of Appeal ("CoA"), the CoA allowed the taxpayers' appeal.

Arguments of the Taxpayers

The arguments advanced by the taxpayers are as follows:

(a) The requirements of the Exemption Order, which are as follows, have been fulfilled:
(i) it is effective from YA 2006;
(ii) the person receives allocations given by the Federal government in the form of a grant or subsidy; and
(iii) Any deduction or allowances to be made under the ITA or the Promotion of Investments Act 1986 shall be disregarded and a separate record is maintained to ascertain the deductions or allowances available;
(b) It is not disputed that the payments are identified as "subsidy". In fact, based on the Statement of Agreed Facts between the taxpayers and the Revenue, it is an agreed fact that the taxpayers received Subsidy from the Federal government through the MoA. Based on the clear opinion of the Privy Council in the case of *Chua Lip Kong v Director-General of Inland*

Revenue [1982] CLJ Rep 1, the Courts are not entitled to go behind this statement which has been agreed by both parties. It was not merely part of the evidence before them which they were either to accept or reject as they thought fit;

(c) Further, there is no ambiguity in the Exemption Order; in the absence of any ambiguity or obscurity to the said provision, the provision must be read in its ordinary and literal meaning. The Supreme Court in *National Land Finance Co-operative Society Ltd v Director General of Inland Revenue [1993] 4 CLJ 339* has held that "there is no room for intendment in tax legislation and the rule of strict construction applies. Unless there are clear words tax cannot be imposed. Another principle is that where the meaning of a statute is in doubt the ambiguity must be construed in favour of the subject. Yet another principle is that an exemption from tax cannot be removed except by sufficiently clear words to achieve that purpose…"

(i) the Revenue has no basis to aver that the payment received by the taxpayers were not subsidy as the payments were meant for paddy farmers and the public to maintain selling price and control inflation rate. In other words, the Revenue has no basis to arbitrarily suggest that "target group" is a requirement under the Exemption Order;

(ii) the Exemption Order clearly states that it is accorded to recipients who "receive[s] allocations given by the Federal government in the form of a grant or subsidy", it does not state any requirements that the subsidy could only be given to any targeted person or group;

(iii) Further, the Revenue did not at any time referred to any aids to statutory interpretation and has conflated the "object of the statute", being the Exemption Order with that of its purported "purpose of the subsidy"; and

(a) As per the cases of *Lower Perak Co-operative Housing Society Bhd v KPHDN [1994] 2 MLJ 713* and *Ketua Pengarah Hasil Dalam Negeri v Perbadanan Kemajuan Ekonomi Negeri Johor (2009) MSTC 4399,* it is trite there must be liability to income tax first before the question of exemption arises. Further, a reading of the Exemption Order would squarely show that the said exemption is in respect of "income relation to the allocations given by the Federal government or the State government in the form a grant or a subsidy". In light of that, even if the payments would be income in the hands of the taxpayers but for the Exemption Order, this would not negate the operation of the Exemption Order.

CASE 2

CITITOWER SDN BHD V PEMUNGUT DUTI SETEM (CIVIL APPEAL NO. WA-24-5-01/2016) (CIVIL APPEAL NO. (HIGH COURT)

BACKGROUND FACTS

The Plaintiff and Aliran Moden Sdn Bhd ("AMSB") are the joint venture companies jointly owned by KLCC (Holdings) Sdn Bhd ("KLCCH") and QD Asia Pacific Ltd ("QD"). KLCCH and QD were in the process of restructuring the joint venture companies.

During the restructuring process, the Plaintiff entered into a Sale of Business Agreement ("the Agreement") with AMSB. Pursuant to the Agreement, the Plaintiff agreed to acquire the business of AMSB ("the Acquisition") which includes its assets and liabilities consisting of cash, receivables, contracts, goodwill, business intellectual property and a plot of land bearing the title Geran No. 43695, Lot 167 ("the Land").

In order to effect the transfer of the Land from AMSB to the Plaintiff, a Memorandum of Transfer ("MoT") was executed between the Plaintiff and AMSB via Form 14A. The Plaintiff then submitted an application for relief of stamp duty for the Form 14A under

Section 15 of the Stamp Act 1949 ("the Application") to the Defendant. However, the Defendant rejected the Plaintiff's Application and raised a notice of assessment for stamp duty by applying the *ad valorem* duty under Item 32 of the First Schedule of the Stamp Act 1949 ("SA"). The Plaintiff appealed this to the High Court.

The Defendant took the view that although the Plaintiff had fulfilled all four conditions to qualify for exemption under Section 15(1) of the SA, the instrument to be exempted from paying stamp duty is the agreement, not the MoT. The MoT is not an undertaking instrument per se to be qualified for exemption under Section 15 of the SA. The MoT is a standalone instrument and thus should be subjected to stamp duty.

On the other hand, the Plaintiff contended that the Plaintiff satisfied all the conditions stipulated under Section 15(1) of the SA. Thus, not only the Agreement is exempted from stamp duty but also the MoT. Further, the MoT is also exempted from stamp duty by virtue of Section 4(3) of SA as a subsidiary instrument.

ISSUE

Whether the MoT is liable to *ad valorem* stamp duty under Item 32, Schedule 1 of the SA or exempted from stamp duty under Section 15(1) of the SA?

DECISION

The High Court allowed the Plaintiff's application with costs and held that the MoT executed pursuant to the Agreement is exempted from stamp duty.

Section 15 of the SA provides relief from stamp duty in case of reconstructions or amalgamations of companies. Section 15(1) of the SA clearly states if the conditions are satisfied, stamp duty under item 32(a) or (b) in the First Schedule shall not be chargeable on any instruments made for the purposes of or in connection with the transfer of the undertaking. The Plaintiff had satisfied all the conditions stipulated under Section 15(1), thus, not only the SBA is exempted from stamp duty but also the MoT. MoT is not a stand-alone instrument. It was executed pursuant to the SBA.

The Defendant ought to give the statute its plain meaning as it is trite law that one has to read what is clearly said in a taxing statute. Nothing is to be read in, nothing is to be implied (National Land Finance Co-operative Society Ltd v Director-General of Inland Revenue [1993] 4 CLJ 339). The Court cannot rewrite the statute and inject matters into it which are not in the legislature's language (Saujana Hotel Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2011) MSTC 30-022). The Defendant, who seeks to bring an instrument within the Stamp Act must show clearly that it falls within it, and no intendment can be made in favour of the liability. Any ambiguity found in the legislation is to be resolved in favour of the taxpayer (UMBC v Pekeliling Triangle Sdn Bhd [1991] 1 CLJ Rep 474).

The word used by Parliament is any instrument. This clearly envisages one or more instruments. If Parliament had intended the exemption to apply to only one instrument or a specific instrument, then Parliament would have surely specified this clearly in Section 15(1) (KPHDN v OKA concrete Industries Sdn Bhd (2015) MSTC 30-091 and Clear Water Sanctuary Golf Management Berhad v KPHDN (2014) MSTC 30-075).

Further, the MOT is also exempted from stamp duty by virtue of Section 4(3) of the Stamp Act 1949. Where a document is exempted from stamp duty, all subsidiary documents accessory to the primary purpose are also exempted (Cheh Choon Gan v Registrar of Titles, Kedah [1973] 1 MLJ 107).

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CASE 3

BYWATER INVESTMENTS LTD & ORS V COMMISSIONER OF TAXATION; HUA WANG BANK BERHAD V COMMISSIONER OF TAXATION [2016] HCA 45

BACKGROUND

Section 6(1)(b) of the Australian Income Tax Assessment Act 1936 ("the Australian Act") defines resident or resident of Australia as "a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia, and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia".

Similarly, Section 8(1)(b) of the Malaysian Income Tax Act 1967 ("the Malaysian Act"), provides that a company or a body of persons (not being a Hindu joint family) carrying on "a business or businesses is resident in Malaysia for the basis year for a year of assessment if at any time during that basis year the management and control of its business or of any one of its businesses, as the case may be, are exercised in Malaysia".

This decision focuses on the meaning and interpretation of "central management and control", and is therefore of guidance in the interpretation of "management and control" which appear in both Section 6(1)(b) of the Australian Act and Section 8(1)(b) of the Malaysian Act.

Facts : **the appeal involves four (4) foreign incorporated companies.** For three (3) appellants ("Swiss appellants"), all but one of the directors were resident in Switzerland and meetings of directors were held in Switzerland. For the fourth appellant ("the Samoan appellant") which was incorporated in Samoa, most of its directors were employees of a Samoan international trustee and corporate service provider.

In August 2010, the Commissioner of Taxation issued assessments to the appellants in respect of profits derived from the purchase and sale of shares listed on the Australian Stock Exchange. The appellants disputed the assessments, amongst others, on the basis that they were not Australian residents for tax purposes under Section 6(1) of the Australian Act.

TRIAL

Justice Perram, the primary judge, held that although the "formal organs" of each company were located abroad, the real business of the appellants was conducted by an Australian resident from Sydney, a Mr. Gould, without the involvement of the directors of the appellants. Justice Perram accordingly held that the "central management and control" of each appellant was situated in Australia, thus bringing the appellants within the ambit of the definition of resident in Section 6(1) of the Australian Act and liable to tax as an Australian resident.

FEDERAL COURT

On appeal, the Full Court of the Federal Court rejected the appellants' argument that the "central management and control" of the appellants was situated abroad because the meetings of their Boards of Directors were held abroad. The Full Court held that there was no reason to doubt the primary judge's findings of fact, and no error in the conclusion that each appellant was a resident of Australia for income tax purposes.

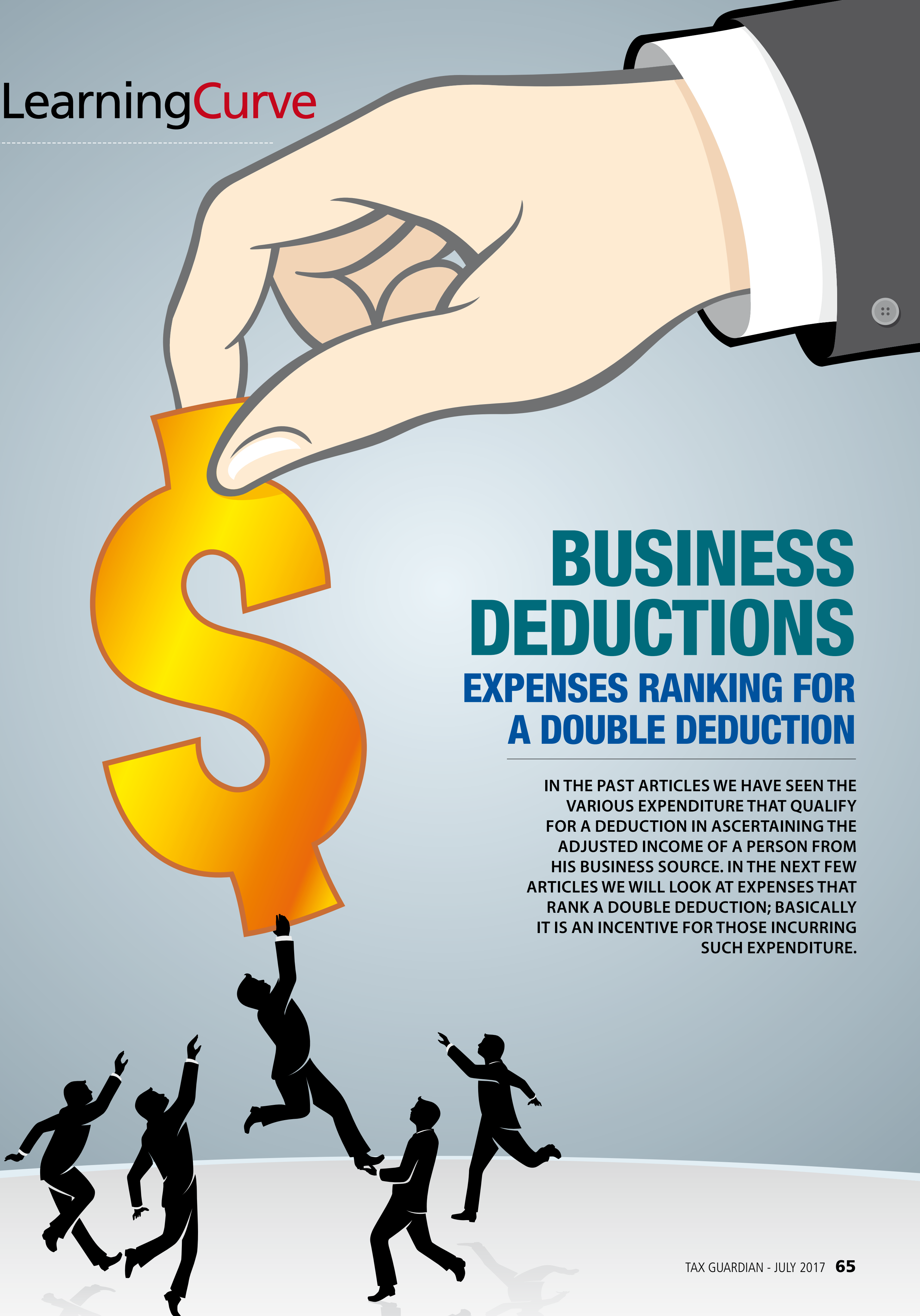
HIGH COURT

The High Court unanimously dismissed the appeal after considering the following two issues:-

- Whether the appellants were resident in Australia within the meaning of Section 6(1) of the Australian Act because their central management and control was in Australia
- In the first place, the plurality (French CJ, Kiefel, Bell and Nettle JJ) acknowledged as a long-established principle, that:-
  "... the residence of a company is a question of fact and degree to be answered according to where the central management and control of the company actually abides, and that is to be determined by reference to the course of the company's business and trading, rather than by reference to the documents establishing its formal structure."
- The plurality proceeded to hold that, the fact that the Boards of Directors were located abroad, was insufficient to locate the residence of the appellants abroad. In actual fact, the Boards of Directors had abrogated their decision-making in favour of Mr. Gould. The Boards of Directors merely acted as 'puppets' or 'ciphers' to "mechanically implement or rubber-stamp decisions" made by him in Australia.
- The plurality rejected the appellants' policy argument that a formalistic approach should be adopted in construing Section 6(1) of the Australian Act (1) to provide certainty to companies and advisors, and (2) to avoid increased litigation. In that regard, the plurality held that a formalistic approach was not supported by case law, and concerns over uncertainty or excessive litigation were exaggerated.

- The plurality further rejected the Samoan appellant's alternative argument that its 'very simple business model' of decision-making should be seen as the exercise of central management and control of that business, for the reason that the primary judge's findings made it clear that Mr. Gould exercised complete control over its' operations.
- If the Swiss appellants' central management and control was in Australia, whether their place of effective management was, for the purpose of the relevant Double Tax Agreements ("DTAs"), in Australia, the UK or Switzerland
- This issue was considered in detail by Gordon J, who focused on the impact of DTAs between the UK and Australia, and Switzerland and Australia because the income of the Swiss Appellants had an Australian source (even if they were foreign residents). For that reason, unless relief was available to the Swiss appellants under a DTA, then they would be liable to tax on their Australian income.
- Gordon J observed that the DTAs provide two avenues of relief:
- if the company is resident only in the UK or Switzerland for the purposes of the tax laws in those nations; or
- in this case, this avenue was closed off because (as the primary judge found), the central management and control of the Swiss appellants was exercised by Mr. Gould in Australia, and therefore each was resident of Australia.
- if the company is resident both in the UK or Switzerland as well as Australia, but its' 'place of effective management' is in the UK or Switzerland and not Australia
- in this case, the 'place of effective management' was neither the UK nor Switzerland but Australia: the location of the organs cannot be determinative, and it was Mr. Gould who truly effectively managed the companies from Australia.

***Sudharsanan R. Thillainathan** and **Tania K. Edward** are tax lawyers with Messrs Shook Lin & Bok.*



BUSINESS DEDUCTIONS

EXPENSES RANKING FOR A DOUBLE DEDUCTION

IN THE PAST ARTICLES WE HAVE SEEN THE VARIOUS EXPENDITURE THAT QUALIFY FOR A DEDUCTION IN ASCERTAINING THE ADJUSTED INCOME OF A PERSON FROM HIS BUSINESS SOURCE. IN THE NEXT FEW ARTICLES WE WILL LOOK AT EXPENSES THAT RANK A DOUBLE DEDUCTION; BASICALLY IT IS AN INCENTIVE FOR THOSE INCURRING SUCH EXPENDITURE.

MECHANICS OF CLAIMING THIS DEDUCTION

The tax treatment of such expenses is important as candidates are usually required to prepare a tax computation in examinations where the question contains an income statement and other notes to the accounts.

Generally most expenses are deducted in the income statement is determining the profit before tax figure (PBT) and therefore since most of the tax computations start with this figure, the adjustment for a double deduction is merely a further deduction in ascertaining the adjusted income of a person from his business source.

For example, if A S/B incurs RM 500 in respect of Expense A which qualifies for a double deduction and it has been deducted in arriving at the PBT figure, then the adjustment required in the tax computation (commencing from PBT) for A S/B for this expense is a further deduction of RM500.

However, if the RM500 is capitalised in the accounts of A S/B (i.e. not channelled through its income statement) then in determining the adjusted income from a business of A S/B an amount of RM1,000 (i.e., RM500 X 2) should be deducted.

Yet some examination questions complicate it further by stating that the expense has been capitalised and amortised over five years. In this case the tax adjustment in the year of assessment of incurrence and for the subsequently years of assessment are detailed as follows.

QUALIFYING EXPENSES

The expenses qualifying for a double deduction in the Income Tax Act 1967 is basically research and development expenditure under Sections 34A and 34B. This has been deliberated in the article published

in *Tax Guardian 2012 Q2 & Q3*. The others are mainly through gazette orders as detailed below:

Year of assessment of incurrence:	RM	
Expense A	500	
Double deduction (x2)	1,000	
Amount reflected in PBT (amortisation RM500 / 5)		(100)
Amount claimable	900	
Amount claimable		
Subsequent 4 years of assessment:	**RM**	
Amortisation of Expense A in Income Statement	100	
Adjustment in tax computation (commencing from PBT) Add back	100	

INTEREST PAYABLE ON LOANS TO SMALL BUSINESSES

CONDITIONS

1. The person claiming the deduction shall produce a certificate from an appropriate authority designated to approve any loan to a small business; and
2. the interest must be allowable under Section 33 of the Act. i.e. the interest expense must be deductible under Section 33 of Income Tax Act 1967 i.e. the borrowing must be used for the production of income or laid out on assets either used or held for use in the production of income.
3. Where the certificate is cancelled or revoked at any time in any year of assessment, any deduction shall be deemed never to have had effect for the year or years of assessment to which the cancellation or revocation relates.

LAW

INCOME TAX (DEDUCTIONS OF INTEREST PAYABLE ON LOAN TO A SMALL BUSINESS) RULES 1981 P.U. (A) 90/1981

REMUNERATION OF DISABLED EMPLOYEES

CONDITIONS

1. Employer shall prove to the satisfaction of the Director-General that the employee is physically or mentally disabled and is not able to perform the work of a normal person.
2. The remuneration must be allowable under Section 33 of Income Tax Act 1967.

LAW

INCOME TAX (DEDUCTIONS FOR THE EMPLOYMENT OF DISABLED PERSONS) RULES 1982 P.U. (A) 73/1982

PREMIUM PAID ON EXPORT CREDIT INSURANCE (CONVENTIONAL / TAKAFUL) TAKEN WITH A COMPANY APPROVED BY THE MINISTER OF FINANCE (MALAYSIA EXPORT CREDIT INSURANCE BERHAD)

CONDITIONS

The premium must be allowable under Section 33 of Income Tax Act 1967

LAW

INCOME TAX (DEDUCTIONS OF PREMIUMS FOR EXPORT CREDIT INSURANCE) RULES 1985 P.U. (A) 526/1985

INCOME TAX (DEDUCTION FOR PREMIUM FOR EXPORT CREDIT INSURANCE BASED ON TAKAFUL CONCEPT) RULES 2010. P.U. (A) 428/2010

EXPENDITURE INCURRED ON APPROVED TRAINING IN ORDER TO QUALIFY FOR A DEDUCTION UNDER THESE RULES, A COMPANY CLAIMING THE DEDUCTION SHALL

(a) in the case of an approved training programme, produce a letter of approval from the relevant approving authority; and
(b) in the case of a training programme conducted by a training institution, produce a letter from the training institution certifying that the employee of the company has attended such training programme.

A "training institution" means a training institution approved by the Minister of Finance.

MANUFACTURING

CONDITIONS

1. for the purpose of ascertaining the adjusted income of a manufacturing company, which has commenced business, there shall be allowed as a deduction double the amount of any expenditure incurred by such a company in training its employees for the purpose of upgrading and developing the employees' craft, supervisory and technical skills or increasing the productivity or quality of its products under
(a) a training programme approved by the Malaysian Industrial Development Authority; or
(b) a training programme conducted by a training institution.
2. for the purpose of ascertaining the adjusted income of a manufacturing company, which has not commenced business, for the year of assessment in which the gross income first arises, there shall be allowed as a deduction double the amount of any expenditure incurred by such a company during its pre-commencement period in training its employees for the acquisition of craft, supervisory or technical skills which will contribute directly to the future production of its products under
(a) a training programme approved by the Malaysian Industrial Development Authority; or
(b) a training programme conducted by a training institution.

Candidates should note that approved training for employees engaged in the manufacturing industry where the company has not commenced operations i.e. it for "the acquisition of craft, supervisory or technical skills" is the only pre-commencement expenditure which ranks for a double deduction.

NON-MANUFACTURING

CONDITIONS

For the purpose of ascertaining the adjusted income of a non-manufacturing company there shall be allowed a double deduction any expenditure incurred in training its employees under—
(a) a training programme approved by the Minister of Finance or any

agency appointed by the Minister of Finance; or
(b) a training programme conducted by a training institution.

Candidates should note that qualifying training expenses incurred on potential employees engaged in the non-manufacturing industry where the company has not commenced operations can rank for a single deduction under The Income Tax (Deduction of Pre-Commencement of Business Training Expenses) Rules 1996. The order is for all companies but since those in manufacturing can enjoy a double deduction, this order is generally used by companies in the non-manufacturing sector

HOTEL OR TOUR OPERATING BUSINESS

A "hotel business" means the carrying on of a business in a hotel including a motel, chalet or hostel, where such business provides sleeping accommodation and may include providing of food, drinks and other services or facilities and the granting of concessions of any part of such hotel for purposes connected with and incidental to the promotion of tourism;

A"tour operating business" has the meaning assigned to it under the Tourist Development Corporation (Tour Operating Business and Travel Agency Business) Regulations 1985.

CONDITIONS

For the purpose of ascertaining the adjusted income of a company carrying on a hotel business in a hotel registered with the Tourist Development Corporation of Malaysia or a company carrying on a tour operating business registered with the Tourist Development Corporation of Malaysia, there shall be allowed as a double deduction any expenditure incurred in training its employees under

(a) a training programme approved by the Minister of Culture, Arts and Tourism; or
(b) a training programme conducted by a training institution.

TRAINING OF HANDICAPPED PERSONS

CONDITIONS

For the purpose of ascertaining the adjusted income of a company there shall be allowed as a deduction double the amount of any expenditure incurred in training any handicapped person registered with the Ministry of National Unity and Social Development, who is not an employee of the company under
(a) a training programme approved by the Minister of Finance, which is conducted in Malaysia; or
(b) a training programme conducted by a training institution,

Further the training programme is for the purpose of enhancing his employment prospect.

LAW

INCOME TAX (DEDUCTIONS FOR APPROVED TRAINING) RULES 1992 P.U. (A) 61/1992

In the next article we shall look at other deductions that qualify for a double deduction.

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FURTHER READING

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Kasipillai, J. A Guide to Malaysian Taxation, McGraw Hill.
Malaysian Master Tax Guide, CCH Asia Pte. Ltd
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CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: JULY – SEPTEMBER 2017

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
JULY 2017								
Workshop: GST Impact on Accounting and Tax Issues for Property Developers, JMB/MC & Property Investors	3 July	9a.m. - 5p.m.	Penang	Dr. Tan Thai Soon	350	450	600	8 WS/017
Workshop: Transfer Pricing & BEPS	4 July	9a.m. - 5p.m.	Johor Bahru	Harvindar Singh	350	450	500	8 WS/024
Workshop: Transfer Pricing & BEPS	11 July	9a.m. - 5p.m	Ipoh	Harvindar Singh	350	450	650	8 WS/025
NATIONAL TAX CONFERENCE 2017	25 & 26 July	9a.m. - 5p.m	Kuala Lumpur Convention Centre	Various Speakers	Early Bird 1300 Normal 1500	Early Bird 1400 Normal 1600	Early Bird 1500 Normal 1800	25 NTC/001
Public Holiday								
AUGUST 2017								
Workshop: Tax Optimization on Capital & Industrial Building Allowances	1 Aug	9a.m. - 5p.m	Penang	Sivaram Nagappan	350	450	500	8 WS/036
Workshop: Tax Optimization on Capital & Industrial Building Allowances	9 Aug	9a.m. - 5p.m	Kota Kinabalu	Sivaram Nagappan	350	450	500	8 WS/037
Workshop: GST Impact on Accounting and Tax Issues for Property Developers, JMB/MC & Property Investors	10 Aug	9a.m. - 5p.m	Johor Bahru	Dr. Tan Thai Soon	350	450	500	8 WS/018
Workshop: Withholding Tax and Double Tax Agreements	10 Aug	9a.m. - 5p.m	Kuala Lumpur	Thenesh Kannaa	400	500	600	8 WS/051
Workshop: Tax Optimization on Capital & Industrial Building Allowances	14 Aug	9a.m. - 5p.m	Kuching	Sivaram Nagappan	350	450	500	8 WS/038
Workshop: Understanding the Legal and Practical Aspects on Deductibility of Expenses Based on Public Rulings	14 Aug	9a.m. - 5p.m	Melaka	Kularaj	350	450	500	8 WS/043
Workshop: Customs Audit and Investigations	16-17 Aug	9a.m. - 5p.m	Kuala Lumpur	Thomas Selva Doss	800	1000	1200	16 WS/035
Workshop: GST – Practical Issues & Recent Developments	22 Aug	9a.m. - 5p.m	Ipoh	Thenesh Kannaa	350	450	500	8 WS/039
Public Holiday *(Merdeka Day: 31 Aug)*								
SEPTEMBER 2017								
Workshop: Understanding the Legal and Practical Aspects on Deductibility of Expenses Based on Public Rulings	4 Sept	9a.m. - 5p.m	Kuala Lumpur	Kularaj	400	500	600	8 WS/044
Seminar: Managing Tax Audits & Investigations	5 Sep	9a.m. - 5p.m	Penang	Saravana Kumar & Annie Thomas	450	550	650	8 SE/008
Seminar: Managing Tax Audits & Investigations	7 Sep	9a.m. - 5p.m	Kuala Lumpur	Saravana Kumar & Annie Thomas	450	550	650	8 SE/009
Workshop: Understanding the Legal and Practical Aspects on Deductibility of Expenses Based on Public Rulings	11 Sept	9a.m. - 5p.m	Penang	Kularaj	350	450	500	8 WS/044
Workshop: GST – Practical Issues & Recent Developments	12 Sept	9a.m. - 5p.m	Melaka	Thenesh Kannaa	350	450	500	8 WS/040
Half Day Workshop: A Critical Legal Review of the Section 4A(ll) Withholding Tax on Services and Other Emerging Front-Page Issues	13 Sept	9a.m. - 5p.m	Kuala Lumpur	Vijey Krishnan	300	350	400	4 WS/050

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: JULY – SEPTEMBER 2017

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
Public Holiday *(Malaysia Day: 16 Sept)*								
SEPTEMBER 2017								
Workshop: Understanding the Legal and Practical Aspects on Deductibility of Expenses Based on Public Rulings	18 Sept	9a.m. - 5p.m	Kuching	Kularaj	350	450	500	8 WS/046
Workshop: Understanding the Legal and Practical Aspects on Deductibility of Expenses Based on Public Rulings	25 Sept	9a.m. - 5p.m	Kota Kinabalu	Kularaj	350	450	500	8 WS/047
Workshop: Understanding the Legal and Practical Aspects on Deductibility of Expenses Based on Public Rulings	28 Sept	9a.m. - 5p.m	Ipoh	Kularaj	350	450	500	8 WS/048

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

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