Official Journal of the Chartered Tax Institute of Malaysia

tax guardian

Vol.11/No.3/2018/Q3

AUTHORITATIVE • RELEVANT • GLOBAL EXCELLENCE

CHARTERED TAX INSTITUTE OF MALAYSIA

RM28.00

THE END OF GST

GST (Goods and Services Tax) was implemented in Malaysia on 1 April 2015 and one would have never thought that it would only survive for a little over three years.

- **NATIONAL GST CONFERENCE 2018**
- **Sales and Services Tax (SST) – What's in store?**
- **BUSINESS DEDUCTIONS: PROHIBITED EXPENSES (Part II)**

ISSN 0128-7583

9 770128 758008

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.

INSTITUTE ADDRESS

The Secretariat, Unit B-13-1,
Block B, 13th Floor, Megan Avenue II,
No. 12 Jalan Yap Kwan Seng,
50450 Kuala Lumpur
Telephone : 603 2162 8989
Facsimile : 603 2162 8990
E-mail : secretariat@ctim.org.my
Website : www.ctim.org.my

PUBLISHING CONSULTANT

Executive Mode Sdn Bhd (317453-P)
Tel: +603-7118 3200, 3205, 3230
Fax: +603-7118 3220
e-mail: executivemode@executivemode.com.my
web: www.executivemode.com.my

PRINTER

BHS Book Printing Sdn Bhd (95134-K)
Lot 4, Lorong CJ 1/1B
Kawasan Perindustrian Cheras Jaya
43200 Cheras, Selangor DE
Tel: +603-9076 3399, 9074 7558, 9074 7017
Fax: +603-9074 7573, 9074 5226
e-mail: bhs@bhsbookprint.com

Tax Guardian

Tax Guardian is the official journal of the Chartered Tax Institute of Malaysia and is distributed to members and students of CTIM as well as subscribers, both corporate and individual. The contents of *Tax Guardian* do not necessarily reflect the views or opinions of CTIM and no liability is accepted in relation thereto. CTIM does not accept liability for any views or opinions published herein. Advertisements appearing within this journal should not be taken to imply any direct support for or sympathy with the views and aims of CTIM.

IMPORTANT DISCLAIMER

No person should rely on the contents of this journal without first obtaining advice from a professionally qualified person. This journal is distributed/sold on the terms and understanding that (1) the author(s) and/or CTIM is not responsible for the results of any actions taken on the basis of information in this journal nor from any error or omission contained herein; and (2) that, in so far as this journal is concerned, neither the author(s) nor CTIM is engaged in rendering legal, accounting, professional or other advice or services. The author(s) and/or CTIM expressly disclaim any and all liability and responsibility to any person, whether a purchaser, a subscriber or a recipient; reader of this journal or not, in respect of anything and/or of the consequences of anything done or omitted to be done by such person in reliance, either wholly or partially, upon the whole or any part of the contents of this journal. If legal advice or other expert assistance is required, the service of a competent professional person should be sought.

contents

Tax Guardian

VOL.11/NO.3/2018/Q3
July 2018

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.

Contributions may be sent to:
The Chairman, Editorial Committee
Chartered Tax Institute of Malaysia
Unit B-13-1 Block B, 13th Floor, Megan Avenue II,
No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur.
Email: *publications@ctim.org.my*

SEAH SIEW YUN

GST TO SST: AN UNPRECEDENTED CHANGE

Like many Malaysians, I waited eagerly for the results of our nation's 14th General Elections on 9 May 2018. That waiting went on until the following day when it was announced in the early hours of the morning that Malaysia now had a new government and our new Prime Minister was sworn in later that night. At a press conference the next day, our Prime Minister announced that the Goods and Services Tax (GST) would be abolished and replaced by the Sales and Services Tax (SST).

In the weeks following the announcement that GST would be abolished, the Ministry of Finance (MoF) and the Royal Malaysian Customs Department (RMCD) have issued a series of media announcements on the transition from GST to SST. The GST rate of 6% was reduced to 0% effective from 1 June 2018 and the SST is likely to be implemented effective from 1 September 2018. I would like to thank the (MoF) and the RMCD for promptly issuing answers to frequently asked questions on the transitional matters related to the reduction of the GST rate from 6% to 0%. These have helped to clear some of the uncertainties arising from the transition.

The GST rate reduction to 0% translates into a tax holiday from GST for three months from 1 June 2018 to 31 August 2018. As a result, there would be an increase in disposable income for all taxpayers. More spending by consumers in this period is expected. This would stimulate retail sales particularly for consumer products, entertainment outlets, food and beverage businesses, etc.

The Institute is of the view that the impending change in the tax regime from GST to SST would create opportunities for members to engage with businesses and the public. The RMCD is expected to undertake GST audits on GST returns that have been submitted to ensure that the right amount of GST has been collected and the right amount of GST is to be refunded. There are also legacy issues such as the special sales tax refund, input tax credit for businesses with long gestation periods, businesses which were not allowed to register for GST etc. to be addressed. Furthermore, it is not presently known whether the SST slated to be reintroduced would be similar to the previous SST regime or it would be a hybrid of the old SST with certain elements of GST. However, GST tax agents may not be required moving forward and there may be changes to the tax agent licensing requirements. Whether it is to be abolished or retained is still a question to be answered.

I would like to take the opportunity to congratulate members who have passed the Malaysian GST Compliance Assurance Programme (MyGCAP) examination and interview. I am pleased to inform that CTIM participants are among those who have achieved a very high passing rate. This MyGCAP qualification may still come in useful later despite the pending repeal of GST.

I am pleased to highlight several of the Institute's key undertakings and engagements with the various authorities in the second quarter of 2018 as follows:-

GST to SST Transformation Working Group

Following the government's announcement to abolish GST and replace it with SST, the Institute has taken the initiative to set up the GST to SST Transformation Working Group (TWG) to support the government on the transition from GST to SST. The TWG comprises of a centralised team of leading indirect tax practitioners from various taxation firms and commercial businesses. The activities which will be undertaken by the TWG would include the following:-

- Lobbying and liaising with the authorities on issues arising from the transition from GST to SST and implementation of SST.
- Educating the public on the GST transitional issues through roadshows in major cities.
- Contributing articles in the media.
- Reviewing and providing feedback / comments on draft SST rulings as and when necessary.

To date, the TWG has contributed four articles in *The EDGE* and conducted a roadshow in Kuantan with more to come. The TWG is also seeking to engage with the RMCD to discuss pressing issues arising from the transition from GST to SST, the RMCD's FAQ on the transition from GST at 6% to GST at 0% and any other relevant issues.

Exemption in respect of the increase in Chargeable Income from Business

Members have raised issues on the Income Tax (Exemption)(No. 2) Order 2017 [P.U. (A) 117/2017] on exemption in respect of the increase in chargeable income from business for the years of assessment 2017 and 2018. These issues have been submitted to the Inland Revenue Board Malaysia (IRBM) for clarification in December 2017. The IRBM's responses on the issues were

The GST rate reduction to 0% translates into a tax holiday from GST for three months from 1 June 2018 to 31 August 2018. As a result, there would be an increase in disposable income for all taxpayers. More spending by consumers in this period is expected. This would stimulate retail sales particularly for consumer products, entertainment outlets, food and beverage businesses, etc.

received in April 2018 and have been circulated to members via our e-CTIM TECH-DT 26/2018 dated 26 April 2018. Our members' comments on the IRBM's responses were gathered and submitted to the IRBM in early June 2018. The IRBM's responses to the comments will be circulated to members as soon as they are received.

Earning Stripping Rules

I shared in the *Tax Guardian* 2018/Q1 issue regarding the 2018 Budget proposal to replace thin capitalisation rules with earning stripping rules (ESR) which would take effect from 1 January 2019. To recap, the ESR is expected to impose limitations on the quantum of interest which is allowed a deduction based on a percentage of the Earnings before Interest and Tax (EBIT) or the Earnings before Interest, Tax, Depreciation and Amortisation (EBITDA) for a year of assessment, in line with the OECD's BEPS Action Plan 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments. At a tax conference in April 2018, the IRBM clarified that the ESR will be applied to cross border financial assistance. The Institute has set-up an ESR Working Group which submitted comments on the draft ESR to the tax authorities at the end of April 2018. The Institute was recently made to understand that the draft ESR is being reviewed and will be revised to take into account some of the comments raised by the ESR Working Group.

CPD Events

The National Tax Conference (NTC) 2018 will be held at the Kuala Lumpur Convention Centre from 16 July 2018 to 17 July 2018 on the theme of "Taxation in a Changing Economy". For those who are coming from out of Kuala Lumpur to attend this two-day signature event, I hope you have made your travelling and accommodation arrangements. I look forward to seeing you there.

Do also peruse the schedule of upcoming CPD events from July 2018 to September 2018 which can be found at the back of this *Tax Guardian* and in the Institute's website. The Institute's CPD Committee and Secretariat have done a wonderful job of putting these events together.

Membership

I am pleased to inform you that the CTIM membership is now approximately 3,500 members. The Institute encourages eligible individuals to apply for CTIM membership and the CTIM Practising Certificate. Conditions for eligibility and the application procedures can be found in the membership section of the Institute's website at *www.ctim.org.my.*

CTIM 26th Annual General Meeting

The Institute's 26th Annual General Meeting took place on 9 June 2018 and saw several changes to the CTIM Council line-up. I am pleased to inform that Ms. Farah Rosley was re-elected to the CTIM Council and continues to serve alongside me as the CTIM Deputy President for the 2018/2019 term. I would like to thank Mr. Poon Yew Hoe who stepped down after two terms in the CTIM Council. He served as the Chairman of several committees during his tenure including the technical committee, the public practice committee and the NTC committee. He was also the CTIM Deputy President for the 2014/2015 term. My thanks also go to Ms. Theresa Goh and Datuk Harjit Singh Sidhu who did not seek re-election after their first term on the CTIM Council. Lastly, I would like to thank the CTIM Council for placing their faith and trust in me to continue as the CTIM President for the 2018/2019 term. I would like to welcome Mr. Thenesh Kannaa, Ms. Stefanie Low Geok Ping and Mr. Soh Lian Seng into the CTIM Council. I look forward to working with the CTIM Council to build up the Institute and its members.

I would like to thank all members for supporting the Institute. I am grateful for this opportunity to continue to serve and be a part of this esteemed premier body.

Editor'sNote

YEO ENG PING

We welcome the new Council following our June elections, a few fresh faces in the group which is always good to see as change and diversity promote innovation and agility, these qualities make us stronger. The Malaysian General Elections in May has of course brought about changes much more sweeping and fundamental for our country. Apart from the review of contracts recently awarded by the previous administration, it was mentioned that the current Prime Minister has asked the Ministry of Finance to consider reviewing the Budget 2018. By the time this edition of *Tax Guardian* is published, Parliament may already be in the midst of repealing the Goods and Services Tax Act 2014, with the new Sales Tax Act and Services Tax Act making its way through the legislative passage. At the time of writing, the details of the new taxes (SST) are not known, other than that they should be effective from 1 September 2018, giving Malaysia a tax holiday from 1 June to 31 August 2018 where GST of 6% is brought to 0%. It is also timely to highlight the recent Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) Regulations 2018, which compared to its predecessor regulations, expands the scope to cover virtually all goods and services. Based on industry chatter, questions and enforcement by the relevant authority is already underway.

I had originally planned for this edition to focus solely on Indirect Taxes, working closely with David Lai and the Indirect Tax Committee, particularly to take stock of the technical and policy issues surrounding the early years of GST implementation. As with many other organisations, the Editorial Committee dealt with "business unusual" circumstances as the GST and SST announcements were made by the new government, and with the support of various authors, managed to adjust our articles in time but nevertheless keeping in the theme of "Indirect Taxes". So here, we have two articles that share viewpoints arising from these rather sudden developments. At the same time, out of respect for the work done by Farah Rosley and the organising committee in successfully hosting the National GST Conference in February together with the Royal Malaysian Customs Department (RMCD), but more importantly also, to showcase the great collaboration and exchange between CTIM and the RMCD, we have an article that provides a comprehensive coverage of that event. It is hoped that the spirit of openness and cooperation will continue as we transition and implement the new SST.

Indirect taxes are becoming increasingly important as many countries around the world have adopted a value-added or goods and services tax, as part of their tax regime. Such tax is conceptually more straightforward, as it only depends on a transaction occurring and not dependent on there being "profits" or "earnings". It is also broad-based as it is usually framed as capturing "all" transactions with exceptions made. Administratively, it is also amenable to technology solutions for promoting compliance, for both businesses and tax authorities alike. These are some of the considerations as the government frames the new SST.

The new tone from the top will no doubt also influence the approach of the tax authorities. The IRBM and the RMCD in continuing to administer the laws competently, reasonably and with fairness should be able to manage any changes smoothly. Change throws light, and the hope is that we make improvements where we should, but also retain traditions that are good and sensible; the most important being continued open exchange of views and ideas among the stakeholders of our tax system : Ministry, tax authorities, professional bodies, tax practitioners and taxpayers.

26TH ANNUAL GENERAL MEETING OF THE INSTITUTE - COUNCIL MEMBERS

The Chartered Tax Institute of Malaysia (CTIM) held its 26th Annual General Meeting (AGM) on 9 June 2018 at the Seri Pacific Hotel Kuala Lumpur. A total of 81 members attended the AGM.

Pursuant to Article 59, Farah Binti Rosley was re-elected to the Council.

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

1. Thenesh Kannaa A/L Kannan @ Renganathan Kannan
2. Low Geok Ping
3. Soh Lian Seng

The first Council meeting for the 2018/2019 term was held on the same day. Pursuant to Article 63, the Council has elected from amongst the Council Members as listed below for the term 2018/2019, the President and the Deputy President.

President
Seah Siew Yun
National Tax Practice Leader, Grant Thornton Malaysia

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

Council Members

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

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

Chow Chee Yen
Executive Director, Advent MS Tax Consultants 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

Koong Lin Loong
Chief Executive Officer, Reanda LLKG International

Lai Shin Fah @ David Lai
Tax Executive Director, BDO

Mohd Noor Bin Abu Bakar
Partner, Imran Chartered Accountants

Chow Tuck Him
Head of Tax, YYC Tax Consultants Sdn Bhd

Leow Mui Lee
Managing Director, Axcelasia Taxand Sdn Bhd

Dr. Zulfahmy Bin Ibrahim
Executive Chairman, Zulfahmy & Co

Thenesh Kannaa A/L Kannan @ Renganathan Kannan
Partner, TRATAX

Low Geok Ping
Executive Director, Deloitte Tax Services Sdn Bhd

Soh Lian Seng
Executive Director, KPMG Tax Services Sdn Bhd

Seah Siew Yun is the National Tax Practice Leader of Grant Thornton Malaysia who has 31 years of experience in Malaysian taxation. She has been acting as the Council Member of CTIM since July 2009 and as Deputy President from 2015 to 2017 before the current role as the Institute's President from 2017.

Farah Binti Rosley is a Partner in the business tax services practice of Ernst & Young Malaysia. She has more than 20 years of taxation experience. She has been a Council Member of CTIM since 2014 before the current role as the Deputy President from 2017.

CPD EVENTS

A series of CPD events were conducted in the 2nd quarter of 2018 as follows:

- Recent Updates of Tax Audits, Enforcement Actions by the IRBM & Statutory Appeal Process
- Current Tax Developments
- Managing GST Audits
- Transfer Pricing Documentation
- Morning Talk "Your Business & Tax"
- MyGCAP Reviewers Course
- Transitional Issues of GST
- GST Regime, Tax Holiday Period and the New SST Regime – Transitional Issues

Mr. Renganathan conducted a workshop on "Recent Updates of Tax Audits, Enforcement Actions by the IRBM & Statutory Appeal Process" at major venues i.e Kuala Lumpur, Ipoh, Penang and Johor Bahru. This course empowered the participants with the knowledge and skills to handle various stages of a tax audit and post audit matters - tax appeals, extension of time, dispute resolution proceedings at branch, state and central level prior to proceedings at the Special Commissioners of Income Tax stage.

A Seminar on "Current Tax Developments" was organised on 25 April 2018 at The Saujana Hotel, Kuala Lumpur. Expert speakers namely Mr. Chow Chee Yen, Mr. Sudharsanan Thillainathan, Datuk Harjit Singh and Mr. Tan Hooi Beng gathered and discussed four interesting topics on Tax Implications Arising from the Companies Act 2016, Recent Tax Cases, Taxing Cryptocurrency in Malaysia and Service Fee.

The workshops on 'Managing GST Audits' were conducted by Mr. Thenesh Kannaa on 27 April 2018 and 4 May 2018 at Melaka and Kuala Lumpur respectively. The objective of the workshops were to assist businesses to prepare for GST audits, to provide guidance on handling the tax audits process & highlighted the common mistakes that businesses should avoid.

The workshops on "Transfer Pricing Documentation" was conducted by Mr. Harvindar Singh at several venues i.e Kuala Lumpur, Penang & Johor Bahru. The speaker highlighted several case studies and shared real life examples with the participants.

The IRBM in collaboration with CTIM organised a half-day talk on "Your Business & Tax" at the IRBM Headquarters, Cyberjaya on 5 April 2018. This talk focussed on educating and guiding the taxpayers on how to complete a tax return which comply with the IRBM's requirements. The speaker from the IRBM was Dr. Zainal Abidin and the session was moderated by Mr. Chow Chee Yen.

The Institute organised a 3-day MyGCAP Reviewers Course from 20 - 22 April 2018 in Kuala Lumpur. 154 participants attended the course, sat for examinations and attended the interviews which were conducted by senior officials of the Royal Malaysian Customs Department (RMCD). The results were released recently and the pass rate for examinations was 83% and for interviews was 75%.

The government has announced the reduction of the Goods & Services Tax (GST) rate from 6% to 0% effective 1 June 2018. Therefore, all registered business entities have to comply with the GST rate adjustment to 0%. Ms. Annie Thomas from the RMCD conducted a workshop on "Transitional Issues of GST" at various venues namely Kuala Lumpur, Johor Bahru, Penang and Kota Kinabalu.

On 7 June 2018, Mr. Thenesh conducted a half-day workshop on "GST Regime, Tax Holiday Period and the New SST Regime – Transitional Issues" in Kuala Lumpur. The speaker discussed the latest Customs' FAQs dated 30 May 2018 and explained the issues to the participants.


GST

THE END OF GST

David Lai

► GST (Goods and Services Tax) was implemented in Malaysia on 1 April 2015 and one would have never thought that it would only survive for a little over three years. Malaysia was among the last three ASEAN countries to implement GST, when the government was convinced that GST was a necessary tax for Malaysia to address the potential future deficit from its depleting oil revenue.

Did Malaysia need GST in the first place?

For an economically successful nation, Malaysia had an incredibly low proportion of its population (i.e. no more than 10% in 2015) paying income tax. At the same time, there was competitive pressure in the region to lower Malaysia's headline rate of income tax. Although Malaysia's income tax rate was already on a downward trend from 28% to 25% between 2006 to 2015, it was still above some of our neighbouring countries. The global trend was to shift tax revenue source from income tax to consumption tax and the Malaysian government was convinced it was the right time to follow suit. GST being a broad based consumption tax system was a suitable system for many growing and developing economies.

Proponents of GST argued that a consumption tax is a fairer tax as the burden of tax is more evenly distributed as compared to income tax which impacts a relatively small proportion of the population. The wealthy would generally spend more and therefore pay more GST, whereas the less wealthy would spend less and therefore pay less GST. Moreover, the expenditure of the poor would mostly be necessities which are zero rated. Even so, a majority of people felt that the Malaysian GST system was regressive and unfair to the middle and lower income group.

Were the GST objectives met?

GST is designed to be a tax on tax on consumption, not on businesses. This was also the general understanding communicated to businesses before the implementation of GST in Malaysia. Many have questioned whether this was really the effect experienced in practice. Malaysia implemented a more intricate GST system whereby there were many exempted, zero-rated and items which resulted in more complex rules and higher compliance cost to businesses. The GST refund process was a constant struggle for the authorities which added to the financing costs of businesses. The widely expected two year amnesty period for educating the public turned out to be non-existent and the Royal Malaysian Customs Department (RMCD) wasted no time in deploying droves of its GST audit teams and issued the requisite assessments and penalties as provided under the GST legislation. GST wrongdoings were intentionally publicised in the media and at GST conferences to educate the public but also evoked much fear and apprehension to businesses.

Why does GST have to be abolished?

The 14th General Elections brought to power the new Pakatan Harapan government that had wanted to remove the GST. This was a key promise to the Rakyat contained in the Pakatan Harapan manifesto which had to be fulfilled and there was no turning back. GST is undeniably an excellent tax system from a revenue collection point of view. It had a proven track record and precedence of its effectiveness in over 160 countries worldwide. GST is undeniably a superior multi-stage tax system compared to the more primitive SST single-stage tax system which resulted in cascading effects and potential double tax. The GST system in its pure form is intended to be broad based, transparent and a tax on consumption to be borne by the final consumer, not by business. However, in Malaysia GST was far from perfect and was often perceived by the public as just another tool for the government to tax both the Rakyat and businesses.

The 'exempt' category was a misnomer as it resulted in inflationary effects. In Australia, it was more aptly categorised as 'input taxed' rather than 'exempt'. The burden of GST was still either passed to consumers via higher prices, or absorbed by the businesses for the sake of remaining competitive and maintaining market share. It was the 'exempt' category which resulted in high administrative costs especially when computation of Partial Exemption, Capital Goods Adjustment and/or Longer Period Adjustment required a higher level of GST proficiency from either in-house GST practitioners or GST consultants. Incorrect GST computations would additionally result in costly penalties which were often not budgeted for by the business. Other potential GST penalty traps for businesses included, *inter alia*, the treatment for blocked input tax, deemed input tax, reverse charge mechanism and non-supplies where common mistakes have been discovered by the RMCD.

Many businesses involved in long gestation projects such as infrastructure or property development projects have been disadvantaged by the long wait for input tax credits to be refunded. Businesses have frequently been informed by the RMCD that input tax will not be refunded until output tax is collected which may be several years down the road. As a result, interest costs incurred to finance the GST input tax on purchases have also become unintended costs to businesses. Many potential foreign investors have cited this phenomenon as a huge disincentive for them to invest in Malaysian projects.

The inclusion of supply of land

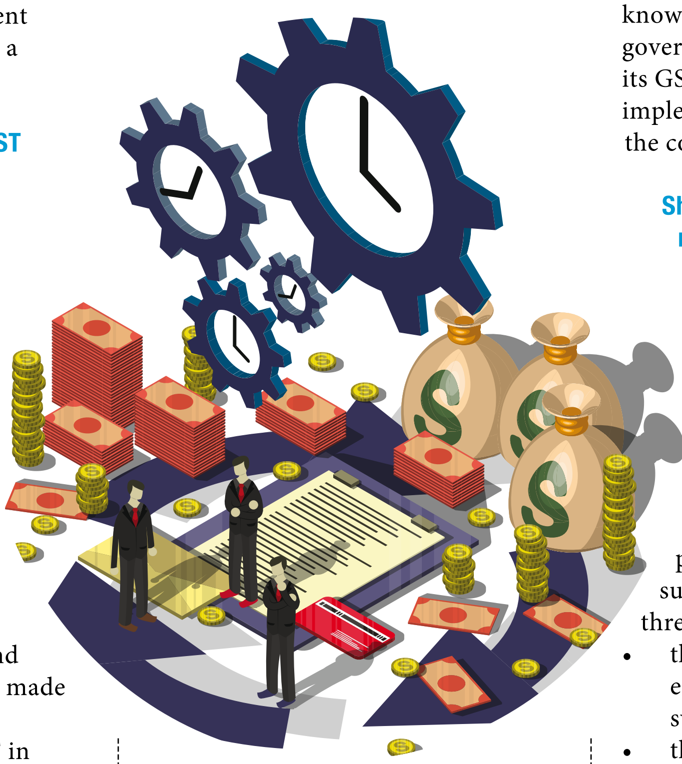
to the government for the purposes of providing public amenities and public utilities as 'non-supply' in the Finance Act 2017 had resulted in additional input tax cost to many property developers. This was another classic example of businesses having to bear GST cost which is against the spirit of the GST system. Many businesses have suffered financially as a result of the above peculiarities in the Malaysian GST system. This became a deterrent to investment as GST became a significant cost to businesses.

How would the reversion to SST affect businesses?

Many businesses lauded the introduction of GST in 2015 as they were victims of an uneven playing field under the old SST system. Too many businesses (e.g. manufacturers, restaurants etc.) did not comply with SST and therefore those who complied were disadvantaged and uncompetitive. One of the greatest benefits of GST was the enhanced transparency and compliance, which effectively made it a 'self-policing' system.

The inevitable end to GST in Malaysia on 1 June 2018 should be a relief not only to the Rakyat but also to many businesses. The Rakyat would enjoy a temporary price reduction whilst businesses would have to deal with transitional compliance issues and price fluctuation concerns. Consumers would naturally attempt to time their purchases to benefit from the price reduction and retailers may be forced to try to counter the expected sales volume volatility by offering discounts. This is on the assumption that there will be a time gap of a few months before SST is implemented and for prices to readjust upwards. At the time of writing, it is anticipated that the time gap may be between two and three months as time is required for new SST legislation to be drafted, tabled and passed in Parliament before coming into effect.

Reducing the rate of GST from 6% to 0% on all taxable supplies on 1 June 2018 onwards would no doubt be a costly affair for the government.



Based on the targeted GST collection of RM42 billion in 2018, the revenue loss would translate to approximately RM3.5 billion per month. The 0% GST would be costly not only because of a sudden loss of output tax collection, but also from a cash flow perspective because of the need for the government to continue to honour all unpaid GST refunds which could be a considerably large number. Would there be a long queue for GST refunds after 1 June 2018 when there is no more output tax collection? Almost certainly, and it remains to be seen how refunds from input tax on transitional contracts would be administered by the RMCD. For registered businesses who have been informed that input tax would only be refunded upon receipt of output tax, it is hoped that the RMCD would consider 0% GST as valid output tax. Technically it should, as supplies at 0% GST are taxable supplies. Understandably, businesses would be anxious to know how long it would take the government to complete settling all its GST refunds especially when the implementation of SST is just around the corner.

Should the SST system be modified?

Many have asked whether the same SST model as before would be implemented. Implementation of the new SST should not be done in haste before first analysing the weaknesses of the SST system experienced in the past. The weaknesses in the previous SST model may be summarised into the following three key categories:

- the cascading and double tax effect of the single-stage tax system;
- the high percentage of non-compliance; and
- the inefficient manual SST accounting systems.

The switch to the GST system in April 2015 had largely eliminated these weaknesses and some modifications could be made to avoid the same problems of the past. If handled correctly the transition from GST to SST could potentially be a win-win situation for the government and the Rakyat.

Areas to address for the new SST

Firstly, the issue of cascading and double tax was largely eliminated under the GST system due to the input tax credit mechanism. It may be possible to explore modifications to the previous SST system to mitigate the cascading effect by providing certain exemptions or by allowing some form of tax credits for SST incurred. Without this, the Rakyat may suffer higher prices than under the GST system due to a compounding effect of profit margins computed with the SST embedded at each subsequent stage of supply. Furthermore, under certain circumstances double tax could occur. For example, a manufactured food product served at a restaurant could attract both sales tax and service tax on the same item. Having exemptions or allowing tax credits may prevent price escalation by eliminating the potential compounding or double tax impact, thus operating as an improved hybrid of the GST and SST system.

Secondly, the GST system in Malaysia has achieved over 450,000 registrations. Rather than abolishing the GST registration system altogether and requiring fresh licensing or registrations for SST, the government may consider riding on the existing system to recognise the available information from the GST to facilitate a smooth switchover to SST. Studies may be conducted by the government to implement the transition which may include simpler or minimal registration procedures for those who are already registered for GST. For example, many more restaurants have now been registered for GST compared to SST. These GST registrants which are also above the SST threshold (not yet announced) may be permitted to switch over to be SST licensees with minimal verification.

Thirdly, considerable time and money have been invested by both the government and also by businesses to implement the processes and information technology systems for GST. Many businesses have automated their accounting systems to be GST compliant and which can even produce detailed GST Audit Files. The low compliance level experienced under the manual SST system previously could be addressed by riding on the existing GST registration information already available. Although there could still be some narrowing of the scope of taxable persons compared to GST, it should be possible to plug a large portion of the SST leakages of the past with the use of the data already available to the RMCD.

The Macroeconomic effects

The GST system in Malaysia was far from perfect as GST was not only a tax on final consumers but ended up to be a significant cost to businesses as well. Businesses felt a significant financial burden from compliance, non-claimable input taxes and delays in refunds. In hindsight, it may have been more acceptable to have introduced GST at a lower rate with fewer exemptions and zero rating. This would have reduced the compliance burden and also cost to businesses, which would have been felt by the consumers one way or another. In other words, the price increases experienced post-GST was not only due to the GST, but also due to the inefficiencies resulting from the overly complicated GST system. In some instances, it was simply not economically viable for some businesses to comply as more cost would have been spent on hiring GST specialists to compute the tax than on the tax itself.

In 2014, Malaysia's revenue from SST was RM17.2 billion, and indirect tax revenue was 22.8% of total tax revenue. In 2016, Malaysia's GST revenue was RM41.2 billion, and indirect tax revenue had increased to 31.7% of total tax revenue[1]. With the introduction of GST in 2015, Malaysia was already on the gradual trend of reduction of direct tax as a proportion of total tax revenue. Does the reversal from GST to SST mean that Malaysia is moving back its focus from consumption tax base to income tax base? Increasing the SST rates or broadening the scope of SST may not seem to be the politically correct step for the government to do right now. However, the growing pressure for Malaysia to have more competitive income tax rates may result in either upward pressure on SST rates or pressure to broaden the scope of SST. Going forward, the competitiveness of Malaysia's current headline income tax rate of 24% with its regional countries and overseas trading partners should be monitored and reviewed carefully by the government as it would be a key factor affecting foreign direct investments. Attracting foreign direct investments would become a harder uphill task if Malaysia's headline income tax rate is not competitive with its trading nations. For instance, the United States of America has announced in 2017 that it will lower its corporate tax rate from 35% to 21% to attract businesses back to the country. If this is left unchecked, internationally accepted transfer pricing methodologies may eventually cause multinational organisations to shift their assets, functions and risks out of Malaysia to lower tax jurisdictions.

Concluding remarks

There is much to discover about the future government policy direction as we are still in the early days of Malaysia's first ever change of government. A list of promises has been made to the Rakyat which have to be fulfilled within 100 days. The removal of GST was one of the first, and the new government saw it necessary to carry it out swiftly to prove its trustworthiness. The government should now also take the opportunity to improve the SST system so that it will be more robust and possibly to even cater for the digital economy. The mere replacement of GST with SST without careful study of the cascading effects and double tax effects of SST would not only result in unwarranted price increases but would be a wasted opportunity for a review to ensure it remains relevant to the business models of today. The processes and systems which have been put in place for GST may be used for SST to achieve a higher compliance rate. The database of information from GST and introducing a simple SST registration process would enable the government to ensure a much higher rate of compliance under the new SST compared to the old SST.

If the government is serious in ensuring that Malaysia is a competitive location for foreign direct investments, then it would have to ensure that the new SST system would enable it to continue its current path of reductions in its direct taxes. Other government expenditure savings would also be necessary to help accelerate this. As Malaysia approaches its goal of becoming a high income nation, its revenue collection from consumption tax would become more relevant. Who knows, when the time is right GST may in the future become acceptable to the Rakyat and make a comeback. Therefore, GST professionals and GST practitioners in the commercial sector for the moment should continue to closely monitor the changes and not be too quick to discard their valuable GST knowledge and experiences.


Career talk presented to UNIRAZAK students

1. *"Fiscal and Economic Data" published by the Ministry of Finance, Malaysia*

David Lai *is the chairman of the* ***Technical Committee-Indirect Tax of CTIM*** *and is the* ***Head of Tax Advisory*** *at BDO Tax Services Sdn Bhd. He can be contacted at davidlai@bdo.my. The views expressed above are his own.*

NATIONAL GST CONFERENCE 2018

The National GST Conference 2018 was held from 27 February 2018 to 28 February 2018 at the Kuala Lumpur Convention Centre. This is the fourth annual conference jointly organised by the Royal Malaysian Customs Department (RMCD) and the Chartered Tax Institute of Malaysia (CTIM). The 2018 conference featured the theme "Future Challenges of GST Administration" and attracted approximately 1,200 participants.

DAY 1 WELCOME SPEECH BY CTIM PRESIDENT MS. SEAH SIEW YUN

The President felt honoured and thanked the Minister of Finance II, YB Datuk Seri Johari Abdul Ghani, for officiating and declaring open the National GST Conference 2018.

The President spoke of the recent announcement on the possibility of certain categories of GST registrants to apply and obtain approval for bimonthly taxable period and gave a brief rundown of the topics to be discussed including the Malaysian GST Compliance Assurance programme (MyGCAP), the GST treatment of digital economy and GST audits.

She also highlighted the theme of the conference that brings together experts to deal with various topics.

The President ended her speech by thanking the RMCD, various gracious sponsors, professional bodies and the joint organising committee co-chaired by YBhg. Dato' Ahmad Maheer of the RMCD and Ms. Farah Rosley of CTIM, for making the conference a success.

OPENING ADDRESS BY YBHG DATO' SRI SUBROMANIAM THOLASY, DIRECTOR GENERAL OF THE RMCD

YBhg Dato' Sri Subromaniam recapped the introduction of Customs Blue Ocean Strategy (CBOS) effective from 2017. Dato' Sri Subromaniam said CBOS was an informed approach that is not intended as a punitive measure. This enables the RMCD to learn and understand issues faced by GST registrants.

Dato' Sri Subromaniam announced that the RMCD has successfully launched MyGCAP which will benefit businesses seeking for refunds. He acknowledged there are slight delays in the refunds of GST due to many reasons, including wrongly refunded amounts which

were subsequently discovered to be fraudulent claims. The introduction of MyGCAP is intended to enhance the internal controls and measures in place to prevent such occurrences.

Dato' Sri Subromaniam thanked the Minister of Finance II for his attendance and for making this conference successful. This conference is a platform to openly discuss and address issues and challenges faced in respect of the Malaysian taxes.

The collaboration between CTIM and the RMCD with businesses should be pursued in empowering the administration of the taxes.

Dato' Sri Subromaniam expressed his gratitude and ended his speech with two stanzas of poem.

KEYNOTE ADDRESS BY GUEST OF HONOUR, YBHG DATUK SERI JOHARI ABDUL GHANI, MINISTER OF FINANCE II

YBhg Datuk Seri Johari shared the updates of Malaysia's economy, comparing the improvement in growth rates.

Datuk Seri Johari commented that there is room for improvement to ensure GST compliance including the intention to build mutual trust. It is the government's duty to continue engaging with the public to achieve the right process for tax collection.

Datuk Seri Johari emphasised the importance of the role of tax advisors as intermediaries between their clients and the authorities.

The government's aim is to enhance efficiency in the GST administration for a hassle free tax refund.

Datuk Seri Johari pointed out that taxing the digital economy has become a challenge which the Ministry hopes to address immediately. Digital service providers operating outside of Malaysia are not currently subject to Malaysian GST. GST will be imposed on Business to Consumers (B2C) transactions in the rising digital economy, with Singapore introducing the imposition of GST on the digital economy in the year 2020.

Datuk Seri Johari urged all GST registrants to focus on tax governance as part of the overall corporate governance and culture within the entities. He hopes to continue enhancing the collaborative framework to achieve fair and effective taxes.

Datuk Seri Johari thanked the participants and looked forward to everyone's support and suggestions.

TOPIC 1 CHALLENGES & FUTURE DIRECTION OF GST ADMINISTRATION

Moderator:

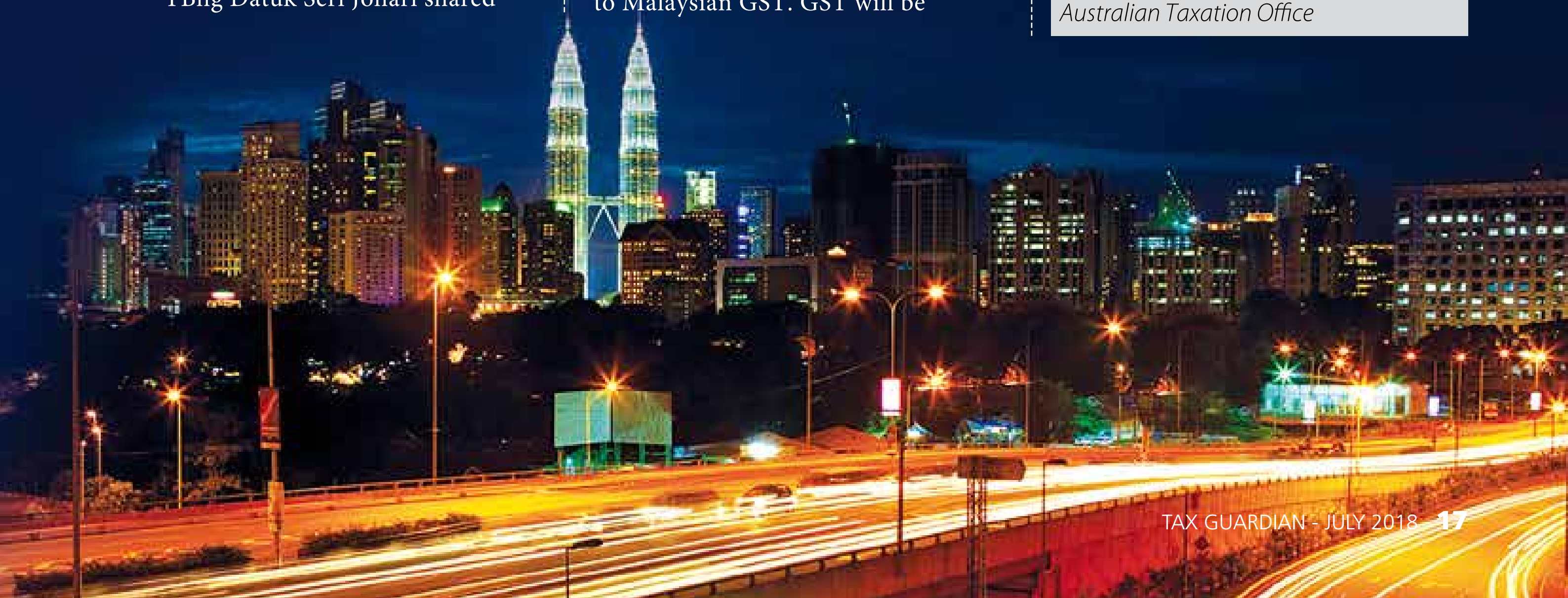
MR. MOHAMMAD SABRI BIN SAAD
Deputy Director of Customs, GST Division
Royal Malaysian Customs Department

Panel Members:

MR. MA SIVANESAN
Deputy Under-Secretary (Indirect Tax & GST Policy Sector)
Tax Division Ministry of Finance Malaysia

MR. DAVID LAI
Council Member
Chartered Tax Institute of Malaysia

MS. VIRGINIA GOGAN
Assistant Director, GST Technical Product Leadership, Indirect Tax
Australian Taxation Office



Foreword by Mr. Sabri

Mr. Sabri introduced the panel members and gave an overview of GST in Malaysia. He highlighted the areas of concern, which include how businesses comply with the GST law and how the government ensures business compliance.

The GST collection for the year 2017 was RM43 billion.

Mr. Sabri commented that there are differences in the interpretations of the GST law amongst the RMCD, the businesses and tax practitioners, giving rise to ambiguities that lead to disputes.

Mr. Sabri stressed that there is a provision in the GST legislation for refunds to be made within any period

practicable even though the GST legislation provided the period for GST refunds to be within fourteen working days.

PRESENTATION BY MS. VIRGINIA GST system on digital economy

Ms. Virginia said that Australia is the first country to implement charges on digital economy internationally.

Australia imposed GST on imported services and digital products with effect from 1 July 2017. Ms. Virginia also spoke about the new regime on imported goods that will be introduced on 1 July 2018.

Both of these regimes use a vendor collection model. Overseas vendors need to register for GST in Australia and lodge GST returns along with collection of GST on the sales if they exceed the registration threshold of AUD75,000.

Challenges on e-commerce and digital economy

One of the challenges for the Australian Taxation Office (ATO) is the ability to respond effectively to changes in the economy with the arrival of e-commerce and digital economy. Ms. Virginia explained that the ATO has focused on big data analytics and uses new tools such as the exchange of information with other jurisdictions, to enforce compliance.

The ATO has also been more open in consulting businesses and this sets a good example for a contemporary tax system.

Imported services and digital products

Australia's rules on imported services and digital products are similar to New Zealand's. Examples of digital products are video streaming, music, apps and games. Ms. Virginia highlighted that digital products apply also to conventional services such as architectural, legal and accounting services.

Low value imported goods

Ms. Virginia shared the details of the new regime on low value imported goods in Australia. GST will be applied on the importation of low value goods into Australia when the value of the goods exceeds AUD1,000.

Many overseas sellers use an online platform or marketplace to reach the Australian market. In the new regime, the GST liability lies with the online platform or marketplace rather than requiring each of the sellers outside of Australia that sells through the online platforms or marketplaces to register for GST purposes in Australia. The GST will be collected by the online platforms or marketplace operators.

The ATO considers this as a better way for these entities to comply with the legislations after taking into account the drawbacks of a border collection model. The number of taxable persons who need to register is reduced compared with the border collection model, thereby reducing compliance costs. GST will be collected on the point of sales and the goods will flow freely across the borders.

According to Ms. Virginia, the introduction of taxes on imported goods on the digital economy is a world-first reform. It is similar to or is an extension for imported services or digital products because GST is applicable only to sales to consumers. GST will be collected by one of the three entities– the platform operator, the seller of the goods or a third entity known as the re-deliverer.

Compliance of overseas entities

Ms. Virginia revealed that the number of registrations and amount of revenue collected have surpassed the ATO's expectations. There are already entities registered with the ATO for the importation of low value goods even though the new regime has yet to be implemented.

Ms. Virginia shared the ATO's compliance strategies, i.e. profiling the entities that are expected to register for GST. The ATO draws from a number of data sources including financial transaction data, records of money sent overseas and import data, to determine how the goods are entering into Australia. The ATO has compiled a list of approximately 24,000 entities (including 30 entities based in Malaysia) that the ATO believes will need to register under this measure.

The ATO's next focus is on communication and awareness – directly reaching out to these entities by writing and visiting, as well as having international engagement sessions.

The ATO also focused on the availability of public guidance to provide businesses with certainty in the manner ATO administers the law.

For the top 100 most significant and intellectual entities, the ATO has assigned its staff to assist them to ensure compliance on implementation.

Ms. Virginia highlighted that the ATO is focused on ensuring that entities are aware of their obligations under the law. Actions will be taken against non-compliant businesses so that the complying entities are not at a disadvantage.

Non-compliance

For non-compliant businesses, Ms. Virginia explained that the ATO could activate under international agreements, exchange information with their home jurisdictions, recover debts, raise assessments, impose penalties, etc. Other strategies include the potential to garnish payments.

Another strategy is aimed at reputational risks where entities need to maintain good compliance records across the world.

What has the ATO learned?

Simplification and international alignment will allow businesses to comply and reduce compliance costs. According to Ms. Virginia, businesses are allowed to use methods that are accepted in other jurisdictions like New Zealand and the European Union.

The ATO also applies behavioural insights by focusing on the top 100 most significant entities as the compliance attitude of others in the marketplace is influential.

Ms. Virginia also said that the ATO is focused on the ability to exchange information between governments, use international agreements to assist each other to collect GST/VAT and to help combat international tax evasion.

Presentation by Mr. Sivanesan

Mr. Sivanesan clarified that there was no projection for 15 years of GST collection. However, there is a 5-year projection that includes the previous collections of sales and services tax. Based on the collections for the last three years, the collections of GST are expected to exceed the original targets by 5% to 10%. He attributed this achievement to the efforts of the RMCD.

Mr. Sivanesan presented the following points:

- The challenge from the MoF's perspective is in terms of the administration of GST.
- Companies had also attempted to approach the MoF to expedite GST refunds when it is a function of the RMCD.
- It has never been the government's intention to make

GST a cost to taxpayers.

- Some measures including initial reliefs, facilitation or concessions granted to businesses, to achieve the government's agenda to promote certain industries and to attract investors.

PRESENTATION BY MR. DAVID LAI

Mr. David commented that some of the initial objectives of GST were to make tax broader, simpler, easier, and to enhance compliance as compared with the sales and services tax regime. However, there have been complications and they are often from zero-rating and exemptions.

Mr. David opined that Malaysia has to simplify its GST system. He quoted Singapore as an example, for its smoother GST system because of less ambiguity and more transparency.

Another area of improvement in Malaysia mooted by Mr. David is to increase the number of public rulings. He recommended that draft public rulings be shared with the tax practitioners, professional bodies and businesses for consultation prior to their release.

COMMENTS BY MR. VIRGINIA

What are the main challenges in Australia since the introduction of GST ?

Ms. Virginia responded that Australia has more exceptions like zero-rating of basic food as compared with New Zealand. She shared a recent issue in Australia on whether a packed salad is zero-rated or taxable. Other recent challenges include fraudulent activities in the gold industries and the property sectors.

COMMENTS BY MR. DAVID LAI

Mr. David expressed the concerns of certain businesses with long gestation period such as construction or property development, which have encountered difficulties in registration and delays in the refunds of input tax credits.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED)

Public rulings

When will the RMCD release the public ruling for reimbursement and disbursement?

Mr. Sabri responded that the draft has been circulated for comments and will be released to the public in the next few months.

Help desk

Can the RMCD set up a help desk for tax agents only to allow more technical questions to be raised?

Mr. Sivanesan supported this suggestion as long as the RMCD can facilitate the businesses.

TOPIC 2 IN CONVERSATION WITH THE DG OF RMCD & CEO OF IRBM

Moderator:

MR. SM THANNEERMALAI
Managing Director
Thannees Tax Consulting Services Sdn Bhd

Panel Members:

YBHG DATO' SRI SUBROMANIAM THOLASY
Director General of Customs
Royal Malaysian Customs Department

YBHG DATO' SRI SABIN BIN SAMITAH
Chief Executive Officer
Inland Revenue Board Malaysia

FOREWORD BY MR. SM THANNEERMALAI

Mr. SM Thanneermalai introduced the session and asked what are the action points and strategies of the RMCD and the IRBM to achieve targets that he described as lofty.

PRESENTATION BY DATO' SRI SUBROMANIAM

Overview of the Malaysia GST Compliance Assurance Programme (MyGCAP)

Dato' Sri Subromaniam said the MyGCAP was introduced on 24 January 2018 and it will be rolled out in the second quarter of 2018. MyGCAP is a new approach on informed compliance (similar to the CBOS) as opposed to enforced compliance (involving an audit or investigation).

MyGCAP is a strategy shift in promoting informed compliance or a culture of voluntary compliance. The aim of MyGCAP is for registered businesses to better manage their GST.

BENEFITS OF MyGCAP

Dato' Sri Subromaniam imparted the details of MyGCAP including the following benefits for GST participants approved under this program:

- Automatic renewal of all special schemes such as the Approved Toll Manufacturer Scheme and the Approved Trader Scheme.
- Dedicated team to resolve GST issues. GST officers including their mobile numbers will be shared with the approved GST registrants.
- Step down of GST compliance activities of the RMCD, for example, audit free period for at least three years. Audit activities may still be carried out at least once in six years.
- Expedited refund from the current period of three months to a targeted one month period.

WHO CAN PARTICIPATE IN MYGCAP?

Dato' Sri Subromaniam explained that only Public - Listed Companies (PLC), Government-linked Companies (GLC) and companies with a turnover of more than RM100 million will be allowed to participate in MyGCAP.

WHO CAN BE THE REVIEWER OF MyGCAP?

A member of the Chartered Tax Institute of Malaysia (CTIM), the Malaysian Institute of Accountants (MIA) or the Malaysian Association of Tax Accountants (MATA) who has obtained the GST tax agent license would be eligible to be a reviewer.

The candidate will be required to undertake a course co-organised by CTIM, MIA or MATA with the RMCD. Successful candidates will be certified and accredited by the RMCD.

Only firms with a minimum of two certified individual reviewers will qualify to be listed in the RMCD portal.

A MyGCAP reviewer must be independent and must not act as the auditor or tax consultant of the participants.

MyGCAP ROLL OUT TIMELINE

Dato' Sri Subromaniam presented the timeline planned for MyGCAP as follows:

- Jan 2018: Launch of MyGCAP
- Feb - Mar 2018: Development of examination modules for reviewers
- Apr - May 2018: Examination and certification process for reviewers via courses conducted by CTIM, MIA or MATA with the RMCD.
- May – Jun 2018: Enlisting of reviewers (i.e. name of firms) and roadshows.
- Jun 2018: Official roll out of the programme
- Jul – Dec 2018: Appointment of reviewers by businesses and reviews to be conducted.
- Jan – Mar 2019: Review of reports and approval of status by a panel consisting of the RMCD and the Tax Analysis Division of the Ministry of Finance. Successful applicants will be certified as MyGCAP participants.

LIABILITY OF REVIEWER

Dato' Sri Subromaniam pointed out that in the event of any serious non-compliance issues, the MyGCAP reviewer firm will also be liable under the criminal and civil regimes.

GST RATE

Mr. Thanneermalai asked when the Malaysian GST rate will be increased. Dato' Sri Subromaniam replied that the government has no intentions of increasing the GST rate for the time being.

COMMENTS BY DATO' SRI SABIN

Mr. Thanneermalai asked whether the Inland Revenue Board Malaysia (IRBM) will embark on a programme similar to MyGCAP. Dato' Sri Sabin answered that presently there is no such programme in the pipeline in the IRBM's strategic planning. He then congratulated Dato' Sri Subromaniam on his commendable initiative for MyGCAP and said that the IRBM will fully support the RMCD to ensure the success of the programme.

Dato' Sri Sabin also shared the IRBM's approach in achieving an efficient and effective tax administration as follows:

- Strengthening of leadership at all levels
- Introduction of work shifts in the year 2018
- Digitalising work processes
- Rewards and recognitions for competent personnel.

AUDITS AND INVESTIGATIONS

Dato' Sri Sabin shared the statistics of audits and investigations conducted in January 2018 compared with January 2017. The statistics showed that the collection in January 2018 had increased by 30%.

Dato' Sri Sabin said audits and investigations in the year 2018 will focus on financial institutions, insurance companies, oil & gas companies and other specialised industries. The audits and investigations will also focus on transfer pricing practices and companies which took advantage of aggressive tax planning to minimise taxes.

Mr. Thanneermalai commented that the fine line between audit and investigation has collapsed. He noted that audits conducted are geared towards investigations and asked Dato' Sri Sabin whether this is intentional. According to Dato' Sri Sabin, it was intentional in 2017. However, desk investigations will be the focus in 2018. They will be comprehensive audits instead of investigations. This can be conducted on a surprise basis.

REFUNDS

Dato' Sri Sabin revealed that in January 2018, the IRBM has processed a significant number of refund cases

totalling up to RM652 million and allowed set off of approximately RM1 billion.

REVISION OF TAX ESTIMATE

Mr. SM Thanneermalai commented on the revision of tax estimates. He proposed to the IRBM to consider allowing more opportunities of perhaps four times a year for taxpayers to revise their tax estimates. Dato' Sri Sabin responded positively that the IRBM will consider this.

TOPIC 3 GST AUDITS: ENHANCING GST COMPLIANCE – ISSUES & FINDINGS

Moderator:
MR. CHOW CHEE YEN
Council Member
Chartered Tax Institute of Malaysia

Speaker:
MS. ZAIZAH BINTI ZAINUDDIN
Deputy Director of Customs
Compliance Division
Royal Malaysian Customs Department

Panel Members:
MR. BRYNNER CHIAM
Associate Director
Axcelasia Taxand Sdn Bhd
MR. THENESH KANNAA
Partner
Tratax

FOREWORD BY MR. CHOW

After introducing the speaker and panel members, Mr. Chow outlined the subject matters for discussion covering common issues encountered during GST audits, challenges faced by the RMCD and taxpayers, and MyGCAP.

PRESENTATION BY MS. ZAIZAH

Ms. Zaizah began by distinguishing the two types of non-compliance. Unintentional non-compliance is due to errors in calculations and misinterpretation of laws while intentional ones are deliberately undertaken by fraudsters.

In 2017, 62,000 notices were sent to GST registrants to give them the opportunity to amend their returns that the RMCD found dubious. Ms. Zaizah pointed out that amendments are allowed for voluntary disclosure and they must be made within three months. The failure to do so will result in full audits being conducted. She also revealed that in early 2018, approximately 5,000 fraudsters were identified.

According to Ms. Zaizah, the compliance model that the RMCD has adopted aims to simplify compliance by relaxing the laws. However, the law will be applied in full force on those who wilfully abuse the system.

Ms. Zaizah shared the statistics from 2015 to 2017 on the following matters:

- compliance of return submission
- GST payments
- number of full audits/ verifications conducted (the number of verifications conducted via the Customs Blue Ocean Strategy (CBOS) operation increased tremendously in 2017)
- number of Bills of Demand (BOD) generated (283 BOD were generated on a best judgement basis)

COMPLIANCE CHECKLIST

The following compliance checklist is currently in place to ensure the fulfilment of obligations and declaration of correct returns:

- Timeliness of registration upon breaching the threshold
- Issuance of correct tax invoices
- Proper accounting of records to ensure input tax is not overstated and output tax is not understated
- Timeliness of filing the GST returns
- Correctness of accounting for the GST liability
- Timeliness of GST payments

WHAT TO EXPECT IN A GST AUDIT?

The compliance division has been restructured to merge the post clearance audits for importation with GST audits. Ms. Zaizah highlighted that being selected for an audit does not imply a mistake has been made nor an offence has been committed.

She explained that the GST audit process entails the following:

- Pre-audit session - The RMCD will analyse the registrant's GST return including a review of preliminary information requested such as the GST Audit File (GAF).
- Registrants will be notified

within 14 days of the audit visit. The registrants can request for a change of appointment.

- Premises visit and interview by the audit team - Registrants are given the opportunity to introduce their background and explain the discrepancies noted between the GAF and the GST return. Ample time will be given to furnish the supporting documents.
- Audits will be conducted at the registrants' office. Documents can be taken by the RMCD for further review.
- Audit exit conference - A Round Table Discussion (RTD) will be held with the auditee.
- Issuance of the BOD - There are avenues for the auditee to dispute the audit findings such as discussion with the RMCD during the RTD; applying for a review of the decision; proceeding to the tribunal session; or filing for a judicial review.

COMMON COMPLIANCE ISSUES FOUND IN AUDIT

Ms. Zaizah pointed out that non-declaration of cash sales in eateries and restaurants is where best judgement assessments are applied the most. There are no specific methods employed for best judgement assessments. The methods applied are based on observations (observing in restaurants), invigilations (invigilating the peak and non-peak periods of the business) and using the mark-up method for hardware business (based on purchases and expenditures incurred).

The common compliance issues for purchases include over-claiming of input tax by investment holding companies under group registration and claiming of blocked input tax.

Ms. Zaizah also touched on other specific compliance issues found in certain industries.

JOINT AUDIT BETWEEN THE RMCD & THE IRBM

Ms. Zaizah shared the objectives and standard operating procedures of joint audits with the IRBM. She stressed that there are no surprise visits. They have conducted 31 joint audits within the Klang Valley in the year 2017. According to her, this exercise will be extended to Johor, Penang, Sabah and Sarawak.

COMMENTS BY MR. THENESH

Mr. Thenesh shared the common compliance issues from the practitioners' perspective. Among others, they are:

- Failure to account for output tax on advances
- Failure to declare advances in relation to zero-rated supplies in the GST-03 return
- Incorrect understanding of zero-rating of international services
- Indirect export of goods
- No reconciliation between GST data and financial records.

COMMENTS BY MR. BRYNNER

Assisted Compliance Assurance Programme (ACAP)

Mr. Brynner shared some points on the ACAP in Singapore which is expected to be similar to MyGCAP. ACAP has been introduced since 2011 in Singapore. There are approximately 500 businesses out of a total of 97,000 registrants (i.e. approximately 0.5%) which are registered for this programme. As at the third quarter of 2017, 350 of these participants have been endorsed with ACAP status by the Inland Revenue of Singapore (IRAS).

According to Mr. Brynner, an ACAP reviewer must be independent as an Accredited GST Advisor. An ACAP guideline is in place for reviewers to conduct the review. Findings are to be consolidated by businesses and submitted to the IRAS. The final approval lies with the IRAS and not with the tax agent or accountant.

Mr. Chow added that the ACAP has two types of statuses, i.e. premium status granted for four years and merit status granted for three years. When ACAP was introduced, there was a one-off penalty waiver for voluntary disclosures. In Singapore, there is also a 50% subsidy payment by the government to the independent reviewer.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED)

Reason for change in Field 15 of the GST-03 return

Ms. Zaizah explained that there had been differences in the declaration for GST and income tax purposes. The main reason for the change is to reduce the gap between the income that taxpayers declared

in the income tax returns compared with their GST returns.

DAY 2 OVERVIEW OF DAY 1 CONFERENCE

Comments Ms. Farah Rosley

Ms. Farah recapped the salient points presented by the presenters in Day 1 of the conference.

TOPIC 4 INTERNATIONAL EXPERIENCE ON GST – COMMON ISSUES & APPLICATION

Moderator:
MR. YEOH CHENG GUAN
Partner
Malaysia Indirect Tax Leader
Ernst & Young Tax Consultants Sdn Bhd

FOREWORD BY MR. YEOH

After introducing the speaker and panel members, Mr. Yeoh introduced the topic for discussion and said that it will delve into the implementation of GST in India, Saudi Arabia, United Arab Emirates (UAE) and Malaysia.

PRESENTATION BY MR. UPENDER

Mr. Upender's presentation covered the implementation and operation of GST in India. He began with an overview of the different taxation of the states and union territories in India. He shared the journey from the announcement of GST in 2006 to the introduction of GST in India on 1 July 2017.

Mr. Upender touched on various key points as follows:

Speaker:
MR. SHRI UPENDER GUPTA
Commissioner, GST Policy Wing
Central Board of Excise and Customs (CBEC)
Ministry of Finance, Government of India

Panel Members:
MR. BHUPINDER SINGH
Vice - President, Group Tax
Petronas
MS. ANNIE THOMAS
Senior Assistant Director of Customs II
National Revenue Recovery Enforcement Team
Attorney - General Chambers

- There are 0.2 million tax administrators; 10 million registered taxpayers with four million registered by 1 July 2017; five to six million returns filed monthly; 300 million tax invoices.
- GST in India is a single tax system but with multiple stakeholders consisting of the GST Council, tax administration, GST network, taxpayers and other stakeholders.
- There are 12 unique features of the GST system in India such as: a unique federal body called GST Council; a non-intrusive Information Technology (IT) based system for electronic compliance; a feedback based taxation policy designed to listen and respond to challenges faced by taxpayers and providing solutions on a real time basis.
- The uniqueness of the model known as Integrated GST (IGST).
- The different tax rates in India. There are four tax rates for goods: lower rate at 5%, lower standard rate at 12%, standard rate at 18% and higher rate at 28%. The number of goods taxed at 28% has been reduced from 250 items to 50 items. Precious metals or stones are taxed at a special rate of 3% or 0.5%. There is also a mechanism to levy compensation cess. For services, it is generally levied at 18% with a few exceptions.

Mr. Upender opined that GST in India could not have started with a single tax rate like in Malaysia because India is huge and the taxation powers are in the hands of the tax administration, and the differences in the ability of taxpayers to pay tax.

GOODS AND SERVICES TAX NETWORK

The GST Network (GSTN) is the IT arm that initially functions as a common pass through portal for taxpayers to submit registration applications, file returns and make tax payments. Over a period of time due to the different IT capabilities, 28 states have requested the GSTN to develop their back end module, i.e. the tax authority statutory functions.

Mr. Upender also shared on the challenges faced relating to legal, IT and human resources issues.

COMMENTS BY MR. BHUPINDER

How was the recent implementation of GST in the UAE?

Mr. Bhupinder shared PETRONAS's experience on the implementation of GST in India before sharing the experience on the implementation of GST in the Gulf Cooperation Council (GCC) countries. Only Saudi Arabia and the UAE have implemented GST amongst the five members of the GCC countries. He shared a number of issues, including the filing requirement in the UAE to report inter-emirates charges.

Following this, Mr. Bhupinder stressed that simplification is expected for compliance to minimise the burden on businesses.

COMMENTS BY MS. ANNIE

What are the current challenges that Malaysia face?

According to Ms. Annie, the taxpayers are not transparent with the tax authority. Only selected information is revealed by the taxpayers. She stressed that there should be trust between the tax authority and taxpayers and this can be achieved via MyGCAP.

Is MyGCAP a new programme or are there similar programmes widely implemented elsewhere?

Singapore has implemented ACAP and Ms. Annie identified other countries in Europe such as the Netherlands and Ireland that have introduced compliance programmes similar to ACAP and MyGCAP. The similarity is to develop good relationships between the tax authorities and taxpayers to enhance compliance.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED)

Can the RMCD open up a channel which is easy and convenient for taxpayers to clarify tax issues?

Ms. Annie responded that emails can be sent to the RMCD and they will be directed to the relevant sectors. Alternatively, the queries can be sent directly to the relevant sectors or directly to the officers. The avenues are available in the GST portal.

TOPIC 5 GST IMPACT ON INFLATION AND PROFITEERING

Moderator:

MS. NG SUE LYNN
Executive Director
Indirect Tax
KPMG Tax Services Sdn Bhd

Speaker:

MS. LOW SWEE HON
Senior Principal Assistant Director
Anti-Profiteering Unit
Enforcement Division
Ministry of Domestic Trade, Co-Operatives & Consumerism

Panel Members:

YBHG. DATO' ABDUL LATIF BIN ABDUL KADIR
Assistant Director General of Customs (GST)
Royal Malaysian Customs Department
MR. RAJA KUMARAN
Executive Director
PricewaterhouseCoopers Taxation Services Sdn Bhd

FOREWORD BY MS. NG

Ms. Ng introduced the speaker and panel members.

PRESENTATION BY MS. LOW

The Price Control and Anti-Profiteering Act 2011 came into operation on 2011. Full implementation of anti-profiteering only took place in 2015 right before the implementation of GST.

Ms. Low explained the mechanism used to determine unreasonably high profit during the GST era.

ENFORCEMENT DURING THE GST

For the purposes of GST, the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014 was enforced on 1 April 2015. This set of rules applies across all goods and services.

Ms. Low recapped that during the enforcement period, the net profit margin shall not be increased for 18 months from 2 January 2015 until 30 June 2016. This period was then extended for six months till 31 December 2016. The net profit margin is calculated in Malaysian Ringgit and benchmarked against the net profit margin on 2 January 2015.

Ms. Low shared the various enforcement activities carried out during these 24 months:

- nationwide anti-profiteering enforcement operations (OPS CATUT)
- joint inspections with the RMCD focusing on food & beverage businesses and retailers
- inspections on the impact of GST on pricing, focusing on goods and services that were previously subjected to sales and services tax
- inspections on the special refund of sales tax
- compliance inspections to examine business records to ensure compliance

Various statistics including consumer complaints, issuance of notices under Section 21 and OPS CATUT, were presented.

NEW ANTI-PROFITEERING MECHANISM

The Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016 took effect from 1 January 2017. Prior to the introduction,

discussions and consultations were held with various industries for views and feedbacks.

Ms. Low explained the basic principles and scope of the new mechanism. According to Ms. Low, the net profit margin control in the new mechanism had been liberalised and the scope of goods covered has been reduced. There are only two classes of goods, i.e. foods & beverages, and household goods excluding cosmetics.

Ms. Low also shared on the challenges that abound in the enforcement including criticisms of the regulations and compliance by small medium enterprises.

COMMENTS BY MS. NG

Ms. Ng shared statistics of inflation in a few countries including Australia, Singapore, India and Malaysia.

COMMENTS BY DATO' LATIF

Do you agree that GST is the main cause of inflation or are there other factors?

Prior to answering the question, Dato' Latif presented a set of statistics showing that GST is not the factor for inflation.

If there is a change in GST rate, will inflation increase?

If the GST rate was to increase, Dato' Latif reckoned that the inflation rate will still be tolerable. He quoted a phrase by Mr. Sivanesan on Day 1 of the NGC that there should not be any changes in the GST rate "dalam masa yang terdekat", i.e. interpreted as the next 3-4 years.

COMMENTS BY MR. RAJA

How will businesses react if hypothetically there is a change/increase in the GST rate?

According to Mr. Raja, the rate would not make any difference as the GST incurred is generally claimable as input tax credit. It is the non-GST registrants and mixed suppliers who would be impacted with the additional GST costs on purchases. Price increases would be seen in Business to Consumer (B2C) supplies as a mode to transfer the newly increased taxes to the consumers. Exempt suppliers such as education and medical sectors will not be impacted much as GST relief is available for various items for these sectors. For non-GST registrants, Mr. Raja reckoned that the impact can be negated by personal income tax reductions or the anti-profiteering provisions to discourage businesses from profiteering.

COMMENTS BY MS. LOW

Ms. Low expressed that price increase is perceived as profiteering but price increase does not mean profiteering.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED

Instead of increasing the price or margin of the goods or services, suppliers especially from the food & beverage business, have reduced the size of the servings of food and drinks. Would these suppliers be considered as profiteering and committing an offence?

According to Ms. Low, this business approach cannot be an offence under the regulations as the prices are compared against similar products and they must also be of similar sizes. She added that the Ministry of Domestic Trade, Co-Operatives & Consumerism (MDTCC) is aware of the approach and has had frequent discussions relating to this.

TOPIC 6 MALAYSIAN CROSS - BORDER GST CASES

Moderator:
MR. KOONG LIN LOONG
Council Member
Chartered Tax Institute of Malaysia

Speakers:
MR. MOHAMMAD FURIMAN BIN HATTAR
Senior Assistant Director of Customs 1
Compliance Management Division
Royal Malaysian Customs Department
MR. S SARAVANA KUMAR
Partner
Lee Hishammuddin Allen & Gledhill

FOREWORD BY MR. KOONG

Mr. Koong introduced the speakers and handed over the stage to Mr. Saravana.

PRESENTATION BY MR. S SARAVANA

Mr. Saravana Kumar presented five cases with cross-border GST issues.

CASE NO. 1 – PLACE OF SUPPLY AND BELONGING

Interbet Trading Ltd. (No. 2) (1978) 1 BVC 1085 (Manchester VAT Tribunal, United Kingdom)

Issue: Whether the Appellant is a company having a registered office in Jersey affects its liability to be registered as a taxable person in the UK since the Appellant is deemed to have made taxable supplies in the UK through its agent, John Gough Forecasts Ltd (JGFL).

The Appellant appealed on the grounds that it had no establishment in the UK and the agreement between the Appellant and JGFL excluded the possibility of JGFL acting as an agent for the Appellant.

The Tribunal ruled that substance prevails over form. JGFL was indeed acting as an agent for the Appellant and JGFL is the establishment most directly concerned with the supply of services made in the UK even though the Appellant also has a business establishment in Jersey. Hence, the Appellant is deemed to have a business establishment in the UK and is required to be registered for VAT purposes in the UK.

CASE NO. 2 – REVERSE CHARGE

GST-Sarviz AG Germania v Direktor na Direktsia 'Obzahalvane i danachno-osiguritelna praktika' (Case C-111/14) [2015] BVC 23 (European Court of Justice, 6th Chamber)

Issue: Firstly, whether the provisions for reverse charge is interpreted as either the supplier (who has no establishment) of goods or services or the recipient of goods or services is exclusively liable to VAT or both persons are simultaneously liable for that tax. Secondly, if only one person is liable for VAT, whether the recipient of the services is liable to pay VAT on the services supplied by a supplier with a fixed establishment in the same Member state as the recipient.

In the first issue, VAT was held to be payable by a taxable person supplying the taxable service, even in cases of imported services if the supplier has a fixed establishment in the territory in which the VAT is due. However, if it is expressly provided that VAT is payable by another person, for example the recipient of an imported service whereby the supplier has no fixed establishment, VAT will be payable by that person.

It was held for the second issue that the application of reverse charge procedure is limited solely to situations in which the supplier of the service is not established in the Member State in which the VAT is due. Hence, the recipient cannot be liable for payment of the VAT if the supplier of the service has a business establishment in the Member State.

CASE NO. 3 - BEST JUDGEMENT ASSESSMENT

Q.V v Ketua Pengarah Kastam

Issue: Whether the Director General (DG) has the power to issue a best judgement assessment under Section 43 of the Goods and Services Tax Act 2014 when the Company is late in filing its GST returns.

The GST collected by the Company during a period was less than RM247.95 and the Company was late in filing the GST returns. The Company then received a best judgement assessment to pay GST amounting to RM6,702.96.

The Tribunal held that the DG is allowed to raise an assessment to the best of his judgement, to an amount he deems fair and reasonable.

CASE NO. 4 – GENERAL GST ANTI-AVOIDANCE RULE

Glenharrow Ltd v Commissioner of Inland Revenue [2009] 2 NZLR (Supreme Court, New Zealand)

Issue: Whether, notwithstanding taxpayer compliance with specific provisions of the Act, the Commissioner may set a particular arrangement aside and reconstruct it because the arrangement constituted tax avoidance.

A non GST-registrant mining licensee sold the licence to the taxpayer who is a GST registrant, for $45 million. Only $80,000 was paid by the taxpayer.

A GST registrant who buys second-hand goods from a non-registrant is entitled for input tax credit. The licence came within the definition of second-hand goods and the taxpayer claimed the corresponding amount of input tax credit based on the amount paid and the Inland Revenue paid the refund.

The taxpayer then claimed a further GST refund based on the remaining $44,920,000 which was declined by the Inland Revenue. The taxpayer objected.

The Supreme Court held that the arrangement to be a distortion that defeated the intent and application of the GST Act.

CASE NO. 5 – E-COMMERCE TRANSACTIONS

Skatterverket v Hedqvist (Case C-264/14) [2015] BVC 34 (European Court of Justice, Fifth Chamber)

Issue: Whether a transaction involving exchange of bitcoins (i.e. virtual currency) for traditional currency and vice versa, constitutes the supply of service effected for consideration. If so, is this transaction exempted from VAT?

The Respondent obtained a preliminary decision from the Revenue

Law Commission (RLC) that his services consisting of the exchange of traditional currency for bitcoin and vice versa, would be a supply of an exchange service for consideration that is exempted from VAT. The Swedish Tax Authority appealed against the RLC's decision.

It was held that such an exchange in return for payment of a sum equal to the difference between the values of the two, would constitute the supply of services for consideration subject to VAT unless otherwise exempted. It was concluded that exchange services involving bitcoins are financial transactions which are exempted from VAT.

PRESENTATION BY MR. MOHAMMAD FURIMAN

Mr. Furiman explained that some cross-border transactions are re-engineering / adjustments to the supply chain. Some businesses used cross-border transactions for tax planning to reduce their tax liabilities.

Can we do tax planning? Yes, provided the aims are for bona fide commercial reasons that are allowable under Section 44 of the Goods and Services Tax Act 2014.

Mr. Furiman shared briefly the rules and recommendations by the Organisation for Economic Co-operation and Development (OECD) on cross-border transactions relating to the supply of services and intangibles from B2C. This does not apply to Business to Business (B2B) transactions due to the existing provisions on reverse charge mechanism.

However, there are currently no provisions in place for similar B2C supplies. He revealed that the proposal to amend the law to include B2C transactions may be introduced by the end of 2018.

Mr. Furiman also shared some issues and costly consequences of cross-border transactions. These include claiming input tax credit on importation when it is not available to the taxpayer due to incorrect supporting documents.

Mr. Furiman also highlighted that the issuance of a Public Ruling on Item 12 of the Second Schedule of the GST (Zero-Rated Supply) Order 2014 is in the pipeline to provide clarification on the application of zero-rating of GST for certain services.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED)

Fixed establishments in Malaysia

Will the overseas principal who has registered for GST in Malaysia automatically be considered to have a fixed establishment in Malaysia, without considering other factors?

Mr. Saravana replied that there must be activities in Malaysia, similar to permanent establishment under the income tax provisions and there must be substance. Mr. Furiman added that fixed establishment is not an issue when the overseas principal is already a GST registrant in Malaysia.

BONA FIDE COMMERCIAL REASON

What is considered as a bona fide commercial reason for GST tax planning?

Mr. Saravana explained that the first point that needs to be considered is the purpose of the transaction. Is it purely to gain a tax benefit? He quoted case no. 4 that he presented and gave an example: a business changed its business approach for cost efficiency and a tax benefit is gained from being more efficient. This is a bona fide commercial reason. However, if one attempts to manipulate the law to obtain a refund, it is not a bona fide commercial reason.

BEST JUDGEMENT ASSESSMENTS

Can a best judgement assessment be issued out of the statute barred period?

Mr. Saravana answered in the affirmative as there are circumstances that allow for time-barred assessments to be issued. These are similar to the income tax provisions where time-bar provisions are not applicable if the RMCD can prove the existence of fraud, wilful default or negligence. Mr. Furiman added that best judgement assessments can be raised for up to six years. However, there is no limit for fraud cases.

TOPIC 7 MALAYSIA UNDER THE DIGITAL ECONOMY

Moderator:

MR. ALAN CHUNG
Executive Director
Indirect Tax & GST
Grant Thornton Malaysia

Speaker:

YBHG DATO' PADDY BIN ABDUL HALIM
Deputy Director General of Customs (GST/ Customs)
Royal Malaysian Customs Department

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

FOREWORD BY MR. ALAN

Mr. Alan enlightened the participants with a brief history of the introduction of VAT/GST after World War II as a means to raise funds to rebuild nations.

He shared that Norway is one of the first few countries that introduced taxation on the digital economy in 2011, followed by South Africa in 2014, the European Union and Japan in 2015, Taiwan and Australia in 2017. Singapore released its guidelines recently in February 2018.

PRESENTATION BY MR. TAN

Mr. Tan presented the current GST treatment in Malaysia for services, highlighting the belonging concept of the supplier.

B2B

For a supplier who does not belong in Malaysia, the reverse charge mechanism applies where recipient is a business in Malaysia, irrespective of whether he is a GST registrant.

B2C

Presently, no GST is collected on services purchased by Malaysian household consumers from overseas suppliers.

Practices in other countries

Mr. Tan shared the definition of a digital service in a Singaporean draft guide: A digital service is defined as a service which is delivered over the Internet or a electronic network and the nature of which renders their supply essentially automated involving minimum human intervention, and it is impossible to ensure in the absence of information technology. Examples of digital services are Google eBooks, Spotify and Netflix.

Mr. Tan pointed out that these are to be differentiated from e-commerce involving trade in goods and other conventional services such as travel and accommodation.

Mr. Tan also shared the GST features of four countries that have implemented simplified registration rules, namely Singapore, Australia, New Zealand and United Kingdom.

KEY OECD RECOMMENDATIONS

Among the key OECD recommendations that Mr. Tan presented is the destination principle where GST is a tax on final consumption, i.e. the country of consumption. Different rules may be applied to B2B and B2C transactions.

Other main features include simplification of registration; no input tax recovery; simplified and electronic returns, payment method and record keeping; and invoicing rules.

CHALLENGES FACED BY BUSINESSES IN OTHER COUNTRIES

Among others, the challenges are the increased administrative and operational cost for compliance; unrealistic requirements on information needed and record keeping; selling platforms which are not equipped to collect GST; and dealing with transitional rules.

PRESENTATION BY YBHG DATO' PADDY

According to Dato' Paddy, there is no Malaysian model presently but only one adapted from the OECD and Singaporean guidelines. He opined that simplified registration recommended in the OECD guidelines is not necessary as it is a non-occurring matter.

Dato' Paddy shared that tax authorities in many countries have measures to ensure that consumption taxes on international trade in services are effectively paid in the jurisdiction where the services are consumed, while minimising the risks that uncoordinated tax rules distort international trade. One of the reasons for such measures by tax authorities is to protect their GST revenues and to level the playing field between domestic and foreign service providers.

He shared the proposed Malaysian model of taxing digital services. The proposed scope of implementation covers all inbound digital services supplied by foreign suppliers and foreign operators in an online marketplace where they are supplied to Malaysian consumers. Malaysian consumers include those who purchase digital services in Malaysia, excluding businesses which may or may not be registered for GST.

QUESTIONS AND ANSWERS (ONLY A SELECTION IS PRESENTED)

Staff paid using their credit cards for overseas services billed to them but the services are used by the company. Can the company claim input tax on the reverse charge applied?

Mr. Tan explained that reverse charge is only applicable to imported services. If services are consumed outside of Malaysia such as hotel accommodation, the services will not be subject to reverse charge mechanism.

If household purchases, imported products and services are made in an electronic marketplace, will the user be required to a submit GST-04 return?

Mr. Alan responded that a GST-04 return is only applicable for imported services consumed by businesses. If this question is for a B2C transaction, the submission of a GST-04 return is not required. However, if digital services are taxed in the future, there may be a requirement for the marketplace to charge GST instead of requiring the recipient to submit a GST-04 return.

What e-supplies will fall outside the scope of GST in other jurisdictions?

Mr. Tan commented that GST is a tax on goods and services, and they should be subject to tax if consumed locally. Dato' Paddy opined that an e-service is logically out of scope if the equivalent conventional service is also out of scope of GST .

Is selling of cryptocurrency subject to GST?

Mr. Alan answered that the sale of cryptocurrency in Malaysia is a service and not a monetary supply.

The above article was contributed by a writer who is a tax specialist.

SALES AND SERVICES TAX (SST)

WHAT'S IN STORE?

Thenesh Kannaa

On 1 April 2015, Goods and Services Tax (GST) replaced the previous Sales and Services Tax (SST). In 2018, GST is being abolished and it has been announced that SST would be reintroduced.

Following the political reform, the indirect tax system in Malaysia is undergoing an unprecedented revolution. As a first step to abolish GST, the tax rate is reduced from 6 per cent to zero per cent on all supply of taxable goods and services made on or after 1 June 2018. For consumers, this simply means that there will be no GST from 1 June 2018. Businesses, however, should be mindful that the requirements of the GST Act 2014 must be complied until the legal process to repeal the GST Act 2014 is completed. This includes the requirement to file GST returns within one month from the end of the respective taxable period and the requirement to issue tax invoice for taxable supplies made.

It has been announced that SST would be implemented on 1 September 2018. As things are likely to unfold at a rapid pace, businesses and tax professionals must constantly watch this space and act swiftly.

The evolution of consumption taxes in Malaysia is summarised in Diagram 1.

POSSIBLE APPROACHES TO DEVELOP THE 2018 SST MODEL

At the time of writing, details of the SST to be implemented in 2018 is yet to be available. At this juncture, there are three approaches that the policymakers may choose, as depicted in Diagram 2.

***Diagram 1**: Evolution of consumption taxes in Malaysia*

***Diagram 2**: Possible approaches to develop the 2018 SST model:*

2018 SST

- Reintroduce SST based on its form as at 31 March 2015.

  (Reintroduce the 2015 SST)

- Reintroduce SST based on its form as at 31 March 2015 but with some modifications.

  (The Modified SST)

- Develop a new SST model

  (The new SST model)

Each path has its own pros and cons, as summarised in **Table 1**.

Whichever path is pursued, there are number of policy considerations that must be borne in mind, as elaborated in the remainder of this article.

FISCAL REVENUE

GST collection for 2018 was initially estimated be RM43.8 billion. It has been reported that the SST would be implemented on 1 September 2018, with expected annual collection of about RM30 billion. To put things into perspective, the SST collection in 2014 was only RM17 billion.

In other words, the 2018 SST regime is expected to yield almost double the revenue of the old SST, and about three-quarter of the GST collection.

If the path to 'reintroduce the 2015 SST' is pursued, the target of RM30 billion appears rather high but it remains to be seen whether it can be attained through a stricter enforcement of the 2015 rules (given that the Royal Malaysian Customs Department (RMCD) is now more experienced as a result of GST implementation).

If the 'Modified 2015 SST' path is pursued, some key modifications should be explored, such as reviewing the SST registration threshold for certain industries (such as restaurants, which had an

Table 1: Pros and cons of each approach to develop the 2018 SST model

Approach	Description	Key advantages	Key drawbacks
Reintroduce the 2015 SST	Reintroduce SST based on its form as at 31 March 2015.	- The policy-making process would be faster and easier as it means that the Acts, Orders and Regulations which were effective as at 31 March 2015 is to be reintroduced without amendments.	- The SST collection was RM17 billion in 2014 and reintroducing SST is in form as at 31 March 2015 may result in difficulties to meet the government's expected yield of RM30 billion from SST. - 10% sales tax on manufactured goods and imported goods may lead to price increase for some (but not all) products.
The modified SST	Reintroduce SST based on its form as at 31 March 2015 but with some modifications.	- It may give a good balance between doing things swiftly and achieving the yield of RM 30 billion from SST. - There would scope to adopt the features of GST – such as electronic submission of returns via the Taxpayer Access Point (TAP).	- Depending on the type and extent of modification, various stakeholders must be consulted, and hence an effective implementation of SST may be more-time consuming than simply reintroducing the 2015 SST.
The new SST	Develop a new SST model from scratch.	- Provides an avenue to incorporate the best of the features of the 2015 SST regime, the GST regime and consumption tax rules in other jurisdictions (such as on taxing the digital economy).	- Would be very time-consuming and challenging given the objective to implement SST by 1 September 2018.

exceptionally high threshold of RM3 million until 2015) and expending the scope of SST to include digital services. These would increase the yield from SST significantly.

Of course, there are many avenues to attain the RM30 billion target if the new SST path is pursued. However, if an entirely new tax system is introduced, industry players would require time to comprehend the new tax and make the preparations for implementation, and hence there is a risk that the implementation may have to be deferred.

In any case, it is vital to balance the fiscal needs and the priorities of the people and businesses. If required, the target of RM30 billion should be re-evaluated, and a suitable approach to develop the new SST model should be pursued.

LEGISLATIVE BACKGROUND

SST as at 31 March 2015 comprised of two independent pieces of principal legislation – Sales Tax Act 1972 and Services Tax Act 1975.

The Sales Tax Act 1972 had manufacturers (including sub-contractors) as its registrants, and also imposed sales tax on the importation of certain goods.

The Services Tax Act 1975 had specified service providers as its registrants.

In 2018, it has to be decided whether SST is to be enacted as two independent legislation – or as a single legislation (like the GST Act 2014).

SCOPE OF THE TAXATION

Being a broad-based tax, GST applied on supply of all goods and services, except those which were expressly exempt, zero-rated or relieved from GST.

Sales Tax Act 1972 was applicable only for manufacturers and the importation of specific goods. It did not apply to distributors, retailers and so on.

Services Tax Act 1975 was applicable only for specified service providers such as hotels, restaurants, night clubs, massage parlours, private clubs, golf courses, private hospitals (only for lodging and food & drinks), insurance companies (only on insurance provided to business organisations), telecommunication service providers, courier services, car park operators, car workshop, security providers, professional services (such as accounting, legal, engineering, architecture), consultancy / management services, and so on.

At this juncture, two vital decisions need to be made in relation to the scope of the new SST:

1. Sales Tax: would it be applicable to business operators other than manufacturers (for example, a

retail sales tax)?

2. Service Tax: would more items be added to the list of prescribed services?

SINGLE-TIER VS MULTI-TIER

The SST regime until 2015 was single-tier, i.e. generally no credit was available to customers to whom the SST tax was charged (business or otherwise). GST is multi-tier, i.e. business customers are generally entitled for credit in respect of GST incurred on goods and services acquired by the business.

Would the new SST be a single-tier tax or a multi-tier tax? If it is to be a multi-tier consumption tax, how different would it be from the GST which is being dismantled now?

CASCADING EFFECTS

While the design of multi-tier tax naturally avoids the cascading effect of taxation, conscious efforts are necessary to avoid cascading effects (or double taxation) in a single-tier system.

It is worth recalling that the SST regime until 2015 had the following features incorporated to avoid cascading effects:

- Ring system, refund system and credit system for sales tax purposes;
- Sales tax exemption on importation by manufacturers; and
- Non-application of service tax on reimbursement of costs on which service tax had been charged by the first service provider.

TAX RATE

As at 31 March 2015, sales tax rates were as follows:

- General Rate: 10%
- Food, building materials etc: 5%
- Compound preparations used for beverages: 20%
- Petrol: RM0.5862/Litre
- Diesel: RM0.40/Litre

As at 31 March 2015, service tax rates were as follows:

- General Rate: 6%
- Credit Card:
  - Principal card: RM50
  - Supplementary card: RM25.

What would be the tax rates for the 2018 SST? The general rate of 10 per cent for sales tax may have inflationary effects on some (but not all) products. This will be cases where 10 per cent SST of the factory price is higher than 6 per cent of retail price. The government may want to consider a lower rate to avoid any inflationary effects, and to avoid confusion and potentially a backlash arising from any negative perception.

For the case of service tax, the general rate of 6 per cent should not cause much disruption as it is consistent with the GST rate until 31 May 2018. Bearing in mind that the RM50/RM25 service tax on credit cards was introduced for a specific purpose, it should not be re-introduced unless there is a need to do so.

REGISTRATION THRESHOLDS

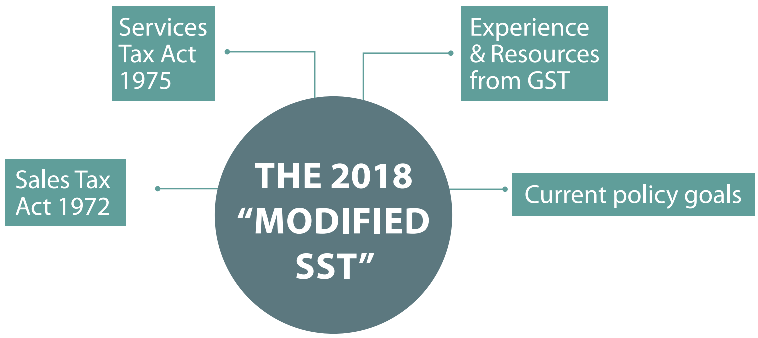
GST has a harmonised registration threshold of RM500,000.

As at 31 March 2015, the sales tax registration threshold was set low at RM100,000 per annum for manufacturers and RM20,000 per annum for sub-contractors. Service tax registration thresholds varied by industry. – in many cases RM300,000 or simply zero (i.e. all service providers in the specified industry were subject to service tax). In some cases, the service tax threshold was as high as RM3 million, leaving most industry players out of the system.

At this juncture, it is unclear whether the 2018 SST would have multiple registration thresholds or a harmonised single threshold. A harmonised threshold of RM500,000 may be the least disruptive for implementation, as well as monitoring by the RMCD.

TAXABLE PERIOD / FREQUENCY OF REPORTING

GST had quarterly taxable



periods (and monthly for the larger businesses). As at 31 March 2015, both sales tax and services tax had bi-monthly taxable periods.

Four, rather than six, submissions per annum would be more business-friendly, but what is more important is the mode of filing and payment of tax. The feature to furnish tax returns electronically and make tax payments electronically must be incorporated into the 2018 SST model. The information required in to be reported in the tax return must be limited to the essential information and be clearly-defined.

TAXING THE DIGITAL ECONOMY

The rapid rise in the digital economy should not be overlooked. Many people patronise various online service providers to search for information, to book hotel rooms, to purchase goods, to book a ride home or simply to stay in touch with friends and family via social media.

In the last few years, many countries in the European Union, Norway, Australia, New Zealand, Japan, South Korea and South Africa made policy and legislative changes to subject the digital service providers to consumption tax. Such effort does not only increase the tax collection, but also creates a level playing field for the local businesses.

Imposing corporate income tax or withholding tax on the digital service providers is not always easy due to the various bilateral commitments that Malaysia has made with other jurisdictions through tax treaties, which are also known as agreement for avoidance of double taxation.

However, Malaysia does not have any such agreement for consumption tax (the free trade agreements entered into for Customs duty purposes generally does not affect GST or SST). As such, the existence of the ever-growing digital economy must be taken into account in the design and scope of the 2018 SST.

CONCLUDING THOUGHTS

Malaysia is ushering into unchartered territory. It appears to be the first jurisdiction to abolish GST, and to replace it with SST. While it may be convenient and quick to re-introduce SST in its old form as existed as at 31 March 2015, its suitability to the present business environment and economic conditions must be evaluated. Consultation with industry players, consumer associations and tax institutions is key to its implementation despite some time constraints.

***Thenesh Kannaa** is partner at TraTax, a firm of independent tax advisors. He is also the author of **Master GST Guide** and a member of **CTIM's Technical Committees** on **Direct Taxation** and **Indirect Taxation**. Thenesh can be contacted at thenesh@tratax.my. Views that are expressed in this article are his own.*

MANAGING CUSTOMS VALUATION IMPLICATIONS OF RETROSPECTIVE

TRANSFER PRICING ADJUSTMENT

Huang Shi Yang & Chan Ching Eong

The perception that commonly exists among taxpayers is if one had met its obligation mandated by the income tax authority with regard to transfer pricing, then generally, the invoice price of goods should be "good enough" to satisfy the Customs for customs duty purposes. However, this may not be the case. The rules of the customs valuation and income tax transfer pricing may look similar on the surface to many taxpayers but the underlying details to determine compliance are quite different.

Briefly, there are six (6) valuation methods under customs valuation rules. The Transaction Value method is the primary basis to determine the customs value of imported goods with specific adjustment(s) where necessary if not already included in the invoice price. The fact that buyers and sellers are related does not mean the price is deemed to be unacceptable and it is prima facie influenced by relationship. However, the burden of proof lies with the taxpayer to prove that the price has

not been influenced by relationship. If the importer fails to demonstrate the price is free of influence, then the Transaction Value method can be denied, and then, the Identical Goods method, Similar Goods method, Deductive method, Computed method, and Flexible Valuation method will apply in sequential order. Determination of price under these methods can be time consuming and require a lot of data and information. The determination must be carried out in respect of each buy-sell or each importation of goods. If a particular importer buys from ten (10) separate sellers, there are ten (10) separate appraisals to be conducted even if the goods are the "same".

For income tax transfer pricing purposes, the assessment of the transacted price is to determine if it is arm's length and this is usually carried out by way of a benchmarking analysis. Most taxpayers are aware that tipping either side of the balance will trigger questions and possible stern action due to non-compliance from the Customs or the Income Tax Authority. It is almost unlikely that the requirements from both authorities can be met concurrently without paying adequate attention to both set of rules.

The World Customs Organisation (WCO) and the Organisation for Economic Co-operation and Development (OECD) had jointly worked together to tackle this valuation riddle and the results were published in 2015. However, the outcome of the exercise, which were anticipated by many, did not set out specific steps that taxpayers can follow in reducing their burden in complying with customs and income tax requirements. Numerous insights were shared but a straight forward answer was not given to the bewildered taxpayers. This issue remains as a conundrum in 21st century global trade environment. The existing gaps in connection with customs valuation and transfer pricing rules and other dynamic and frequent developments in global trade have made managing cross border transactions even more difficult and unpredictable.

FAST CHANGING GLOBAL TRADE ENVIRONMENT

The global trade environment is changing drastically over the last decade. Many recent developments pose new challenges to taxpayers in managing global trade. The United States' recent trade policy changes, Brexit, tax authorities introducing new taxation (such as the Australian government exploring the possibility of taxing electronic commerce) are just some of the examples that directly or indirectly contribute to the growing uncertainties in global trade. These dynamic factors may lead to frequent transfer pricing adjustments becoming an integral part of businesses to meet with OECD's arm length principle. Lump-sum retrospective transfer pricing adjustments, which may be considered by some as poor transfer pricing management, is becoming a norm to certain businesses due to the volatile economic environment in recent years.

However, price adjustment, be it from time-to-time or in lump-sum form retrospectively, requires the importers to re-appraise how dutiable value is arrived at (in particular one that is based entirely on invoice price between related companies) in order to meet customs' valuation requirements. Many do not realise that even though the entity may meet arm's length's requirement, it does not mean each product's price meets customs' valuation requirements. Besides, when transfer pricing comes into the picture, it means the parties are related and there is a mandatory obligation falling upon the importers

to demonstrate whether price of goods are free from the influence of relationship or not. If the importers fail to do so, the invoice price may be denied as the basis to determine dutiable value. As a result, other valuation methods must be applied instead.

The problem is indeed not new and the debate will continue. An effort to bring these two valuation rules together is like trying to square a circle. But this does not mean that taxpayers can simply compromise on either of the rules and only strive to comply with one authority's requirements out of convenience.

WHAT CAN BE DONE?

The Royal Malaysian Customs Department (RMCD) and the Inland Revenue Board Malaysia (IRBM) need to tackle the valuation issue by firstly obtaining a holistic view of the entire circumstances. It is understood that both authorities are exercising and enforcing their power under two separate laws (e.g. Customs Act 1967 and Income Tax Act 1967), but the valuation issue has muddled the separation. As such, given the present circumstances, the RMCD needs to be aware of how transfer pricing study, in particular, a benchmarking analysis conducted by the taxpayers can provide useful information as regard to the environment in which the buyer and seller operates.

On the other hand, the IRBM also has to be attuned to the customs valuation requirements. When price of each product that a taxpayer imported had been appraised and adjusted to meet customs' valuation rules, the result merits the IRBM's consideration because customs' valuation involves analysing product-by-product, origin-by-origin specific, and thorough computation made before arriving at the customs' value. Theoretically, if every importer exercises due-care in this regard, the computed value under customs valuation rules is accurate in removing the influence of relationship because it scrutinises and treats every importation as a single transaction. This should be more than adequate to demonstrate that the value is free from the influence of the relationship.

The thought of the Income Tax Authority in general, accepting the work under the customs valuation is an overreaching concept for many. However, in a recent case, the Indian Advance Pricing Agreement (APA) authorities have accepted the price of imports determined by the Special Valuation Branch (SVB) of the Indian Customs authorities as the arm's length price. While the circumstances in this case may or may not apply to others, nevertheless it is a good indication that tax authority, specifically Indian Tax Authority, is beginning to appreciate the work under customs valuation. It is nearly impossible for this to happen unless the Indian APA authorities had taken efforts in studying the work done by SVB of the Indian Customs authorities. If more tax authorities begin to accept customs valuation, it is a positive sign to taxpayers as what the future entails in relation to this valuation turmoil.

The RMCD and the IRBM should also consider the dynamic nature of today's trading environment and seek to introduce framework for taxpayers to engage with the authorities voluntarily or when it is necessary, instead of adopting a "tick-the-box" approach and leave the burden of proof entirely to the importers. Regardless of the design, form, and substance of such framework, it must share the following criteria:-

ADAPTABLE

The framework should not be a one-size-fits-all because companies are of different sizes and background. If a rigid, punitively complex, and prescriptive framework is introduced without taking into account the differences, it may drive the authorities and taxpayers to a state of deadlock. And even if a least adaptable framework introduced may seem to take off at the beginning, as business become more and more complex by day, it will not be future-proof. Ideally, Customs and the Income Tax Authority have to ensure that the framework developed is up to date, flexible, and follows the dynamic nature of business.

NO OR MINIMAL PENALTY

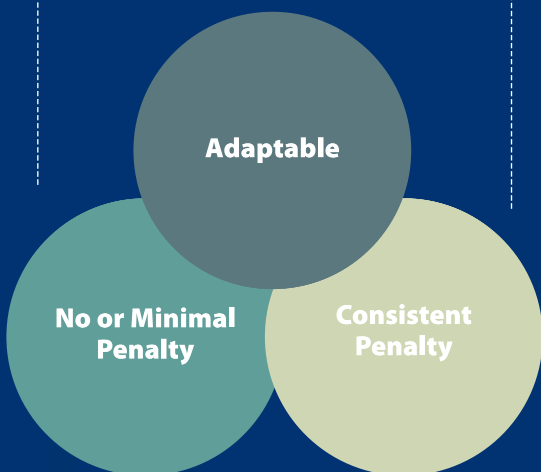
Further, in order to encourage taxpayers to engage voluntarily, framework with no or minimal penalty should be introduced such as the position taken by some authorities in cases of voluntary disclosure. This should be communicated clearly in the form of guideline or order supported by law. It helps to bolster the confidence among taxpayers. If uncertainty exists, taxpayers may not be receptive to the idea of disclosing cases of minor non-compliances or omissions due to the risks and uncertainties surrounding it.

In Australia, the Department

Taxpayers must disclosure fully, truthfully, and voluntarily to the Department of Immigration and Border Protection the details of the errors to qualify for the programme. Once disclosure is made voluntarily, the taxpayers are protected under the Australia Customs Act 1901 from penalties and prosecution.

of Home Affairs has introduced a voluntary disclosure programme to encourage taxpayers to disclose errors or omissions in relation to customs' value due to the failure to account a price related cost, incorrect adjustments to the customs value relating to transfer pricing or incorrect tariff classification. Taxpayers must disclosure fully, truthfully, and voluntarily to the Department of Immigration and Border Protection the details of the errors to qualify for the programme. Once disclosure is made voluntarily, the taxpayers are protected under the Australia Customs Act 1901 from penalties and prosecution.

In Canada, a similar approach is adopted by the Canada Border Service Agency (CBSA). However, the programme is not restricted to adjustment to customs value due to transfer pricing adjustment specifically. Instead, it is broad enough to encompass any errors and omissions in relation to customs value that require taxpayers to



make the necessary self-adjustment in complete manner. Among the criteria that taxpayers need to fulfil in order to qualify for the voluntary disclosure programme in Canada is the disclosure must be made voluntary. It involves potential imposition of a penalty. And all incidences of failure to account, non-compliance, or non-report must be disclosed. If taxpayers able to satisfy all the requirements, they are eligible for penalty relief subject to the discretion of the authority. However, taxpayers are not immune from criminal prosecution.

CONSISTENT

Last but not least, such framework must also be consistent, objective, and free from arbitrary judgement. If a same situation translates to different result due to arbitrary judgement of different officer in charge, it will significantly impact the confidence of taxpayers. Therefore, it is important that the authorities ensure comprehensive guideline supported by law is made available and constantly provide updates to eliminate or minimise the chances

of arbitrary decision. Clarities should not only serve as a guide to taxpayers, but it must also able to assist officer in their day-to-day decision making process.

Introduction of framework to promote voluntary disclosure and mutual agreement appears to be a viable approach to encourage taxpayers to initiate talks with the authorities. And when taxpayers are consciously aware that minimal risk exist in approaching the authorities in case of non-compliance, they would have no qualm to proceed. This would also benefit the authorities as they will be able to collect duties and taxes, which may not be possible without taxpayers voluntarily engaging them, and encourage regulatory compliance. Therefore, cooperation between the RMCD and the IRBM is vital.

We also believe that the RMCD has more to offer in the present environment. If the RMCD wants importers to increase their level of compliance in relation to customs' valuation rules, they need to provide comprehensive guidelines supported by law and walk them through the proper process. With the existing laws and lack of clarity from the RMCD, chances are many importers may opt not to disclose any adjustment made and even if they intend to, there is no rule or guideline on the process and procedure for them to follow.

As more and more Customs Authorities from other jurisdictions are making progress in this respect, the RMCD should not take this issue lightly. It is a promising situation when taxpayers are aware and keen to improve their compliance to customs valuation rules. If the IRBM is able to provide thorough and well-written guideline on transfer pricing matters, we do not see why the RMCD chooses not to provide the much needed clarity to importers

"This would also benefit the authorities as they will be able to collect duties and taxes, which may not be possible without taxpayers voluntarily engaging them, and encourage regulatory compliance. Therefore, cooperation between the RMCD and the IRBM is vital."

in this regards. Perhaps, this is also a good time for the RMCD to revisit the existing law and proposed the necessary amendments.

Authorities aside, importers must also take responsibility in this matter. As the party that bears the duty to comply with the law, importers should not attempt to take advantage of the situation. As law is drafted with finite knowledge of what the future entails, due care must be shown. Importers should strive to look for viable solutions and not alternative shortcuts that will not be sustainable.

It is also time for taxpayers to scrutinise the issues thoroughly as managing customs' valuation and transfer pricing requirements will be an arduous task due to the speed of change in the economic environment. Resource in assessing this matter may likely to go beyond the "traditional" finance or tax professional boundaries as the authorities are moving towards using Artificial Intelligent (AI) and big data. And while taxpayers explore other possibilities to ease their burden in managing this issue, they should also be proactive in seeking meaningful discussion and provide insight

to the authorities.

Whilst, for tax professionals, apart from keeping abreast to the latest development and requirement by both tax authorities, they must also ensure that advice and support provided to taxpayers address the requirements of both set of rules. Solution that works theoretically is of little use, and "quick fix" simply to satisfy expectations of one but not both authorities are unlikely to be sustainable nor optimum.

Efforts should also be taken to communicate with the authorities to manage their expectation on top of providing pragmatic solution to the taxpayers. As the person standing in between the tax authorities and taxpayers, tax professional is in a unique position to help to reduce the possible gap and expectation of both authorities, in particular with regard to communication on the requirements. When expectations are managed properly, risks of disputes can be managed to the most minimal. Even when there is no complete solution to the problem, a workable and sustainable middle ground can be reached while searching for a better solution. If tax professionals are able to provide consistent advice and solution, it would not be a surprise if one day eventually, what many consider as a half-baked solution to address the existing problem will be able to turn into the real solution with certain improvisation.

CONCLUSION

The rigid rules, their mutual exclusivity by design, and in particular, the mind-set of the two tax authorities may soon fail to catch up, leaving taxpayers globally to address the issue in the midst of tough and unpredictable economic environment. The focal point of this article is to highlight to the readers that global trade is becoming very fast-changing and the speed of change and magnitude are ever increasing fuelled by technological advancement as we enter the next digital evolution. This can change however. For many importers that claim they are not in a position to determine dutiable value because "prices are set by transfer pricing policy", they should begin to understand the importance of ensuring compliance to customs valuation requirements. Clearly, every party, including tax authorities in every jurisdiction, wished that a single solution will come forth to address both customs valuation and transfer pricing issues. However, realistically speaking, it will not happen in the near future and for now, taxpayers need to manage this, ideally, with assistance from their professional advisors.

***Huang Shi Yang** is the **Head of Customs** and **Trade, KPMG Tax Services Sdn. Bhd.** and **Chan Ching Eong** (**Tax Consulting Assistant, KPMG Tax Services Sdn. Bhd.**) They can be contacted at shiyanghuang@kpmg.com.my and chingeongchan@kpmg.com.my*

International**News**

The column only covers selected developments from countries identified by the CTIM and relates to the period 16 February 2018 to 15 May 2018.

CHINA (PEOPLE'S REP.)

Deduction for donations for public interest and charity clarified

On 11 February 2018, the Ministry of Finance (MoF) and the State Administration of Taxation (SAT) jointly issued Circular (2018) No.15 (the Circular), announcing new rules on deduction for donations made to public interest and for charity purposes. The Circular applies retroactively from 1 January 2017.

The existing rules provide that donations for charity and public interest purposes made through qualified organisations and government institutions are deductible up to 12% of total annual profits for enterprise income tax purposes. Any excess donations, or unused deductions within the limit of 12%, may be carried forward for three years. However, according to the Circular, the total amount of the annual deduction plus the excess carried forward from previous years shall not exceed 12% of the total annual profit of the enterprise. In the calculation of the deduction for charity or public interest in a tax year, the deduction must first take into account the amount carried forward from previous years and then followed by the donations incurred in the current year.

The Circular may also be applied for donations made between 1 September 2016 and 31 December 2016 and yet to be deducted for enterprise income tax for 2016 tax year.

New rules relating to non-profit organisations published

On 7 February 2018, the MoF and the SAT jointly issued Circular (2018) No.13 (the Circular) announcing updated administrative rules in regards to non-profit organisations. The rules retroactively apply from 1 January 2018 and supersede the previous Circular (2014) No. 13.

The Circular states that a non-profit organisation shall qualify for tax exemption if it satisfies the following conditions:

- established and registered according to the Chinese laws and regulations and recognised by MoF and SAT;
- conducts activities for public interest or non-profit purposes;
- all the funds obtained, except for reasonable expenditures of the organisation, must be used for non-profit activities or activities for public interest;
- assets and gains accrued are not distributed with the exception to reasonable payments for wages or salaries;
- any remaining property or assets of the non-profit organisation after wounding up and deregistered, must be used for non-profit purposes or activities for public interest;
- the incorporator of the organisation does not retain or have any proprietary rights of the funds or assets bought in the organisation;
- the level of salaries and benefits of the employees shall not exceed two times of the average salary of similar organisation in the same industry in the same city in which the organisation is registered; and
- the taxable income and tax exempt income and their associated costs, expenses and losses must be calculated separately.

Moreover, the applicant for the tax exemption is required to submit a set of documents including the application form, registration certificate, the statement of the source and expenditure of funds, and audit report of the immediate prior year financial statement.

The tax exemption is valid for five years, and application on renewal can be made after the expiry of the exemption period.

Deed tax exemption for reorganisation or business restructuring released

On 2 March 2018, the MoF and the SAT jointly issued Circular (2018) No.17 (the Circular), in regards to deed tax exemption for transfer of immovable properties in a business reorganisation and restructuring. The Circular applies from 1 January 2018 to 31 December 2020.

According to the Circular, deed tax is exempted for the transfer of immovable properties (i.e. land use right and ownership of buildings) in the following situations:

- an unincorporated business that changes its legal form and is converted into a limited liability company or a company limited by shares, or a limited liability company that is converted into a company limited by shares or vice versa. The investors (or shareholders) who inherit the rights and liabilities of the former entity must remain the same and at least 75% of the equity interest in the companies must be transferred to the new entity (proportions of investor's investment may change);
- more than 50% of a semi-government organisation is converted into a commercial entity;
- merger of two or more companies, where the main investors remain the same (proportions of investor's investment may change);
- division into two or more companies;
- bankruptcy (subject to certain conditions);
- asset transfer between enterprises owned by the same investor including the asset transfer between a parent company and subsidiaries or companies wholly-owned by the same investors (including capital increase by a parent company to its wholly-owned subsidiary in the form of immovable property), or asset transfer under order by the government (from county level and above);
- conversion of debt to equity where immovable property is involved; and
- transfer of shares where the underlying assets include immovable properties that are not transferred.

Adjustments to VAT rates announced

Following the announcement from the State Council previously, the MoF and SAT jointly issued Circular (2018) No. 32 (the Circular) on 4 April 2018 announcing reduction of value added tax (VAT) rates effective from 1 May 2018.

According to the Circular, part of the taxable goods or services that is currently charged the VAT rate of 17% will be reduced to 16% and that of 11% to 10%. The input tax refund rate for exports will correspondingly be reduced to 16% and 10%, respectively, while the input tax deduction rate for purchases of agricultural products is adjusted to 10%. The timing of the application of new rates must be based on the date of export as stated in the export good clearance statement, or, in the case of exports other than of goods, the date of invoice issuance.

In respect to the purchase of agricultural products used in sales, production or contract processing arrangement, which are charged at 16% VAT (and not 10%), the input tax deduction rate would be 12%.

Moreover, a transitional rule applies for enterprises engaged in foreign trade in respect of goods purchased before 31 July 2018 which are subject to different VAT rates.

New tax treatment of commercial pension insurances announced

On 2 April 2018, the MoF, the SAT, the Ministry of Human Resources and Social Security, China Banking and Insurance Regulatory Commission (CBIRC) and the Securities Regulatory Commission jointly issued Circular (2018) No. 22 (the Circular) announcing a pilot project for the deferred tax treatment of commercial pension insurances for individual income tax purposes. The Circular applies from 1 May 2018 to 1 May 2019 in Shanghai, Fujian province (including Xiamen city) and Suzhou Industrial Park. Salient provisions are summarised as follow:

Deduction of contributions

Contributions to a commercial pension fund are deductible for individual income tax purposes. However, the deduction is limited to 6% or CNY1,000 per month for individuals receiving wages, salaries and remuneration for labour services. For individual business owners, sole proprietors, partners of a partnership and other sole traders, the deduction is limited to 6% or CNY12,000 on an annual basis. The relevant government departments will publish a list of pension insurance products that are eligible for the tax deduction. Also, a centralised digital platform will be set up by the CBIRC to provide documentary proof for taxpayers who contribute to such approved pension insurance companies and claim the tax deduction allowed.

Tax exemption of earnings by pension fund

The investment income accrued to the personal account of a commercial pension fund is not subject to personal income tax for the period of contribution.

Tax exemption of pension payments

When an individual receives pension payments, only 75% of the payment is subject to individual income tax at a flat rate of 10%; whilst the remaining 25% will be tax exempt, provided that the annuity is for more than 15 years. Exceptions are made in cases of accidents and disabilities provided for in insurance policies where lump-sum payments are made. The individual income tax on 75% of the pension payments must be withheld by the insurance company.

Other

Individuals who derive income from more than one source may apply the deduction only once and are allowed to decide the applicability of the deduction.

HONG KONG

Inland Revenue (Amendment) Bill 2018 gazetted

The Inland Revenue (Amendment) Bill 2018 (the Bill) was gazetted by the government on 9 March 2018 and subsequently was passed by the Legislative Council on 16 May 2018. The Bill amends the Inland Revenue Ordinance, and seeks to implement the concessionary revenue measures proposed in the 2018-19 Budget. Some of the provisions are as follows:

Corporate taxation

- One-off reduction of 75% of profits tax for the year of assessment (YA) 2017/18 is provided. The reduction is capped at HKD30,000, which is applied to each business.

Personal taxation

- A one-off reduction of 75% of salaries tax and tax under personal assessment for YA 2017/18 is provided, subject to a maximum of HKD30,000.
- The personal income tax bands is widen from HKD45,000 to HKD 50,000 effective from YA 2018/19 as follows:

Marginal tax rate from YA 2018/19 onwards	
Net chargeable income (tax band) (HKD)	rate (%)
on the first 50,000	2
next 50,000	6
next 50,000	10
next 50,000	14
remainder	17

- The following allowances will be increased effective from YA 2018/19 onwards:

	(HKD)
Child allowance	
– for each of the first to ninth child	120,000
– additional child allowance for each child born during the YA	120,000
Dependent parent/ grandparent allowance (per dependant aged 60 or above):	
– not residing with taxpayer	50,000
– residing with taxpayer	100,000
Dependent parent/ grandparent allowance (per dependant aged 55-59):	
– not residing with taxpayer	25,000
– residing with taxpayer	50,000

- A personal disability allowance of HKD75,000 for eligible taxpayers.
- The deduction ceiling for elderly residential care expenses increased from HKD92,000 to HKD100,000 from YA 2018/19.

Two-tiered profits tax rates regime to be implemented

On 29 March 2018, the Inland Revenue (Amendment) (No.3) Ordinance 2018 (the Ordinance) was gazetted by the government. The Ordinance enables Hong Kong to implement the two-tiered profits tax rates regime announced in the 2017 Policy Address.

According to the Ordinance, the two-tiered profits tax rates regime will be applicable to any year of assessment commencing on or after 1 April 2018. The profits tax rate for the first HKD2 million of profits of corporations will be reduced to 8.25%, while the standard profits tax rate of 16.5% will remain unchanged for profits beyond HKD2 million.

For unincorporated businesses (i.e. partnerships and sole proprietorships), the two-tiered tax rates will correspondingly be set at 7.5% and 15%.

Expansion of profits tax exemption to privately offered open-ended fund companies

On 29 March 2018, the Inland Revenue (Amendment) (No.2) Ordinance 2018 (the Ordinance) was gazetted by the government. The Ordinance enables Hong Kong to implement the 2017-18 Budget initiative of extending profits tax exemption to privately offered open-ended fund companies (OFCs) with their central management and control exercised in Hong Kong.

An OFC is a collective investment scheme with variable share capital set up in the form of a company, but providing the flexibility to create and cancel shares for investors' subscription and redemption in the fund. In addition, an OFC is not bound by restrictions on distribution out of share capital applicable to a conventional company, and instead may distribute out of capital subject to solvency and disclosure requirements.

The Ordinance will come into operation later this year at the same time as the OFC regime on a date to be appointed by way of notice published in the Gazette.

Stamp duty on instruments involving more than one residential property clarified

The Stamp Duty (Amendment) (No. 2) Ordinance 2018 was gazetted by the government on 20 April 2018.

According to the Amendment Ordinance, unless specifically exempt or otherwise provided in the law, acquisition of more than one residential property under a single instrument executed on or after 12 April 2017 will be subject to ad valorem stamp duty (AVD) at a flat rate of 15%. This is applicable even if the purchaser/transferee is a Hong Kong permanent resident acting on its own behalf and not owning any other residential property in Hong Kong at the time of acquisition.

New requirements for companies to keep significant controllers registers enter into force

In order to fulfil Hong Kong's international obligations, the Companies Ordinance (Cap. 622) has been amended, requiring a company incorporated in Hong Kong to obtain and maintain up-to-date beneficial ownership information by way of keeping a Significant Controllers Register (SCR). The new requirements were introduced via the Companies (Amendment) Ordinance 2018 (the Amendment Ordinance) and entered into force on 1 March 2018. The details are summarised below.

Application scope

The requirement of keeping a SCR applies to all companies incorporated under the Companies Ordinance in Hong Kong, including companies limited by shares, companies limited by guarantee and unlimited companies. Companies with shares listed on the Hong Kong Stock Exchange are exempt from such requirement.

An SCR is required to be kept in either the English or Chinese language, containing required particulars of its significant controllers (including registrable persons and/or registrable legal entities). The SCR should be kept at the company's registered office or a prescribed place in Hong Kong.

Conditions for significant control over a company

A person has significant control over a company if one or more of the following five conditions are met:

- the person holds, directly or indirectly, more than 25% of the issued shares in the company, or the person holds, directly or indirectly, a right to share in more than 25% of the capital or profits of the company;
- the person holds, directly or indirectly, more than 25% of the voting rights of the company;
- the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;
- the person has the right to exercise, or actually exercises, significant influence or control over the company; and
- the person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions (in their capacity as such) in relation to the company.

Registration requirements

If a registrable person of a qualifying company is a natural person, the particulars required for the SCR are as follows:

- the person's present first name and surname, former first name or surname (if any), and aliases (if any);
- the person's correspondence address;
- the number of the person's identity card, or the number and issuing country of a passport held by the person;
- the date on which the person became a registrable person of the company; and
- the nature of control over the company.

If a registrable person of a qualifying company is a legal entity, the particulars to be contained in the SCR are as follows:

- the entity's name;
- the registration number and address of its registered or principal office;
- the entity's legal form and the law that governs it;
- the date on which the entity became a registrable legal entity of the company; and

New measures introduced to combat money laundering and terrorist financing

To enhance Hong Kong's regulatory regime for combating money laundering and terrorist financing, a new licensing regime for trust or company service providers (TCSPs) was introduced under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) and entered into force on 1 March 2018.

Under the new licensing regime, TCSPs are required to apply for a licence from the Registrar of Companies and satisfy a "fit-and-proper" test before they can provide trust or company service business in Hong Kong. It is considered an offence if any person (including individuals, partnerships and corporations) carries on a trust or company service business in Hong Kong without a licence.

Tax incentives for qualifying R&D activities proposed

The Inland Revenue (Amendment) (No.3) Bill 2018 (the Bill) was gazetted by the government on 20 April 2018. By amending the Inland Revenue Ordinance (IRO), the Bill seeks to provide for enhanced tax deduction for expenditure incurred by enterprises on qualifying research and development (R&D) activities in Hong Kong.

According to the proposal, Section 16B of the IRO is to be amended and restructured to provide for a new schedule which sets out the operational details of the basic and enhanced tax deduction regimes for R&D activities. These include the definitions, scope and rates of the basic tax deduction, and the enhanced tax deduction. The schedule also contains provisions to empower the Commissioner of Inland Revenue (CIR) to seek advice from the Commissioner for Innovation and Technology (CIT) on R&D and qualifying R&D claims, as well as to empower CIT to designate local institutions as "designated local research institutions" for tax deduction purposes.

Currently, the IRO provides 100% deduction for R&D expenditure, as well as capital expenditure incurred in the purchase of plant or machinery for R&D purposes, in the year it is incurred. Subject to the passing of the Bill, enterprises will be able to enjoy additional tax deduction for domestic R&D expenditure incurred. The first HKD2 million spent on qualifying R&D will enjoy a 300% tax deduction, and expenditure beyond that threshold will enjoy a 200% tax deduction. In addition, there is no cap on the amount of enhanced tax deduction.

The Bill will be introduced into the Legislative Council on 2 May 2018.

INDIA

India gazettes Finance Act, 2018

The Union Budget for the fiscal year 2018-19 was presented in Parliament on 1 February 2018 and subsequently, the Lower House of Parliament passed the Finance Bill 2018 with 21 amendments and three new clauses. The final Finance Bill, 2018 received the President's assent on 29 March 2018. Key amendments of the Finance Bill 2018 are as follows:

Corporate tax

- The scope of "significant economic presence", where income of a foreign entity taxed in India if specific criteria are met, is expanded to include transactions/activities with respect to which agreements that have been entered into outside India.
- Regarding incentives for "start-ups" as to income from "eligible business", the requirement on business turnover less than INR250 million is relaxed, only relating to the years in which the deduction is claimed under Section 80-IAC of the Income Tax Act, 1961 (the Act), instead of to a period of seven years from the year in which the start-up is incorporated, as originally proposed.
- The benefit of indexation will be available for long-term capital gains from the transfer of shares which had not been listed as at 31 January 2018, but were listed as at the date of transfer and became the property of the assessee by any of the modes prescribed under Section 47 of the Act.

- The actual cost of capital assets will be the fair market value of the inventory on the date of conversion of the inventory into capital assets.
- The obligation to obtain a Permanent Account Number will be required only for non-individual residents entering into financial transactions of INR250,000 or more in any year.
- The definition of "short-term capital gains" under Section 2(42A) of the Act will be modified, with the term "equity oriented fund" having the meaning assigned to it as per Section 112A of the Act.
- Along with income computation and disclosure standards, extant guidelines issued by the Reserve Bank of India are also to be considered for valuation of securities held by a scheduled bank or public financial institution.

Personal tax

- The amount standing to the credit of the Public Provident Fund will not be liable to any attachment under any decree or order of a court in respect of any debt or liability incurred by the depositor.

Personal tax

No amendments has been made to the proposed 2018 Bill.

INDONESIA

Tax holiday for pioneer industries – regulation issued

The Ministry of Finance (MoF) issued Regulation No. 35/PMK.010/2018 (PMK35) which took effect from 4 April 2018, to regulate the granting of tax holidays to specified pioneer industries. PMK 35 revokes MoF Regulation No. 159/PMK.010/2018 as amended by Regulation No. 103/PMK.010/2016. Salient provisions are listed below:

- Full tax exemption will be granted as follows:

Value of new investments (IDR)	Tax holiday
IDR500 billion and not more than IDR1 trillion	5 years
IDR1 trillion and not more than IDR5 trillion	7 years
IDR5 trillion and not more than IDR15 trillion	10 years
IDR15 trillion and not more than IDR30 trillion	15 years
IDR30 trillion and above	20 years

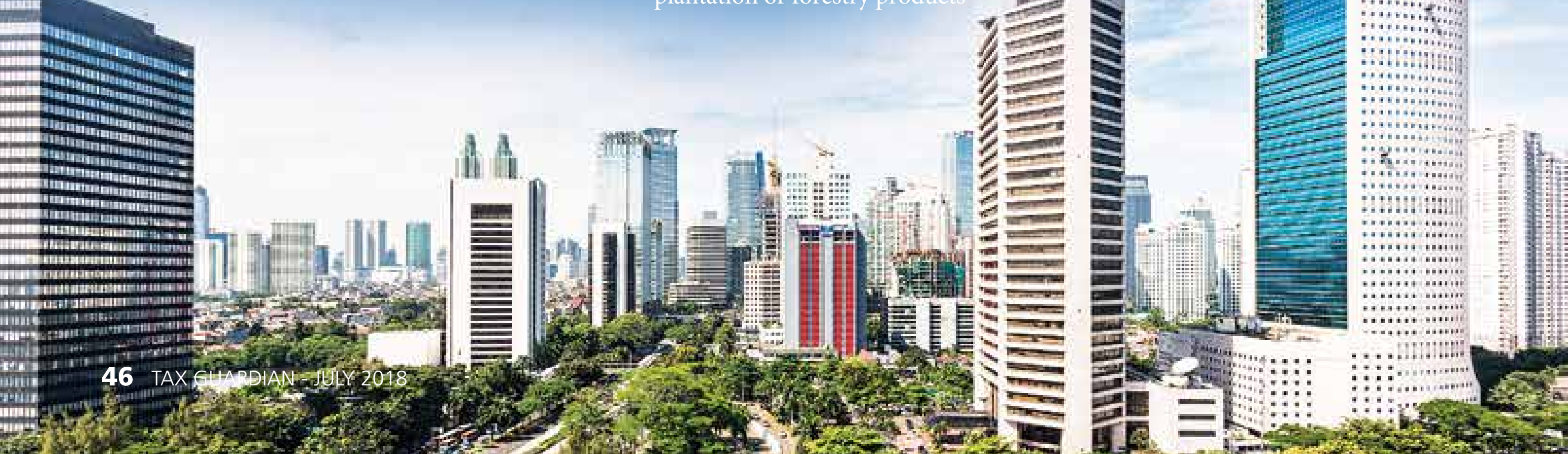
- The eligible taxpayer will be granted a 50% income tax reduction for the next 2 years after the tax holiday.
- The eligible pioneer industries are:

Integrated industry of:

- Upstream basic metal (steel and non-steel) with or without derivatives;
- Refining of oil and gas with or without derivatives;
- Petrochemicals based on petroleum, natural gas or coal with or without derivatives;
- Basic chemicals with or without derivatives;
- Basic organic chemicals derived from agricultural, plantation or forestry products with or without derivatives;
- Pharmaceutical raw materials with or without derivatives;

Manufacturing of:

- Semi-conductors and other main components for computers;
- Main components of communication equipments for smartphones;
- Main components of health equipment for irradiation, electromedical or electrotherapy equipment;
- Main components of industrial machines for the manufacturing of machines;
- Main components of machines for motor vehicles with at least 4 wheels;
- Robotic components for manufacturing machines;
- Main components for vessels, aircrafts and trains;
- Power generation plants industry; and
- Economic infrastructure.
- The eligible taxpayer must be incorporated in Indonesia and must adhere to the debt to equity ratio stipulated by the MoF. The taxpayers should not have been granted a tax holiday in the past or have been rejected for its prior tax holiday application.



- The tax holiday application must be submitted with the application for new investment before the commencement of commercial production or within a year after the issuance of the investment registration.
- A taxpayer that has been granted the tax holiday is required to submit annual reports to the Director General of Tax within 30 days after the end of a tax year and keep separate accounts of the tax exempted industry.
- If it is discovered during an audit that the taxpayer which has been granted a holiday does not meet any of the stipulated conditions, the tax authorities will revoke or amend the tax holiday granted.

Regulation on preliminary tax refund issued

On 12 April 2018, the MoF issued Regulation no. 39/PMK.03/2018 setting out the criteria for taxpayers to obtain preliminary tax refunds of income tax and value added tax (VAT). Qualifying taxpayers would be entitled to speedier tax refunds.

The following categories of taxpayers are eligible to apply for the preliminary tax refunds:

Taxpayers that meet certain criteria (Wajib Pajak Kriteria Tertentu (WPKT)

- Taxpayers that have submitted their tax returns by the due dates.
- Taxpayers with unpaid taxes, unless permission has been obtained from the authorities to pay in instalments or to postpone the payments.
- Taxpayers with audited financial statements with unqualified opinions for three consecutive years.
- Taxpayers that were never convicted of tax crime in the past five years.

Taxpayers that meet certain requirements (Wajib Pajak Persyaratan Tertentu (WPPT)

- Individuals not engaging in business or freelance jobs who have applied for tax refunds in their tax returns.
- Individuals engaging in business or freelance jobs who have applied for tax refunds not exceeding IDR100 Million in their tax returns.
- Companies that apply for tax refunds not exceeding IDR1 Billion in their tax returns.
- VAT-able enterpreneurs that apply for VAT refunds not exceeding IDR1 Billion in their tax returns.

Low-risk VAT-able entrepreneurs (Pengusaha Kena Pajak Berisiko Rendah (PKPBR))

- Companies listed on the Indonesian stock exchange.
- Companies whose majority shareholders are the central and/or regional government.
- Companies that are Priority Partners of Customs or Authorised Economic Operators.
- Manufacturers with a premise to carry on manufacturing activities and have submitted VAT returns for the past 12 months by the due date.
- VAT-able enterpreneurs that apply for VAT refunds not exceeding IDR1 Billion in their tax returns.

The PKPBR must be engaged in the either export of goods and services; supply of VAT-able goods and/or services to a VAT Collector; and/or supply of VAT-able goods and/or services for which VAT is not collected.

Application for a WPKT status must be submitted by 10 January. The Director General of Tax (DGT) will decide on the application within one month from the date of receipt of application, otherwise the application is deemed approved by the DGT. Approval by the DGT can be revoked if the taxpayer subsequently defaults in the submission of tax returns or is investigated for tax crimes. Income tax refund applications made under the WPKT will be processed within three months from the date of receipt of application while VAT refunds will take one month.

WPPT-eligible persons may apply for preliminary tax refunds via tax returns without having to apply for WPPT status. Under the WPPT, refund application by an individual will be processed within 15 days from the date of receipt of application. VAT refunds and refund applications by a company will take one month to process.

To apply for a PKPBR status, a company must not be investigated for tax crimes and convicted of tax crimes in the past five years. The DGT will decide on the application within 15 working days from the date of receipt of application, failing which the application will be deemed to have been approved. The approval may be revoked if the conditions for the granting of a PKPBR status were not adhered to. Tax refund applications from a PKPBR-eligible person will be processed within 1 month from the date of receipt of application.

SINGAPORE

Transfer pricing guidelines – amendments

On 23 February 2018, the Inland Revenue Authority of Singapore (IRAS) issued the fifth edition of the e-Tax guide on the transfer pricing (TP) guidelines. The main amendments to the e-Tax guide are summarised as follows:

- guidance is provided on related parties for a permanent establishment in Singapore, i.e. the application of the arm's length principle between a PE in Singapore and other PEs outside Singapore and the attribution of profits to the Singapore PE using a separate entity approach;
- enhanced guidance on
  comparability analysis and the transactional profit split method;
  - information on transfer pricing adjustments by IRAS;
  - rewriting of Section 6 on TP documentation requirements. The main changes are:
  - the inclusion of the TP documentation requirements under the new Section 34F of the Income Tax Act (ITA);
  - the application of qualifying past TP documentation; and
  - the consequences of insufficient TP documentation or not preparing TP documentation;
  - amendment of certain paragraphs (8.23, 8.35 and 8.36) in relation to the Mutual Agreement Procedure and Advance Pricing Arrangement to be consistent with the e-Tax guide on Avoidance of Double Taxation Agreement;
- removal of details on spontaneous exchange of information on certain rulings as the details are available on the IRAS website;
- clarification on application of the arm's length principle for re-financing;
- a new section on the surcharge and penalty imposed from the year of assessment 2019 for non-compliance with the arm's length principle and TP documentation requirements; and
- amendment of types of routine support services (Annex C) to be consistent with the First Schedule of the TP Documentation Rules.

THAILAND

Corporate tax deduction for employment of people on state welfare

On 6 March 2018, the government of Thailand resolved to provide a corporate tax deduction to companies that employ people on state welfare. The allowable tax deduction is equivalent to 150% of expenses paid out for employing such persons, subject to the following rules and conditions:

- deduction is capped at 10% of the total number of employees of the company;
- where the state welfare employee works for more than one company at a time, only the first company is entitled to the tax deduction;
- the salary paid to a state welfare employee does not exceed THB 15,000 per month; and
- the company complies with the additional rules, procedures and conditions issued by the Revenue Department.

The tax deduction is applicable for financial years beginning on or

after 1 January 2018 and before or on 31 December 2019.

Tax incentive for angel investors

A Ministerial Regulation regarding a tax exemption on personal income tax for angel investors was approved by the government end of January 2018. The qualifying conditions for the tax exemption are set out below.

- The investee must be a start-up company or juristic partnership:
- incorporated under Thai law and registered between 1 October 2015 and 31 December 2019;
- that conducts a promoted business activity in an industry approved by the National Science and Technology Development Agency (e.g. food and agriculture);
- with registered capital not exceeding TH5 million and revenue generated from the supply of goods or services not exceeding THB30 million in any fiscal year that the tax exemption is applied; and
- with at least 80% of total revenue generated from the sale of goods or services and/or related to the approved industry in the fiscal year.

The angel investor:

- has made investments between 1 January 2018 and 31 December 2019 at the incorporation phase or capital increment phase of the investee; and
- must hold shares in the investee for a period of 2 consecutive years or more from the date of investment.
- The tax exemption is capped at THB100,000 per applicable tax year.

Additional tax incentives for EEC

On 12 March 2018, the Board of Investment made an announcement regarding additional tax incentives granted to investors engaged in eligible activities in three provinces (Chachoengsao, Chonburi and Rayong) under the development of the Eastern Economic Corridor (EEC). The incentives are allotted to investors based on their establishment in the above provinces as follows:

- Special Industry Promotions Zones [Eastern Airport City (EEC-A), Eastern Economic Corridor of Innovation (EEC-I) and Digital Park Thailand (EEC-D)]

- extension of corporate income tax exemption by two years; and
- additional corporate income tax reduction of 50% for five years

Target Industry Promotion Zones

- additional corporate income tax reduction of 50% for 5 years

Promoted Industrial Estates or Industrial Zones

- additional corporate income tax reduction of 50% for three years

Second draft bill on VAT on foreign e-commerce operators issued

On 17 January 2018, the Thai Revenue Department (TRD) issued the second draft bill aimed at bringing international e-commerce transactions with non-VAT-registered persons in Thailand (recipients) under the scope of value added tax (VAT). The proposed law will take effect 180 days after it is published in the Royal Gazette.

The key proposals for tax legislative amendments are set out below.

VAT registration

Foreign operators that are required to register for VAT purposes in Thailand and are subject to VAT in Thailand, provided that the annual service income derived by them exceeds THB1.8 million and the services rendered are consumed in Thailand, including:

- foreign e-commerce operators providing services to recipients by means of electronic media or through foreign digital platform operators;
- foreign digital platform operators whose platforms are used by the above foreign e-commerce operators that provide services to recipients. However, VAT registration and VAT taxability of service income is re-allocated to the foreign e-commerce operators if all of the following criteria are met:
  - the foreign digital platform operator is not the person determining the terms and conditions of the service provision, approving the delivery of services to the recipient, or approving the service fee collection from the recipient;
- an agreement stating that the foreign e-commerce operator, instead of the foreign digital platform operator, is responsible for administering and registering for VAT purposes in Thailand is made between both parties; and
- a document is issued to the recipient stating that the service is provided by the foreign e-commerce operator.

The recipients making payment to the aforementioned foreign operators are not required to administer VAT through self-assessment.

VAT rate

The reduced VAT rate of 7% is applied to the service income received from recipients.

VAT administration

- Foreign operators may register for VAT electronically via the TRD's website.
- Foreign operators are not allowed to issue VAT invoices to the recipients.
- Foreign operators are not allowed to collect VAT from recipients.
- Foreign operators are required to prepare output VAT reports and submit electronic VAT returns together with the VAT payments.
- Foreign operators are not allowed to apply for input VAT deductions or obtain VAT refunds.
- Foreign operators are subject to VAT liabilities, penalties, surcharges and fines for failure to comply with the VAT rules.
- Foreign operators may request for their customers' VAT number to confirm whether they are VAT-registered persons in Thailand.
- Where a customer is a VAT-registered person in Thailand, the customer will not be able to claim the self-assessed VAT as input VAT or apply for a VAT deduction, if the foreign operator does not comply with the proposed e-commerce law.

The final two proposed measures reported on 7 July 2017 (i.e. taxable presence subject to corporate income taxation and withholding tax) have been removed from the bill.

__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.

TechnicalUpdates

The technical updates published here are summarised from selected government gazette notifications published between 16 February 2018 and 15 May 2018 including Public Rulings and guidelines issued by the Inland Revenue Board Malaysia (IRBM), the Royal Malaysian Customs Department and other regulatory authorities.

INCOME TAX

Public Ruling No. 1/2018: Disposal of Plant or Machinery Part II – Controlled Sales

Public Ruling (PR) No. 1/2018, published on 26 February 2018, explains the tax treatment of the acquisition or disposal of assets from / to a related party. Broadly, the PR explains the meaning of "control" for a company and a partnership, and provides guidance and examples on interpreting the control transfer provisions discussed in Paragraphs 39 and 40 of Schedule 3 of the ITA and the Income Tax (Capital Allowances and Charges) Rules 1969 [P.U.(A) 96].

PR No. 2/2018: Tax Incentive for Returning Expert Programme

PR No. 2/2018, published on 2 May 2018, provides the guidance on the tax incentive granted for the Returning Expert Programme (REP). Broadly, the PR explains the purpose of the introduction of the REP and the conditions for an individual to be eligible for the incentive. The additional criteria for an individual working overseas and returning to work in Malaysia with a company under the same group are also outlined therein.

Tax audit framework (Amendment 1/2018)

The Inland Revenue Board Malaysia (IRBM) has issued on its website the 2018 tax audit framework in Bahasa Malaysia, titled "Rangka Kerja Audit Cukai (Pindaan 1/2018)". The 2018 tax audit framework takes effect from 1 April 2018 and replaces the 2017 tax audit framework that was effective from 1 May 2017. Some of the important changes are as follows:

- Paragraph 7.1 – Preliminary actions of an audit

The timeframe to respond to a letter from the IRBM requesting documents and/or information is reduced from 21 days to 14 days, from the date of the letter.

The 2018 framework also provides that the audit may now be extended to include companies and businesses connected or controlled by the taxpayer, without prior notice to the taxpayer.

- Paragraph 7.4 – Examination of records

The 2018 framework does not specifically state that records pertaining to time-barred years of assessments will not be examined (unlike the 2017 framework - see Paragraph 7.4.1).

- Paragraph 7.6 – Voluntary disclosure

The 2018 framework clarifies the meaning of "commencement of tax audit" in determining the taxpayer's entitlement to the concessionary penalty rate of 35% for voluntary disclosure.

- Paragraph 7.5 – Settlement of audit

The timeframe to object/settle a tax audit has been reduced as follows as (**see Table 01**)

*If no objection is made within 18 days from the date of notification, the taxpayer shall be deemed to have agreed to the proposed tax adjustments.

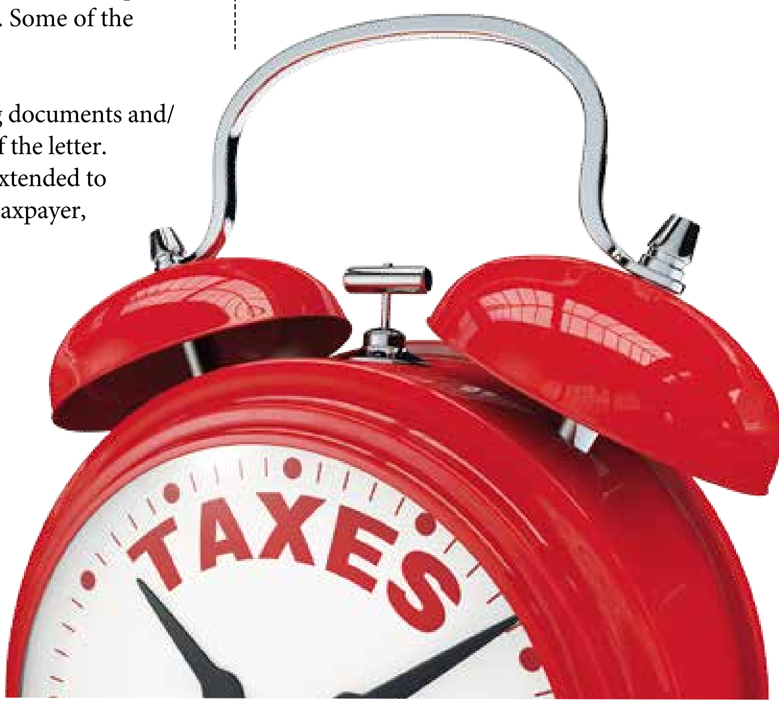
Table 01

	Timeframe
• Taxpayer to file an objection if the taxpayer disagrees with the IRBM's notification of proposed tax adjustments*	18 days (2017 framework: 21 days)
• Settlement of a tax audit	three months, i.e. 90 days (2017 framework: four months, i.e. 120 days)

Practice Note No. 1/2018: Tax treatment of digital advertising provided by a non-resident

The IRBM has issued a one-page Practice Note No. 1/2018 (PN) dated 16 March 2018, to provide guidance regarding the withholding tax (WHT) treatment of income of a non-resident from the provision of digital advertising services.

The PN explains that the tax treatment of payments to non-residents



in relation to digital advertising will depend on whether the non-resident has a permanent establishment (where a tax treaty applies), or a business presence (in the case of a non-tax treaty country), in Malaysia.

- If the non-resident has a permanent establishment (PE) or business presence in Malaysia, the payments received by the non-resident will constitute Malaysian-sourced business income and will be subject to tax under Section 4(a) of the ITA. Interestingly, the PN does not then elaborate on what WHT position should be adopted by the payer.
- If the non-resident does not have a PE or business presence in Malaysia: and the payment constitutes royalty income, the payment is subject to WHT under Section 109 of the Income Tax Act 1967 (ITA) and if the payment constitutes services income under Section 4A(ii) of the ITA, the payment received is subject to WHT under Section 109B(1)(b) of the ITA

To determine whether WHT under Section 109 or Section 109B(1)(b) of the ITA would apply, the PN provides the following guidance:

- **Royalty income**: If the payment is for the purchase or use of (for example) an application (App) by the payer that allows the payer to create his own advertisement campaign
- **Service income under Section 4A(ii) of the ITA:** If the payment does not involve the purchase or use of an App. In this case, the payer solely relies on the service provider to deal with all aspects of digital advertising.

2018 Tax Investigation Framework

The IRBM has issued on its website the updated Tax Investigation Framework (TIF) in Bahasa Malaysia, titled "Rangka Kerja Siasatan Cukai". The TIF takes effect from 15 May 2018 and replaces the previous TIF that was effective from 1 October 2013. Some of the important changes are as follows:

- Paragraph 3.2 – Investigation activity

The new TIF specifies that the IRBM officers can now obtain clarification / documents from anyone relevant to the case investigated, to assist with the investigation activity.

- Paragraph 7.3 – Record statement

The new TIF provides that an accredited lawyer can be present during the recording of statements from persons relevant to the case investigated.

- Paragraph 7.4 – Finalisation of investigation

After completion of the investigation procedures, the IRBM will issue an official settlement or conclusion letter to the taxpayer. If the taxpayer accepts the settlement, the taxpayer will either sign an agreement or a letter of undertaking. The investigation is considered finalised and concluded after the case is approved by the Director General of Inland Revenue and an assessment is raised. The new TIF states that taxpayers who have been subjected to investigation will be placed under the IRBM's monitoring programme. However, the new TIF does not provide any explanation of the monitoring programme and it is not indicated whether this monitoring programme is similar to the Monitoring Deliberate Tax Defaulter Programme contained in the 2018 Tax Audit Framework issued in April 2018.

The new TIF also specifies that in cases where the taxpayers disagree with the findings of the investigation, the IRBM may raise an assessment with penalty, on the DGIR's best judgement basis.

- Paragraph 8.2 - Taxpayer

The new TIF does not specifically state that taxpayers have the right to appoint qualified spokespersons / advisers at any time, or lawyers during the investigation and/ or prosecution (unlike the earlier framework - see Paragraphs 8.2.3 and 8.2.4).

- Paragraph 10 – Failure to furnish return or give notice of chargeability

The updated TIF reflects the increased penalty for default under Section 112 of the ITA.

Section 112(1) Penalty for default (effective from 31 December 2014)	Fine of not less than RM200 and not more than RM20,000, or to imprisonment for a term not exceeding six months, or both
Section 112(1A) Offence and penalty (effective from 31 December 2015)	Fine of not less than RM1,000 and not more than RM20,000, or to imprisonment for a term not exceeding six months, or both

The penalties as provided for under Section 112(3) and Section 113(2) are also highlighted therein.

- Paragraph 11 – Payment procedures

The new TIF stipulates that tax payments and penalties are to be remitted on a one-off payment basis. However, taxpayers may apply to settle the payments on an instalment basis. If approved, the first payment (which must be a minimum of 25% of the total tax payable and penalties) will have to be remitted on the date of the agreement, with the balance to be remitted in accordance to the instalment plan approved by the IRBM, subject to certain conditions being adhered to. It is also highlighted that higher penalty rates would be imposed in cases with a longer instalment payment periods as opposed to cases with full payments or shorter instalment periods.

- Paragraph 12.1– Appeal against notice of assessment

Table 02

Upon conviction of money laundering offence under Section 4 of the AMLATFPUAA *(Offence of money laundering)*	Imprisonment for a term not exceeding 15 years, and fine of not less than five times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed, or RM5 million, whichever is higher *(Earlier framework: Fine not exceeding RM5 million or to imprisonment for a term not exceeding five years, or both)*
Upon conviction under Section 34 of the AMLATFPUAA *(Obstruction to exercise powers of an investigating officer)*, for failure to comply with Paragraph 13.5 of the new TIF	Fine not exceeding RM3 million, or to imprisonment for a term not exceeding five years, or both. In the case of continuing offence, he shall be liable to a further fine not exceeding RM3,000 for each day or part thereof during which the offence continues to be committed. *(Earlier framework: Fine not exceeding RM1 million, or to imprisonment for a term not exceeding one year, or both. In the case of a continuing offence, he shall be liable to a further fine not exceeding RM1,000 for each day during which the offence continues after conviction.)*

The new TIF clarifies that appeals against a notice of assessment raised as a result of a tax investigation will need to be made pursuant to Section 97A(2) and Sections 99 to 102 of the ITA.

- Paragraph 13.2 – Investigation under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA)

The criminal charges and fines discussed in the new TIF have been updated to reflect the amendments to Sections 4 and 34 of the AMLATFPUAA, which were gazetted on 28 December 2017 as (**see above Table 02**)

The IRBM issues general information on the taxation of the digital economy

The IRBM recently updated its website with general information on the taxation of the digital economy. The updates are available in the following link:

http://www.hasil.gov.my/bt_printext.php?bt_kump=5&bt_skum=2&bt_posi=4&bt_unit=1&bt_sequ=3

The digital economy is referred to as the economy based on the use of digital technology. Any trade transactions conducted through digital technology, including supply of information, promotion and advertising, marketing, supply or delivery of goods or services (even if the payment and delivery of these transactions may be carried out offline), are considered as being part of the digital economy. As the digital economy is not limited to online trading, the IRBM has provided a sector-based list of activities which should be seen to be part of the digital economy.

The IRBM clarifies that the tax treatment of the digital economy should be similar to the "conventional" economy, pursuant to the ITA.

STAMP DUTY

Stamp duty exemption for sale and purchase transaction of shares of a medium and small capital company

The Stamp Duty (Exemption) Order 2018 [P.U.(A) 65], gazetted on 1 March 2018, provides a stamp duty exemption on a contract note executed for the sale and purchase transaction of shares of a medium and small capital company. The Order came into operation on 1 March 2018, and will apply to contract notes executed between 1 March 2018 and 28 February 2021.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2018

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2018 [P.U.(A) 104] was gazetted on 19 April 2018. 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:

Islamic Medium Term Notes issued or to be issued by MKD Kencana Sdn Bhd pursuant to the *Sukuk Murabahah* in nominal values of up to RM1.5 billion; and

Guarantee provided or to be provided by the government of Malaysia in relation to the *Sukuk Murabahah*

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2018

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2018 [P.U.(A) 112] was gazetted on 30 April 2018. 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:

- *Murabahah Term Financing* facility obtained or to be obtained by Perbadanan Tabung Pendidikan Tinggi Nasional amounting to RM3.5 billion; and
- Guarantee provided or to be provided by the government of Malaysia in relation to the *Murabahah Term Financing*

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 4) Order 2018

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 4) Order 2018 [P.U.(A) 113] was gazetted on 7 May 2018. 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:

- *Sukuk Murabahah* issued or to be issued by MyHSR Corporation Sdn Bhd pursuant to the *Sukuk Murabahah* Programme in nominal values up to RM1 billion; and
- Guarantee provided or to be provided by the government of Malaysia in relation to the *Sukuk Murabahah*

LABUAN

Updated guidelines on the establishment of a Labuan International Commodity Trading Company under the GIFT programme

On 8 March 2018, the Labuan Financial Services Authority (LFSA) issued the following updated guidelines and a new directive in relation to the Labuan International Commodity Trading Company (LICTC):

- "Guidelines on the establishment of Labuan International Commodity Trading Company under the Global Incentives For Trading (GIFT) programme" (the Guidelines) – effective from 1 October 2018; and
- "Directive on Labuan International Commodity Trading Companies trading in Non-Petroleum and Non-Petroleum-Related Commodities" (the Directive) – effective from 1 March 2018

The Guidelines are applicable to all Labuan companies licensed as a LICTC to conduct International Commodity Trading business in Labuan IBFC under the GIFT programme (the Directive is to be read together with the Guidelines). The Guidelines clarify the legal provisions pertaining to the licensing and operational requirements.

The key changes to the new Guidelines and Directive are to provide that LICTC licenses will no longer be processed or issued for the trading of Non-Petroleum products or Non-Petroleum-Related commodities.

CUSTOM DUTIES

Customs (Prohibition of Exports) (Amendment) Order 2018

The Customs (Prohibition of Exports) (Amendment) Order 2018 [P.U. (A) 56] gazetted on 23 February 2018 and which came into operation on 1 March 2018, provides for amendments to Part I of the Third Schedule under the Customs Duties (Prohibition of Export) Order 2017 [P.U. (A) 102/2017].

Customs (Prohibition of Imports) (Amendment) Order 2018

The Customs (Prohibition of Imports) (Amendment) Order 2018 [P.U. (A) 57], gazetted on 23 February 2018 and which came into operation on 1 March 2018, provides for amendments to the Second, Third and Fourth Schedules under the Customs (Prohibition of Imports) Order 2017 [P.U. (A) 103/2017].

Customs (Anti-Dumping Duties) (Expedited Review) Order 2018

The Customs (Anti-Dumping Duties) (Expedited Review) Order 2018 [P.U. (A) 84], gazetted on 30 March 2018 and which came into operation on 31 March 2018, provides that anti-dumping duties under the Customs (Anti-Dumping Duties) (No.3) Order 2013 [P.U. (A) 339/2013] shall not be imposed on Zhongshan Shunwei Import and Export Co. Ltd., the exporter of electrolytic tinplate from the People's Republic of China, while the expedited review is being carried out from 31 March 2018 until 29 May 2018.

Customs Duties (Exemption) (Amendment) Order 2018

The Customs Duties (Exemption) (Amendment) Order 2018 [P.U. (A) 86], gazetted on 4 April 2018, provides for amendments to Part I of the Schedule in relation to item 68 under the Customs Duties (Exemption) Order 2017 [P.U. (A) 445/2017].

GOODS AND SERVICES TAX

Recent developments

On 16 May 2018, the Royal Malaysian Customs Department issued GST (Rate of Tax) (Amendment) Order 2018 [P.U. (A) 118] which amends the standard rate of GST from 6% to 0% on the supply of goods and services effective from 1 June 2018. The standard rate of 0% does not apply to the supply of goods and services listed under the Goods and Services Tax (Exempt Supply) Order 2014 [P.U. (A) 271/2014].

The following GST Orders are revoked with effect from 1 June 2018:

- Goods and Services Tax (Zero-Rated Supply) Order 2014 [P.U. (A) 272/2014]
- Goods and Services Tax (Relief) Order 2014 [P.U. (A) 273/2014]
- Goods and Services Tax (Application to Government) Order 2014 [P.U. (A) 185/2014]
- Goods and Services Tax (Imposition of Tax for Supplies in respect of Designated Areas) Order 2014 [P.U. (A) 187/2014]
- Goods and Services Tax (Imposition of Tax for Supplies in respect of Free Zones) Order 2016 [P.U. (A) 373/2016]

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

MAGNUM HOLDINGS SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (AND 2 OTHER APPLICATIONS) [2018] 2 AMR 944 (HIGH COURT)

BRIEF FACTS

Magnum Berhad was incorporated in Malaysia and was previously known as Multi-Purpose Holdings Berhad. The principal activities of Magnum Berhad are that of investment holding, provision of share registration and provision of management services. Magnum Holdings Sdn Bhd is a wholly owned subsidiary of Magnum Berhad and its principal activity is investment holding (Magnum Berhad and Magnum Holdings Sdn Bhd collectively referred to as "**the Applicants**").

The Applicants had incurred interest expenses for its investment in portfolio shares related to interest income sources. Among other reasons, the Respondent took the stance that the interest expenses incurred are not deductible on the basis that the Applicants should have applied the tax deduction under Section 33(1)(a) of the Income Tax Act 1967 (**ITA**) instead of Section 33(2) of the ITA, and that the interest expenses incurred are not deductible as the investments did not produce income.

The Applicants filed the applications for leave to commence judicial review proceedings to quash the Respondent's Notices of Assessment and Notices of Additional Assessment with penalty (**the Respondent's Decision**). The grounds for the applications are that the Respondent's Decision is illegal, void, unlawful and/or in excess of authority and is irrational and/or unreasonable. The Applicants' contention isthat the Respondent's position on this matter is contrary to the position in the case of ***Multi Purpose Holdings Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2001] 8 CLJ 462 (the Multi-Purpose case)***

The putative Respondent was invited by the Court to submit on the legal issue of whether leave should be granted. Both the Federal Counsel from the Attorney-General Chambers and the putative Respondent objected to the application for leave on the basis that there is an alternative remedy of appeal provided under Section 99 of the Income Tax Act 1967.

ISSUES

The issue for the High Court to decide was whether the application for leave should be dismissed as the Applicants ought to proceed with the appeal process statutorily provided for by Section 99 of the Income Tax Act 1967?

DECISION

The High Court allowed the Applicants' applications. The High Court held that, the Applicants in the present issue raised the same issue as in the Multi-Purpose case, that is whether the Respondent can segregate the Applicants' investments on the premise that its investment in certain share counters did not produce any income. This act of segregation, according to the Applicants, is contrary to the legal principles in Multi-Purpose. Bearing in mind that it is the submission of the Applicants that the facts and the law in this case fell squarely within the case of Multi-Purpose, the case of Multi-Purpose will be binding on both the Special Commissioners of Income Tax (SCIT) and the Respondent. In this regard, the failure to apply the principles in Multi-Purpose would amount to an excess of jurisdiction by the Respondent. Further, the High Court also held that, if the Respondent is seeking to revisit the legal position in Multi-Purpose, then proper forum is the High Court as both the SCIT and the Respondent are equally bound to apply the High Court's decision in Multi-Purpose.

CASE 2

KERAJAAN MALAYSIA V B SDN BHD (COURT OF APPEAL, 2018)

BRIEF FACTS

The Inland Revenue Board Malaysia (**IRBM**) had raised notices of additional assessment for years of assessment (**YA**) 2011, 2012, 2013 and 2014 in excess of RM100 million wherein the IRBM sought to subject the gains from the disposal of

investment property assets to income tax, instead of real property gains tax.

Being aggrieved by the IRBM's decision to do so, B Sdn Bhd filed notices of appeal to the Special Commissioners of Income Tax (**SCIT**) against the said notices of additional assessments. Notwithstanding the appeal, the government of Malaysia commenced civil recovery proceedings against B Sdn Bhd on the basis that the taxes assessed in the said notices of additional assessments are due and payable regardless whether an appeal is filed to the SCIT.

In response to this, B Sdn Bhd filed an application for a stay of proceedings pending the disposal of their appeal before the SCIT.

ISSUES

The issue for the Court of Appeal to decide was whether the High Court had erred in their judgement in deciding that there existed special circumstances warranting a stay of proceedings for a civil action commenced by the government of Malaysia to recover taxes under Sections 103(1) and 106 of the Income Tax Act 1967 (**ITA**). The discretion is granted to the DGIR to remit the whole or any part of the sum increased under Section 109B(2) of the ITA imposed for failure to pay the withholding tax amount due under Section 109B(1) of the ITA within the stipulated timeframe (i.e. one month after the payment is made to a non-resident), for any good cause shown for such failure.

DECISION

High Court's Decision

In April 2017, the High Court decided that Section 73 of the Courts of Judicature Act 1964 vested with the High Court inherent powers to grant a stay of proceedings, provided that there existed special circumstances which warrants the granting of a stay of proceedings. In B Sdn Bhd's case, the High Court held that there existed such special circumstances and granted a stay of proceedings pending the disposal of their appeal before the SCIT. Among the special circumstances cited by the High Court was as follows:

(a) There is an appeal pending before the SCIT and the outcome will materially affect the civil action initiated by the government of Malaysia;
(b) There are merits in B Sdn Bhd's appeal which must be considered;
(c) The amount of taxes involved is very large, i.e. in excess of RM100 million;
(d) The damages caused would be irreparable and cannot be remedied by damages; and
(e) There must be a balance between the government's interest to collect taxes and the safeguard of public interest against arbitrary income tax assessments.

In deciding to grant the stay of proceedings, the High Court judge had considered the operation of Sections 103 and 106 of the ITA and made reference to a previous Supreme Court decision which decided that Sections 103 and 106 of the ITA does not debar the Courts from granting a stay of proceedings, even in a tax case.

The government then appealed to the Court of Appeal.

Appellant's (Government) Submission

The Appellant submitted that Sections 103 and 106 of the ITA creates a strict liability against the taxpayer to settle the taxes assessed regardless of whether an appeal is filed with the SCIT. Further, they had been prejudiced in collecting taxes assessed as a result of the order for a stay of proceedings and reiterated their submission at the High Court that the circumstances cited by the Respondent at the High Court did not amount to special circumstances warranting the granting of a stay of proceedings.

Respondent B Sdn Bhd's Submission

It was submitted that the granting of a stay of proceedings is an exercise of discretion which should not be interfered with by the appellate court. There are several decisions by the Federal Court and Court of Appeal which have held that the granting of a stay is an interlocutory matter and should be left to the trial judge to decide. Further, it was previously decided that the decision to grant a stay of proceedings is an exercise of discretion by the High Court judge and in so doing, there is an assumption that the discretion was correctly exercised. Even if the appellate Courts would have decided differently on the facts, this should not be sufficient grounds to interfere with the High Court's decision.

In response to the Appellant's (Government) submission that they are prejudiced from collecting taxes, given that the appeal before the SCIT will only take place some years from now, the Respondent submitted that the fixing of hearing dates at the SCIT is beyond their control as the dates are fixed by the SCIT.

COURT OF APPEAL'S DECISION

The Court found that the High Court judge had taken into consideration of Sections 103 and 106 of the ITA in granting the stay of proceedings and further opined that taxation provisions need to be interpreted strictly, and where there is some ambiguity, it has to be read in favour of the taxpayer.

In that regard, the Court of Appeal unanimously dismissed the government's appeal with costs and maintained the granting of the order for a stay of proceedings.

CASE 3

IM SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (HIGH COURT, 2018)

BRIEF FACTS

The taxpayer wanted to enter into a Software Distribution Agreement with a non-resident company. Before executing the agreement, the taxpayer applied for an Advance Ruling under Section 138B of the Income Tax Act 1967 (**ITA**) on whether the payment to be made to the non-resident company under the agreement is royalty and hence, is subject to withholding tax.

An Advance Ruling was issued by the Director General of Inland Revenue (DGIR) stating that the payment to be made under the agreement is royalty and thus, is subject to withholding tax. Being aggrieved by the Advance Ruling, the taxpayer appealed against it by way of judicial review.

ISSUES

The main issues involved in this case are:

i. Whether the Advance Ruling issued is merely an opinion of the DGIR and hence not a decision amenable to judicial review;
ii. Whether there is domestic remedy under the ITA available to the taxpayer and hence judicial review is not the right forum to deal with the appeal; and
iii. Whether the payment to be made under the Software Distribution Agreement is royalty and is subject to withholding tax.

DECISION

ISSUE 1: THE ADVANCE RULING IS A "DECISION" AND NOT MERELY AN OPINION

It was held by the High Court that an Advance Ruling issued by the DGIR is a binding decision which is susceptible to judicial review. In this case, it was held that the Explanatory Note to Clause 26 of the Finance Bill 2006 and the Income Tax (Advance Ruling) Rules 2008 (**the Rules**) make it clear that the Advance Ruling is final and binding on the DGIR and taxpayer.

The DGIR also argued that the taxpayer has not been adversely affected by the Advance Ruling because no assessment has been made by the DGIR. The High Court rejected the DGIR's argument and held that the "adversely affected" test is the single test for all the remedies under judicial review. In order to pass the test, the taxpayer has to show a real and genuine interest in the subject matter and the decision must affect the aggrieved party by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy.

The High Court agreed that the taxpayer's rights have been deprived by the Advance Ruling since the taxpayer will suffer financial detriment and will have to pay a tax as a result of the Advance Ruling.

ISSUES

NO DOMESTIC REMEDY UNDER THE ITA TO THE TAXPAYER

The High Court also rejected the DGIR's argument that there is an alternative remedy available to the taxpayer under Section 99(1) or Section 109H(1) of the ITA. The right to appeal to the Special Commissioners of Income Tax (**SCIT**) does not arise in the case of Advance Ruling.

The right to appeal under Section 99 only arises when an assessment or a notice of assessment has been issued. In this case, there was no assessment or notice of assessment raised by the DGIR.

Additionally, the High Court also held that no right of appeal could arise under Section 109H(1) because no amount was due from the taxpayer to the DGIR under Sections 109, 109B or 109F of the ITA at the time when the Advance Ruling was made.

As a result, the only remedy available to the taxpayer is by way of judicial review which is inherent in the power of the High Court.

The High Court added that the "no appeal against any Advance Ruling" rule under the Rules does not operate to estop the Court from judicially reviewing a decision.

ISSUES

PAYMENT UNDER SOFTWARE DISTRIBUTION AGREEMENT IS NOT ROYALTY

The High Court held that the definition of "royalty" provided under Article 13(6) of the Double Taxation Agreement between Malaysia and Netherlands (**DTA**) and supplemented by the OECD Commentary on Article 12 shall prevail over the ITA in determining whether a payment is royalty.

Since the payments to be made by the taxpayer are not for the right to reproduce the software programs or the use of any copyright but only for the costs of purchasing the products to be distributed, the High Court held that the payments are not royalty.

Hence, the Court held that the decision taken by the DGIR in the form of Advance Ruling is *ultra-vires*, illegal, void, unlawful and / in excess of its authority.

CASE 4

NR SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (HIGH COURT, 2018)

BRIEF FACTS

In 30.4.1988, when NR Sdn Bhd (**the Company**) was unable to settle its debt to the Inland Revenue Board Malaysia (**IRBM**), the IRBM filed a petition to wind-up the Company in the Seremban High Court.

The High Court in 22.2.1993 appointed the Official Receiver as liquidator. The Official Receiver began realising the assets by disposing of 2 plots of land in years 1993 and 2001 respectively.

In 2011, two individuals from a Big 4 Firm became the liquidators of the Company (**Liquidators**) replacing the Official Receiver. The Liquidators continued disposing the assets of the Company by further sales of plots of land via four separate transactions in years 2012, 2013 and 2014. The Liquidators duly filed Real Property Gains Tax (**RPGT**) returns on the said disposals.

In year 2015, the IRBM commenced tax investigation on the Company pertaining to years of assessment (**YA**) 2013 and 2014. The IRBM initially issued a notice of additional assessment against the contributories of the Company on 21.6.2017. Later, the IRBM cancelled the aforementioned assessments and issued the notices of additional assessments for YA 2012, 2013 and 2014 against the Company on 29.12.2017.The IRBM's contention is that the said disposals of land

should have been subject to income tax and not RPGT.

However, in order for income tax to be chargeable under Section 4(a) of the Income Tax Act 1967 (**ITA**), it is a well-established principle that for a gain to fall under Section 4(a) of the ITA, there must be an intention to trade on the part of the taxpayer as per the Court of Appeal in ***Alf Properties Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2005] 3 CLJ 936***. Our Supreme Court in ***Lower Perak Co-operative Housing Society Bhd v Ketua Pengarah Hasil Dalam Negeri [1994] 2 MSTC 3406***, held that gains arising from the disposal of land will only be taxable under the ITA if the taxpayer had engaged in a trade or an adventure in the nature of trade. Furthermore, Section 236(1)(a) of the Companies Act 1965 (now replaced by Section 486(1)(b) of the Companies Act 2016) expressly states that a company in liquidation must cease business unless approved by the High Court.

Based on the clear legal statutes and cases, the Company filed a judicial review application to the High Court.

ISSUES

The question of law posed by the Company before the court was: can a company in liquidation be considered to be trading for income tax purposes when such trading is expressly prohibited by statute?

DECISION

The High Court granted leave to the Company to commence judicial review proceedings. The High Court recognised that there was indeed a question of law that it needs to answer. The substantive hearing is yet to be heard.

The outcome of this case will have a significant impact on the tax law landscape as it will be a landmark decision and hugely influence business practices in Malaysia.

CASE 5

H SDN BHD V KPHDN (HIGH COURT, 2017)

BRIEF FACTS

In this case, H Sdn Bhd, in the ordinary course of its business makes payments to another company in the same group, based in the Netherlands, for services rendered towards a project it is carrying out in Malaysia. Accordingly, there is an obligation for H Sdn Bhd to withhold tax on the prescribed rate (being 8% on the sum paid to the non-resident), pursuant to Section 109B(1)(a) of the ITA.

In 2015, H Sdn Bhd had executed a power of attorney (**POA**) to authorise several of its officers to sign documents (including cheques) on its behalf. The authorisation for signing cheques is classified into different categories of signatories, each with differing levels of amounts they are authorised to sign off.

In this case, a cheque amounting to USD2.4 million or RM10.8 million (based on the exchange rate of USD1 to RM4.2250) was issued to settle the withholding tax amount due and payable (**First Cheque**). The signatories of the cheque issued was authorised to sign cheques in the amount of USD 2.5million or RM8 million. It should be noted that this was the equivalent amount based on the exchange rate for USD and RM when the POA was executed.

However, the cheque could not be processed on the basis that the signatories were not authorised to sign off the amount in RM. As such, a new cheque had to be issued signed by officers authorised to issue cheques of a greater amount in RM (**Second Cheque**).

Due to the need to issue the Second Cheque, H Sdn Bhd had missed the deadline to pay the withholding tax sum to the DGIR and was imposed with the increased amount under Section 109B(2) of the ITA. H Sdn Bhd then wrote to the DGIR requesting that he exercise his discretion to remit the whole or a part of the increased sum imposed on H Sdn Bhd for the following reasons:

(a) Ringgit Malaysia had depreciated from the time where the POA was executed to the date where the First Cheque was issued;
(b) The Disputed Sum as converted from USD to RM based on the exchange rate at the time where the Power of Attorney was executed is within the threshold of the signatory i.e. below RM 8,000,000.00;
(c) The First Cheque was issued before the deadline to pay the withholding tax sum; and

(d) The First Cheque was cancelled as the amount in Ringgit Malaysia i.e. RM10.8 million has exceeded the authorised threshold permissible for the signatory.

On 27.2.2017, the DGIR rejected H Sdn Bhd's appeal to exercise his discretion to remit the sum increased under Section 109B(2) of the ITA without specifying the reasons for refusing to do so. H Sdn Bhd then wrote a further appeal letter on 30.3.2017 to the DGIR for him to consider the grounds to exercise his discretion. On 15.5.2017, the DGIR rejected the appeal in finality without considering the grounds and reasons provided by H Sdn Bhd.

Judicial Review Application at the High Court

H Sdn Bhd then applied for leave to commence judicial review proceedings in August 2017. Ordinarily the application for leave for judicial review is an ex-parte application, but in this case the DGIR was invited by the High Court to appear as Putative Respondent.

The DGIR then raised two preliminary objections against the granting of leave:

(a) The judicial review application was made out of time; and
(b) There is an alternative remedy available provided by Section 109H of the ITA.

Applicant's Submission

On the time-bar issue, it was submitted that the letter dated 15.5.2017 represented the final decision by the DGIR and the three months' time limit provided by Order 53 rule 3(6) of the Rules of Court 2012, and not the letter dated 27.2.2017, as contended by the DGIR. This is due to the wording of the letter dated 15.5.2017, and particularly the phrase "Having made a detailed review, your appeal could not be considered". This represented the final decision being made by the DGIR on the matter, and accordingly the application was not made out of time.

On the issue of the availability of an alternative remedy in the form of an appeal to the Special Commissioners of Income Tax provided by Section 109H of the ITA, the Applicant submitted that the provision of Section 109H of the ITA allows for an appeal to be filed if the taxpayer is taking the position that the amount is not liable to be paid. However, in this case, H Sdn Bhd did not make any such contention. They agreed that withholding tax ought to be withheld for payments made to a non-resident for services rendered under Section 109B(1) of the ITA. They also agreed that the increased amount was properly done under Section 109B(2) Of the ITA, as they did make the payment to the DGIR past the deadline for them to pay the withholding tax. As such, they are not taking the position that there is no amount liable to be paid. The issue is that the DGIR had failed to exercise his discretion to consider remitting the increased amount under Section 109B(3A) of the ITA. It was then submitted that Section 109H of the ITA did not provide an avenue of appeal where the amount is not disputed.

ISSUE

The issue for the High Court to decide was whether leave to commence judicial review proceedings should be granted in respect of a failure by the Director General of the Inland Revenue (**DGIR**) to exercise his discretion under Section 109B(3A) of the Income Tax Act 1967 (**ITA**). The discretion is granted to the DGIR to remit the whole or any part of the sum increased under Section 109B(2) of the ITA imposed for failure to pay the withholding tax amount due under Section 109B(1) of the ITA within the stipulated timeframe (i.e. one month after the payment is made to a non-resident), for any good cause shown for such failure.

DECISION

The learned High Court judge agreed with the Applicant's submission that the letter dated 15.5.2017 represented the final decision of the DGIR, given the wordings used in the said letter and therefore the judicial review application was not made out of time.

The learned High Court judge also agreed with the Applicant's submission that Section 109H of the ITA did not provide for an avenue to appeal where the Applicant was not disputing the sum imposed but was dissatisfied with the fact that the DGIR refused to exercise his discretion to remit the increased amount imposed under Section 109B(1) of the ITA.

The learned High Court judge granted leave for the Applicant to commence judicial review proceedings against the DGIR's decision.

Subsequent to leave being granted, the case was settled out of court.

__Heng Jia__ is an associate in the firm's tax, GST and customs practice where her primary areas of practice include tax litigation, tax advisory and planning, transfer pricing and private clients. She read law at the University of Exeter and is trained as a barrister.

__Muhammad Azim Che Mokhtar__ is an associate in the firm's tax, GST and customs practice where his primary areas of practice include tax litigation, tax advisory and planning, and private clients. He read law at the London School of Economics and Political Science.

BUSINESS DEDUCTIONS

PROHIBITED EXPENSES (PART II)

THE LAST ARTICLE DISCUSSED THE PROHIBITION OF DOMESTIC OR PRIVATE EXPENSES UNDER SECTION 39(1).

Siva Subramanian Nair

(a) and this article will continue with the following i.e. Section 39(1)

(b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of producing the gross income; and

(c) any capital withdrawn or any sum employed or intended to be employed as capital;

The wording in part (b) is quite similar to those in Section 33(1) as stated by Lee Hun Hoe C.J in *DGIR v RB Sdn. Bhd. [1984]* "…if we substitute the words 'for the purpose of' for the word 'in' the wording would then be the same as that of 'the wholly and exclusively' test in Section 33(1)…"

The phrase "expenses not being money wholly and exclusively laid out or expended for the purpose of producing the gross income" would encompass amounts paid to related parties in general which are excessive i.e. disproportionate with the functions and duties performed by such persons.

This is put in an interesting manner by the learned judge Lord Reid in ***RANSOM V HIGGS [1974] 3 ALL ER 949***

> I would agree that if a trader is actuated by none but commercial motives the Revenue cannot merely say that he has paid too much. He may have been foolish or he may have had what could fairly be regarded as a good commercial reason for paying too much. But if it is proved that some non-commercial reason caused the trader to pay more than he otherwise would have done, then it seems to me quite clear that the payment can no longer be held to have been wholly and exclusively expended for the purpose of the trade.

Also expenditure which serves a dual purpose will also not qualify for a deduction as illustrated in ***MURGATROYD V EVANS-JACKSON [1967] 43 TC 581***

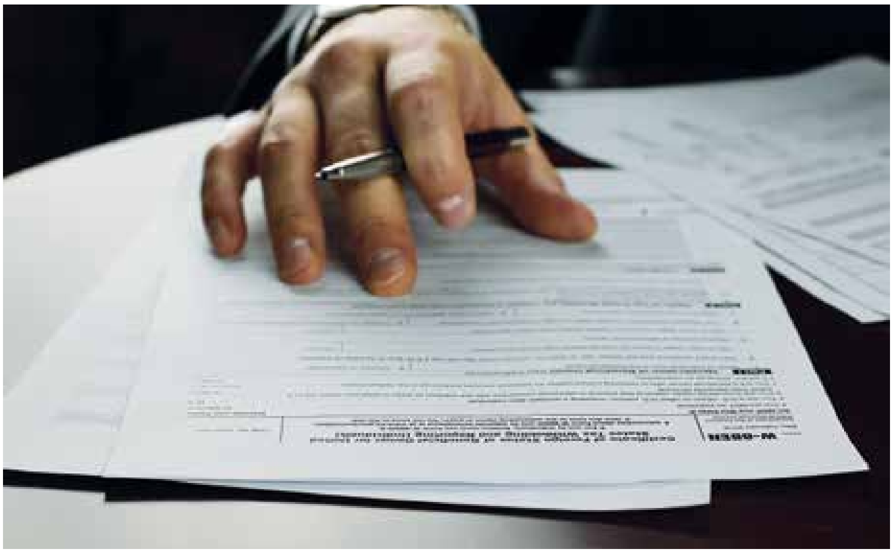
FACTS OF THE CASE

The taxpayer who carried on the profession of trade mark agent ruptured a disc in his spine, received medical treatment at a nursing home as a private patient. Whilst receiving treatment he was provided with all the necessary facilities to enable him to carry on his profession including holding conferences with his clients, receiving his correspondence every morning and afternoon and giving instructions to his staff members for onward transmission to his clients. These facilities were not available in a National Health Service hospital. Mr. Evans-Jackson claimed 60% of the nursing home costs as a deduction in computing his profits based on the assertion that the costs were in effect office costs incurred for the purposes of his trade.

DECISION OF THE COURT

In disallowing the claim for a deduction, the judge opined that the apportionment itself betrayed the essential duality of purpose. However, the judge made the point that, had the taxpayer:

As stated in the last article, any expenditure (except for those having an express deduction under other sections of the Income Tax Act 1967 or through gazette orders) must not only qualify under Section 33 (1) but must also not be prohibited under Section 39(1). In ***DGIR v LTS [1974] 1 MLJ 187***, the learned judge Chang Min Tat J states that a deduction granted under Section 33 (1) is "… qualified within set limits by Section 39."



This is clearly illustrated in the following cases:

W. NEVILL & CO. LTD. v. FCT [1937] 56 CLR 290

FACTS OF THE CASE

A company, [Nevill] which previously had been managed by one managing director introduced a system of joint management, The company employed King as joint managing director of the company for a term of five years from 1 July 1930 at a remuneration of £1,500 per annum together with a certain percentage of the profits. The system of joint management did not work out satisfactorily and tended to impair the efficient management of the business, and, in the belief that its abolition would lead to increased efficiency, and with a view to saving his salary, an arrangement was made in March 1931 for the resignation of the additional managing director

The taxpayer agreed to pay King £2,500 in March 1931, payable by a series of promissory notes, in consideration of his agreeing to resign as managing director.

DECISION OF THE COURT

The payments were deductible because the payments were made for the purpose of increasing the efficiency of the company and therefore increasing its income producing capacity. The expenditure was actually incurred in gaining or producing the taxpayer's assessable income and its deduction therefrom was not prohibited because it was money wholly and exclusively laid out in the production of such assessable income

PIRAMID INTAN SDN BHD v KPHDN [2015] 10 MLJ 436

FACTS OF THE CASE

A timber contractor made advance payments to a timber license holder to obtain the right to extract, remove and sell timber logs from the latter's concession area for a period of 20 years

DECISION OF THE COURT

The expenditure was held to be capital as the taxpayer was able to bring into existence an advantage for the enduring benefit of the taxpayer's trade.

The High Court was of the view that the upfront payments were not wholly and exclusively incurred in the production of gross income. It also found that the main object of the directors in making the arrangement for King's resignation was to effect a saving of King's salary and that at the same time the directors believed that the abolition of the system of joint control would tend to increase the efficiency of the company

Now we shall look at Section 39 (1)(c) which prohibits a deduction for "any capital withdrawn or any sum employed or intended to be employed as capital." This includes capital withdrawn by partners or generally from a business.

This is the provision in the Income Tax Act 1967 which prevents the availability of a deduction for capital expenditure. However, note that Section 39 (1) starts with "[s] ubject to any express provision of this Act,…", therefore capital expenditure specifically allowed under the Act such as mining expenditure under Section 34 (6)(c), replanting under Section 34 (6)(d), provision of equipment and renovation of building for disabled employees under Section 34(6)(e) etc. can still rank for a deduction in ascertaining the adjusted income from a business source.

In **DECEMBER 2012 REVENUE LAW PAPER Q1** the following details were given for the year ended 31.12.2011, in respect of Kiddies Sdn Bhd which was granted a manufacturing licence to produce toys for export. Kiddies had produced a gross income of RM150,000 and incurred the following expenditure. Candidates were required to ascertain the deductibility of the expenses as (**see Table 01**).

Similarly in **REVENUE LAW JUNE 2014 Q2** (ii) which relates to News Best Sdn Bhd., a Malaysian resident company which publishes a monthly magazine. It undertook the following in the year of assessment 2013:

In the spirit of this downsizing, the company also terminated a lease agreement on one of its production premises which had eight years remaining on it and paid a sum of RM75,000 as compensation for early termination of the lease agreement.

Again candidates were required to evaluate the deductibility of the compensation

SOLUTION

The termination of lease

Table 01

Expenditure	Solution
Compensation paid to a competitor pursuant to a covenant requiring the competitor to relocate its business to another state.	***Sec.39(1)(c)*** – 40,000 not deductible because capital expenditure (enduring benefit – ***The Sun Newspaper***)
Registration of new - Sec.39(1)(c) – Initial expense –not trademark	***Sec.39(1)(c)*** – Initial expense –not trademark deductible - ***CIR v Granite CityS/ship***
Construction of power station	***Sec.39(1)(c)*** – Not deductible because capital expenditure – ***The Sun Newspaper***

payment of RM75,000 to the lessor is also capital expenditure and not deductible as it is to give up a non-profitable capital asset - *Sun N/ papers v FCT; Sec. 39(1)(c)*

Again in **JUNE 2016 ADVANCE TAXATION 2 PAPER Q4** candidates were requested to advise Rajen a Malaysian resident, is an enterprising person with varied business interests, on the tax deductibility of each of the following transactions:

a) He owns a Toyota Camry (WUW 7005) for private use. In February 2015, he obtained a taxi licence and converted his private car into a taxi, upon incurring RM2,500 as fees paid to the Road Transport Department for conversion of the use of the car as a taxi.

b) –omitted-

c) Rajen, who is financially astute, has ample spare cash to take advantage of viable investments as they become available. Between January to April 2015, Rajen bought three units of old shop-lots for RM400,000 each in the central business district of Kelana Jaya for the purpose of renting them out. As the shop-lots were in a dilapidated condition, he spent RM400,000 in total in restoring them. The shop-lots were rented to Grant Sdn Bhd in June 2015. In December 2015, Rajen incurred RM200,000 on further repairs to the shop-lots

SOLUTION

The following expenses would be deductible if they satisfy Section 33 (1) ITA i.e. are expenditure/outgoings wholly and exclusively incurred in the production of gross income; and are not capital expenditure under Section39(1)(c):-

(a) RM2,500 fees paid to the RTD for taxi license is not deductible 'because

it is capital expenditure, giving rise to a capital asset of enduring benefit.

- *Atherton v British Insulated & Helsby Cables Ltd*
- *Sun Newspaper v FCT*

(c) A distinction must be made between "repairs" and "renewals". Repairs involving the replacement of a subsidiary part of an capital asset, restoring it back to its original condition is deductible. On the other hand renewals involving replacement, adaptation or restoration of a substantial part of a capital asset is considered capital in nature and thus not deductible.

A tax deduction claim for the cost of repairs takes on a new dimension when what is repaired is an asset that has just been acquired – frequently termed as initial repairs. Initial repairs are considered capital in nature thus denied under Section 39(1)(c). In *Law Shipping Co. Ltd v CIR*, the repairs on a second hand ship was held capital as it was necessary, otherwise the ship would not be able to sail – thus the repairs were held to be initial expenses and disallowed. Thus the RM400,000 incurred in initial repairs is not deductible – capital in nature. However, the subsequent repair, RM200,000 is deductible as no renewal or enhancement of value is involved.

In the next article we will discuss further on other prohibited expenditure.

***Siva Subramanian Nair** is a freelance lecturer. He can be contacted at sivasubramaniannair@gmail.com*

FURTHER READING

Choong, K.F. Malaysian Taxation Principles and Practice, Infoworld,
Kasipillai, J. A Guide to Malaysian Taxation, McGraw Hill.
Malaysian Master Tax Guide, CCH Asia Pte. Ltd
Singh, V. Veerinder on Taxation, CCH Asia Pte. Ltd
Thornton, R. Thornton's Malaysian Tax Commentaries, CCH Asia Pte. Ltd.
Thornton, Richard. 100 Ways to Save Tax in Malaysia for Partners and Sole Proprietors, Thomson Reuters Sweet & Maxwell Asia
Thornton, R. 100 Ways to Save Tax in Malaysia for SMEs, Sweet & Maxwell Asia
Yeo, M.C., Alan. Malaysian Taxation, YSB Management Sdn Bhd

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: JULY – SEPTEMBER 2018

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
JULY 2018								
Workshop: Public Rulings	3 July	9a.m. - 5p.m.	Ipoh	Kularaj	350	450	500	8 WS/042
Workshop: Public Rulings	5 July	9a.m. - 5p.m.	Melaka	Kularaj	350	450	500	8 WS/043
Workshop: Public Rulings	10 July	9a.m. - 12p.m	Penang	Kularaj	350	450	500	8 WS/044
Workshop: Public Rulings	12 July	9a.m. - 5p.m	Johor Bahru	Kularaj	350	450	500	8 WS/045
NATIONAL TAX CONFERENCE 2018	16 & 17 July	9a.m. - 5p.m	Kuala Lumpur Convention Centre	Various Speakers	Early Bird 1400 Normal 1600	Early Bird 1500 Normal 1700	Early Bird 1600 Normal 1900	25 NTC/001
Workshop: Public Rulings	24 July	9a.m. - 5p.m	Kuching	Kularaj	350	450	500	8 WS/046
Workshop: Public Rulings	25 July	9a.m. - 5p.m	Kota Kinabalu	Kularaj	350	450	500	8 WS/047
AUGUST 2018								
Workshop: Capital Allowances Maximisation	2 Aug	9a.m. - 5p.m	Penang	Harvindar Singh	350	450	500	8 WS/056
Workshop: Managing Tax Investigation & Tax Audits	6 Aug	9a.m. - 5p.m	Melaka	Yong Mei Sim	350	450	500	8 WS/048
Workshop: Capital Allowances Maximisation	9 Aug	9a.m. - 5p.m	Johor Bahru	Harvindar Singh	350	450	500	8 WS/057
Workshop: Managing Tax Investigation & Tax Audits	13 Aug	9a.m. - 5p.m	Ipoh	Yong Mei Sim	350	450	500	8 WS/049
Workshop: Capital Allowances Maximisation	14 Aug	9a.m. - 5p.m	Kota Kinabalu	Harvindar Singh	350	450	500	8 WS/058
Workshop: Capital Allowances Maximisation	15 Aug	9a.m. - 5p.m	Kuching	Harvindar Singh	350	450	500	8 WS/059
Workshop: Managing Tax Investigation & Tax Audits	20 Aug	9a.m. - 5p.m	Kuala Lumpur	Yong Mei Sim	400	500	600	8 WS/050
Workshop: Managing Tax Investigation & Tax Audits	27 Aug	9a.m. - 5p.m	Penang	Yong Mei Sim	350	450	500	8 WS/051
Workshop: Capital Allowances Maximisation	28 Aug	9a.m. - 5p.m	Kuala Lumpur	Harvindar Singh	400	500	600	8 WS/060
Public Holiday *(Hari Raya Aidiladha : 22 August , National Day 31 August)*								
SEPTEMBER 2018								
Workshop: Capital Allowances Maximisation	3 Sept	9a.m. - 5p.m	Melaka	Harvindar Singh	350	450	500	8 WS/061
Workshop: Capital Allowances Maximisation	13 Sept	9a.m. - 5p.m	Penang	Various Speakers	450	550	650	8 SE/
Seminar: Current Updates	20 Sept	9a.m. - 5p.m	Ipoh	Harvindar Singh	350	450	500	8 WS/062
Workshop: Managing Tax Investigation & Tax Audits	24 Sept	9a.m. - 5p.m	Johor Bahru	Yong Mei Sim	350	450	500	8 WS/052
Public Holiday *(Agong's Birthday: 9 September, Awal Muharram: 11 September, Malaysia Day: 16 September)*								

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.

NATIONAL TAX CONFERENCE 2018

Closing Date : 2 July 2018

Conference Fees

* Registration of participants will be confirmed upon receipt of full payment or an acceptable employer's guarantee and settlement of previous outstanding dues.
* Walk–in participant registration is subject to availability of seats and full payment.
* Certificate of Attendance will be issued upon full attendance and receipt of full payment.
* Normal rate will be applicable for unpaid early bird registrations after 18 June 2018.

*Registration Fee	Early Bird Fee *(with payment before or on 18 June 2018)*	Normal Fee *(after 18 June 2018)*
LHDNM officer / CTIM member	RM1,400	RM1,600
Member's Firm Staff Member of Supporting Body Member / Staff of Sponsor	RM1,500	RM1,700
Non-Member	RM1,600	RM1,900

Effective on 1 June 2018

PARTICIPANTS' DETAILS

Participant 1

Full name as per I/C (Dato' / Datin / Dr / Mr / Mrs /Ms): ☐ Vegetarian Meal

Designation: ______ I/C No: ______

Email ______ Mobile No. ______

Membership Affiliation

Please indicate which body you are associated with and your membership number:

☐ CTIM ☐ ACCA ☐ CIMA ☐ CPA Australia ☐ IIAM ☐ MAICSA ☐ MFPC ☐ MIA ☐ MICPA

☐ Member's Firm Staff

Membership number ______

Participant 2

Full name as per I/C (Dato' / Datin / Dr / Mr / Mrs /Ms): ☐ Vegetarian Meal

Designation: ______ I/C No: ______

Email ______ Mobile No. ______

Membership Affiliation

Please indicate which body you are associated with and your membership number:

☐ CTIM ☐ ACCA ☐ CIMA ☐ CPA Australia ☐ IIAM ☐ MAICSA ☐ MFPC ☐ MIA ☐ MICPA

☐ Member's Firm Staff

Membership number ______

ORGANISATION'S DETAILS

Organisation: ______

Industry: ______ Contact Person: ______

Address: ______

Email: ______ Tel: ______ Fax: ______

TAX INVOICE to be issued under:

☐ Company

☐ Individual

Authorised Signature & Company Stamp:

PAYMENT DETAILS

I / We hereby enclose*

☐ **Online Payment** via JomPAY

Biller Code: 78659
Ref-1: NTC2018
Ref-2: Mobile Number

JomPAY online at Internet and Mobile Banking with your Current, Savings or Credit Card account

☐ **Master Card / Visa Card** for amount of RM ______

Card Number

Cardholder's Name ______ Cardholder's Signature

as per credit card

Expiry Date: ______

☐ **Cash** for amount of RM ______

☐ **Cheque** No. ______ for amount of RM ______

*(non-refundable) and made payable to "**CTIM-NTC**". Please write NTC 2018, your name, contact number at the back of the cheque and mail together with registration form to the Conference Secretariat.*

Authorised Signature & Name

Date

TERMS & CONDITIONS

Reservation can be made by email / facsimile / post, but will only be confirmed upon receipt of registration form and payment.

Kindly contact the following Conference Secretariat for more information.

1. **Chartered Tax Institute of Malaysia**
   B-13-1, Block B, 13th Floor, Unit 1
   Megan Avenue II
   No. 12, Jalan Yap Kwan Seng
   50450 Kuala Lumpur, MALAYSIA

   Contact Person
   Ms Yus / Ms Jaslina / Mr Jason
   Tel : 03-2162 8989 Ext 121 / 131 / 108
   Fax : 03-2161 3207 / 2162 8990
   E-mail : ntc@ctim.org.my, cpd@ctim.org.my
   Website : www.ctim.org.my

2. **Akademi Percukaian Malaysia, LHDNM**
   Persiaran Wawasan
   43650 Bandar Baru Bangi
   Selangor, MALAYSIA

   Contact Person
   Ms Harmiza / Mr Khairul Asyraf / Mr Zura Zuwan
   Tel : 03-8924 3600 Ext 132178 / 132155 / 132192
   Fax : 03-8925 7005
   E-mail : ntc@hasil.gov.my
   Website : www.hasil.gov.my

Cancellation Policy
Conference fees are non-refundable once reservation has been confirmed. No refund is given for cancellations or withdrawals. Cancelled unpaid registrations will also be liable for full payment of the Conference fees.

Replacements
Please note registrations for the event are not interchangeable but replacements are acceptable. Please notify us at least five days prior to the event if you intend to send a replacement. CPD points will be allocated to the designated attendee. If the replacement is not a Member but a Member's Firm Staff or Non-Member, the appropriate fees will apply.

Member's Firm Staff / Member of Supporting Body / Member or Staff of Sponsor
Member's Firm Staff is the staff of a CTIM member within the same firm. Member of Supporting Body or Member or Staff of Sponsor, kindly indicate which body you are associated with in the registration form.

Confirmation of Registration
A confirmation letter will be issued within 3 weeks before the conference. Please contact us immediately if you have not received the confirmation letter 7 days prior to the conference.

Reminder
Certificate of Attendance will only be released to registered participants **(must register before 11.00am on day 1)**, full attendance with full payment and after completion of the Conference.

Recording
Video / Sound recording is strictly prohibited.

Disclaimer
All information contained in this brochure is correct and accurate at the time of printing. The Conference Organisers reserve the right to cancel, make any amendments and/ or changes to the programme if warranted by circumstances beyond the control of the Organisers. The Conference Organisers also reserve the right to make alternative arrangements without prior notice should it be necessary to do so. Upon signing the registration form, you are deemed to have read and accepted the terms and conditions.

Sponsorship and Exhibition Opportunities
For more information, kindly contact Ms Jaslina / Ms Ally at 03-2162 8989 ext 131 / 123 or email to ntc@ctim.org.my

ORGANISED BY

LHDN MALAYSIA

CHARTERED TAX INSTITUTE OF MALAYSIA

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE 2018

16 & 17 JULY 2018 | MONDAY & TUESDAY
KUALA LUMPUR CONVENTION CENTRE

The Inland Revenue Board of Malaysia (IRBM) and the Chartered Tax Institute of Malaysia (CTIM) will be co-hosting the National Tax Conference for the 18th successive year on 16 & 17 July 2018 at the Kuala Lumpur Convention Centre, Kuala Lumpur.

This conference will provide a good platform for interaction and building mutual understanding amongst key players in the tax arena; taxpayers, tax practitioners, tax administrators and tax policy makers.

The theme of this year's conference is "Taxation in a Changing Economy" and will bring tax experts from various fields to discuss topical issues in taxation. The chairmen / speakers /panelists of the conference are drawn from government and private sectors.

The key conference topics are:

- The Malaysian Economy - The Way Forward
- LHDNM's Strategies & Challenges
- Cryptocurrencies in the Digital Economy – Tax Issues
- Tax Audits & Investigations – Latest Issues & Findings
- Aggressive Tax Planning – Is There a Clear Dividing Line
- Earnings Stripping Rules – What Are In Store
- Update of Recent Tax Cases
- Open Discussion on Current Issues & Concerns

REGISTER NOW! Visit **www.ctim.org.my** and/or **www.hasil.gov.my** to view the full brochure.

Conference Secretariat
Chartered Tax Institute of Malaysia
B-13-1, Block B, 13th Floor, Unit 1
Megan Avenue II
No. 12, Jalan Yap Kwan Seng
50450 Kuala Lumpur, MALAYSIA

Contact Person
Ms Yus / Ms Jaslina / Mr Jason
Tel : 03-2162 8989 Ext 121 / 131 / 108
Fax : 03-2161 3207 / 2162 8990
E-mail : ntc@ctim.org.my, cpd@ctim.org.my
Website : www.ctim.org.my

Akademi Percukaian Malaysia, LHDNM
Persiaran Wawasan
43650 Bandar Baru Bangi
Selangor, MALAYSIA

Contact Person
Ms Harmiza / Mr Khairul Asyraf / Mr Zura Zuwan
Tel : 03-8924 3600 Ext 132178 / 132155 / 132192
Fax : 03-8925 7005
E-mail : ntc@hasil.gov.my
Website : www.hasil.gov.my

Supporting Professional Bodies :

ACCA Think Ahead | CIMA | CPA Australia | The Institute of Internal Auditors Malaysia | MAICSA | MFPC | MIA Malaysian Institute of Accountants | CPA Malaysia

25 CPD points
(For purposes of Section 153, ITA 1967)

CLAIMABLE UNDER THE SBL SCHEME HRDF
Based on the merit of each applicant.