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

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Tax Guardian

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INVITATION TO WRITE

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

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

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FARAH ROSLEY

NO SURPRISES IN THE FORTHCOMING BUDGET 2020

Dear Members,

I am pleased to inform you that the Minister of Finance had recently stated at the National Tax Conference 2019 that there will be no new taxes for the forthcoming Budget 2020, which focuses on strengthening the country's economy. The Institute welcomes the Minister of Finance's announcement that Malaysians can look forward to the year 2020 with a relief that no new taxes will be imposed. However, the government is striving to identify more efficient collection of tax revenues as a key strategy to help fund the nation's development policy and continuity of the people's well-being.

Courtesy visits

On 22 July 2019, my fellow Council Members and I paid a courtesy visit to YBhg Dato' Sri Sabin Samitah, the Chief Executive Officer ("CEO") of the Inland Revenue Board of Malaysia ("IRBM") together with his Deputy CEOs and senior management at the IRBM Headquarters in Cyberjaya. Besides strengthening ties, we discussed on several income tax related issues facing the tax profession and also possible future collaboration apart from the existing ones.

CTIM also paid a courtesy visit to YBhg Dato' Seri Paddy Abd. Halim, the Director General of the Royal Malaysian Customs Department ("RMCD") and his deputy, YBhg Dato' Ahmad Maher Abd. Jalil at the RMCD Headquarters in Putrajaya on 15 August 2019 to strengthen the bond and working relationship between the RMCD and CTIM. The Institute has expressed its desire to work closely with the RMCD in addressing issues pertaining to indirect tax matters.

On 26 August 2019, we paid a courtesy visit to YBhg Dato' Abdul Majid Ahmad Khan, the Chairman of the Malaysian Investment Development Authority ("MIDA") at MIDA Sentral to introduce CTIM to MIDA and also discuss on possible collaboration in future. MIDA has expressed their interest in working together with CTIM.

On 27 August 2019, CTIM paid a courtesy visit to En. Azizol Ahmad,

the State Director of IRBM Pulau Pinang. Issues pertaining to the Special Voluntary Disclosure Programme were discussed during the meeting among other issues.

Special Voluntary Disclosure Programme

The Special Voluntary Disclosure Programme, unveiled in Budget 2019 has officially come to an end on 30 September 2019. I hope many taxpayers have participated in this programme and benefitted from this one-time offer given by the government.

On 16 September 2019, CTIM collaborated with the IRBM to conduct the Countdown to Special Voluntary Disclosure Programme with the support of the National Chamber of Commerce and Industry of Malaysia at Menara Hasil, Petaling Jaya. The event was well received by taxpayers with over 300 attendees during the session. The event was officiated by the Minister of Finance, YB Tuan Lim Guan Eng. The talk was delivered by YBhg Dato' Sri Sabin Samitah, CEO of the IRBM, followed by a dialogue session. The panellists for the dialogue session were YB Tuan Lim Guan Eng, YBhg Dato' Sri Sabin Samitah, myself, Mr. Lim Kien Tai, Director of Shah Alam Branch, IRBM and Mr. Vijayen a/l Nagalingham, Deputy Director II, Large Taxpayers Branch, IRBM.

Meetings, dialogues and interactions with IRBM

The Institute had interactions with the IRBM in the third quarter of 2019 and the key ones are listed below: -

- **Earning Stripping Rules**
  The Institute's Earning Stripping Rules Working Group has submitted feedback and comments to the IRBM on the Income Tax (Restriction on Deductibility of Interest) Rules 2019 ("Earning Stripping Rules") gazetted on 28 June 2019 and the IRBM Guidelines on Restriction on Deductibility of Interest dated 5 July 2019. According to the Earning Stripping Rules ("ESR"), the ESR applies to a person who has been granted any financial assistance in a controlled transaction and the total amount of any interest expense for all such financial assistance exceeds

RM500,000 in the basis period for a year of assessment; and applies in respect of the basis period beginning on or after 1 July 2019 and subsequent basis periods (refer to our e-CTIM TECH-DT 54/2019 dated 3 July 2019). The IRBM Guidelines provides further explanations on the applicability of the ESR (refer to our e-CTIM TECH-DT 56/2019 dated 10 July 2019).

- **Guidelines on Taxation of Electronic Commerce Transactions**
  The Institute has submitted its feedback and comments to the IRBM on the IRBM Guidelines on Taxation of Electronic Commerce Transactions dated 13 May 2019. According to the Guidelines, any income in relation to electronic commerce transactions ("e-CT") is deemed to be derived from Malaysia if it is associated to any activities in Malaysia regardless of whether that income is received in Malaysia or otherwise. A non-resident person who derives income from e-CT may also be deemed to derive that income from Malaysia in relation to special classes of income and royalty. The scope of tax liability for business, special classes of income and royalty are explained in the Guidelines (refer to our e-CTIM TECH-DT 52/2019 dated 1 July 2019).

CTIM's 2020 Budget Proposals

The MoF had invited CTIM to attend a meeting on 25 July 2019 together with the IRBM to discuss on the Institute's 2020 Budget Proposals which had been submitted to the MoF on 31 May 2019. The Institute's 2020 Budget Proposals include, amongst others, matters pertaining to deduction for tax filing fees, penalty for late filing of tax return, withholding tax, derivation of business income, the taxing of advance billings and receipts, incentives and allowances. The MoF indicated that it would study some of the Institute's proposals for consideration accordingly. Members may refer to the Institute's proposals in the "Members Only" section of the CTIM website.

National Tax Conference ("NTC") 2019

The NTC 2019, themed "Economic Prosperity & Taxation" was successfully concluded on 6 August 2019 after two days of discussions on contemporary topics and current issues at the Kuala Lumpur Convention Centre. The mutual co-operation between the event's co-organisers, i.e. the IRBM and the Institute, has made this annual event very successful with a record-breaking turnout of participants exceeding 2,500. I would like to thank YBhg Dato' Sri Sabin Samitah for making this partnership possible. I would also like to thank the participants for their support and the chairpersons, speakers, moderators and panellists for each session for their tremendous contributions. I would also like to acknowledge the efforts of the NTC Co-Chairpersons, Committee and the Secretariat for ensuring the smooth running of this event. Finally, I would like to thank YB Tuan Lim Guan Eng, the Minister of Finance for officiating this event. I would encourage you to read the article on the NTC 2019 for more information on the happenings at the Conference in this issue of the *Tax Guardian*.

Upcoming CPD Events

The Honourable Minister of Finance will be announcing the Budget 2020 on 11 October 2019. Following from this, the CTIM 2020 Budget Seminar will be held on 24 October 2019 at the Berjaya Times Square, Kuala Lumpur. The CTIM 2020 Budget Seminar will then move on to the other Malaysian cities (Melaka, Penang, Johor Bahru, Ipoh, Kuching and Kota Kinabalu) from 20 November 2019 to 26 November 2019 before coming back to Kuala Lumpur on 5 December 2019. I would encourage you to register early for the CTIM 2020 Budget Seminar nearest to you to avoid disappointment. Please look up our CPD Events Calendar for Quarter 4 of 2019 (October 2019 to December 2019) in this issue of Tax Guardian and the CPD events listed in the Institute's website (www.ctim.org.my) for details of CPD events which will be coming your way.

Graduation and Prize Giving Ceremony

The 24th CTIM Graduation and Prize Giving Ceremony will be held on 16 November 2019 at the Renaissance Kuala Lumpur Hotel. The event will be officiated by YBhg Dato' Sri Sabin Samitah, CEO of the IRBM. The total number of graduates from the December 2018 and June 2019 sittings is 21. I would like to take this opportunity to congratulate all the successful candidates. I hope to see you at the graduation ceremony together with your family members to celebrate your achievement.

Membership

The Institute encourages eligible individuals to apply for CTIM membership and the CTIM Practising Certificate. The eligibility criteria and application procedure for CTIM membership and the CTIM Practising Certificate are available in the membership section of the Institute's website at *www.ctim.org.my*.

Finally, I would like to encourage members to communicate and bring matters of concern to CTIM in relation to taxation so that we can raise the issues to the relevant tax authorities to address such issues amicably. I would like to convey my sincerest thanks to everyone involved for their efforts in promoting CTIM's status as the premier body for tax professionals.

Editor'sNote

YEO ENG PING

As I observe the various media articles on tax, ahead of Budget 2020 which is to be unveiled on 11 October 2019, there seems to be one theme that is gaining interest among writers. A lot is being written around the goods and services tax, or a variation of it, its inherent advantages as a tax system, and the need for the nation to broaden its tax base. Other topics that have come up in pre-Budget discussions include whether Malaysia will introduce a new digital tax beyond the current sales and service tax provisions, whether the real property gains tax will be recalibrated after the expansion in scope / rates following the last Budget, and whether there will be new tax incentives, including a refocus of the Malaysian incentives regime. The answers will be apparent by the time this Editor's Note goes to print, so I will not dwell further on this, but will be watching the developments with a lot of interest as these are major topics that affect our day to day lives as an individual consumer, as a tax professional and as a Malaysian.

At a recent tax conference I attended overseas, the key themes discussed were around the impact of global trade tensions and also BEPS 2.0. The OECD's 2019 workplan on addressing the tax challenges of the digitalised economy sets out its proposals under two pillars: **One** is the creation of a new way to attribute taxing right (new nexus rules), new ways to allocate profits to the various taxing jurisdictions and **Two** is the introduction of a global minimum tax on MNEs. The plan hopes to achieve full consensus by the end of 2020, and if it proceeds, will have far reaching consequences for all multi-national enterprises – not just limited to "digital businesses" as it will change

the hitherto adopted international tax rules. **Pillar One** seeks to allocate taxing rights towards the jurisdiction where customers or users are located;

> **"The OECD's 2019 workplan on addressing the tax challenges of the digitalised economy sets out its proposals under two pillars: One is the creation of a new way to attribute taxing right (new nexus rules), new ways to allocate profits to the various taxing jurisdictions and Two is the introduction of a global minimum tax on MNEs."**

and hence taxing rights can accrue even without a physical presence. Further the discussion encompasses possible methods of profits allocation based on users, or marketing intangibles, or "significant presence".

Under **Pillar Two**, there are proposed mechanisms which intended effect are that an MNE will be subject to tax on its global income at a rate of at least the agreed minimum rate, regardless of where it is headquartered or where it operates. It is recognised that this will put pressure on incentive regimes. As a BEPS associate member, Malaysia would have participated in the OECD discussions on these, and it would be interesting to hear what our stance is and how this may impact Malaysia's tax polices going forward. Will this be made evident at the Budget announcement?

Closer to home, and just before I end this note, we will undoubtedly get an official account on the effectiveness of the IRBM's special voluntary disclosure programme (SVDP) which ended 30 September 2019 without further extension. I would really like to hear from CTIM members of any changes to the tax authority's approach to tax audits and penalties, with the end of the SDVP. So please do share your experiences on this and your thoughts about Budget 2020 as it unfolds!

CPD EVENTS

A series of events were conducted in the 3rd quarter of 2019 as follows:

- Seminar: Managing Large Taxpayers' Issues – a practitioner's update
- Workshop: The Effects of Digital Tax in Malaysia
- Workshop: Public Rulings 2018 & 2019 – compliance issues and latest updates
- Seminar: Unravelling the Recent Trends in Tax Avoidance Cases
- Practical Guide 2019: Taxation Principles and Procedures (in collaboration with MAICSA)
- Countdown to Special Voluntary Disclosure Programme

The seminars on "Managing Large Taxpayers' Issues – a practitioner's update" were organised on 3 July 2019 and 18 July 2019 in Kuala Lumpur and Johor Bahru respectively. Amongst the speakers involved were Council Members of the Institute and the Director of Large Taxpayers Branch of Inland Revenue Board of Malaysia (IRBM) Dr. Nik Abdullah Sani Nik Mohammed.

The workshop on "The Effects of Digital Tax in Malaysia" was held on 16 July 2019 in Kuala Lumpur and the re-run of the workshop was held subsequently on 19 July 2019 due to the overwhelming response. The speaker, Mr. Sivaram explained to the participants the effect of service tax on payments for digital services by Malaysian service recipients/consumers to Foreign Service providers under the Service Tax (Amendment) Act 2019 and also the available tax incentives for Digital Economy.

A series of workshops on "Public Rulings 2018 & 2019 – compliance issues and latest updates" were conducted at major cities by Mr. Kularaj. This workshop provided participants with an understanding of income tax laws and regulations pertaining to the issues in the Public Rulings and discussed together with practical examples from selected tax cases.

The Institute had successfully organised a seminar on "Unravelling the Recent Trends in Tax Avoidance Cases" on 4 September 2019 in Kuala Lumpur. Some of the topics presented by the speakers were tax avoidance cases in Malaysia, BEPS action plan in combatting tax avoidance & its influence in Malaysia and strategies to manage tax audits and investigations.

The speakers for this seminar were Ms. Farah Rosley, Mr. Chow Chee Yen & Ms. S Saravana Kumar.

A series of workshops on "Practical Guide 2019: Taxation Principles and Procedures" were conducted by Mr. Vincent Josef from 13 to 27 September 2019. The workshops were divided into 4 modules i.e Module 1: Business & Employment, Module 2: Allowances & Deductions, Module 3: Advance Subject I and Module 4: Advance Subject II.

The Inland Revenue Board of Malaysia (IRBM) in collaboration with the Chartered Tax Institute of Malaysia (CTIM) and National Chamber of Commerce and Industry of Malaysia (NCCIM) conducted a programme on "Countdown to Special Voluntary Disclosure Programme (SVDP)" on 16 September 2019 at the Menara Hasil, Petaling Jaya. This event was attended by more than 300 people. The talk was delivered by YBhg. Dato' Sri Sabin Samitah, Chief Executive Officer of the IRBM; followed by a dialogue session with the following panellists:

- YB Tuan Lim Guan Eng, Finance Minister of Malaysia
- YBhg. Dato' Sri Sabin Samitah, Chief Executive Officer of the IRBM
- Ms. Farah Rosley, President of CTIM
- Mr. Lim Kien Tai, Director of Shah Alam Branch, IRBM
- Mr. Vijayen a/l Nagalingham, Deputy Director II, Large Taxpayers Branch, IRBM

The Northern Branch of the Institute together with the IRBM Penang Branch organised two talks on Special Voluntary Disclosure Programme as follows:

- 7 September 2019 (in collaboration with the Federation of Malaysian Manufacturers Penang)
- 13 September 2019 (in collaboration with the Federation of Penang and Province Wellesley Hawkers and Petty Traders' Association)

COURTESY VISITS TO GOVERNMENT AGENCIES

The Institute organised several courtesy visits to the Inland Revenue Board of Malaysia (IRBM), the Royal Malaysian Customs Department (RMCD) and the Malaysian Investment Development Authority (MIDA) recently. During the visits, pertinent matters relating to tax development and further strategic collaboration as well as initiatives for the benefits of members were discussed. The courtesy visits will indeed lead to stronger ties between CTIM and the agencies and authorities.

The courtesy visits were led by CTIM's President, Ms Farah Rosley and Council Members. For the Penang courtesy visit to the IRBM Penang State Branch, the CTIM delegate from the Penang Committee were led by Ms. Farah and the CTIM Northern Branch Chairman, Ms. Kellee Khoo. Attending the meetings, were also senior officials from the respective agencies.

Courtesy Visit to IRBM
Date : 22 July 2019
Venue: Menara Hasil, Cyberjaya

Courtesy Visit to IRBM
Date: 15 August 2019
Venue: Jabatan Kastam DiRaja Malaysia, Putrajaya

Courtesy Visit to MIDA
Date: 26 August 2019
Venue: MIDA Sentral, Kuala Lumpur

Courtesy Visit to IRBM (Penang State Branch)
Date: 27 August 2019
Venue: IRBM Penang Branch

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NATIONAL TAX CONFERENCE 2019 ECONOMIC PROSPERITY & TAXATION

MORE TAX REFORMS ARE ON THE HORIZON FOR MALAYSIA; THIS WAS ONE OF THE MAIN TOPICS OF DISCUSSION AT THE NATIONAL TAX CONFERENCE 2019. THE CONFERENCE THEME THIS YEAR WAS "ECONOMIC PROSPERITY & TAXATION." WELCOMING DELEGATES, CTIM PRESIDENT FARAH ROSLEY SAID THAT THE CONFERENCE OFFERED A PLATFORM FOR THE PUBLIC AND PRIVATE SECTORS TO HAVE CONVERSATIONS ON TAX MATTERS AFFECTING BOTH. "THE TOPICS OF THIS CONFERENCE WERE CHOSEN BECAUSE THEY AFFECT THE TAX COMMUNITY," SHE SAID. "THIS IS THE PLACE TO RAISE QUESTIONS AND CLARIFY YOUR DOUBTS."

Majella Gomes

SETTING THE STAGE FOR CHANGE

Voicing full support for the government's efforts to improve tax collection, IRBM's CEO Dato' Sri Sabin Samitah said that the IRBM will continue being proactive about tax collection and recovery mechanisms despite the difficulties and setbacks experienced in the course of its work. "IRBM fully supports the Tax Reform Committee," he said. "Discussions at this Conference will help the IRBM identify areas of growth as well as shortfalls in the tax regime and policy. Feedback from the people involved in discussions will help in understanding the challenges and opportunities better."

Having hinted in his previous year's keynote address (at NTC 2018) that a tax regime change was likely, NTC 2019's Guest of Honour, Finance Minister YB Lim Guan Eng faced the audience and confidently announced that the change had indeed begun, with the institution of the Tax Reform Committee in September 2018. Underscoring the importance of tax as an economic tool, he said, "The system is being reformed for better efficiency, and the economy is showing resilience." He added that the World Bank has projected a 4.6% growth for Malaysia in 2019 although detractors have been quick to question this in light of Singapore's slight economic contractions in the first quarter of this year.

Signs point to sustained growth, he continued, with unemployment at 3.3% as at May 2019. The labour market was healthy, with strong prospects, and production was up 4% year-on-year. On 18 July 2019, *Fitch* upgraded Malaysia's rating to A- which indicates confidence in the government. "Malaysia has a stable government and a stable political situation, despite many people saying things to the contrary," he affirmed. "The government will keep its promises." It is making efforts to reduce the budget deficit to 3.4% of GDP this year, as part of the move to restore public trust. In tandem, fiscal reform of the system is necessary.

Commenting on the Special Voluntary Disclosure Programme (SVDP), he said that it was one of the government's efforts to overcome tax avoidance and evasion, and to help normalise or regularise tax payments. So far, more than 486,000 taxpayers have declared unreported income under the SVDP. Systems were also being improved to make filing easier. He stressed that taxpayers must always be treated courteously by the IRBM, and that it was imperative for them to see that their taxes were being used properly, in order to maintain public support.

This will be spurred further with the implementation of the National Anti-Corruption Plan, with which the government had declared its commitment to fight corruption. "What happened in the past must not be allowed to happen again," he stressed. On the issue of Base Erosion and Profit Shifting (BEPS), he said that the IRBM will continue to be vocal about it at international meetings as the body had been invited by the OECD to participate in its Advisory Group on the matter. With information already received from 92 countries, compliance action could be taken in collaboration with other international bodies affected by this problem.

Discussion on the Digital Economy was also ongoing at the OECD level, and there was a need for tax education and awareness which included technical guidance and mechanisms for public accountability. Cautioning delegates to advise their clients with care, he pointed out that clients' levels of compliance were actually a reflection of tax professionals' commitment to tax laws. He urged delegates and the public in general to complain to the MoF/IRBM if they felt they had been unfairly treated but insisted that this criticism should be constructive in order to build a better society where wealth could be fairly shared.

TOPIC 1 IRBM's STRATEGIES AND CHALLENGES

Prior to the official opening of the Conference by the Minister of Finance, proceedings had already got off to a flying start with Farah

Rosley's one-on-one with Dato' Sri Sabin, where she invited the IRBM CEO to talk about taxation challenges in light of changes in the global economy and its constantly evolving dynamics. "Taxation can be used to encourage or discourage certain behaviours," she said. "What is the role of taxation in ensuring the growth of the country and the prosperity of the nation?"

While conceding that it would be ideal to live in a country without taxation, Dato' Sri Sabin Samitah asserted that this was not possible as services which were essential to national growth and stability – like the army, police, judiciary and education – had to be funded. "Financing of all this comes through taxation," he said. "The main purpose of taxation is to raise revenue to provide these services for the citizens. Tax is a tool to reduce inequality, distribute resources and protect local industries." In 2017, tax collection made up 55% of the country's income, he added.

He also stressed the importance of having adequate laws in support of tax policies, citing the case of Australia and Argentina, two countries which had roughly the same GDP at the turn of the 20th century. Both had good prospects but Argentina fell behind because of faulty policies and poor governance whereas Australia prospered because its government put the right structures in place.

TARGET INCREASES NECESSITATE DIFFERENT APPROACHES

The IRBM, he said, had been set an original target of RM147 billion to collect, for 2019. "Developing countries like Malaysia should collect at least 20% of GDP to be able to provide services for its people," he explained. "That's why the target increases every year." But he conceded that there were still issues to be addressed, among them the question of incentives, some of which had outlasted their usefulness. In order to achieve its targets, the IRBM empowers itself with the use of technology such as advanced analytical tools, big data and risk analysis, and more efficient audit processes that help improve the quality of audits, and rigorous staff training. In short, the whole system is slowly but surely undergoing a major revamp.

Responding to Farah's query on the IRBM's key challenges, Dato' Sri Sabin said that the main one was meeting collection targets amid pressure to do more with less. There was also increased expectations and growing public scrutiny; hence a paradigm shift needs to happen within the IRBM to meet these expectations. Farah also asked how the IRBM deals with compliant taxpayers who make genuine mistakes, as opposed to those "bad" taxpayers who set out to intentionally defraud the authorities. With the self-assessment system, non-compliance is discovered only with audit and investigation, Dato' Sri Sabin said.

The IRBM is empowered to impose heavier fines on habitual offenders, he added, but taxpayers can appeal if they feel they have been unfairly treated. "We want to penalise those who have not complied so that we have a level playing field," he explained, adding that penalising errant taxpayers was fair to those dutiful, compliant ones. It was imperative for the IRBM to be seen as trustworthy, and taxpayers need to understand that tax goes beyond numbers. "The IRBM wants taxpayers to be involved in the country's tax system," Dato' Sri Sabin said. "It is critical to engage and build confidence, and be seen as not imposing arbitrary or capricious rules. This encourages compliance, and gives legitimacy to the IRBM's administration."

IT'S NOT JUST ABOUT THE MONEY

On the SVDP, he clarified that it was not so much about collecting revenue, as offering an opportunity to errant taxpayers to "come clean" and ultimately reduce the cost of compliance for all parties. Will those who did not declare under SVDP be audited after 30 September 2019? Dato' Sri Sabin said that the under-declared years claimed by taxpayers under the SVDP would not be audited as the information given on these years would be accepted in good faith. "We will audit the years that were not declared under SVDP," he clarified. "But not aggressively."

How was the IRBM improving efficiency at branch level, to keep up with these new and evolving demands? Branch staff are monitored closely, he said, and are given on-the-job training and guidance by supervisors. Rigorous performance management is applied, and performance translates into year-end reports that determine promotions and salary increments. Describing taxpaying as everyone's responsibility, he concluded with the hope that all Malaysians would be tax compliant, with the ultimate aim of creating a level playing field for the nation.

TOPIC 2 ECONOMIC PROSPERITY TOWARDS A RESURGENT MALAYSIA

Discussion about Malaysia's place in the world economy and its prospects in the face of increasingly difficult global conditions, was front and centre in the Conference's second topic, "Economic Prosperity towards a Resurgent Malaysia." Moderated by Dr. Sukhdave Singh, Independent Non-Executive Director of Khazanah Nasional Bhd, the panel members for the session were noted economist Tan Sri Dato' Dr. Lin See Yan, now CEO of Zeta Advisory, and Wan Suhaimie Wan Mohd Saidie, Head of Economic Research, Kenanga Investment Bank Bhd.

SMALL FISH IN A BIG POND

At the global level, Malaysia is a relatively small economic player, so anything that happens in the world will have an impact locally. The global economy has undergone a 10 year expansion, said Dr. Sukhdave but overall, conditions were still weak, with poorly-paid jobs, and low growth. Household debt has increased, as has corporate debt, and the debt of emerging markets. China's total debt was more than 300% of its GDP; Japan's total debt was closer to 400% of its GDP.

Banks were holding more assets than necessary, further distorting the economy, and financial markets were becoming delinked from economies. "Expansion is unbalanced," Dr. Sukhdave said. "Consumer prices are muted but property and asset prices are increasing. What are these prices signals telling us? The world's major economies have seen no major reforms after the last difficult period. This is not a sustainable scenario. Central banks are holding too many assets. Protectionism and geopolitics are rife; major central banks are contemplating further easing of the already easy monetary policies."

But monetary policies have lost their impact, and economies are becoming vulnerable again. Geopolitical issues are beginning to affect supply chains.

Commenting on the fears of a global recession, Tan Sri Lin said that although the global economy was not healthy, and economic indicators point to a significant slowdown, a recession is unlikely in the next 18 months. "The possibility of a recession in the next 18 months is 29%," he said. "Investors are becoming more cautious but despite indications (such as an inverted yield curve that usually points to an oncoming recession), it is unlikely that there will be a "Trump" recession. But we shall have to wait and see," he remarked, somewhat ominously.

THINGS ARE NOT WHAT THEY SEEM

On the Malaysian economy, he pointed out that although it appeared fundamentally strong, he was not convinced that it was, primarily because the IMF/World Bank growth forecast of 4.5% on average over the next 18 months was not sustainable, given that this growth was based on private consumption. "Private consumption is not a reliable driver of growth," he stated. "It is not sustainable if it rises above the rate of growth of the economy and income." What worried him, he continued, was that business confidence and total-factor productivity were down. "This is because we have not been investing enough," he said. "There has not been enough innovative activity and companies are not investing enough."

Among the factors which have caused this unsustainability are the size of the government, and the fact that too many state-owned enterprises (SOEs) are actually crowding out others. Currently, about 75% of listed companies are SOEs. In addition, youth and graduate unemployment are high,

and the Ringgit is weak. Six decades ago (when US$1: RM3.06), it was the general opinion of economic advisors that a weak exchange rate would actually be beneficial to Malaysia. Sixty years on, said Tan Sri Lin, it has become clear that the weak exchange rate is not beneficial to us because as manufacturers, "We are value adders, and are importing too much. The weak Ringgit does not help Malaysia. Our market is small."

Other indicators that are cause for worry are labour-related problems and widening wage inequality. Foreign direct investment (FDI) is not rising fast, despite claims of "strong fundamentals" that would encourage this. FDI inflow has not been effectively translated into capital formation. Also, the Ringgit is undervalued. All these point to the urgent need for economic reform; all these economic ills will persist unless there is a serious relook at the way things are done.

WHAT DO WE NEED?

Frameworks need to be reworked, objectives reset, and the country should aim for a high quality of life, not just income. The measures that need to be put in place have to be economically and environmentally sustainable. There is also a need to stop importing unskilled labour. "Malaysia's growth was predicated on population and productivity growth," he explained. "But our population is in decline, and we cannot depend exclusively on productivity growth. Unskilled labour will not help us. We need to move up the value chain."

This includes instituting a good living wage, providing good education, and reforming the tax structure. "The current income tax structure actually works against the middle class! This is like killing the goose that lays the golden eggs! We need to promote technological growth, innovation, robotics and AI," he asserted, conceding that this would initially be disruptive but would "unwind" itself and develop. To this end, the E&E industry and manufacturing needed rejuvenation in order to be able to compete in high-value industries. Policies have to be rethought and revisited to attract "frontier" industries.

Existing difficulties are further exacerbated by agencies which don't talk to teach other, so it is hard for people who need the incentives to actually access them. The incentives themselves need to be relooked. Industries, too, were changing in character. For instance, the line between manufacturing and services was beginning to blur. What was traditionally "manufacturing" was beginning to move away from production. There was an overall need to catch up with the rest of the world in this area, and for this, he advocated looking to China, Japan, Korea and Taiwan to understand developments, instead of depending on what Europe and the US were doing.

NO MORE MOLLYCODDLING

Agreeing with Tan Sri Lin on many of the issues, Wan Suhaimie Wan Mohd Saidie opined that more clarity was needed on many aspects but the reforms had started with the change of government. Because we were faced with many challenges, he said we needed to be "anti-fragile" as Malaysians in general had been overprotected for a very long time. We need to live up to our potential. To toughen up the economy (and people), he recommended focussing on areas that bring growth like tourism and agriculture, and the reintroduction of a consumption tax.

SMEs, he said, needed help to automate; this could reduce the need for cheap labour which in turn could control or restrict the inflow of low or unskilled labour. He agreed that a quality basic education should be free for all, and suggested that the current digital divide could be reduced by upskilling and retraining. The Ringgit, he opined, should be free-floated and traded offshore to regain its strength. "We claim to have strong fundamentals, so maybe we should allow the Ringgit to float freely," he remarked.

Dr. Sukhdave remarked that it appears that over time, Malaysia has become afraid of global competition (as evidenced by declining productivity, weakening currency, talent flight etc); Tan Sri Lin's response was that Malaysians have talent but the country has not built up the capacity to absorb it, despite engaging foreign expertise to provide input. He reiterated that the government should facilitate the private sector, not crowd it out. "The time for reform has come, and there are enough brains in Malaysia to do it," he stated. "We look at other factors as excuses but we don't see our own weaknesses as part of the problem. If we (continue to) rely on cheap labour, we will no longer be hungry."

To a question on whether increasing tax and letting the government spur the economy could be a better strategy than reducing tax to enable the taxpayer to spend more, Wan Suhaimie said that it was really a balancing act, with the government still trying to find ways to top up the shortfall. Tan Sri Lin suggested that the government should give funds to bodies that showed they could use it efficiently and effectively. On the issue of low wages, he quipped, "Blame it on Mahathir; he likes things cheap!" before attributing the comparatively low wages in Malaysia in part to archaic labour laws. "They are old," concluded. "They need to be upgraded."

TOPIC 3 NAVIGATING TAX REFORMS

Tax reform may be necessary, but how should it be managed, considering the dynamic scenarios in which it is expected to happen? CTIM Council Member Phan Wai Kuan, who moderated the session on Navigating Tax Reforms pointed out that as Malaysia embarks on tax reform, it is not alone in its journey. Countries like India, the Philippines, Indonesia, Australia, New Zealand and the US have undertaken similar measures. "In the last 60 years, Malaysia has made changes," she said, quoting several Acts like the 1974 Land Speculation Act, the 1976 RPGT Act, the GST Act and the Act to abolish it, and the SST in 2018 as examples.

In recent years, the focus has shifted from whether or not it should be instituted, to how it should be managed, in the face of increasingly difficult economic challenges both domestically and internationally, and the need to sustain competitiveness and productivity in a volatile and uncertain global market. In the course of analysis and discussion, the whole Malaysian economy has come under scrutiny. Panel speaker and Executive Director of the Socio-Economic Research Centre Malaysia, Lee Heng Guie said that there was a need for the government to look for new sources of revenue to finance expenditure.

CONSIDER THE WHOLE PICTURE

Besides the need for tax reform, other reforms need to be set in motion as well, such as economic, productivity and competitiveness. Can the Malaysian tax system deal with all these reforms simultaneously? The numbers do not inspire confidence. Panel speaker and Deputy CEO of the IRBM, Datuk Mohd Nizom Sairi confirmed that out of a total workforce of 15.6 million, there were only 8.037 million "active" files – which means only about 22% of the population pays tax. The government is between a rock and a hard place. It cannot

"The current tax base is too narrow," he explained, "and the country is still depending on oil revenue, which currently makes up about 19.4% of government revenue. But our oil reserves are declining so we have to look for other sources of revenue, such as direct or indirect taxes. If tax rates are lowered, workers will be encouraged to work harder." Another major challenge is the effective mobilisation of revenue – how to make sure every Ringgit is spent correctly and efficiently. "This is a real challenge for the government, going forward," he remarked.

increase taxes as this will strain an already narrow tax base, nor can it reduce taxes, as that will bankrupt the country.

One way around this may be for ministries to reduce operating expenditure, opined panel speaker Dr. Veerinderjeet Singh, Group Chairman, Axcelasia Inc. "There is a lot of wastage, which can be seen from the Auditor-General's Report every year. We should look at existing taxes and see how they can be collected more efficiently, or better enforced," he said, urging better application of technology and alignment with what is happening internationally. "If the tax base is not increased, it will be the same category of taxpayers that will be pressed for payment."

What role then will the Tax Reform Committee play in all this? It is primarily an advisory committee to the Minister of Finance that will recommend various measures for the consideration of the Minister. The Committee's job scope includes looking at new sources of revenue, ways of reducing the tax gap and compliance, among other measures. Ideally, there should be an even mix of taxes on income, wealth and property but collection is skewed towards collection of direct taxes, at 73%, with the remaining 27% coming from indirect taxes.

SIMPLIFY AND BUILD CONFIDENCE

The tax gap refers to the revenue which should have been collected under the existing laws but have not yet been paid. What kind of reforms should be initiated to increase revenue? The authorities were urged to make compliance simpler and less expensive, while Dr. Veerinderjeet remarked that the government was trying to build confidence in tax-collection bodies. He said that lessening the taxpayer's compliance burden, and increasing education and awareness about tax were likely to build public confidence. Datuk Mohd Nizom confirmed that the IRBM was using technology to speed up and better manage compliance.

In fact, the intention was to move from what he described as "ex-post" to "ex-ante" where information and revenue could be captured even before it was realised. Eventually, he said, there may not even be any need to file tax returns at all, as compliance levels could be raised with the application of technology. However, Lee reminded everyone that we were still dependent on direct taxes – and these were tied to productivity and performance. He suggested making announcements upfront to induce investors to invest their money in Malaysia.

"Right now, there is a disincentive to apply. Replace it with a simplified system, move to a broader consumption tax, away from direct taxes," he urged. "Malaysia has never had comprehensive tax reform before so we need to consider two things: productivity enhancement and production enhancement. We should look at improving the services to taxpayers, and giving them better information."

DO IT GRADUALLY

Dr. Veerinderjeet remarked that "back in the day" indirect taxes used to contribute almost the same amount as direct taxes, but customs duties declined – hence the greater dependency now on indirect taxes like the SST. But the world, he said, was moving towards indirect taxes (so to remain dependent on direct taxes may cause misalignment of Malaysian policies). "We can have tax reforms, but the changes must be sequenced," he cautioned. "It cannot be achieved overnight. If the economy is declining, the government will not increase tax rates."

In tandem, there has to be prudent spending by the government. "The funds collected from the Rakyat have to be well spent," stated Lee. "There should be transparency and accountability." Dr. Veerinderjeet added, "Has there been better accountability over how the government has spent money from taxes? Are we getting this from the Ministries?"

Acknowledging that the tax base needed broadening without burdening the people, Phan queried if instituting a capital gains tax would help. "Revenue gains and capital gains cannot mix," stated Dr. Veerinderjeet. "Some countries say all gains are taxable, and we shall see many countries in this region thinking the same way but look at compliance costs – don't force the taxpayer to report. Instead, get information from other agencies. There are ways to improve things for the taxpayer. Make it easier to report, file and pay." What taxpayers want to see is that things have improved, and are being undertaken for the greater good.

SO MANY FACTORS TO CONSIDER

With only about 15%-20% of the population currently paying tax, reliefs are unlikely to benefit the larger population. There is also the pressing need to build taxpayer confidence, and to spur entrepreneurial activity; the current system is not doing this enough because the state of the economy is not at the right stage, said Lee. Dr. Veerinderjeet agreed on the issue of timing and the economy, adding that for some taxes, the objective was not the collection of revenue. A cashless society was also mooted as a means of preventing below-the-radar transactions. Datuk Mohd Nizom suggested that this could start with all transactions in government departments.

While going cashless may be a good move, Phan queried if we were technologically prepared to accommodate this. "The infrastructure is good," responded Datuk Mohd Nizom. The issue of incentives was raised again by Dr. Veerinderjeet, who emphasised that these should be clear, rules-wise. "Incentives alone do not create problems. It's how they are implemented that is the issue," he asserted. Lee urged more public engagement to raise awareness of what incentives were available. What would be a workable timeframe for assessment of the tax system, before rolling out changes?

He felt that many measures instituted by the government to repair processes, should not be rushed. Datuk Mohd Nizom agreed, adding that any reforms instituted now will take a few years to show results. "Take a year to determine the changes, a year to discuss, a year to implement, a year for feedback, and a year to assess," advised Dr. Veerinderjeet. "It will take about five years for the whole process, from research to presentation for views and recommendations. A special team in the Ministry will have to do this."

SYSTEM REBOOT?

Many have asked if GST will return but SST can be adjusted to cover the shortfall of GST, eventually, said Dr. Veerinderjeet, stressing again that this will not happen overnight. On a question about the Malaysian Income Tax Reporting System (MITRS), Datuk Mohd Nizom clarified that this was intended to simplify reporting and compliance, standardising it and making it easier to provide information to different agencies such as the SSM and IRBM. "If reports are made according to these standards, your documentation is already done," he explained. "There are some initial costs, but in the long run, it will be more beneficial for the taxpayer."

To a question on whether the law on exemption from tax liability should be repealed to curb tax leakage, Dr. Veerinderjeet said that it involved governance, and if used carefully and clearly, would not give rise to problems. In conclusion, he advised making comparisons between ourselves and the rest of the countries in the ASEAN region whose tax scope may be wider. Datuk Mohd Nizom advocated for a just, equitable, efficient system for the taxpayer, and Lee urged the authorities to be accountable for every Ringgit collected.

TOPIC 4 DIGITAL ECONOMY – ONLINE TRANSACTIONS

Day 2 of the Conference offered topics which were just as interesting. The session "Digital Economy – Online Transactions" was moderated by Salamatunnajan Besah, Director, Tax Policy Department, IRBM, with input by the OECD Tax Policy Advisor Eric Robert, and Sim Kwang Gek, Country Tax Leader, Deloitte Malaysia. Acknowledging that the digitisation of the economy was bringing great change, Salamatunnajan remarked that the business models which were now being developed that were taking these changes into consideration, should nevertheless follow the characteristics of the country's development.

NO SUCH THING AS A DIGITAL ECONOMY!

Quoting the OECD findings, Robert stated that there was no such thing as a Digital Economy. Rather, there was the process of digitalisation of business, which was not something unique; the tools being used for business were now digitised and automated to a greater extent than they previously were, to enable them to keep up with BEPS, tax avoidance and the exploitation of loopholes, for example. Digitisation has made it easier to shift profits across the globe, thus making it difficult to identify where income has actually been earned. This has necessitated the tightening of regulations. "There is a need to design a nexus that is not constrained or limited by physical presence," he said.

A programme was thus developed for this purpose, endorsed by the G20 members in Fukuoka, Japan in June 2019. "It is structured around two pillars: the allocation of profits and new nexus rule, and minimum tax," he explained. "Some countries will lose tax rights and some will gain. It is important for countries to realise this." Rules will be simplified, reducing many existing administrative difficulties, and current tax systems based on transfer pricing will not be abandoned. Rather, new systems will be established that allow for co-existence without added difficulty. "The top priority will be to find a spot where all parties can converge on agreement on major BEPS issues," he emphasised.

Malaysia, on its part, has already undertaken measures to address the challenges of the Digital Economy, including amending Section 2 of the Income Tax Act to redefine royalty, and expand the Withholding Tax net. There will be some impact of the OECD Programme of Work on Malaysia's Digital Economy, Sim confirmed, as some methods being applied were dissimilar to the ones currently in use. "Hopefully, the OECD programme will offer simplicity, clarity and fairness for all," she said. Roberts added that the rules were intended to level the playing field between local and foreign suppliers.

TOPIC 5 DEDUCTIBLE EXPENSE UNDER SECTION 33(1) – TO DEDUCT OR NOT TO DEDUCT?

Topic 5, on Deductible Expense Under Section 33(1) – to Deduct or Not To Deduct, brought about a wry comment by moderator Vijey M Krishnan, Partner, Raja, Darryl & Loh. "On the one hand, revenue officers are suspicious of taxpayers trying to claim deductions, but on the other hand, there are taxpayers who feel they deserve the deduction," he remarked. "Tax agents are caught in the middle: damned if you do, and damned if you don't!" He cautioned them to be wary, and protect themselves by always following the regulations, adding, "You need to be proactive and keep abreast of issues, to give correct advice."

When advising whether to deduct or not, speaker K Sandra Segaran, Co-organising Chairman of NTC 2019, said, "The Commonwealth approach is known as the Nexus approach. The focus is on four elements: "wholly" and "exclusively"; "incurred"; "in the production of income"; and "during that period." The elements always refer to the source of the business, and what is deductible for one business may not be deductible for another." He illustrated his statement with references to four cases: ***KPHDN v Kompleks Tanjong Malim Sdn Bhd; Strong v Woodifield; Vallmbrosa Rubber Co Ltd v Farmer;*** and ***Sykt Pukin Ladang Kelapa Sawit v KPHDN***.

Tax agents/advisors must take public rulings into consideration, he reiterated, but clients will always ask if this will bring on more intensive auditing. However, if proper documentation is done, there should be no issue. Tax auditors are also called upon to exercise proper judgement in cases of uncertainty,

and must always bear in mind the facts of the case when making decisions. Entering the discussion with a quip of her own, the IRBM's Senior Revenue Counsel, Normareza Mat Rejab said, "If Albert Einstein felt that tax was the hardest thing in the world to understand, we shouldn't feel bad if we don't either!"

ONUS ON THE TAXPAYER

"The onus of proving that an assessment against which an appeal is made is excessive, is on the appellant," she explained. There must be incontrovertible evidence of transactions; documents must be kept for seven years, starting from the end of that year in which the transaction took place. But what if there are no documents? "Have some information to substantiate your claims," she advised. "Don't come to the IRBM with empty hands." Taxpayers, she added, could provide reasonable estimates in lieu of documents but would have to have a proper basis for these estimates, not just random figures.

What complicates matters in many cases, she added, was the failure of the parties involved to satisfy conditions. Case law on deductions is ever-evolving, cautioned Vijey, so tax accountants must be constantly aware of precedents. They also need to be careful about how the documentation is drafted. "Clients expect a lot of things, so engagement letters should say exactly what they are getting," he advised. Admitting to "not being a big fan of advance rulings" he clarified that the difference between advance Income Tax rulings and advance Customs rulings was that the Customs rulings were binding.

To a question on whether the IRBM will waive penalties in cases where genuine errors had been made in the interpretation of laws, he said that this would be taken into consideration. "Different laws apply, so we still have to follow rules pertaining to different actions," he said. Will the IRBM accept soft copies of source documents that are vital to substantiating or are hard copies required? Soft copies were acceptable, he said, as long as the IRBM could sufficiently understand the information.

TOPIC 6 FORUM – UPDATES OF TAX CASES

Forum panel members for this session were Abu Tariq Jamaluddin, Director of IRBM's Legal Department, and S Saravana Kumar, Partner, Lee Hishammuddin Allen & Gledhill but the star of the show was undoubtedly Moderator Datuk Seri

Gopal Sri Ram, retired Federal Court Judge. He said, to the unbridled mirth of the audience, "There are a few mysteries in this world that nobody can explain: the ancient but perfectly symmetrical carvings in caves in India, the Pyramids at Giza, how our income tax is worked out – and what I am doing here!"

Abu Tariq presented eleven cases in the areas of Judicial Review, Stay of Proceedings, Advance Ruling, ITA vs RPGTA, Deductibility, Capital Allowance and Withholding Tax. Under Judicial Review, he presented the case of ***Iskandar Coast Sdn Bhd v KPHDN***, where the issue was whether the High Court had been correct in dismissing the taxpayer's judicial review application on the grounds that there had been no exceptional circumstances. Both the High Court and the Court of Appeal dismissed the taxpayer's appeal; the taxpayer has filed an application to appeal to the Federal Court.

Under Stay of Proceedings, three cases were presented: ***Aeon Credit Services (M) Sdn Bhd v KPHDN; Berjaya Times Square Sdn Bhd v KPHDN;*** and ***Mass Rapid Transit Corporation v KPHDN***. In the case of Aeon Credit, the issue was whether the taxpayer's application for stay of proceedings in relation to the Notice of Additional Assessment for YA 2010 to 2016 should be allowed. Both the High Court and Court of Appeal have dismissed the taxpayer's appeal as it was found to have contravened the tax recovery scheme under Sections 103 and 106.

STAY OF PROCEEDINGS, ADVANCE RULING AND ITA VS RPGTA

The issue in the Berjaya Times Square case was whether application for stay of proceedings pending the disposal of the taxpayer's appeal before the Court of Appeal should be allowed. The High Court dismissed the taxpayer's application for leave and granted an interim stay of three weeks for the taxpayer to file an appeal. The Court of Appeal, however, allowed the application for stay of proceedings pending the disposal of the appeal. In the case of Mass Rapid Transit Corporation, the issue was similar to that of Berjaya Times Square. Both the High Court and Court of appeal dismissed the taxpayer's application for stay of proceedings.

The two cases involved in Advance Ruling were ***KPHDN v IBM Malaysia Sdn Bhd*** and ***SKF Bearing Industries (M) Sdn Bhd v KPHDN***. The IBM case involved three issues: whether application for judicial review was premature; whether Advance Ruling was final and binding; and whether domestic remedy under the ITA was available to the taxpayer. While the High Court allowed the taxpayer's application for Judicial Review, the Court of Appeal found in favour of the IRBM. With SKF, the issue was whether the DGIR had acted lawfully and reasonably in refusing to apply an Advance Ruling. The High Court dismissed SKF's application for Judicial Review, and the Court of Appeal dismissed the taxpayer's appeal.

In the area of ITA 1967 v RPGTA 1976, the taxpayer, Natasari Sdn Bhd, disputed whether the profit from the sale of 26 lots of land was subject to RPGTA or ITA, and whether the DGIR's imposition of penalties under subsection 113(2) of the ITA was correct in law. The SCIT dismissed the taxpayer's appeal, and the High Court dismissed Natasari's appeal as well.

DEDUCTIBILITY, CAPITAL ALLOWANCE AND WITHHOLDING TAX

The two cases under Deductibility were ***Kompleks Tanjung Malim Sdn Bhd v KPHDN*** and ***KPHDN v Asia Energy Services Sdn Bhd***. The issue with Kompleks Tanjung Malim was whether the DGIR was empowered to apportion quit rent paid by the taxpayer for the purpose of subsection 33(1) of the ITA. The High Court allowed the DGIR's appeal but the Court of Appeal found in favour of the taxpayer. With Asia Energy, the issue was whether the amount paid to a holding company in respect of Employee Stock Based Compensation (ESBC) was deductible under subsection 33(1) of the ITA 1967. The SCIT allowed the taxpayer's appeal; the High Court dismissed the DGIR's appeal.

Ikatan Borneo (M) Sdn Bhd v KPHDN was the case cited under Capital Allowance, where the issue was whether machinery owned by the taxpayer but kept at the premises of and utilised by another company, qualified for Capital Allowance under Schedule 3 of the ITA 1967. The SCIT dismissed the taxpayer's appeal, as did the High Court. In the area of Withholding Tax, the case in question was ***Wira Swire Sdn Bhd v KPHDN***, and the issue was whether payments made to Orange Rederiet AOS were subject to withholding tax under subsection 4A(iii) and paragraph 109B(1)(c) of the ITA 1967. The High Court granted Leave to commence Judicial Review, as well as the order of Certiorari and Declaration.

Commenting on Abu Tariq's presentation, Saravana remarked that Judicial Review was usually resorted to when taxpayers were finding it difficult to pay. In most cases, he felt that the move to seek an Advance Ruling by the DGIR was premature, while in the SKF case, the High Court judge took the view that the taxpayer did not make a full disclosure. After commenting on the Kompleks Tanjung Malim case, where the Court held that revenue for administrative purposes was allowed to be apportioned, the Asia Energy Services on ESOS services which had as its precedent a UK case, Ikatan Borneo and Wira Swire, he remarked that "How courts decide on cases may be a matter of luck. Everything is examined on a case by case basis."

Datuk Seri Gopal commented

courts were not saying that the cases cannot go for Judicial Review; they were giving a different perspective. "In the six Judicial Review cases where leave was not granted, five are pending appeal," he said, to illustrate his opinion. In the Stay of Proceedings case involving Berjaya, he said that there were some instances where the Stay was not granted – and nobody knows why!

INLAND REVENUE CASES INVOLVE HIGHER COURTS

In the IBM case, the Court of Appeal was of the opinion that IBM's that Judicial Review in Malaysia was highly misunderstood because it follows the UK law, and a lot of the law applied today has been taken verbatim from the Indian Constitution, but it is worth noting that the Inland Revenue appeal is not a subordinate court appeal, and neither is the SCIT a subordinate court. Therefore, appeals can go up to the Federal Court.

TOPIC 7 ROUNDTABLE DISCUSSION ON CURRENT ISSUES & CONCERNS

The final session of the NTC

2019 was a Roundtable Discussion on Current Issues and Concerns, moderated by Leow Mui Lee, CTIM Council Member, with panel members Datuk Dr. Sotimin Muhalip, Director, Tax Operations Department, IRBM, and CTIM's Soh Lian Seng. The major topic was the Special Voluntary Disclosure Programme (SVDP). It has produced mixed reactions since it took effect in November 2018. Dr. Sotimin admitted that some of the comments were sceptical of the IRBM's ability to accept declarations in good faith.

"However, we continue to try and convince the public through awareness sessions, and have put it in writing that the IRBM will accept all voluntary declarations," he confirmed, adding that up to June 2019, more than 486,000 such declarations had been made. To a query about whether the IRBM has not accepted some declarations (due to unsubstantiated claims), he said that it was a bit difficult to respond to that since the IRBM has accepted all declarations in good faith, so "Participants should declare in good faith; we won't check. Sometimes declarations don't match the amounts but since we have accepted it in good faith, it stands."

Soh opined that although people were sceptical initially, this has been set aside and trust is being built. "But some taxpayers have become confused, and some are cautious," he said. "They worry that if they do not take up the SVDP, they will have to pay more later, as information from third parties that contradicts declared information will incur a penalty. Inconsistencies happen; information isn't always timely. He added that net worth analysis was adding to the confusion but things were generally improving and people were getting used to it.

STILL ON SVDP

When SVDP ends (on 30 September 2019), penalties will apply said Dr. Sotimin, from a minimum of 45% to 100% or even 300%. Enforcement will be tightened, boosted by more resources. The IRBM has invested substantial amounts in improving its IT infrastructure and staff training for better assistance in audit cases. Will these new systems also help to address the problem of the Shadow Economy, which, according to analysts, may make up almost 30% of the economy? "We are training more people to be Data Scientists," Dr. Sotimin responded.

An SVDP wish list would include an extension to the deadline, said Soh, because people were still confused over matters like audit and investigation, and how it will all work after the initial roll-out. In addition, "How do you educate taxpayers not to deceive or ignore the IRBM?" he queried. Conceding that compliance was not yet at desirable levels, Leow attributed it to the public rulings, dialogues with the IRBM, reviews and various other engagements with the IRBM that were extensive and complex. "Can the IRBM make our lives easier so that we can keep up with all these changes and measures?" she asked.

Dr. Sotimin advised taxpayers to read the material on the IRBM's website to stay abreast of developments. He added that the IRBM will be offering better facilities for this purpose, which will be rolled out soon. He also clarified matters pertaining to the Malaysian Income Tax Reporting System (MITRS), a platform for taxpayers to submit their financial information to the IRBM – part of the measures to make tax filing unnecessary in the future. To a query by Leow about whether the IRBM had sufficient funds for refunds, he replied in the affirmative, adding that delays had been caused primarily by incorrect information about bank accounts and undelivered mail.

MOVING TO THE FUTURE

In cases where refunds were delayed because of tax auditing, he said that the IRBM was considering the possibility of auto-refund, where there was significantly less risk. Leow also queried if companies could be allowed to revise tax estimates in the twelfth month if they wanted to declare more; she was supported by Soh, who urged the IRBM to consider this, as it meant revenue for the IRBM, either way. Dr. Sotimin responded that the current tax structure was already capable of addressing revisions in tax estimates.

ANALYSING THE CHANTIKA KELANG CASE

IS SUBSIDY FROM THE FEDERAL GOVERNMENT TAXABLE?

S. Saravana Kumar & Nur Amira Ahmad Azhar

This article analyses what is likely the first tax case of its kind in Malaysia, namely the taxation of Federal government subsidy. The Court of Appeal reversed the decisions of the High Court and the Special Commissioners of Income Tax ("**SCIT**") and held that the subsidy received by the taxpayer was not taxable.

BACKGROUND

There were three issues before the SCIT, which are summarised below:

Issue 1

Whether the subsidy received by the taxpayer from the Ministry of Agriculture & Agro-Based Industry Malaysia ("***MoA***") in the years of assessment 2008, 2009 and 2010 ("***Subsidy***") is exempted from income tax under the Income Tax (Exemption) (No. 22) Order 2006 ("***Exemption Order***")?

Issue 2

Whether the taxpayer may apply for relief under Section 131 of the Income Tax Act 1967 ("***ITA***") to claim the tax exemption granted via the Exemption Order?

Issue 3

Whether the Director General of Inland Revenue

("***DGIR***") was correct in his decision to reject the taxpayer's application for relief under Section 131(1) of the ITA?

In retrospect, issues 2 and 3 are consequential to the determination of issue 1. The crux of the taxpayer's submission was that the Subsidy received by the taxpayer is "subsidy" within the meaning of the Exemption Order and is thus, exempted from tax.

The taxpayer was in the business of rice milling and received subsidy from the MoA for rice and paddy seedlings. The MoA would grant the subsidy after sending its officers to the taxpayer's premises to confirm that the conditions had been met.

The taxpayer had declared the subsidy as gains and profits from its business under Section 4(a) of the ITA. Upon learning about the Exemption Order, the taxpayer then applied for relief from error or mistake under Section 131(1) of the ITA. This is because the taxpayer took the stand that the Exemption Order exempts any person from the payment of income tax in respect of a grant or subsidy given by the Federal or State government. However, the DGIR rejected the taxpayer's application, which resulted in the appeal being lodged by the taxpayer to the SCIT.

IS SUBSIDY TAXABLE?

In determining whether the subsidy is exempted from income tax, one must first examine the requirements of the Exemption Order, as summarised below:

(a) It is effective from the year of assessment 2006;
(b) The person receives allocations given by the Federal government in the form of a grant or subsidy; and
(c) Any deduction or allowances to be made under the ITA or the Promotion of Investments Act 1986 shall be disregarded and a separate record is maintained to ascertain the deductions or allowances available.

Effective from the year of assessment 2006:

The Exemption Order covered the years of assessment in which the taxpayer had committed the error or mistake of not claiming the tax relief available. The years of assessment in dispute here were 2008, 2009 and 2010.

It was also not in dispute that the taxpayer had received subsidies in the years of assessment 2008 to 2010.

Allocations given by the Federal Government in the form of a subsidy:

It was also accepted by the DGIR that the taxpayer had received subsidy from the MoA. The taxpayer explained that the MoA is indeed a part of the Federal government. Although, the "Federal government" is not defined in the Exemption Order or the ITA, the Interpretation Acts 1947 & 1967 defines it as the government of Malaysia. The offer letters for subsidy issued by the MoA to the taxpayer clearly stated that the subsidy is from the government of Malaysia.

Any deduction or allowances to be made under the ITA or the Promotion of Investments Act 1986:

The taxpayer did not make any deduction or claim any allowance under the ITA or the Promotion of Investments Act 1986 in respect of the subsidy received from the MoA.

Based on the above analysis, the taxpayer submitted that the subsidy was exempted from income tax by virtue of the Exemption Order.

DGIR'S STANCE

The DGIR took the position that the subsidy was taxable as only subsidy given to paddy farmers was exempted from income tax. According to the DGIR, the purpose of the subsidy was to enable paddy farmers to purchase good quality paddy seedlings at subsidised price rice at ceiling price. As such, rice millers such as the taxpayer were not the targeted group. The SCIT and the High Court accepted the DGIR's position and dismissed the taxpayer's appeal.

At the Court of Appeal, the taxpayer argued that the SCIT and the High Court, had erred by failing to consider the meaning of "subsidy". As aptly summarised in the Australian case of ***First Provincial Building Society Ltd v FC of T 95 ATC 4145***:

Courtesy visit to IRBM

"... in modern usage, as Jowitt's Dictionary of English Law(Sweet & Maxwell 1977 2nd ed) observes, the word: "generally means ***financial assistance granted by the Crown****". This is the meaning which the word truly has in the present context.*

The word, in the context of an agreement which provided that the Commonwealth would pay a "subsidy" to a company was said, by Windeyer J in Placer Development Limited v Commonwealth of Australia (1969) 121 CLR 353, to derive from the Latin subsidium

meaning ``an aid or help". His Honour said (at 373):

``The word is no longer used in its early legal sense of a grant to the Crown. It ordinarily means today not aid given to the Crown but ***aid provided by the Crown to foster or further some undertaking or industry****..."*

Further, based on dictionary meanings of "subsidy" it could be gleaned that "subsidy" is defined as a financial or pecuniary aid, help, aid or assist special needs, or for a special purpose or occasion. However, a reading of the definitions would show that at no time is a "subsidy" defined as being limited to "a special class of person", as what was submitted by the DGIR.

NO AMBIGUITY IN THE EXEMPTION ORDER

The Supreme Court in ***National Land Finance Co-operative Society Ltd v Director General of Inland Revenue [1993] 4 CLJ 339*** gave clear guidance on how a taxing statute is to be read. The following passages from that decision are instructive:

"...in construing the said amendments certain principles relating to the interpretation of taxing statutes must be followed. ***Firstly, there is no room for intendment in tax legislation and the rule of strict construction applies. Unless there are clear words tax cannot be imposed.*** *Another principle is that where the meaning of a statute is in doubt the ambiguity must be construed in favour of the subject. Yet another principle is that* ***an exemption from tax cannot be removed except by sufficiently clear words to achieve that purpose...***

There are ample authorities to show that Courts have refused to adopt a construction of a taxing Act which would impose liability ***when doubt exists****. In Re Micklewait [1855] 11 Exch 452 it was held* ***that a subject was not to be taxed without clear words...*** *we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J. in Cape Brandy Syndicate v. I.R.C. (supra):*

... in a taxing Act one has to look merely at what is clearly said. There is ***no room for any intendment. There is no equity about a tax. There is no presumption as to a tax.*** *Nothing is to be read in, nothing is to be implied.* ***One can only look fairly at the language used...****"*

Adopting this principle, the taxpayer clearly fell within the ambit of the Exemption Order. This is amplified further by the decision of the Court of Appeal in ***Exxon Chemical (Malaysia) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2005] 4 CLJ 810***, where it was held:

"The corollary of that proposition is that those parts in a revenue statute that favour the taxpayer must be read liberally. What learned counsel for revenue is asking us to do is to go the other way. That would be standing the true principle on its head."

Accordingly, it must be observed that the Exemption Order did not state any requirements that the subsidy could only be given to any targeted person or group. For argument's sake, even if one is to adopt a purposive approach, in considering the object of the statute, one must look at the words which **have been used** by the Parliament to ascertain what **have been said**. As held by the Federal Court in ***All Malayan Estates Staff Union v Rajasegaran & Ors [2006] 4 CLJ 195***, it was stated that:

> *"The choice prescribed in Section 17A of a* ***construction that would promote the purpose or object underlying the Act*** *shall be preferred to a construction that would not promote that purpose or object* ***can only arise when the meaning of a statutory provision is not plain and is ambiguous****.* ***If*** *therefore, the* ***language*** *of a provision* ***is plain and unambiguous Section 17A will have no application*** *as the question of another meaning will not arise. Thus, it is* ***only when a provision is capable of bearing two or more different meanings can Section 17A be resorted to in order to*** *determine the one that will promote the purpose or object of the provision.* ***Such an exercise must be undertaken without doing any violence to the plain meaning of the provision****. This is a legislative recognition of the purposive approach and is in line with the current trend in statutory interpretation."*

Further, in ***Metramac Corporation Sdn Bhd v.Fawziah Holdings Sdn Bhd [2006] 3 CLJ 177***, the Court of Appeal observed:

> *"Thus* ***when the language used in a statute is clear effect must be given to it****. As Higgins J said in Amalgamated Society of Engineers v. Adelaide Steamship Co Ltd [1920] 28 CLR 129 at pages 161-162:*
>
> ***The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole.*** *The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense it is our duty to obey that meaning even if we think the result to be inconvenient, impolite or improbable.*
>
> *The primary duty of the court is to give effect to the intention of the Legislature as expressed in the words* ***used by it*** *and no outside consideration can be called in aid to find another intention (see Nathu Prasad v. Singhai Kepurchand [1976] Jab LJ 340)"*

In the present case, the Exemption Order is silent on any requirements to be imposed on the recipient. To the contrary, the Exemption Order clearly states that it is accorded to recipients who "receive[s] allocations given by the Federal government in the form of a grant or subsidy".

IS RELIEF UNDER SECTION 131(1) AVAILABLE?

Section 131(1) of the ITA reads:

> *"If any person who has* ***paid tax*** *for any year of assessment alleges that an assessment relating to that year is* ***excessive*** *by reason of some error or* ***mistake*** *in a return or statement made by him for the purposes of this Act and furnished by him to the Director General prior to the assessment becoming final and conclusive, he* ***may within six years*** *after the end of the year of assessment within which the assessment was made, make an* ***application in writing*** *to the Director General for relief."*

Essentially, Section 131(1) requires the Appellant:

(a) To have paid excessive tax;
(b) By reason of some error or mistake;
(c) Make the application within six years; and
(d) The application is made in writing to the Respondent.

The taxpayer submitted that it may make an application under Section 131(1) to claim the tax exemption for the following reasons:

(a) The taxpayer subjected the subsidy to income tax as neither the taxpayer nor its tax agent at the material time had knowledge of the tax incentive under the Exemption Order
(b) Due to the mistake of subjecting the subsidy to income tax, the taxpayer had paid tax; and
(c) The applications by the taxpayer were made within six years (as the law stood then) and in writing

to the DGIR. As a result of the mistake made in those years, the taxpayer also paid tax in the affected years.

In essence, the taxpayer was ignorant of the Exemption Order and as a result, the taxpayer did not claim the tax exemption that it was entitled to and consequently paid excessive tax.

On the other hand, the DGIR rejected the taxpayer's application on the basis that:

(a) the subsidy received is taxable pursuant to paragraph 26 of Schedule 3 of the ITA;
(b) the taxpayer was not involved in any plantation or agriculture activity as it did not undertake any paddy plantation activity directly or indirectly; and
(c) the subsidy received was to compensate the taxpayer for the losses suffered due to the difference between the market price and the ceiling price set by the government.

The taxpayer rebutted the DGIR's stance on the basis that:

(a) Paragraph 26 of Schedule 3 of the ITA has no relevance at all in the present matter;
(b) In the present appeal, the taxpayer's business does not consist of wholly or partly of the working of a farm. The Appellant is in the business of a rice miller. Further, the subsidy was not paid by the government to relieve the taxpayer of the burden of any capital expenditure incurred on a farm;
(c) The Exemption Order does not require the taxpayer to be involved in any plantation or agriculture activity or undertake any paddy plantation activity directly or indirectly for the subsidy to be exempted from the income tax. The wordings of the Exemption Order are very clear and simple. Any subsidy received by any person from the Federal government is exempted from income tax.

The Court of Appeal accepted the taxpayer's submission that even if the subsidy was received for the purpose of compensating the taxpayer for the losses suffered, it is still immaterial as the Exemption Order is not concerned with the purpose of the subsidy. The Exemption Order clearly states that any allocation in the form of grant or subsidy from the government is exempted from income tax. Accordingly, the DGIR's action to deny the taxpayer the tax exemption that it is rightfully entitled to is clearly unfair and caused great injustice. This defeats the purpose of the government in issuing the Exemption Order which is to exempt from income tax any subsidy received by any person from the Federal government.

CONCLUSION

This is a classic case of a taxpayer making a mistake in its tax treatment. The taxpayer did not claim the tax exemption and erroneously subjected the subsidy received from the Federal government through the MoA to income tax. This mistake is understandable, given that the taxpayer had no knowledge of tax law or, for that matter, of the Exemption Order. The taxpayer was under a misplaced confidence that such Exemption Order did not exist and had relied on its then tax agent to manage its tax affairs.

This Court of Appeal decision highlights that even in situations where taxpayers have made a mistake in their tax treatment and paid excess tax, there is a remedy available under Section 131(1) of the ITA.

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SECTION 140C RESTRICTION ON THE DEDUCTIBILITY OF INTEREST UNDER THE INCOME TAX ACT 1967

Amir Zainuddin Abdul Hamid

Basic tax abatement and profit transfer through interest expenses are issues that are often associated with Multinational Enterprises (MNEs) and commonly encountered by tax administrators around the globe. These issues arise due to rapid cross-border transactions that do not coincide with the development of tax laws between the countries of the world. These weaknesses have provided opportunities for some MNEs to leverage on existing gaps and differences in tax regulations to divert their profits to other low-tax or tax- free countries.

To address such issues, the OECD/ G20 under the Base Erosion and Profit Shifting (BEPS) Project have released a comprehensive report on this issue in BEPS Action 4: 2015 Final Report - Limiting Base Erosion Involving Interest Deductions and Other Financial Payments (BEPS Action 4 Report). This report recommends an approach known as Earning Stripping Rules (ESR) to address tax leakages through excessive interest expenses claimed. Malaysia has implemented restriction on interest deductibility rules adopted from the recommendations of BEPS Action 4 Report. The rules are intended to prevent tax leakages using excessive interest expense deductions to reduce domestic tax. The absence of specific guidelines to deal with the issue of manipulation of interest claims may have adversely affected the efforts of the Inland Revenue Board of Malaysia (IRBM) to address tax leakages involving some MNEs that take advantage of loan transactions between related companies to claim excessive interest expense.

Since 2016, the IRBM has examined and analysed internal data to determine the suitability of the recommendations made in the BEPS Action 4 Report for implementation in Malaysia. A comprehensive proposal and supporting analysis on how this recommendation can be implemented in Malaysia was prepared in 2017 and several government agencies were consulted. The intention to implement ESR was made public during the 2018 Budget Speech on 27 October 2017. It was announced that the commencement of ESR will be effective from 1 January 2019. The public had more than 12 months to prepare for this measure. Throughout that time, numerous dialogue sessions with stakeholders (e.g. accountants and tax practitioners, business associations and MNEs) were held to discuss on the ESR implementation and its impact. The IRBM shared its view and initial proposal on how these new rules will be implemented and had considered some of the suggestions from stakeholders in finalising these rules.

In the 2019 Budget Speech, Finance Minister of Malaysia announced the proposal to introduce Section 140C – Restriction on the deductibility of interest under the Income Tax Act 1967 ('the Act'). Pursuant to that, the Income Tax (Restriction on Deductibility of Interest) Rules 2019 [P.U. (A) 175] ('the Rules') was gazetted on 28 June 2019. The IRBM took a soft approach in introducing such a measure in Malaysia under Section 140C of the Act. Based on Restriction on Deductibility of Interest Guidelines ('the Guidelines') issued by the IRBM on 5 July 2019, these new rules will only affect specific transactions of MNEs group. The Guidelines provide exemptions for domestic transactions involving interest payment.

As provided under the Rules 2019 and the Guidelines, the restriction on deductibility of interest under Section 140C of the Act should be applied to a person within the charge to tax under the Act except for the following:

- An individual;
- A person who is licensed under the Financial Services Act 2013 [Act 758] to carry on banking business, investment banking business, insurance business or reinsurance business;
- A person who is licensed under the Islamic Financial Services Act 2013 [Act 759] to carry on Islamic banking business, takaful business or re-takaful business;
- Labuan banks and Labuan investment banks licensed under Part VI of the Labuan Financial Services and Securities Act 2010 (LFSSA);
- Labuan Islamic banks and Labuan Islamic investment banks licensed under Part VI of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA);
- Labuan insurers and reinsurers including Labuan captive insurance business licensed under Part VII of the LFSSA;
- Labuan takaful and re-takaful operator including Labuan captive takaful business licensed under Part VII of the LIFSSA;
- A development financial institutions (DFIs) prescribed under the Development Financial Institutions Act 2002;
- A person who is carrying on a business as a construction contractor who is subject to Income Tax (Construction Contracts) Regulations 2007 [P.U. (A) 276/2007];
- A person who is carrying on a business as a property developer which is subject to Income Tax (Property Developers) Regulations 2007 [P.U. (A) 277/2007];
- A person who has been granted an exemption under paragraph 127(3)(b) or subsection 127(3A) of the Act in respect of the adjusted income of the person; and
- A special purpose vehicle (SPV) as defined under Subsection 60I (1) of the Act.

Courtesy visit to the IRBM

For taxpayers subjected to Section 140C of the Act, the restriction on deductibility of interest will only be applicable on a business source. Only interest expenses claimed under business sources under Section 4(a) of the Act will be affected. Interest expenses claimed under other classes of income such as dividends, interest, discounts, rents, royalties or premiums are not subjected to this restriction.

For ease of implementation and compliance, the restriction on deductibility of interest under Section 140C of the Act and the Rules will only be applicable in respect of basis period of a person beginning on or after 1 July 2019. In a scenario where the basis period of a person begins before 1 July 2019, the interest restriction under Section 140C of the Act and the Rules will not be applicable. Consequently, the calculation of the restriction will only affect the tax computation for the year of assessment 2020 onwards, for the basis period starting 1 July 2019. This allows taxpayers to review their current financing arrangements to determine whether the amount of interest expense falls within the ratio under the ESR.

There is no specific definition of 'interest' under Section 2 of the Act, but in the Guidelines, interest is defined as the return or compensation for the use or retention by a person of a sum of money belonging to or owed to another person. It may include interest in all forms of debt or payments economically equivalent

to interest. The restriction will not apply to any interest expenses which are not allowable in ascertaining the adjusted income before the application of Section 140C of the Act such as guarantee fee incurred in connection with the raising of finance or any interest that is not due to be paid.

Furthermore, only interest which is paid or payable to a specific person will be subjected to the restriction. A person having interest expenses from financial assistance which is deducted in ascertaining the adjusted business income (which is before applying any restriction under Section 140C of the Act) which is paid or payable as listed below will be subjected under the restriction:-

(i) Payment of interest to its associated person outside Malaysia;
- Only affects cross border transaction where the interest expenses was paid or payable to an associated person outside Malaysia.

(ii) Payment of interest to its associated person outside Malaysia which operates through a permanent establishment in Malaysia;
- Payment of interest to a permanent establishment in Malaysia that belongs to its associated person outside Malaysia. Although the payment is made locally to a permanent establishment in Malaysia, the fact that such permanent establishment is part of the associated person outside Malaysia, such payment of interest will be subjected to the restriction.

(iii) Payment of interest to a third party outside Malaysia where the financial assistance is guaranteed by its holding company or any other enterprises under the same MNE group (regardless of the tax residence country of the guarantor).
- This type of transaction is defined as a 'specific third party interest' in the Guidelines. When interest is paid or payable to the third party outside Malaysia and such financial assistance is guaranteed by its holding company or any other enterprises under the same MNE group (regardless of the tax residence of the guarantor), such payment of interest will be subjected to the restriction. If such third party outside Malaysia establishes a permanent establishment in Malaysia and provides financial assistance to a person in Malaysia through that permanent establishment and that financial assistance is guaranteed by its holding company, or any other enterprises under the same MNE group (regardless of the tax residence country of the guarantor), such payment of interest will also be subjected to the restriction.

Based on the above explanations,

Courtesy visit to MIDA

it can be summarised that only interest expenses from business sources which is paid or payable to an associated person outside Malaysia or a permanent establishment that belongs to its associated person outside Malaysia or a third party outside Malaysia where such financial assistance is guaranteed by its holding company or any other enterprises under the same MNE group will be subjected to the restriction on deductibility of interest.

The restriction under Section 140C of the Act will only be triggered if the interest expenses from all business sources is more than RM500,000. When a person has multiple business sources, the threshold of RM500,000 should be the aggregate from all business sources while the calculation of interest restriction should be made separately for each of the business sources. The interest restriction under Section 140C of the Act does not apply to a person where the total amount of any interest expense for all financial assistance from all business sources is equal to or less than RM500,000 in the basis period for a year of assessment.

Although a person might have interest expenses of more than RM500,000, it does not mean that such interest will be automatically restricted. Before applying the restriction, the maximum amount of interest expense allowable is computed. There are three steps to calculate what the maximum amount of interest expense allowable is and the amount of interest restricted:

STEP 1: ASCERTAIN THE AMOUNT OF TAX-EBITDA

- The formula to calculate Tax-EBITDA is as follows:

  Tax-EBITDA = [A] + [B] + [C]
- **[A]** is the amount of adjusted income from business source before any restriction on the deductibility of interest under Section 140C of the Act. It is computed by taking into account all relevant provisions in ascertaining the adjusted business income such as Section 33, 34, 34A, 34B, 34C, 35 and 39 of the Act without applying the interest restriction under Section 140C of the Act. In other words, [A] is the amount of adjusted income as currently computed by the person.
- **[B]** is the total amount of qualifying deductions allowed in ascertaining the total amount of the adjusted income as [A] above. Qualifying deduction refers to an amount equal to the amount of the expenditure incurred by a person computed in any deduction falling to be made under the Act where the amount of deduction is twice the amount of the expenditure incurred by a person, or any claim for deduction under any rules made under paragraph 154(1)(b) of the Act where the deduction is allowed for purposes of ascertaining the adjusted income of a person under the Act. Such deductions may include a special deduction or claims, further deductions or double deductions in ascertaining the adjusted business income as listed in the IRBM's Company Return Form & Guidebook.
- **[C]** is the total amount of interest expense incurred in relation to the gross income of a person for financial assistance from business source for the basis period for a year of assessment. Where the person incurs the interest expense in ascertaining the adjusted business income, such interest expense will be considered as part of an interest expense to be restricted under Section 140C of the Act and to be included in [C].

STEP 2: APPLYING A FIXED RATIO OF 20% ON THE TAX-EBITDA

- The maximum amount of interest expense allowable is 20% of Tax-EBITDA
- For example, if Tax-EBITDA is RM4,400,000, the maximum amount of interest expense allowable will be RM880,000.

STEP 3: THE AMOUNT OF INTEREST TO BE RESTRICTED

- Any amount of interest that exceeds the maximum amount of interest expense allowable will be restricted and carried forward to the following year.
- For example, if the maximum amount of interest expense allowable is RM880,000 and the amount of [C] is RM1,000,000, the amount of excess interest expenses will be RM120,000.
- This amount will be added back to the current year tax computation and will be allowed to be carried forward to the following year.

The most important concept in the application of the restriction on deductibility of interest under Section 140C of the Act is that the restricted interest based on excess interest expenses is allowed to be carried forward indefinitely subject to certain conditions. Interest expense which is more than the maximum amount ascertained under the Rules can be carried forward to be utilised in the subsequent year which is subject to the maximum amount of interest allowable for that year. The excess of the maximum amount shall be allowed to be carried forward if the shareholders of that company on the first day and the last day of the basis period for the year of assessment following the year in which such amount was ascertained were substantially the same.

The generality of allowable expenses in the calculation of tax in Malaysia will usually fall back to Section 33 of the Act, which includes the deductibility of interest expenses. In line with such provision, when the purpose of the borrowings or loans are used for both business and non-business purposes, the portion on interest costs which relate to the borrowings or loans used for non-business (i.e. other classes of income, investment, etc.) will not be allowed to be deducted against the business income. However, the restricted interest can be attributed to the other classes of incomes (i.e. investments) where it can be deducted against income derived from such investments, if any. Therefore, there are instances where we can attribute the restricted interest against the appropriate income. Such restriction of interest expenses on business income under Section 33(2) need to be applied first before the application of the restriction on deductibility of interest under Section 140C of the Act.

There is concern whether Section 140C is redundant since there is another provision, i.e. Section 140A to deal with interest charges in relation to borrowings or loans from associated person. However, Section 140A and Section 140C of the Act deals with different issues although both concern transactions with associated person. Section 140A of the Act deals with arm's length remuneration and circumstances of the loan from associated person. Whereas Section 140C of the Act deals with excessive interest expense in relation to a company's profitability (in this case Tax-EBIDTA), even though the interest rate is found to be at arm's length.

Section 140C of the Act will only restrict the interest expenses if a person does not have enough business profit in term of Tax-EBITDA. In consideration that a decrease in business profit may be due to the economic situation rather than due to the excessive interest expenses claimed, the excess amount of interest expenses are allowed to be carried forward indefinitely. In other words, such excess interest expense will only be deferred and allowed to be utilised when they have a higher maximum amount of interest expense allowable in the subsequent years.

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THE US-CHINA TRADE WAR

AND ITS TAX IMPLICATIONS TO MALAYSIA

Chong Mun Yew

"The trade war with China is not only affecting China and the US, it is affecting everybody … these kinds of decisions are impacting the entire world – and it should not be the right of one person to decide." - Rodrigo Malmierca Díaz, Minister of Foreign Trade and Foreign Investment of Cuba said at the World Economic Forum's Annual Meeting of the New Champions in Tianjin on 21 September 2018.

Is Malaysia also being affected by the US-China trade war? Absolutely. China is Malaysia's most important and largest trading partner. Meanwhile the US is Malaysia's third largest export destination accounting for 9.5% or RM88.7 billion of Malaysia's total exports. Any trade liberalisation that takes place between these two nations will definitely impact the economic growth of Malaysia. The question is how great is the impact? Is it solely negative impacts or may it also have some positive impacts?

INTRODUCTION

The US-China trade war came about when the US filed a request for consultation to the World Trade Organisation (WTO) in relation to violation of intellectual property rights by China[1]. On 23 March 2018, The *Financial Times* reported that "Donald Trump to impose 25% tariffs on USD60bn of Chinese imports – US targets strategic sectors such as robots and high-speed trains in fight over IP." The US has iterated that tariffs are important to protect the intellectual property of its businesses. China, on the other hand, argued that the claim on violation of property rights was baseless and they refused to respond based on the WTO rules. Ever since then, both parties have not agreed on a solution. Both countries have continued engaging in trade war activities.

WHAT DOES IT MEAN TO MALAYSIA?

Malaysia, alongside Taiwan, Vietnam and South Korea are engaged in intermediary trading between the US and China. These countries export machine parts and components for communication equipment which is used in China's final products and then, exported to the US. With the US imposing tariffs on China's products, countries like Malaysia are certainly vulnerable as this will impact Malaysia's exports.

NEGATIVE IMPACT ON THE MALAYSIAN ECONOMY

Malaysia's exports are expected to be affected directly via lower demand and indirectly via slower production in the global value chain. Tham Siew Yean et. al. (2019) highlighted that the safeguard tariffs imposed on solar, steel and aluminum since February 2018 can affect Malaysia's exports to both the US and China.


NTC 2019

Malaysia's role as a major exporter of solar panels to the US will be affected with the imposition of solar tariffs. Companies involved in exporting components and materials to be used in China's final product will face a downward trend. This will eventually have a negative bearing on the companies' profitability. The negative effect on companies' profitability may have some adverse tax implications to the Malaysian economy. These issues are further discussed below.

TAX INCENTIVES

Many of these export based companies enjoy various tax incentives such as Pioneer Status, Investment Tax Allowance and Reinvestment Allowance. The pioneer status incentive is granted under the Promotion of Investments Act 1986 (PIA 1986) to companies that participate in promoted activities or are involved in the production of promoted products. The pioneer status incentive involves the granting of a 70% exemption of a company's statutory income for a period of five years or 10 years, as the case may be. In certain cases, a full exemption from income tax is also granted. On the other hand, investment tax allowance is a tax incentive which is usually granted to manufacturing companies. It is a capital-based incentive which is suitable for companies with long gestation periods and large capital investment. Investment tax allowance is also more appropriate for a company which is not expected to be profitable in the initial years. Nevertheless, the pioneer status incentive and the investment tax

[1] *Wikipedia*

allowance incentive are mutually exclusive. Most of the export based companies are granted the pioneer status because of its profit intensive criteria. Now, with the trade war and their profits dropping, will the companies be able to enjoy these incentives?

In the event that these companies suffer losses, do note that there is a time limit of seven years in which these tax losses may be carried forward with effect from YA 2019.

If the tax estimate is not revised accordingly at the relevant month i.e., sixth month and/or ninth month during a basis period when the profits are dropping, this may result in a tax refund situation. A large tax refund will usually attract the attention of the IRBM for a field audit.

LEGAL SUITS

Echoing the effect of a loss making company, debts may also be on the rise. Companies may not have sufficient funds to finance its loans. As a result, these companies may have to face legal suits from creditors and banks on the non-performing loans. In this case, will the legal expenses incurred to defend the suit be a deductible expense to the financially strained companies?

In accordance to the provisions of Section 33 of the Income Tax Act 1967 (ITA), legal and professional expenses which are not wholly and exclusively incurred in the production of gross income will not be allowed for tax deduction. Expenses prohibited from deduction under Section 39(1) of the ITA will also be disallowed. Public Ruling No. 6/2006 was issued on 6 July 2006 to explain the deductibility and non-deductibility of various legal and professional expenses. This Public Ruling discusses specific situations where legal and professional expenses may be deducted as expenses. These costs, among others, include legal costs incurred for attempting to recover sums relating to disputes over trading contracts.

Therefore, it looks like the legal cost for defending suits by the financially strained companies could be a deductible expense as it is in respect of a trading contract.

BAD DEBTS WRITTEN OFF

Looking at the point of view of the companies which had lent money to these distressed companies, the loans or borrowing will now be considered bad debts. Will these bad debts written off be deductible expenses? The most common example of a bad debt is where goods are supplied to a customer and for various reasons the debt is not paid and thus turns out to be a loss for the trader. Section 34(2) of the ITA provides for the deduction of this type of loss. Debts which have become worthless or partially worthless are allowable as deductions against assessable income provided they are business debts. In the case of ***STP Sdn Bhd v KPHDN***[2], it was held that the specific provision for doubtful debts is not allowed a deduction because the taxpayer could recover the debts owed but did not do so because both companies share the same director. Therefore, in this case, the companies which have lent money to the distressed companies will be allowed to claim tax deduction on the bad debts written off provided the debt must be reasonable estimated in all circumstances to be irrecoverable.

RETRENCHMENT OF STAFF

Weaker trade activities due to the US-China trade war would also incur some spillovers on Malaysia's domestic economy. Companies may look at downsizing measures such as retrenchment of staff. Companies may incur huge amounts as retrenchment benefits paid to the employees who are laid off. Will these retrenchment benefits paid be a deductible expense? In the case of

R Rubber Estate Bhd v DGIR[3], it was held that redundancy payment paid on cessation of a business is not a deductible expense. These payments are said to be not exclusively incurred in the production of income because the liability was incurred in the expectation of the company's total extinction. In another case, ***Ampat Tin Dredging Ltd v DGIR***[4], retrenchment benefit payments to employees within the terms of existing agreements did not qualify for deduction under Section 33(1) of the ITA as they had not been incurred in the production of gross income.

However, the case of ***DGIR v Kulim Rubber Plantation Ltd***[5] held that compensation paid which results in the increase or retention of a source of income is a deductible expense. In this case, compensation was paid by the company to its estate agents and secretaries on the sale of part of its estate holdings to make good future remuneration of the agents which would have been attributable to revenue.

STOCKS WRITTEN OFF

The trade war will see a slow growth in China as well as in the US. With this, demand of goods from other countries will also decline. This will also be experienced by Malaysia. Malaysian companies will face a situation where their trading stocks will remain in the company. Some of these stocks may not last long and will be outdated. This will result in the stocks being written off and possibly, companies may need to estimate a provision for stock obsolescence. Will the expense on stock written off be a deductible expense? Public Ruling 4/2006 - Valuation of Stock in Trade and Work in Progress Part I explained that a provision for stock obsolescence is not an allowable expense but when stock in trade is written off and charged to the income statement, the amount written off would be allowed as a deduction.

WAIVER OF DEBTS

The trade war will also cause many companies to experience financial woes. Companies may opt to downsize or even close down their businesses. The holding company may try to salvage these companies by taking measures like waiving off the subsidiary companies' debts, mainly the intercompany balances. Will this waiver of debts be subject to tax? Section 30(4) of the ITA specifically provides for certain receipts to be treated as gross income from a business which include the release of a debt in respect of expenditure previously allowed as a deduction. In the unreported case of ***Felda Trading Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri*** the waiver of debt by the taxpayer's holding company was held to be taxable because the loan provided was part of the taxpayer's income producing activity and formed part of its operating expenses.

US and China were the key reasons that made Malaysia the fourth biggest beneficiary of the US-China trade war. It also pointed out that Malaysia's E&E sector was the country's top beneficiary of the tariffs imposed by the US on China. The gains were particularly seen in the production of integrated circuits as well as semiconductor devices and light-emitting diodes.

Malaysia's agriculture industry is also said to gain from this trade war.

ESTIMATES OF TAX PAYABLE

When profits increase, taxes also increase. The first thing that a company needs to worry about is the estimates of tax payable. By virtue of Section 107C of the ITA, every company is required to furnish an estimate of income tax payable for each year of assessment to the Director General of Inland Revenue (DGIR) in the prescribed form, Form CP204 not later than 30 days before the beginning of the relevant basis

POTENTIAL GAINS FOR MALAYSIA

SUBSTITUTION OF EXPORT

Large trade gains could also be derived from this trade war as both the US and China look out to substitute its demand for imports to other markets. The Malaysian electrical and electronics (E&E) sector, as well as natural gas are said to be among the biggest beneficiaries of the ongoing trade war. Nomura Research, a Japan based brokerage firm said in a recent report that the gains made by the two sectors due to trade diversions from the

China has been US's top agricultural export market for products like soybean, wheat, fish, dairy and pork. China is the world's largest buyer of soybean from the US, which is used for its animal feed and vegetable oil. With China imposing tariffs on American soybean, will this be a boon to Malaysia? Yes, the Malaysian palm oil will be a good substitute to the soybean. This will be a good opportunity to the Malaysian palm oil industry to expand its exports to China. Are there any tax implications to these industries with this sudden increase in profits?

period. Where the tax payable under an assessment exceeds the original estimate or latest revised estimate of tax payable by an amount exceeding 30% of the tax payable, the difference is subject to a penalty of 10%. Note that this penalty is imposed without any further notice being served. So, if a company's profits hikes up towards the end of the year of assessment, it may risk an underestimation penalty because the tax payable will be more than its estimates. Therefore, these companies should look at revising the estimate of tax payable in the sixth and/or ninth month of its basis period by submitting the revised


Courtesy visit to RMCD

estimate via the Form CP204A to avoid the risk of an underestimation penalty.

Overall, the impact of bilateral trade tensions on Malaysia's export performance is largely dependent on the substitutability of the affected products, manufacturing capacity constraints and Malaysian firms' value proposition. Malaysia has to improve its competitive advantage by strategising in market penetration and product efficiency in order to benefit from this trade war.

Malaysian will also need to "compete" for the inbound investments because investors will be looking for the best destination. To compete with the neighbouring countries, Malaysia may need to offer a good package of tax (including but not limited to e.g. exemption on customs duty, sales tax, withholding tax) and other incentives such as work permits. However, these inbound tax incentives should not be too dissimilar from those given to other previous investors.

On a relating related issue, companies should also be wary of the advance receipts or deferred income. Though these items may be sitting in the balance sheet of the companies, they may be caught in the tax net under Sections 24(1)(b) or 24(1A), as the case may be, of the ITA.

MALAYSIA'S RESPONSE

Bank Negara Malaysia's governor, Datuk Nor Shamsiah Mohd Yunus was quoted as saying by *Bloomberg* on 19 June 2019, "There's a lot of uncertainty as to when the increased investments, the higher productive capacity that the firms would be making in order to take full advantage of the trade diversion." While expecting the trade diversion to add on 10 basis points to Malaysia's economic growth rate for 2019, Nor Shamsiah noted that the uncertainty over when the benefits would materialise is the reason why Bank Negara Malaysia had only included the anticipated losses from the trade war in its forecast for Malaysia's economic growth instead of also taking into account the expected gains. Although Malaysia is well poised to benefit from the US-China trade war due to its open economy and manufacturing industry, *Bloomberg* also noted that the trade war and a slower economy worldwide has weighed down on export-oriented Malaysia. Calvin Cheng in his article entitled "Is Malaysia benefitting from the US-China trade war?" which appeared in the *East Asia Forum* on 5 August 2019 commented that so far, trade and investment 'diversion' does not offset the overall negative impact of the trade war on Malaysia.

In conclusion, a trade war starts when a nation attempts to protect a domestic industry and create jobs. In the short run, it may work. But in the long run, a trade war costs jobs and depresses economic growth for all countries involved. It also triggers inflation when tariffs increase the prices of imports. Like any other war, nobody truly wins in a war.

[2] *STP Sdn Bhd v KPHDN [2017] MSTC 10-062*

[3] *Rubber Estates Bhd v DGIR [1979] 1 MLJ 115*

[4] *Ampat Tin Dredging Ltd v DGIR [1982] 2 MLJ 186*

[5] *DGIR v Kulim Rubber Plantation Ltd [1981] 1 MLJ 214*

Disclaimer: This article does not seek to address all Malaysian tax issues associated with the US-China trade war and all views expressed are purely the personal opinion of the author.

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International News

The column only covers selected developments from countries identified by the CTIM and relates to the period 16 May 2019 to 15 August 2019.

CHINA (PEOPLE'S REP.)

Implementation rules on preferential policy of individual income tax in Greater Bay Area released

Following the announcement by the central government, the Guangdong provincial government and the Guangdong tax authority jointly issued a circular "Notice on Implementing the Preferential Policy of Individual Income Tax in the Greater Bay Area of Guangdong, Hong Kong and Macao" on 22 June 2019 (Guangdong Circular [2019] No.2) (the circular) setting out the implementation rules on the preferential individual income tax (IIT) treatment to attract talented persons to the Greater Bay Area. As a trial project, the circular applies from 1 January to 31 December 2019 to nine cities: Guangzhou, Shenzhen, Zhuai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing.

The content of this local circular is as follows:

- for overseas high-level talents and talents in short supply in the nine cities of the Pearl River Delta, where their IIT paid is more than 15% of their taxable income, they will be compensated with financial subsidies granted by the local government. Thus, the amount of the subsidy is the IIT paid in the Greater Bay Area less 15% of the taxable income;
- the subsidies, calculated per category of income, must be aggregated and are granted once a year. The subsidies themselves are exempt from IIT;
- income eligible for the preferential policy includes wages and salaries, authors' remuneration, royalties, business income and the subsidies from the selected talent projects; and
- to be eligible for the subsidy, the foreign talents must make an application themselves and be permanent residents in Hong Kong, Macao, Taiwan or other foreign countries (including overseas Chinese students with a foreign permanent resident permit and overseas Chinese), and they must work in one of the nine cities of the Pearl River Delta and pay tax there. Furthermore, they must obtain a certification from the relevant Guangdong government department to be recognized as a talented person or skilled persons in shortage. The government of the city concerned will determine the criteria to certify the eligible talents.

Tax treatment of certain taxable items of individual income tax clarified

The Ministry of Finance (MoF) and the State Taxation Administration jointly issued a circular on the categorizing of certain taxable items for individual income tax (IIT) purposes on 13 June 2019 (Circular [2019] No. 74).

As from 1 January 2019, the following income items are treated as "accidental income" for IIT purposes and taxed at a flat rate of 20%:

(i)income derived by an individual from guarantees provided to entities and other individuals; (ii) a real property the ownership of which is transferred as a gift from the transferor to the transferee, unless it is transferred to a spouse, parents, children, grandparents, grandchildren, brothers or sisters or someone to whom the transferor has maintenance obligations or to a legal and testamentary heir or legatee on death as described under Circular [2009] No. 78; and (iii) gifts provided to individuals at promotion and advertising activities, seminars, annual meetings, anniversaries with the exception of vouchers and coupons as price discounts. The value of the gift that is taxable as income must be calculated according to the provisions of Circular [2011]

No.50.

The Circular also emphasises that 75% of pension payments received from a commercial old age pension scheme are subject to IIT at a flat rate of 10% as referred to in Circular [2018] No. 22 and the insurance companies are required to withhold the IIT due.

Moreover, the Circular abolishes the following circulars and rulings:

- Cai Shui Zi [1995] No. 64; Guo Shui Han [1995] No. 351; Guo Shui Han [1998] No. 546; article 3 of Guo Shui Fa [1999] No. 58; Guo Shui Han [1999] No. 627; article 2 Circular [2005] No. 94; Guo Shui Han [2006] No. 865; article 3 Circular [2009] No. 78; Paragraph 1 and 2 of article 2 of Circular [2011] No. 50; Point 3 of Paragraph 2 of Art. 1 of Circular [2018] No. 22 and article 2 of SAT Public Notice [2018] No. 21.

Draft Law on Land Appreciation Tax released for public consultation

On 16 July 2019, the MoF published the draft of the Law on Land Appreciation Tax for public consultation. The draft contains 21 articles in total. Once it has entered into force, the new law will replace the "Interim Measures of Land Appreciation Tax" that has been implemented since 1 January 1994. The deadline of comment is 15 August 2019.

The main purpose of the new law is to transform the legal status of the land appreciation tax from an administrative measure into law, and there are no significant changes in respect of tax rates, tax base and exemptions.

HONG KONG

Departmental Interpretation and Practice Notes on foreign taxes deduction for profits tax purposes – issued

On 19 July 2019, Hong Kong's Inland Revenue Department issued an updated Departmental Interpretation and Practice Notes (DIPN) 28 to set out the Department's interpretation and practice on the provisions relating to foreign tax deduction after the enactment of the Inland Revenue (Amendment) (No. 6) Ordinance 2018 .The main contents of DIPN 28 are summarised below.

Rules of tax on profits

All outgoings and expenses that are not capital in nature, to the extent that they are incurred in the production of taxable profits, are deductible for profits tax purposes.

Deduction of foreign taxes on specified interest and gains

If a foreign tax is paid in a territory outside Hong Kong that has a treaty in force with Hong Kong, and the relevant treaty provides relief from double taxation by way of a tax credit, a Hong Kong resident person can only apply for a tax credit under section 50 of the Inland Revenue Ordinance (IRO). A non-Hong Kong resident person not covered under the relevant treaty may seek unilateral relief from its residence jurisdiction or bilateral relief under the treaty between its residence jurisdiction and the treaty territory (if any).

Departmental Interpretation and Practice Notes on transfer pricing – issued

On 19 July 2019, the Hong Kong Inland Revenue Department issued three DIPN to set out the Department's interpretation and

practices on the relevant rules and requirements, and the latest international standards relating to transfer pricing. The main contents of these DIPNs are summarised below.

DIPN 58 - Transfer pricing documentation and country-by-country reports
Master file and local file

DIPN 58 was issued to further supplement the implementation of the previously gazetted Ordinance to implement BEPS minimum standards and codifying the transfer pricing principles.

A Hong Kong entity should explain its transfer pricing treatment by documenting all material facts and circumstances making it clear how the Hong Kong entity understands the law that applies to those facts and circumstances, and why and on what basis adjustments are made for any material differences.

The master file and local file must be prepared within nine months after the end of each accounting period of the Hong Kong entity.

Exemption from preparing master file and local file

A Hong Kong entity of a group is exempt from preparing both a master file and a local file if they meet any of the two following exemption thresholds:

(i) the total amount of annual revenue for the accounting period does not exceed HKD400 million; (ii) the total value of assets at the end of the accounting period does not exceed HKD300 million; (iii) and the average number of the entity's employees during the accounting period does not exceed 100.

A Hong Kong entity is exempt from preparing a local file for a particular type of controlled transaction if the amount of that type of controlled transaction does not exceed the following threshold:

(i) transfers of properties (movable or immovable, but excluding financial assets and intangibles) do not exceed HKD220 million; (ii) transactions in respect of financial assets do not exceed HKD110 million;(iii) transfers of intangibles do not exceed HKD110 million; and (iv) other transactions do not exceed HKD44 million.

Country-by-country (CbC) reporting

DIPN 58 also sets out the obligations for filing CbC returns, contents of the CbC report and its notification requirements.

DIPN 59 - Transfer pricing between associated persons
Arm's length principle for provision between associated persons

DIPN 59 discusses the arm's length principle for transactions between associated persons to be computed on an arm's length basis.

Concepts and terminologies

The concepts and terminologies relevant to transfer pricing is defined under DIPN 59, including provision, affected persons, transaction and a series of transactions, participation, control, beneficial interest, indirect beneficial interest through interposed person, and potential advantage in relation to Hong Kong tax.

Exempted domestic transactions

DIPN 59 sets out the following exempted domestic transactions that are not subject to the operation of Rule 1, including actual provisions that do not give rise to any potential advantage, domestic nature condition, no actual tax differences, non-business loan condition, as well as non-tax avoidance condition.

Determining the arm's length price

DIPN 59 examines the key aspects in a comparability analysis, the functional analysis, comparability analysis, economically relevant characteristics of comparability factors, contractual terms of the transaction, as well as characteristics of property transferred or services provided in determining the arm's length price.

Transfer pricing methodologies

DIPN 59 explains the various transfer pricing methods, which comprise the traditional transaction methods and the transactional profit methods. As for the most appropriate method, DIPN 59 sets out that although both the traditional transaction method and the transactional profit method can be applied in an equally reliable manner, the traditional transaction method is preferred to the transactional profit method.

However, the Commissioner of the Inland Revenue Department agrees that MNE groups should retain the freedom to apply methods not described above to establish that those prices satisfy the arm's length principle. In cases where other methods are used, their selection should be supported by documentation including an explanation of why OECD-recognised methods were regarded as non-appropriate or nonworkable in the circumstances of the case and of the reason why the selected other method was regarded as providing a better solution.

DIPN 60 - Attribution of profits to permanent establishments (PEs) in Hong Kong

Hong Kong attribution rules

DIPN 60 discusses mainly the attribution of profits to a PE in Hong Kong. Rule 2 in Section 50AAK of the Inland Revenue Ordinance requires the income or loss of a non-Hong Kong resident person attributable to the person's PE in Hong Kong to be determined as if the PE were a distinct and separate enterprise, taking into account the functions performed, assets used and risks assumed by the non-Hong Kong resident person through the PE.

Artificial avoidance of PE

DIPN 60 also examines the strategies that seek to avoid having a PE in Hong Kong, including fragmentation of activities between closely related parties, complementary functions, commissionaire arrangement and similar strategies.

Attribution of profits

The rule for attribution of profits is the separate enterprises principle. Profits are attributed to the PE in the amount that it would have made if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions dealing wholly independently with the non-Hong Kong resident person. This includes the assumption that the PE would have such equity and loan capital attributed to it, as it would reasonably be

expected to have if it were a separate entity.

Expenses are only attributable to the PE in Hong Kong where they are incurred for the purposes of producing chargeable profits of the PE. Meanwhile, expenses incurred for other purposes apart from those of the PE in Hong Kong alone will be subject to an apportionment method to calculate the amount that is attributable to the PE of the non-Hong Kong resident person.

Attribution of "free capital"

The attribution of "free capital" (i.e. funding that does not give rise to a tax-deductible interest expense) should be carried out in accordance with the arm's length principle to ensure that a fair and appropriate amount of profits is allocated to the PE.

INDIA

Multilateral Instrument (MLI) – India deposits instrument of ratification

On 25 June 2019, India became the 28th country to deposit its instrument of ratification for the MLI. The convention will enter into force in respect of India on 1 October 2019. As from this date, India's treaties with Australia, Austria, Finland, France, Georgia, Ireland, Israel, Japan, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Poland, Russia, Serbia, Singapore, the Slovak Republic, Slovenia, Sweden, the United Arab Emirates, and the United Kingdom will be affected by the MLI. This list of affected treaties will increase as further partner countries deposit their instruments of ratification. The extent to which the MLI will modify India's bilateral tax treaties will depend on the final adoption positions taken by other countries.

India submitted its MLI position at the time of signature listing its reservations and notifications and including 94 tax treaties that it wished to be covered by the MLI. In the final version of its MLI position, India has made the following modifications:

- the tax agreement with Hong Kong, the 2006 protocol to the 1993 treaty with Italy and the 2017 protocol to the 1998 treaty with Portugal have been added; the treaties with China (People's Rep.) and Kenya (1985 treaty) have been removed. As a result the total number of listed agreements has changed from 94 to 93;
- the list of covered agreements has been updated to include amending protocols and other additional treaty documents for a number of countries;
- article 5 (Application of Methods for Elimination of Double Taxation, Notification of Choice of Optional Provisions): the reservation for the entirety of article 5 not to apply has been removed and, pursuant to article 5(10) of the MLI, India now chooses under article 5(1) to apply Option C of that article. India has included a list of 5 agreements, together with the article and paragraph number, that it considers contain a provision described in Article 5(7);
- article 7 (Prevention of Treaty Abuse): a "Statement of Acceptance of the PPT as an Interim Measure" has been added; and
- article 35 (Entry into Effect): the reservation pursuant to article 35(7)(a) of the MLI has been removed.

Union Budget 2019 – key amendments in Finance (No. 2) Bill, 2019

The Finance Minister presented the Union Budget 2019 before the Parliament on 5 July 2019. The key amendments introduced in the Finance (No. 2) Bill 2019 are summarised below.

Corporate tax

- There is no change in the corporate tax rate.
- A beneficial corporate tax rate of 25% is now proposed to be extended to all companies with annual turnover of INR4 billion. Previously the turnover criteria was INR2.5 billion.
- Purview of buy-back tax is now proposed to be extended to listed companies.

- There is a paradigm shift in the functioning of the Income Tax Department proposed launch of eassessments in cases requiring verification of certain specified transactions and discrepancies.
- Taxability of interest income of a deposit-taking non-banking financial companies (NBFCs) and systemically important non deposit-taking NBFCs to be shifted to the year of receipt or accrual, whichever is earlier.
- It is proposed that where a taxpayer fails to deduct tax on any sum paid to a non-resident, he shall not be treated as a taxpayer in default if the non-resident has filed his return and remitted taxes on the same.
- It is proposed to levy a withholding tax at the rate of 2% on cash withdrawal exceeding INR10 million per annum from one bank account.
- Any sum/property received by non-residents/foreign companies for NIL/inadequate consideration is proposed to be subjected to tax under Section 56(2)(x) of the Income Tax Act, 1961 (the Act), i.e. gift tax.
- The application for obtaining a NIL/lower withholding tax certificate can now be made online.

Personal tax

- There is no change in the slab rates for individuals.
- It is proposed to levy surcharge on individuals earning income of INR20 million to INR50 million and over INR50 million at the rate of 25% and 37% respectively in addition to the income tax.
- It is proposed to levy tax withholding at the rate of 5% on payments (exceeding INR5 million per annum) made for contractual work or professional fees by an individual or a Hindu Undivided Family (HUF).
- There is a proposed annual deduction of up to INR150,000 for interest on loan taken for the purchase of an electric vehicle.
- There is an option for individuals to file income tax returns using their Aadhar No., without a PAN.
- There is a mandatory furnishing of return of income for person entering into certain high value transactions such as expenditure incurred for foreign travel in

excess of INR200,000 etc.
- There is a proposed additional annual deduction of up to INR 150,000 for interest on a loan taken for the first time purchase of affordable housing property.

Start-ups
- Relief to start-ups from scrutiny in respect of valuation of share premiums. Pending verifications, if any, to take place through e-proceedings.
- Restriction on carry-forward and set-off of losses on account of change in shareholding is proposed to be not applicable for start-ups.
- In order to incentivise investment in eligible start-ups, it is proposed to amend Section 54G of the Act such as the extension of a sunset period under Section 54G to 31 March 2021, etc.

IFSC

In order to increase investment opportunities in India and boost the growth of the economy, the government has proposed to incentivise setting up of International Financial Services Centres (IFSCs) in India.

Indirect tax
- It is proposed to increase special additional duty and road and infrastructure cess on diesel and petrol by Re 1.
- It is proposed to exempt customs duty on certain parts of electric vehicles.
- It is proposed to reduce the GST rate on electric vehicles from 12% to 5%.
- It is proposed to increase custom duty on gold by 2.5%.
- A 5% customs duty on imported books and increase on auto parts, synthetic rubber, PVC, vinyl flooring and tiles is proposed.
- The defence sector needs modernisation. It is proposed to exempt the import of defence equipment from basic customs duty.

Income from investment fund set up in IFSC exempt from filing requirement

The Central Board of Direct Taxes (CBDT) issued Notification No. 55/2019 of 26 July 2019 (the notification) stating that a non-resident (not being a company) or a foreign company having earned, in a previous year, income from an investment in an investment fund set up in an International Financial Services Centre (IFSC) located in India, which income is chargeable under the Income Tax Act, 1961 (the Act), is exempt from the requirement of filing an income tax return under Section 139(1) of the Act from assessment year 2019/20 onwards.

The said exemption only applies if:
- any income tax due on income of the said class of persons has been deducted at source and remitted to the central government by the investment fund based on the tax rate in force as per the provisions of Section 194LBB of the Act; and

- no other income arose during the previous year in respect of which said class of persons is otherwise liable to file a tax return.

The exemption will not be available to said class of persons where a notice under Section 142(1), Section 148, Section 153A or Section 153C of the Act has been issued for filing an income tax return for the assessment year specified therein. The notification will come into force from the date of its publication in the Official Gazette.

Finance (No. 2) Act 2019 issued

On 1 August 2019, the Finance (No. 2) Act 2019 (the Act) was enacted after it had received the assent of the President. The Act will give effect to the financial proposals of the Central government for the financial year 2019/2020. The salient features of the amendments are in line with the draft bill presented to Parliament on 5 July 2019.

INDONESIA

Regulation on calculation of taxable income and repayment of income taxes – amended

On 26 June 2019, the government issued Government Regulation Number 45 of Year 2019 (GR-45) which introduces new tax facilities for industries with particular features to boost investment in certain industries. GR-45 amends Government Regulation Number 94 of Year 2010 (GR-94) on Calculation of Taxable Income and Repayment of Income Taxes in the Current Year. GR-45 became effective on 26 June 2019.

The main amendments made under GR-45 are as follows:

(i)taxpayers making new investments in specified pioneer industries may be granted exemption facilities or a deduction of corporate income tax; (ii) domestic taxpayers making new investments or expanding business activities in certain labour intensive industries may be granted income tax facilities in the form of 60% net income reduction of the total investment in tangible fixed assets; (iii) domestic taxpayers organising working programmes, internships and/or education aimed at fostering and developing certain competency-based human resources may be granted a deduction in gross income of no more than 200% of the total costs incurred; (iv) domestic corporate taxpayers conducting certain R&D activities in Indonesia may be granted a deduction in gross income of no more than 300% of the total costs incurred.

New rules to impose VAT on online goods and services

It has been reported that new rules to impose VAT on online goods and services provided by offshore companies are currently being drafted. The new VAT rules are expected to be imposed on e-commerce, content providers, start-ups and other Internet-based economic activities. No timeline was provided as to when the proposed VAT would be implemented and further details will be reported as they occur.

SINGAPORE

MoF invites feedback on proposed changes to Goods and Services Tax (GST) Act

In a press release issued on 5 July 2019, the MoF invited interested parties to provide feedback on the draft GST (Amendment) Bill 2019 until 26 July 2019. The proposed amendments are as follows:

Introducing GST on imported services

There are two proposed amendments relating to the planned introduction of GST on imported services from 1 January 2020 as announced by the Minister of Finance in Budget 2018:

(i)clarifying or improving GST administration on imported services, such as by clarifying the scope of the reverse charge mechanism, and allowing GST group registration for overseas business under the overseas vendor registration (OVR) regime; and (ii) introducing an offence for misrepresentation of information in order for the Inland Revenue Authority of Singapore (IRAS) to enforce GST on imported services effectively if a customer were to provide false information and that information may be used by an overseas supplier to determine whether GST is chargeable.

Updating the GST treatment of digital payment tokens

Currently, the sale and transfer of digital payment tokens are regarded as supplies of services and are subject to GST. The proposed amendment seeks to:

(i) exempt from GST the exchange of digital payment tokens for fiat currency or other digital payment tokens as financial services and (ii) not subject to GST the use of digital payment tokens as a means of payment for goods and services.

The proposed amendment more accurately reflects the characteristics of digital payment tokens, and is an update of GST rules to ensure that they remain relevant in the digital economy.

Making changes to the reporting of proceedings and decisions of tax cases by the Courts

To align with the principle of open justice and in keeping with international trends, tax proceedings in the High Court and the Court of Appeal (the Courts) will no longer be heard in private by default. The redaction of taxpayers' names in published decisions of such judicial proceedings will also be discontinued.

Introducing definitions of "accountant" and "advocate and solicitor" for purposes of appeals to the GST Board of Review

The proposed definitions are consistent with those in the Income Tax Act for the purposes of appeals heard before the Income Tax Board of Review. These new definitions are to safeguard the interests of taxpayers lodging appeals to the GST Board of Review by ensuring that the representatives handling their appeals meet certain professional qualifications.

Public consultation on draft GST guide on digital payment tokens

In addition to the feedback requested by the MoF on the legislative amendments for GST treatment of digital payment tokens, the Inland Revenue Authority of Singapore (IRAS) is conducting a public consultation on the draft GST guide on digital payment tokens (the draft guide) issued on 5 July 2019.

The draft guide sets out the GST treatment for transactions involving virtual currencies or cryptocurrencies that function or are intended to function as a medium of exchange (referred to as digital payment tokens) which will take effect from 1 January 2020.

IRAS is seeking feedback on this change of GST treatment from businesses dealing in digital payment tokens, including businesses:

(i) buying and selling digital payment tokens;(ii) using digital payment tokens as payment and/or consideration; (iii) charging a fee or commission to facilitate the transfer, purchase or sale of digital payment tokens; or (iv) issuing digital payment tokens, such as through an initial coin offering (ICO).

The draft guide also provides a table comparing the GST treatment of digital payment token transactions before 1 January 2020 and that applicable from 1 January 2020.

Proposed tax framework for VCCs

In a press release of 5 August 2019, the MoF issued a summary of responses to public consultations on the proposed bill introducing a tax framework for variable capital companies (VCCs). The bill is expected to come into effect in the last quarter of 2019.

Background

The Variable Capital Companies Act 2018 (VCC Act) was passed by Parliament on 1 October 2018.

The VCC Act provides for the incorporation and operation of a new corporate structure for investment funds. In February and March 2019, for the purpose of introducing the tax framework for VCC, the MoF invited the public to provide feedback on the proposed changes to the GST Act (GSTA), Income Tax Act (ITA) and Stamp Duties Act (SDA). The proposed legislative changes will be incorporated into the Variable Capital Companies (Miscellaneous Amendments) Bill 2019 (the Bill). The MoF received 39 suggestions, 13 of which were accepted and led to revisions being made to the draft bill.

Proposed tax treatment

The proposed tax treatment was formulated in consultation with the industry and recognizes the unique characteristics of a VCC, which combines the advantages of a single legal entity at the umbrella VCC fund level with the segregation of assets and liabilities at the sub-fund level. Salient aspects of the proposed tax treatment are as follows:

Corporate income tax

- An umbrella VCC only needs to file a single corporate income tax return, regardless of the number of its sub-funds.
- Selected tax incentives under the ITA will be extended to the VCC at the umbrella level.
- Where applicable, a VCC will enjoy a start-up or partial tax exemption once at the umbrella level for its first 3 years of assessment (determined with reference to the date of incorporation of the VCC), regardless of the number of sub-funds.
- Deductions and allowances for the umbrella VCC will be applied at the sub-fund level for the determination of the sub-fund's chargeable or exempt income.

GST

GST will be applied at the sub-fund level because each sub-fund makes independent sale and purchase decisions based on its respective investment mandate. Therefore, if liable, each sub-fund is required to separately register, charge, account for and file GST returns.

Stamp duty

Stamp duty treatment will be applied at the sub-fund level in view of the segregation of assets and liabilities at the sub-fund level.

VIETNAM

Amended law on tax administration – approved and issued

The new law on tax administration 38/2019/QH14 (the law) was approved and issued by the National Assembly on 13 June 2019. The new law will take effect from 1 July 2020. Meanwhile, the provisions on invoices and e-documents will come into force on 1 July 2022.

The salient features of the law are:

- Transfer pricing: A new principle of tax administration in respect of transfer pricing has been introduced. Tax authorities will be granted additional powers to impose tax under certain circumstances such as failure to comply with regulations on related party transactions.
- E-commerce: The State Bank and other banks are required to play a role in the taxation of ecommerce activities including compliance obligations. Further, tax registration has to be made by overseas suppliers that conduct e-commerce activities in Vietnam.
- Taxpayers and tax authorities who satisfy the requirements are required to conduct e-tax transactions for tax purposes and a new section which provides guidance on e-invoices has been introduced.
- Several changes on tax administration procedures are also introduced in the law such as the imposition of administration penalties and late payment interest, deadlines for filing tax returns, a time limit to revise tax returns and other tax appeal and litigation matters.

Janice Loke** and **James Cheang
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.

Technical Updates

The technical updates published here are summarised from selected government gazette notifications published between 17 May 2019 and 16 August 2019 including Public Rulings (PRs) and guidelines issued by the Inland Revenue Board of Malaysia (IRBM), the Royal Malaysian Customs Department and other regulatory authorities.

INCOME TAX

Income tax exemption for non-residents on payments received from religious institutions or organisations (Effective: 1 February 2019 onwards)

The Income Tax (Exemption) (No. 3) Order 2019 [P.U. (A) 137] was gazetted on 21 May 2019, to exempt a non-resident person in Malaysia from the payment of income tax in respect of income derived from Malaysia in relation to any payment received from any religious institution or organisation for the following services:

a. Providing religious lectures or the study of a religious book including the translation of a holy book or related religious books; or
b. Presiding over prayers or rites of worship according to the ritual of each religion

The Exemption Order provides that the exemption granted shall not absolve an individual from any requirement under the Income Tax Act 1967 (ITA) to submit a return, statement of account or any information. The Exemption Order also provides that Section 109A of the ITA (i.e. withholding tax on income of a non-resident public entertainer) shall not apply to the exempted income.

Income tax exemption for non-resident persons on income from software and site-licenses received from Malaysian resident individuals (Effective: 1 March 2019 onwards)

The Income Tax (Exemption) (No. 4) Order 2019 [P.U. (A) 147] was gazetted on 28 May 2019, to exempt persons who are not residents in Malaysia from the payment of income tax in respect of income derived from Malaysia in relation to any payment for shrink-wrap software, site-license, downloadable software or software bundled with personal computer hardware, smartphone or tablet, received from an end-user who is an individual resident in Malaysia, who purchases the software or acquires any right to use the software for personal use (i.e. not for business purposes).

The Exemption Order does not absolve the non-resident from complying with any requirement under the ITA to submit a return, statement of account or any other information. The Exemption Order also provides that Section 109 of the ITA (i.e. withholding tax on royalty payments to a non-resident) shall not apply to the exempted income.

Tax incentives for increased exports

The Exemption Orders discussed below were gazetted on 7 June 2019 to provide income tax exemptions to qualifying companies which achieve an increase in export sales of agricultural produce or products from manufacturing.

The amount of income exempted is deducted against 70% of the statutory income for a year of assessment (YA). If there is insufficient or no statutory income, the amount concerned will be carried forward and allowed against 70% of the statutory income for the following YAs until it is fully utilised.

1. Income Tax (Exemption) (No. 5) Order 2019 [P.U.(A) 161]

The Exemption Order provides that the exemption will apply only if the following conditions are adhered to:

a. At least 60% of the issued share capital of the qualifying company is owned directly by Malaysian citizens;
b. The agricultural produce is planted, reared or caught by the qualifying company; and
c. The products from manufacturing are manufactured by the qualifying company

The amount of income exempted is as follows:

Qualifying company	Amount of income exempted
Where the value of increased exports* is at least 50% in a basis period for a YA	30% of the value of increased exports
Qualifying company	**Amount of income exempted**
Which penetrates a new market for export as determined by the Malaysian External Trade Development Corporation	50% of the value of increased exports
Which is awarded an Export Excellence Award by the Minister charged with the responsibility for international trade and industry for achieving the highest increase in export sales for a YA	100% of the value of increased exports

** The methodology of determining the value of increased exports is outlined in the Exemption Order.*

The Order is deemed to be effective YA 2016. With this, the Income Tax (Exemption) (No. 17) Order 2005 [P.U.(A) 158] is revoked. However, any exemption which has been granted under the said Order will remain in place.

2. Income Tax (Exemption) (No. 6) Order 2019 [P.U.(A) 162]

The Exemption Order provides that the exemption will apply only if similar conditions as outlined in Income Tax (Exemption) (No. 5) Order 2019 above are adhered to.

The amount of income exempted is as follows:

Qualifying company	Amount of income exempted
Where the manufactured product exported attained at least 30% of the value added^	10% of the value of increased exports of the manufactured product
Where the manufactured product exported attained at least 50% of the value added	15% of the value of increased exports of the manufactured product
Qualifying company	**Amount of income exempted**
Where there are increased exports of agricultural produce	10% of the value of increased exports of the agricultural produce

^ Value-added means the sale price of the goods at the factory price less the total cost of the raw materials.

** The methodology of determining the value of increased exports is outlined in the Exemption Order.*

The Order is deemed to be effective YA 2016.

With this, the Income Tax (Allowance for Increased Exports) Rules 1999 [P.U.(A) 128] are revoked. However, any exemption which has been granted under the said Rules will remain in place.

3. Income Tax (Exemption) (No. 7) Order 2019 [P.U.(A) 163]

In Budget 2016, to further encourage small and medium

enterprises (SMEs) in the manufacturing sector to boost exports, the government proposed that a tax exemption on statutory income equivalent to 10% of the value of the increased exports be extended to SME manufacturers, provided that the goods exported attain at least 20% value-add (compared to the previous 30%). It was also proposed that a tax exemption on the statutory income equivalent to 15% of the value of the increased exports be extended to SME manufacturers, provided that the goods exported attain at least 40% value-add (compared to the existing 50%). In both cases, the tax exemption would remain restricted to 70% of the company's statutory income.

To legislate this, the Income Tax (Exemption) (No. 7) Order 2019 was gazetted. The Exemption Order provides that the exemption will apply if the following conditions are adhered to:

a. The qualifying company has a paid-up share capital in respect of its ordinary shares not exceeding RM2.5 million at the beginning of the basis period for a YA;
b. The agricultural produce is planted, reared or caught by the qualifying company; and
c. The product from manufacturing is manufactured by the qualifying company.

The amount of income exempted is as follows:

Qualifying company	Amount of income exempted
Where the manufactured product exported attained at least 20% of the value added^	10% of the value of increased exports of the manufactured product
Where the manufactured product exported attained at least 40% of the value added	15% of the value of increased exports of the manufactured product
Where there are increased exports of agricultural produce	10% of the value of increased exports of the agricultural produce

^ Value- added means the sale price of the goods at the factory price less the total cost of the raw materials.
** The methodology of determining the value of increased exports is outlined in the Exemption Order.*

The Order is deemed to be effective YA 2016 until YA 2020.

◆◆ Tax incentives for employers to employ senior citizens, ex-convicts, parolees, supervised persons and ex-drug dependants

In Budget 2019, to encourage the employment of senior citizens (who are above 60 years of age) and ex-convicts, the government proposed that further deductions be given on the remuneration paid by employers who employ such individuals as full-time employees.

To legislate this, the Income Tax (Deduction for Employment of Senior Citizen, Ex-Convict, Parolee, Supervised Person and Ex-Drug Dependant) Rules 2019 were gazetted on 11 June 2019. The Rules apply to an employer with a business source of income only.

The Rules stipulate that in ascertaining the adjusted income of the employer for a YA, there shall be allowed an additional deduction from the remuneration of the kind allowable under Section 33 of the ITA, payable by him to his employee (who is a Malaysian citizen and resident), where the employee is one of the following:

(a) A senior citizen who is 60 years and above;
(b) An ex-convict who is a person who has been convicted of any offence by a court and has served his sentence of imprisonment;
(c) A parolee as defined in the Prison Act 1995;
(d) A supervised person who is a prisoner directed by an officer-in-charge to work at such labour under Subparagraph 47(1)(b)(iii) of the Prison Act 1995; or
(e) An ex-drug dependant who is registered in the National Anti-Drugs Agency (MyAADK) system and:
    - Has undergone treatment and rehabilitation pursuant to the Drug Dependants (Treatment and Rehabilitation) Act 1988;
    - Has undergone supervision pursuant to Paragraph 6(1)(b) of the Drug Dependants (Treatment and Rehabilitation) Act 1988 or Subsection 38B(1) of the Dangerous Drugs Act 1952; or
    - Has been placed under supervision pursuant to Paragraph 8(3)(b) of the Drug Dependants (Treatment and Rehabilitation) Act 1983

Annual General Meeting 2019

Earning Stripping Rules

Section 140C was introduced into the ITA to implement the Earning Stripping Rules (ESR). Section 140C stipulates that rules will be released to specify the maximum amount of interest which can be claimed in ascertaining the adjusted income of a person from his business sources.

Following the above, the Income Tax (Restriction on Deductibility of Interest) Rules 2019 [P.U. (A) 175] ("Rules") were gazetted on 28 June 2019 with respect to Section 140C. The Restriction on Deductibility of Interest Guidelines (Section 140C, ITA) ("Guidelines") were issued by the IRBM shortly thereafter, on 5 July 2019, to provide clarification on the Rules.

Income Tax (Restriction on Deductibility of Interest) Rules 2019 [P.U. (A) 175]

- The Rules are effective from 1 July 2019.
- The Rules will apply:
    a) To a person who has been granted any **financial assistance** in a **controlled transaction**; and where
    b) The total amount of any **interest expense** for all such financial assistance exceeds RM500,000 in the basis period for a YA,

in respect of a basis period beginning on or after 1 July 2019 and subsequent basis periods.

The Rules also outline the categories of taxpayers which are not be subject to the Rules

- Section 140C stipulates that in ascertaining the adjusted income of a person from his business sources, no deduction shall be allowed in respect of:
    a) Any interest expense in a controlled transaction granted directly or indirectly to that person;
    b) Which is in excess of the **maximum amount of interest** as determined under the Rules

The Rules prescribe that the **maximum amount of interest** is 20% of the amount of "Tax-EBITDA" of that person from each of his business sources for the basis period for a YA. It was explained in the Rules how "Tax-EBITDA" is determined.

- Where a company has interest expense which is in excess of 20% of Tax-EBITDA, the excess can be carried forward and deducted against the adjusted income of the company for subsequent YAs. In any given YA, the total interest which can be claimed is limited to 20% of Tax-EBITDA. A company can utilise such brought-forward interest expense even if the company has no interest expense in the subsequent YA, until the whole amount of the excess has been fully utilised. The carry-forward of interest from the preceding year is subject to the condition that the Director General is satisfied that the shareholders of the company are "substantially the same" in the following YA. The Rules also provide clarification as to how shareholders would be ascertained to be "substantially the same".

Restriction on Deductibility of Interest Guidelines

The Guidelines include the following important updates:

- ESR will apply to cross-border financial assistance from an associated party. However, ESR will also apply in the case of cross-border financial assistance from third parties, where such assistance is guaranteed by related parties in or outside Malaysia.
- ESR will not apply to a Special Purpose Vehicle (SPV) established by a company solely for the issuance of *sukuk*.
- The Guidelines also provide multiple examples and annexes to illustrate the methodology and tabulation of the concept of Tax-EBITDA, the maximum amount of deductible interest, "interest restricted" and the carry-forward of excess interest expense under various scenarios (e.g. single / multiple business sources, companies with positive / negative Tax-EBITDA etc.).

Tax incentives for the repayment of PTPTN loans by employers on behalf of employees

In Budget 2019, to enhance the collection of the Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN)'s loan repayments and ensure the sustainability of the PTPTN Program, the government proposed that income tax deductions be given to employers on the repayments of PTPTN loans on behalf of their full-time employees, on the condition that the employees are not required to reimburse the employers.

To legislate this proposal, the following were gazetted on 24 July 2019:

1.Income Tax (Deduction for Payment of Educational Loan of Perbadanan Tabung Pendidikan Tinggi Nasional by Employers on behalf of Employees) Rules 2019 [P.U.(A) 206] (Effective: YA 2019 and YA 2020)

The Rules stipulate that in ascertaining the adjusted income of an employer from his business for a YA, there shall be allowed a deduction under Section 33 of the ITA, equivalent to the amount of educational loan paid by the employer on behalf of his employee from 1 January 2019 to 31 December 2019. Employers are required to retain an official receipt from the Perbadanan confirming the loan amount and the date of payment, to substantiate the claim for the deduction.

2. Income Tax (Exemption) (No. 8) Order 2019 [P.U.(A) 205] (Effective: YA 2020 only)

The Order provides that an employee is exempted from the payment of income tax in respect of the value of the benefit (i.e. the amount of educational loan paid by the employer on behalf of the employee from 1 January 2019 to 31 December 2019) received as a gift from his employer, in ascertaining his gross employment income.

Update to further deduction for employment of disabled persons (Effective: YA 2019 onwards)

The Income Tax (Deductions for the Employment of Disabled Persons) Rules 1982 [P.U.(A) 73] provide that in ascertaining the adjusted income of a person, there shall be allowed a further deduction (i.e. deduction in addition to any deduction allowable under Section 33 of the ITA) for remuneration paid to an employee who is physically or mentally disabled. In order to qualify for the additional deduction, the employer has to prove to the satisfaction of the Director General (DG) that the employee is physically or mentally disabled and is unable to perform the work of a normal person.

Courtesy visit to RMCD

The Income Tax (Deductions for the Employment of Disabled Persons) (Amendment) Rules 2019 [P.U.(A) 204] were gazetted on 24 July 2019 to stipulate that a further deduction is also allowed where the employer is able to provide a certification from the Social Security Organization, certifying that the employee is able to work within his capabilities, in cases where an employee is physically or mentally disabled due to an accident or critical illness.

Withdrawal of withholding tax exemptions available to MSC Malaysia-status companies

Malaysia Digital Economy Corporation Sdn Bhd (MDEC) has announced on its website that the withholding tax (WHT) exemption on the following types of income received by non-resident companies from an approved MSC-status company, as provided vide the Income Tax (Exemption) (No. 13) Order 2005 [P.U.(A) 102], will only be effective until 31 December 2019:

a) Payment for technical advice or technical services;
b) Licensing fees in relation to technology development; and
c) Interest on loans for technology development

The necessary steps will be taken to revoke the Order effective 1 January 2020.

Public Ruling No. 3/2019 – Business Expenses in respect of Disabled Persons

PR No. 3/2019: Business Expenses in respect of Disabled Persons, dated 8 August 2019, explains the tax treatment of business expenses incurred by a person for the:

a) Employment of disabled persons as employees; and
b) Provision of training to disabled persons who are not employees to enable them to seek employment

Broadly, the PR outlines the various deductions applicable to expenses incurred by businesses for disabled persons. The PR explains and provides examples to clarify the mechanisms of the deductions outlined above. The PR also stipulates the conditions which must be adhered to in order to qualify for each type of deduction.

Updated guidelines on Taxation of Electronic Commerce Transactions

The IRBM has published on its website the "Guidelines on Taxation of Electronic Commerce Transactions" (Guidelines), dated 13 May 2019, to provide guidance on the income tax treatment of electronic commerce transactions (e-CT). The 14-page Guidelines replace the earlier "Guidelines on Taxation of Electronic Commerce" dated 1 January 2013. As the innovation in e-CT allows for the rapid development of new business models, the new Guidelines document also identifies, explains and provides examples of a few business models.

Update to the process for manual application of Certificate of Residence

The IRBM has updated the process for the manual application of a Certificate of Residence (CoR), as outlined in the following link:

http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=6&bt_posi=6&bt_unit=1&bt_sequ=1

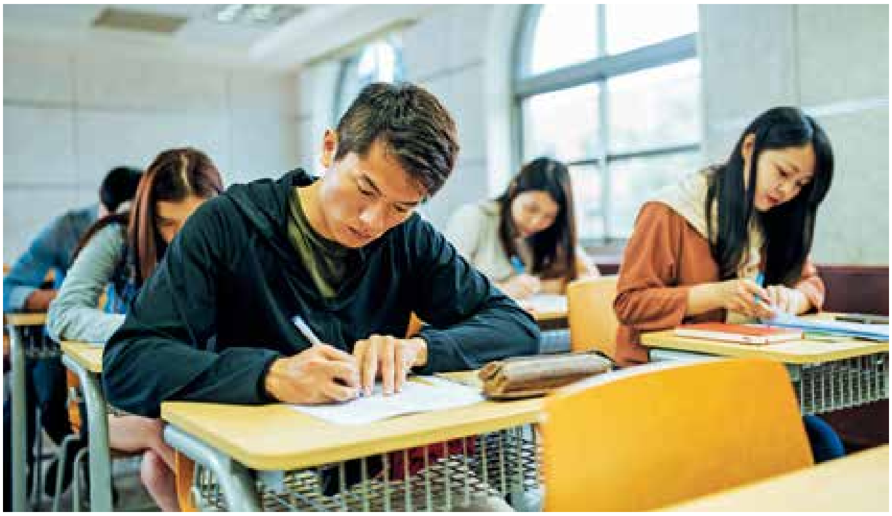
Briefly, a CoR is issued to confirm the residence status of a taxpayer. Manual applications for a CoR can be made at any IRBM branch, except for taxpayers of the Large Taxpayer Branch (LTB) and Duta Branch (DB) where applications will need to be submitted to the Department of International Taxation (DIT). The updated process currently stipulates that all manual applications will need to be submitted in hardcopy format, and that applications sent via e-mail or fax will not be processed.

Updated guidelines on IRBM approval under Subsection 44(6) of the ITA

The IRBM has published on its website the "Guidelines for approval of Director General of Inland Revenue under Subsection 44(6) of the ITA" (Guidelines) dated 15 May 2019. The 21-page Guidelines replace the earlier "Guidelines for application of approval under Subsection 44(6) of the ITA" issued in April 2005. The new Guidelines explain the following:

i. The types of institutions / organisations which are eligible to apply for an approval
ii. The criteria for an institution / organisation to be eligible to apply for an approval
iii. The application procedures for an approval
iv. Conditions for an approval granted
v. Responsibilities of an institution / organisation after obtaining an approval
vi. Consequences of a breach of the conditions of an approval granted
vii. The approval period, extension and appeal of applications
viii. The power of the Director General of Inland Revenue (DGIR) on approvals and imposition of conditions
ix. Tax treatment of donors

The Guidelines provide that the approval period for an approved institution / organisation under Subsection 44(6) of the ITA is five (5) years. The previous Guidelines did not stipulate a limit to the approval period. Any application for an extension of the approval period must be submitted in writing to the DGIR within six (6) months before the expiry of the approval period, for the DGIR's consideration.



Updated guidelines on the tax treatment related to the implementation of MFRS 121 (or other similar standards) on foreign currency translation

The IRBM has issued the "Guidelines on tax treatment related to the implementation of MFRS 121 (or other similar standards) (revised)" ("new Guidelines") dated 16 May 2019 to explain the income tax treatment pertaining to the implementation of Malaysian Financial Reporting Standards (MFRS) 121 or any other accounting standards in relation to foreign currency translation. The new nine-page Guidelines replace the earlier

"Guidelines on tax treatment related to the implementation of MFRS 121 (or other similar standards)" dated 24 July 2015.

The new Guidelines provide that an entity may use the following as the spot exchange rate on the transaction date:

a. Exchange rate issued by the Accountant General's Department of Malaysia from time to time based on the rate published by Bank Negara Malaysia (BNM) for the purpose of managing and accounting for transactions involving foreign currencies; or
b. The exchange rate used by the entity's bank

Updated guidelines and procedures for the application of Automation Capital Allowance (Automation CA)

The Malaysian Investment Development Authority (MIDA) has published on its website the "Guidelines and procedures for the application of Automation Capital Allowance (Automation CA)" dated 23 May 2019. The four-page Guidelines replace the earlier "Guidelines on application for Automation Capital Allowance Expenditure (Automation CA)" dated 25 June 2018. The key changes are discussed below.

a. Evaluation by MIDA and SIRIM

The new Guidelines clarify that the applications for the Automation CA are jointly evaluated by MIDA and the Standards and Industrial Research Institute of Malaysia (SIRIM). MIDA will evaluate the non-technical aspects and SIRIM will undertake the technical verifications which may include site visits. The earlier 2018 Guidelines only stated that the application would be evaluated by both MIDA and SIRIM, without elaboration.

b. Required documents

Earlier Guidelines	New Guidelines
• ML-Automation CA form • SIRIM report for productivity level verification (verification that proves the use of the equipment / machines can increase productivity compared to benchmark figures) • A copy of the ML (if applicable) • Certification by the company's external auditor confirming the functions of the equipment / machines	• ***Three (3) sets*** of the ML-Automation CA form • A copy of the ML ***or confirmation letter to be exempted from obtaining an ML*** (whichever is applicable) • A copy of the tax incentive approval letter(s) (if applicable)

Guidelines on the application by social enterprises for approval under Section 44(11C) of the ITA

In Budget 2019, the government proposed that income tax deductions be given for contributions from any parties to social enterprises (SE), up to a maximum of 10% of aggregate income for a company, or 7% of aggregate income for a person other than a company.

In line with this, the IRBM has published guidelines on its website, in Bahasa Malaysia, titled "Garis Panduan Permohonan Perusahaan Sosial Untuk Diluluskan Di Bawah Subseksyen 44(11C) Akta Cukai Pendapatan 1967" (Guidelines), to provide guidance on the procedures and conditions for an SE to obtain approval under Section 44(11C) of the ITA.

Guidelines on income tax exemption on chargeable income from business for YA2017 and YA 2018

In Budget 2017, the government proposed a reduction in the corporate income tax (CIT) rate. This reduction applies to incremental chargeable income (CI), as compared to the immediate preceding YA.

To legislate the proposal, the Income Tax (Exemption) (No. 2) Order 2017 [P.U.(A) 117] was gazetted on 10 April 2017. The Exemption Order (EO) exempts a "qualifying person" from payment of income tax on an ascertained amount of CI derived from a business source in the basis year for a YA, for YA2017 and YA 2018. The IRBM published on its website guidelines in Bahasa Malaysia, titled "Garis Panduan Berhubung Pengecualian Cukai Bagi Peningkatan Dalam Pendapatan Bercukai Perniagaan" (Guidelines), to explain the application and calculation of the income tax exemption.

NTC 2019

Guidelines on Green Investment Tax Allowance (GITA)

In Budget 2019, to attract more companies to be involved in green technology and environmentally-friendly initiatives, the government proposed that the list of green technology assets (GTA) be expanded. In line with this proposal, the Guidelines on GITA were published on the MyHijau website.

The Guidelines on GITA outline the list of approved GTA for qualifying capital expenditure incurred in the following periods:

- Original list of qualifying assets - from 25 October 2013 to 31 December 2020
- Additional assets - from 1 January 2019 to 31 December 2020

In addition, the Guidelines also explain the application process for the incentive, which is dependent on the type of asset.

STAMP DUTY

Extension of stamp duty exemption on the purchase of residential property under the National Home Ownership Campaign 2019

To encourage the sale of unsold residential properties, the government proposed in Budget 2019 to waive the stamp duty for purchases of homes valued between RM300,001 and RM1 million as part of the National Home Ownership Campaign, under which developers would also offer a discount of at least 10%.

To legislate this proposal, the following Exemption Orders were gazetted on 19 March 2018:

1. Stamp Duty (Exemption) (No. 2) Order 2019 [P.U.(A) 81]

The Order provides that any loan agreement to finance the purchase of a residential property valued from RM300,001 to RM2.5 million under the National Home Ownership Campaign 2019, will be exempted from stamp duty.

2. Stamp Duty (Exemption) (No. 3) Order 2019 [P.U.(A) 82]

The Order provides that any instrument of transfer for the purchase of a residential property valued from RM300,001 to RM2.5 million under the National Home Ownership Campaign 2019, will be exempted from stamp duty in respect of up to RM1 million of the market value of the residential property. Stamp duty of 3% is to be charged on the value in excess of RM1 million.

Both Exemption Orders indicated that the exemption would apply only if the sale and purchase agreement (SPA) was executed between 1 January 2019 and 30 June 2019 and is stamped at any branch of the IRBM.

Following the above, the Amendment Orders outlined below were gazetted on 28 June 2019 to extend the stamp duty exemptions to SPAs executed up until 31 December 2019 (instead of 30 June 2019):

- Stamp duty (Exemption) (No. 2) Order 2019) (Amendment) Order 2019 [P.U.(A) 173]
- Stamp duty (Exemption) (No. 3) Order 2019) (Amendment) Order 2019 [P.U.(A) 174]

CUSTOMS DUTIES

Customs Duties (Amendment) Order 2019

The Customs Duties (Amendment) Order 2019 [P.U. (A) 171] was gazetted on 26 June 2019 and came into operation on 1 July 2019. This Order provides for amendments to the First Schedule, in relation to columns (4) and (5) under the Customs Duties Order 2017 [P.U.(A) 5/2017].

Customs Duties (Goods Under The Agreement Establishing The Asean – Hong Kong, China Free Trade Area) Order 2019

The Customs Duties (Goods Under The Agreement Establishing The Asean – Hong Kong, China Free Trade Area) Order 2019 [P.U.(A) 209] was gazetted on 26 July 2019 and came into operation on 1 August 2019. Subject to the provisions of the First Schedule, an import duty shall be levied on and paid by the importer in respect of the importation of the goods specified in the Second Schedule into Malaysia, originating from ASEAN Member States or Hong Kong, China. The rate of duties imposed depends on the section, chapter, heading/subheading, description and year, as specified in column (4) of the Second Schedule.

Customs Duties (Goods Under The Framework Agreement on Comprehensive Economic Co-Operation between Asean and China) Order 2019

The Customs Duties (Goods Under The Framework Agreement on Comprehensive Economic Co-Operation Between Asean and China) Order 2019 [P.U.(A) 212] was gazetted on 31 July 2019 and came into operation on 1 August 2019. Subject to the provisions of the First Schedule and the Third Schedule, an import duty shall be levied on and paid by the importer in respect of the importation of the goods specified in the Second Schedule into Malaysia, originating from China or ASEAN Member States. The rate of duties imposed is depending on the section, chapter, heading/subheading and description, as specified in column (5) of the Second Schedule.

*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

KETUA PENGARAH HASIL DALAM NEGERI V LC & B SDN BHD

The Court of Appeal unanimously dismissed the appeal by the Director General of Inland Revenue (**DGIR**) in the LC & B's case. The Court of Appeal affirmed the decision of the High Court in allowing the taxpayer's claim for industrial building allowance (**IBA**) and reinvestment allowance (**RA**), among other things, on the renovation cost incurred on the factory.

BRIEF FACTS

The taxpayer manufactures food products. They acquired and renovated an existing factory in Johor as part of its business expansion. It claimed IBA and RA for the capital expenditure incurred on the:

- demolition of substructures in the factory; and
- reconstruction of certain parts of the factory, including the front entrance and guardhouse, as well as resurfacing the driveways and erecting metal fencing to secure the factory compound.

The taxpayer also purchased several machines, such as spiral mixers and electronic doughnut mixers, which were placed and used in one of its key outlets located in a shopping mall in the Klang Valley. The taxpayer claimed RA on the capital expenditure incurred to purchase those machines.

The DGIR disallowed the IBA and RA claims. The Special Commissioners of Income Tax (SCIT) agreed with the DGIR's finding. However, on appeal, the SCIT's decision was set aside by the High Court.

INDUSTRIAL BUILDING ALLOWANCE

DGIR'S CONTENTIONS

The DGIR disallowed the IBA on the basis that the IBA is only available for the construction of factory. According to the DGIR, construction should be distinguished from reconstruction and renovation and, therefore, IBA is restricted to the construction of a new building only. The DGIR further state that the cost for the demolition of substructures is a capital expenditure which does not qualify for IBA. As for the guardhouse, resurfaced driveways and metal fencing, the DGIR claimed that these were located outside the factory building and thus, do not qualify for IBA.

TAXPAYER'S CONTENTIONS

The taxpayer submitted that paragraph 45 of Schedule 3 to the Income Tax Act 1967 (**ITA**) stipulates that construction includes reconstruction and rebuilding. Hence, the High Court had correctly decided that the demolition works were necessary for the construction of the building for the taxpayer's manufacturing activity and, thus, should be part of the capital expenditure incurred in the construction of the building for IBA.

In relation to the other structures, the taxpayer argued that the High Court has correctly referred to the functionality and entirety tests, which have been applied previously in tax cases like **Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturer Sdn Bhd [2012] and Ketua Pengarah Hasil Dalam Negeri v OKA Concrete Industries Sdn Bhd [2015] MSTC 30-091**. What constitutes a factory must be considered in its entirety and would include adjuncts or attachments that are used in relation to the building. Hence, the taxpayer added that for the purposes of IBA, a factory building includes any structure erected on land, so long as it is necessary and integral to the adequate functioning of the factory.

REINVESTMENT ALLOWANCE

DGIR'S CONTENTIONS

The DGIR disallowed the RA claim on the basis that the taxpayer's outlet in the Klang Valley did not obtain a manufacturing license and was not licensed under the Industrial Co-ordination Act 1975 and thus, the outlet is not a factory. The DGIR also argued that the machines for which RA was claimed were not used in the taxpayer's factory in Johor.

TAXPAYER'S CONTENTIONS

The taxpayer responded that the High Court had correctly held that RA is available for plant and machinery used in the expansion of the taxpayer's existing manufacturing business. Paragraph 1(b) of Schedule 7A to the ITA allows RA to be claimed on the capital expenditure incurred for plant, machinery or factory for a qualifying project. It is not confined to plant and machinery used in a factory as claimed by the DGIR. The RA disputed items are used to complete the manufacturing process and were required for the expansion of the taxpayer's business. Hence, the taxpayer had fulfilled all the requirements stipulated under Paragraph 1 of Schedule 7A for the taxpayer to be able to claim the RA. The DGIR added its own extra requirement into the provision of Schedule 7A i.e. for a taxpayer to own a manufacturing license under the ICA in order to claim RA.

CONCLUSION

Upon hearing the submissions of both parties, the Court of Appeal found no merits in the appeal and dismissed the DGIR's appeal.

This landmark decision allows taxpayers, especially those in the manufacturing sector, to maximise their IBA and RA claims on the capital expenditure incurred in expanding and modernising their business.

Counsel for the taxpayer:
DATUK D.P NABAN, S. SARAVANA KUMAR & STEWARD LEE, LEE HISHAMMUDDIN ALLEN & GLEDHILL

Counsel for the DGIR:
AHMAD ISYAK, DUNA ISMAIL & FARREN EVA

SDSB & ORS V KETUA PENGARAH HASIL DALAM NEGERI

The Court of Appeal granted three taxpayers an order for stay of proceedings pending the determination of their appeals before the Court of Appeal. The order enables the trio to defer payment of disputed taxes collectively amounting to more than RM50 million.

BRIEF FACTS

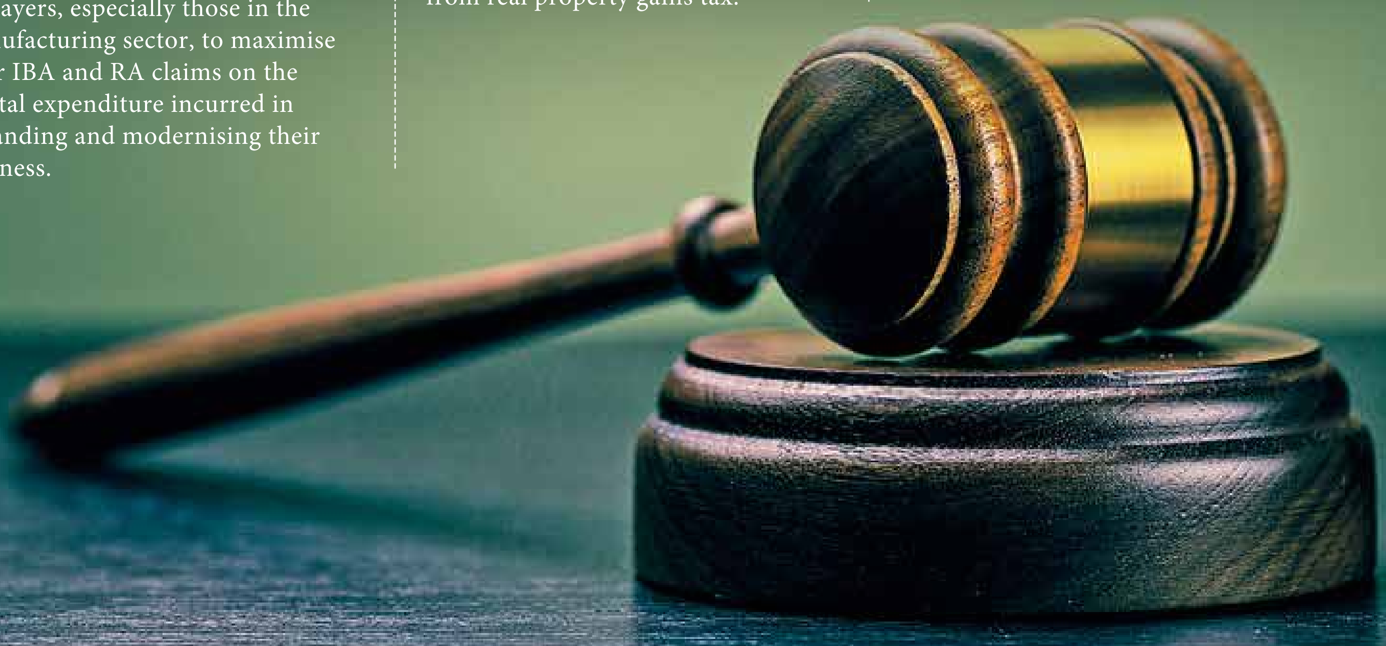
In 1994, the taxpayers, who are in the business of general investment, jointly acquired a piece of land, which they held as investment property and subsequently disposed of in 2007. The gains arising from the land disposal were exempted from real property gains tax.

However, in 2019, the Director General of Inland Revenue (**DGIR**) decided to subject the gains to income tax and raised notices of additional assessment against the taxpayers. Aggrieved by the DGIR's decision, the taxpayers sought to commence judicial review proceedings together with an order for stay of proceedings.

The High Court did not grant leave for judicial review on the basis that the question of law raised by the taxpayers was best determined before the Special Commissioners of Income Tax nor did the High Court grant the application for an order to stay. However, the High Court granted an interim stay for 30 days for the taxpayers to make payment. In the meantime, the taxpayers filed an appeal to the Court of Appeal and also applied for a stay order against the payment of the disputed taxes pending the appeal.

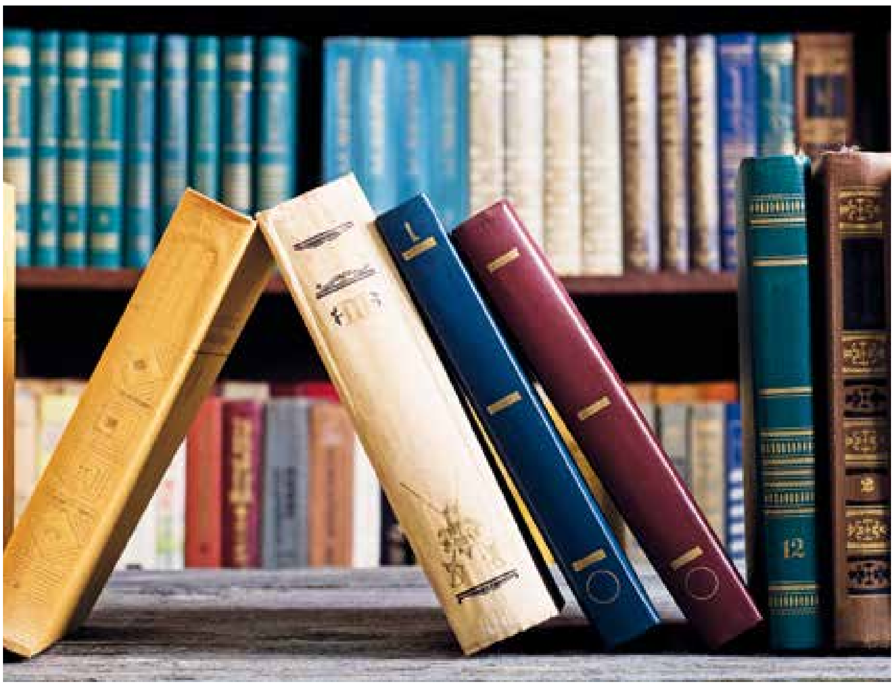
TAXPAYERS' CONTENTIONS

The issue was whether the gains arising from the disposal of land ought to be subject to income tax or real property gains tax. Lead



counsel for the taxpayers relied on the Court of Appeal's decision in the **ALF Properties Sdn Bhd v Ketua Pengarah Jabatan Hasil Dalam Negeri (2006) MSTC 4,243** case, in which it was held that gains from disposal of investment property are not subject to income tax. Accordingly, the taxpayers sought an interim stay pending the disposal of the appeal pursuant to Section 44 of the Courts of Judicature Act 1964 (**CJA**).

The taxpayers submitted that the Court of Appeal has the jurisdiction to grant an interim stay pending appeal, and that the legal test to grant a stay under Section 44 is lower than the special circumstances test. The purpose of a stay under Section 44 is to preserve the integrity of the statutory appeal and, as such, an interim stay should be granted pending the outcome of the appeal. The taxpayers submit that their appeals will be rendered nugatory, if a stay under Section 44(1) of the CJA is refused because the DGIR's notices of assessment had imposed large and inordinate amount of taxes where the taxpayers will suffer detriment and other negative effects that cannot be easily quantifiable and in any case, would not be adequately compensated by way of damages. Thus, an interim order would prevent prejudice to the taxpayers who were likely to be wound up as the amount of taxes raised was substantial. Further, the DGIR's decision had caused manifest injustice to the taxpayers as the tax audit was only conducted more than



10 years after the land disposal. The taxpayers highlighted that they had no tax liability for the past 12 years until they were slapped with the disputed assessments.

Additionally, there are merits to this appeal as the relevant question based on the **Alf Properties** case, and merit is a factor to be considered by the Court of Appeal in exercising its discretion to stay. The taxpayers also emphasised that the DGIR has the power to:

- impose further penalty at the rate of 10% and 5%;
- order travel restriction on the directors;
- freeze bank accounts under the anti-money laundering law; and
- commence a civil suit against the taxpayers and its directors.

DGIR'S RESPONSE

The DGIR submitted that there was no merit to the taxpayers' appeal as the High Court had dismissed their requests for leave and stay. He added that the High Court only granted an interim stay of 30 days for the taxpayers to pay taxes, but not to appeal to the Court of Appeal.

The DGIR also submitted that the taxpayers had applied to make an instalment payment plan, which had been accepted. As such, according to Section 103(7) of the Income Tax Act 1967, there was no threat of civil proceedings against the taxpayers and their directors, provided that they complied with the instalment payment plan.

COURT OF APPEAL'S DECISION

The Court of Appeal agreed with the arguments advanced by our tax lawyers, and unanimously granted the interim stay application pending the disposal of the appeal against the High Court's decision.

The Court of Appeal found that there were merits to the taxpayers' appeal and if stay is not granted, the proceedings before the Court of Appeal are likely to be prejudiced, as such, the granting of an interim stay was appropriate.

CONCLUSION

The main consideration of the Court of Appeal in granting the interim stay was whether the integrity of the appeal could be preserved, which is a lower threshold compared to the special circumstance test. Hence, subject to the merits of a taxpayer's appeal, the Court of Appeal may grant an interim stay order under Section 44, especially to a taxpayer mounting a bona fide appeal to challenge the legality of any tax assessments.

Counsel for the taxpayer:
Rosli Dahlan and Keith Lim Boon Long, Lee Hishammuddin Allen & Gledhill

Counsel for the DGIR:
Syamimi Bukhari, Dayana Sham & Nomareza Mat Rejab

CASE 2

FJ V KETUA PENGARAH HASIL DALAM NEGERI

An individual taxpayer successfully obtained leave to commence judicial review proceedings against the Director General of Inland Revenue (DGIR) to set aside the additional assessment for income tax raised against him. The Attorney-General's representative and the DGIR objected to the application for judicial review on the grounds that there was an alternative remedy of appeal to the Special Commissioners of Income Tax (**SCIT**).

Upon hearing all the parties, the High Court granted leave and dismissed the objections by the Attorney-General and the DGIR. The court also granted a stay order against the payment of the disputed tax amounting to RM1.8 million until the judicial review application is determined by the High Court.

BRIEF FACTS

The taxpayer, who has been filing his tax returns on time, was unaware that a notice of additional assessment had been raised against him until a few weeks ago. Nor was he informed of the reasons, whether in writing or verbally, for the additional assessment. Additionally, he was also not provided with the opportunity to be heard before the DGIR issued the additional assessment.

Aggrieved by the DGIR's decision, the taxpayer applied for judicial review on the premise that the additional assessment was raised arbitrarily by the DGIR.

DGIR'S CONTENTION

The DGIR contended that the taxpayer failed to meet the low threshold of having an arguable case. The DGIR further contended that Judicial Review application should not be granted as there is an availability of an alternative remedy to hear the case i.e. at the Special Commissioners of Income Tax ("**SCIT**"). The DGIR further contended that the taxpayer failed to show any exceptional circumstances that would justify for a leave and stay to be granted. Additionally, the DGIR contended that since the taxpayer has filed an appeal at the SCIT, the taxpayer's application for a Judicial Review is premature and an abuse of process as it amounted to duplicity of proceedings. The DGIR also claimed that the nature of relief sought by the taxpayer is injunctive which the court is not competent to grant against the government or its agent (which include the DGIR).

TAXPAYER'S CONTENTIONS

The taxpayer contended that the availability of an alternative remedy i.e.

the SCIT does not bar the taxpayer from seeking a Judicial Review against the decision of the DGIR. The taxpayer contended that it is premature for the DGIR to object on the availability of an alternative remedy at the leave stage. Further, since the taxpayer had exceptional circumstances, the more it warrants for a Judicial Review. The case of **Ta Wu Realty Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri & Another (2008) MSTC 4,362** held that the existence of alternative remedy is not bar to judicial review if there are exceptional circumstances. Although Section 91 of the Income Tax Act 1967 ("**ITA**") confers power on the DGIR to issue assessments the DGIR had breached the principles of natural justice in arriving at its decision. The DGIR has failed to provide any basis in law for its decision to raise the additional assessment. When one does not provide reasons for their actions, the action will draw a 'Padfield inference', the inference that there are no good reasons for the decision. The DGIR has a duty to furnish reasons for their decision as illustrated in the case of **Paramount Malaysia (1963) Sdn Bhd v. Pesuruhjaya Khas Cukai Pendapatan & Anor (2002) MSTC 3908**. There is an abuse of natural justice by the DGIR as they have not given the taxpayer any explanation on their decision and did not accord the taxpayer the right to be heard. When a person has some right, interest or legitimate expectation it would not be fair to deprive him without hearing or reasons given. By failing to adhere to and apply the settled legal principles and the decisions of our Courts above, the DGIR has clearly committed an error of law amounting to a clear lack of jurisdiction.

The DGIR contended that the issues involved are issues of fact and must be determined at the SCIT. The taxpayer contended that there is no factual dispute as to the primary facts of the case. It is undisputed that no basis for its decision was provided to either the taxpayer or his tax agent.

The DGIR also contended that there is an abuse of court process on the part of the taxpayer to maintain a judicial review application where a taxpayer has filed an appeal to the SCIT. The taxpayer pointed out that there is no rule that states by filing an appeal to the SCIT, a taxpayer would lose the opportunity to assert his rights in court by way of judicial review

HIGH COURT RULING

The High Court granted the taxpayer leave to commence judicial review on the grounds that:

(a) The judicial review application is not frivolous;
(b) Judicial review application is still available to the taxpayer despite the existence of an alternative remedy;
(c) There are exceptional circumstances in the present matter; and
(d) The financial difficulty which the taxpayer would suffer as a result of the DGIR's decision amounts to a special circumstance to warrant the grant of stay of proceedings.

CONCLUSION

This matter supports the legal position that despite the existence of an alternative remedy in the form of an appeal to the SCIT, judicial review proceedings remain available to taxpayers in exceptional circumstances. This is especially so when the DGIR raises an additional assessment without providing any reason.

Taxpayer's Solicitors
WILLIAN YEO, J.M. LIM & CO, ADVOCATES, KUCHING

External Solicitors for the Taxpayer:
S. SARAVANA KUMAR &
JAY FONG JIA SHENG (PUPIL)
LEE HISHAMMUDDIN ALLEN & GLEDHILL

IRBM Counsel:
JESSICA LEE SIUK KUN

***Keith Lim Boon Loong** and **Nur Amira Ahmad Azhar** are associates with the Tax, SST & Customs Practice of Lee Hishammuddin Allen & Gledhill (LHAG)*

BUSINESS DEDUCTIONS

ALLOWANCE (PART II)

Siva Subramanian Nair

We discussed the concept of plant in the earlier article and shall continue this discussion in this article with respect to decided local tax cases and an overview of past examination questions in this area.

Candidates would already be familiar with some of the tax cases which have deliberated on the concept of "plant". These are summarised below.

ASSETS WHICH ARE PLANT	
1. Yarmouth v France	horse
2. Jarrold v John Good & Sons Ltd.	moveable partitions
3. CIT v Taj Mahal Hotel	sanitary & pipeline fittings for a hotel
4. CIR v Barclay, Curle & Co. Ltd	dry dock
5. Munby v Furlong	books
6. Cook v Beach Station Caravan Ltd.	swimming pools
7. Leeds Permanent Building Society v Proctor	decorative screens
8. Schofield v R & H Hall Ltd.	concrete silos
9. Wangratta Woollen Mills Ltd. v FC of T	dyehouse
10. CIR v Scottish & Newcastle Breweries Ltd	electric light fittings, plaques, tapestries, pictures, murals, sculptures

ASSETS WHICH ARE NOT PLANT	
1. J Lyon & Co. Ltd. v Attorney -General	electric lamps & fittings
2. Imperial Chemical Industries of Australia & New Zealand Ltd. v FC of T	acoustic ceilings & electrical installations
3. Dixon v Fitch's Garage Ltd.	canopy over garage service area
4. St. John's School v Ward	laboratory & gymnasium
5. Hampton v Fortes Autogrill Ltd.	permanent false ceiling
6. Norman v Golder	human body

The nature of the business is important in determining whether an asset is an apparatus i.e. does the asset play a primary role in the generation of its income. Sanitary pipelines are essential assets for a business of providing accommodation but will fail the functional test when it comes to a college or trading company. Similarly swimming pools are "contributive assets" in an amusement park or recreation centre or simply a school for budding swimmers **BUT**, would hardly be regarded as an apparatus for an accounting firm!

Now let us review some Malaysian tax cases on "plant" in addition to the CIMB case that we looked at in the last article.

In **KPDHN V RESORT PORESIA BHD. [2015] MSTC 30-054** the question of whether the expenditure on turfing and grass on the golf course falls within the meaning of "plant" that qualifies for capital allowance under Schedule 3 of the Income Tax Act;

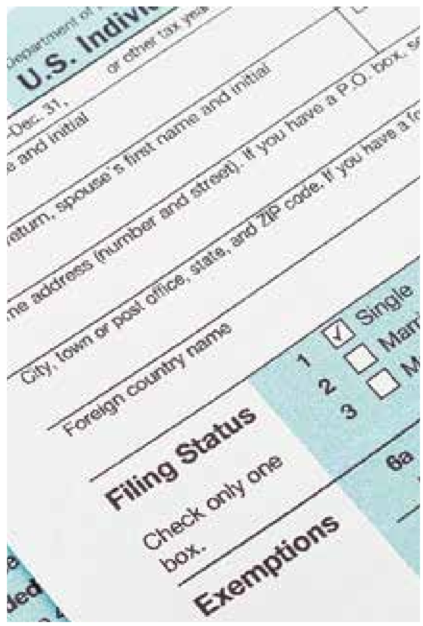
FACTS OF THE CASE

In the Year of Assessment 1995, Resort Poresia Bhd (the taxpayer) claimed capital allowance on the sum of RM18,094,574 which was incurred on turfing and grass on a golf course. The claim was disallowed by the IRBM.

DECISION OF THE COURTS

Initially, an appeal by the taxpayer to the **Special Commissioners of Income Tax (SCIT)** was unsuccessful on grounds that the golf course was premises within which membership fees were derived and the business was carried out **BUT** upon further appeal by the taxpayer to the **High Court** the decision of the **SCIT** was reversed. The IRBM now appealed to the Court of Appeal which upheld that the decision of the SCIT and allowed the appeal.

The taxpayer had argued that the finding of fact by the SCIT that the



taxpayer's income consists of licence fee, subscription and other club operations income, and the inference drawn (that the golf course was a premise within which the business was carried out) is fundamentally flawed as the SCIT has failed to distinguish the golf course from the turfing and grass.

However, the Court of Appeal noted that the functionality afforded by the different grasses is part and parcel of the quality of the golf course itself. The grasses chosen are an inseparable part and parcel of the golf course, and therefore if the golf course is premises from which the business of the taxpayer is carried on, the turf and grasses are part and parcel of such premises. The golf course was a facility with which golf is played, or in other words it is not a plant used in carrying out the business of **Resort Poresia Bhd**, but premises from which the business is carried on. Therefore, it is part of the setting (premise) and **NOT** an apparatus.

KETUA PENGARAH HASIL DALAM NEGERI V TROPILAND SDN BHD (2013) MSTC 30-054

FACTS OF THE CASE

The taxpayer carried on the business of car park operation. By an agreement dated 1 October 1984, the taxpayer entered into a lease agreement with the Penang Development Corporation ("PDC") pursuant to which the taxpayer leased a piece of land from PDC for a period of 30 years. The terms of the lease agreement required the taxpayer to erect a multi-storey car park on the land known as "Komtar"s Car Park". The taxpayer expended a sum of RM10,064,676.00 on the construction of the car park. The multi-storey car park in question was constructed under a privatisation scheme of PDC, and the privatisation contract between PDC and the taxpayer provided, among other matters, that the taxpayer shall ensure that the multi-storey car park was primarily used as a car park, the sole purpose and function of which shall be to service the users and occupiers of Kompleks Tun Abdul Razak. The Revenue disallowed the taxpayer's capital allowance claim on the car park. The issue at hand was whether the purpose built car park is a plant in the course of the taxpayer's business and thus, whether it qualifies for capital allowance?

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DECISION OF THE COURTS

(the parts highlighted is to assist candidates to justify whether an asset is a plant)

The Court of Appeal adopted the test formulated in **Yarmouth v. France** [discussed in the last article] for determining if an item qualified as "plant": In addition the court explained that it was mindful of the following passage from **Commissioners of Inland Revenue v. Scottish & Newcastle Breweries Ltd [1982] 2 All ER 230** which served as an apt reminder that in considering what constitutes a "plant", **due consideration must be given to the particular industry concerned as well as the specific circumstances of the individual taxpayer's own business:**

In the present case, from the terms of the lease agreement, it was not disputed that the taxpayer's business was providing a car park for the users and occupiers of Kompleks Tun Abdul Razak. The taxpayer's **income or revenue was derived from the provision of bays** to the users and occupiers of Kompleks Tun Abdul Razak to park their vehicles. Without the multi-storey car park, the **taxpayer could not have generated an income** from the land since the lease agreement expressly restricts the use to which the taxpayer may put the land. The multi-storey car park was also clearly **not part of the taxpayer's stock in trade**. It was not something the taxpayer purchased or constructed for sale. It was something that the taxpayer **used permanently for his business** – at least for as long as the lease subsists. In this regard, the Court of Appeal commented that more was not needed to then conclude that the multi-storey car park was in fact an apparatus or tool the taxpayer used for carrying on its business.

They opined that the test in **Yarmouth v France** gave the word [plant] the widest possible sense whereby the Court then had the foresight that a whole host of considerations must be taken into account in determining what was a plant in any given set of facts. **A restrictive meaning assigned to the word would have disastrous consequences to business enterprise and economic activity since the tools or apparatus of a business-**

man for carrying on his business undergo constant changes with passing time and advancing technology. According to the Court of Appeal, there was thus clearly a need to **take a holistic approach** in every case and **look at the taxpayer's business in its entirety** instead of taking particular facts in isolation.

The multi-storey car park that the taxpayer constructed in this case **cannot be discounted** as a plant **solely on account** of the fact **that it was a large structure** that can be **characterised as a building**. The taxpayer was a car park operator; that was its business in line with the terms of the lease agreement with PDC. In order to carry on this business, the taxpayer was required by the same agreement to construct the multi-storey car park. Once constructed, it was to be used to service the users and occupiers of Kompleks Tun Abdul Razak. The multi-storey car park was an essential component of the taxpayer's business without which the taxpayer could not have generated its revenue. In the circumstances, the Court of Appeal unanimously ruled that the IRBM's appeal was to be dismissed

Another interesting case is **IQSB v Ketua Pengarah Hasil Dalam Negeri** where the courts ruled in favour of the taxpayer in relation to whether telecommunication towers qualified as "plant". The lawyers for the taxpayers have benevolently published the arguments that they used in ensuring a success in this case. As these points will be useful for candidates answering examination questions on "plant" they are discussed below.

FACTS OF THE CASE

The taxpayer is in the business of providing telecommunication towers to telecommunication service providers who will then affix their antennas to the towers. The taxpayer owns 193 telecommunication towers which are installed on rented land.

The taxpayer's business income is from the licensing of the telecommunication towers. No staff, desk or office equipment was placed at the towers. No correspondence directed to the taxpayer is posted to the towers. The taxpayer's workers carry out maintenance works like painting and grass-cutting at the towers. All business activities of the taxpayer are carried out from its office.

THEIR ARGUMENTS:

They commenced with the prerequisite questions to be answered for claiming capital allowance, i.e. "whether the towers are an apparatus, i.e. does the taxpayer carry on its business **with** the purpose-built telecommunication towers?" followed by "whether the taxpayer carries on its business **in** the telecommunication towers, i.e. whether the towers are the taxpayer's place of business."

Although resembling a premise or setting for the conduct of the telecommunication business, we should "consider the totality of facts and evidence in respect of the functions of an asset in the business" to facilitate the making of a decision as to "whether the item concerned is utilised for the purposes of the trade or business as "plant" or as a "building" looking at the intention of the taxpayer in relation to the use and location of the asset."

Further they highlighted that assuming that the "towers are setting as the Revenue contended, they could still be "plant" since they are the only apparatus and tool used to carry on business." This they argued was clearly illustrated by the fact

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that "the towers are used to collect fees from the service operators, considering their functions in the trade of the taxpayer; the towers are the means through which the taxpayer generates profits. Without the purpose-built towers, the taxpayer does not have any business tool to carry out its business nor would it have any income"

They further attributed their success to the proper documentation of events and the maintenance of such documents which attested to *the fact that:*

a. The towers are used in the permanent employment of business and not for any other purposes;
b. Without the towers, the business of licensing the towers to the telecommunication service providers cannot take place;
c. The towers are the apparatus with which the business is carried out;
d. The towers were manufactured and installed according to the technical proposals provided by the telecommunication service providers. The technical proposals include site details, equipment descriptions, infrastructure dimensions, antennas, frequency of operation, power supply and civil mechanical and electrical requirements;
e. The structure of the towers is specifically designed and manufactured for the purpose of business. Likewise, the materials used are able to withstand strong wind and harsh weather; and
f. The towers are designed at a certain height to help enhance telecommunication connectivity and coverage of the equipment installed. Their function is not merely to hold antennas.

With the above review of tax cases we shall now proceed to recent CTIM examination questions (basically in the Revenue Law paper) on the topic of "what is plant/"

DECEMBER 18 QUESTION 4

(a) The question of what is 'Plant' was first deliberated in the case of **Yarmouth v France (1887) 19QBD647**.

Required:

Discuss the decision in the Yarmouth v France case and the principle established with regard to the determination of what is 'plant'.

(3 marks)

(b) In the Malaysian case of **Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd (2013) MSTC 30-054**, a purpose built car park was considered to be 'plant' within the meaning of Schedule 3 of the ITA.

Required:

Discuss facts of the case and the basis for the decision in that case to treat the car park as 'plant' for the purposes of Schedule 3 of the ITA. (10 marks)

Also in **June 18 Question 6(a)**

Rococos Sdn Bhd ("Rococos") is a company incorporated on 1 January 2014. Since 2 March 2014, Rococos is in the business of manufacturing rubber linings for automobiles. For the production of these rubber linings, Rococos incurred expenditure on plant and machinery to produce the rubber linings in its factory in Kulai, Johor.

Required:

Advise Rococos on the requirements that it needed to fulfil to claim capital allowance pursuant to Schedule 3 of the ITA in respect of the capital expenditure it incurred on its plant and machinery and whether there are any tests to determine what amounts to "plant"?

Again in December 17 Question 4 (resembling the IQSB case)

"Telco Sdn Bhd ("Telco") is in the business of licensing out spaces of its telecommunication towers. In essence, Telco had constructed the telecommunication towers for the same to be licensed out to telecommunication companies in Malaysia. Such companies will then install its satellites or antennas on the towers. The telecommunication towers can be dismantled, moved and reinstalled at other places when required.

Telco does not have any other buiness other than this and the telecommunication towers are its only apparatus in generating income for the company. It houses its office premise in a separate building. Telco does not conduct its business at the telecommunication towers. The telecommunication towers do not have any roof or walls and therefore, there is no desk or office equipment

placed at the telecommunication towers. Telco conducts its business at an office located separately from the telecommunication towers.

Subsequent to the construction of the telecommunication towers, Telco claimed capital allowances in respect of the construction cost incurred.

Required:

Based on the above facts, advice Telco on whether it is able to claim capital allowances pursuant to Schedule 3 of the Income Tax Act 1967 in respect of the capital expenditure it incurred on its plant or machinery."

The Examiner has indicated that the marks are awarded amongst others for identification of the issues, relevant facts and other considerations including a discussion of the relevant issues, salient facts and subject matter in question

Telco as a company that uses the telecommunication towers as its sole apparatus or tool to carry on its business

- The functions of the telecommunication towers towards its business
- Whether the telecommunication towers are deemed to be a "plant or machinery" under Schedule 3 of the Income Tax Act 1967
- The nature of use of the telecommunication towers
- The reason for the construction of the telecommunication towers

In addition marks are given for accurate identification of the relevant tests, the legal provisions, and conditions stipulated plus the application of the conditions.

Similar allocation pattern is seen for the 20 marks in December 16 Question 4

"Infras Sdn Bhd ("Infras") is in the business of operating a futsal arena, where it has synthetic futsal pitches. In essence, Infras will construct the new futsal pitches. In such construction, it incurred capital expenditure on the infilling, draining, textile material and sand filled of the synthetic grass pitch.

Infras does not have any other business other than this and the futsal pitches are its only apparatus in generating income for the company. It houses its office premise in a separate building. Subsequent to the construction of the new futsal pitches, Infras claimed capital allowance in respect of the construction cost incurred.

Based on the above facts, advice Infras on whether it is able to claim capital allowance in respect of the capital expenditure it incurred on its plant or machinery."

Required:

Discuss with reference to decided case law and relevant statutory provisions of the ITA 1967, whether Infras is able to claim capital allowance in respect of the expenditure incurred on the synthetic futsal pitches.

That concludes our discussion on "plant". All the best to the candidates attempting the December examinations & God bless!

***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
Thornton, R.& Kannaa T. Manual of Capital Allowances and Charges
Yeo, M.C., Alan. Malaysian Taxation, YSB Management Sdn Bhd

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: OCTOBER - DECEMBER 2019

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
OCTOBER 2019								
Workshop: Tax Issues and Law Relating to Property Developers, JMB/MC and Investors	2 Oct	9a.m. - 5p.m.	Kuala Lumpur	Dr. Tan Thai Soon	400	500	600	8 WS/040
Workshop: Public Rulings 2018 & 2019	8 Oct	9a.m. - 5p.m.	Johor Bahru	Kularaj	350	450	500	8 WS/036
Workshop: Capital Statements at a Glance – Is Your Capital Statement a Reflection of Your Actual Net Worth at any Point of Time	8 Oct	9a.m. - 5p.m.	Kuala Lumpur	Karen Koh	400	500	600	8 WS/042
Workshop: The Effects of Digital Tax in Malaysia	10 Oct	9a.m. - 5p.m	Penang	Sivaram Nagappan	350	450	500	8 WS/032
2020 Post-Budget Seminar	24 Oct	9a.m. - 5p.m	Kuala Lumpur	Various Speakers	350	500	600	10 BS/001
Public Holiday ***(Deepavali: 27 Oct)***								
NOVEMBER 2019								
Workshop: Public Rulings 2018 & 2019	5 Nov	9a.m. - 5p.m	Kularaj	Dr. Tan Thai Soon	350	450	500	8 WS/038
Workshop: Tax Treatment on Interest – A Practical Approach & Latest Updates	5 Nov	9a.m. - 5p.m.	Kuala Lumpur	Karen Koh	400	500	600	8 WS/043
Workshop: Tax Audits & Investigations – Inception to Disposition	13 Nov	9a.m. - 5p.m.	Kuala Lumpur	Karen Koh	400	500	600	8 WS/0
2020 Post-Budget Seminar	20 Nov	9a.m. - 5p.m.	Kuala Lumpur	Various Speakers	350	500	600	10 BS/002
2020 Post-Budget Seminar	20 Nov	9a.m. - 5p.m	Melaka	Various Speakers	350	500	600	10 BS/003
2020 Post-Budget Seminar	21 Nov	9a.m. - 5p.m	Penang	Various Speakers	350	500	600	10 BS/004
2020 Post-Budget Seminar	21 Nov	9a.m. - 5p.m.	Johor Bahru	Various Speakers	350	500	600	10 BS/005
2020 Post-Budget Seminar	25 Nov	9a.m. - 5p.m	Ipoh	Various Speakers	350	500	600	10 BS/006
2020 Post-Budget Seminar	25 Nov	9a.m. - 5p.m	Kuching	Various Speakers	350	500	600	10 BS/007
2020 Post-Budget Seminar	26 Nov	9a.m. - 5p.m	Kota Kinabalu	Various Speakers	350	500	600	10 BS/008
2020 Post-Budget Seminar	27 Nov	9a.m. - 5p.m	Subang	Various Speakers	350	500	600	10 BS/009
Public Holiday ***(Prophet Muhammad's Birthday: 9 Nov)***								
DECEMBER 2019								
Workshop: Group Relief Under Section 44A – A Practical Approach & Latest Updates	3 Dec	9a.m. - 5p.m	Kuala Lumpur	Karen Koh	400	500	600	8 WS/0
2020 Post-Budget Seminar	5 Dec	9a.m. - 5p.m	Kuala Lumpur	Various Speakers	350	500	600	10 BS/010
Seminar: Taxation of Land Transaction	12 Dec	9a.m. - 5p.m	Kuala Lumpur	Various Speakers	450	550	650	8 SE/020
Workshop: Tax Fraud Examination – How to Conduct a Proper Tax Fraud Audit?	17 Dec	9a.m. - 5p.m	Kuala Lumpur	Karen Koh	400	500	600	8 WS/0

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 is insufficient number of participants. A minimum of 3 days notice will be given.

ENQUIRIES : Please call Ms Yus, Ms Jas and Ms Zaimah at 03-2162 8989 ext 121, 131, 107 and 119 respectively or refer to CTIM's website **www.ctim.org.my** for more information on the CPD events.

2020 BUDGET SEMINARS

CHARTERED TAX INSTITUTE OF MALAYSIA

i) 2020 Budget Seminar with the Ministry of Finance

Date / Event Code	Venue	Session 1: 9:00 am – 10:15 am	Session 2: 11:00 am – 12:15 pm	Session 3: 2:00 pm – 4:00 pm
		Summary of 2020 Budget Proposals	Forum Discussion on 2020 Budget Proposals – Its Changes & Impact to Taxpayers	Effective Tax System in Meeting Sustainable Development Goals and Inclusive Economic Growth
24 Oct 2019 (Thursday) BS/001	Manhattan Ballroom, Berjaya Times Square Hotel, Kuala Lumpur	Chairman : Mr Chow Chee Yen Speaker : Mr MA Sivanesan *(invited)*	Chairman : Ms Phan Wai Kuan Panelists : Mr MA Sivanesan Ms Yeo Eng Ping	Chairman : Ms Farah Rosley Speakers : YBhg. Dato' Azman Mahmud YBhg. Dato' Chua Tia Guan

ii) KLANG VALLEY

Date / Event Code	Venue	Session 1: 9:00 am – 10:15 am	Session 2: 11:00 am – 12:15 pm	Session 3: 2:00 pm – 4:00 pm
		Summary of 2020 Budget Proposals	Forum Discussion on 2020 Budget Proposals – Its Changes & Impact to Taxpayers	Tax Updates & Latest Developments
20 Nov 2019 (Wednesday) BS/002	Renaissance Hotel, Kuala Lumpur	Chairman : Ms Farah Rosley Speaker : LHDNM	Chairman : Ms Farah Rosley Panelists : LHDNM Ms Phan Wai Kuan	Chairman : Mr K Sandra Segaran Speakers : Mr Soh Lian Seng Mr S Saravana Kumar
27 Nov 2019 (Wednesday) BS/009	The Saujana Hotel Subang	Chairman : Ms Stefanie Low Speaker : LHDNM	Chairman : Ms Stefanie Low Panelists : LHDNM Mr David Lai	Chairman : Dr Zulfahmy Speakers : Mr Chow Chee Yen Mr Sudharsanan Thillainathan
5 Dec 2019 (Thursday) BS/010	Seri Pacific Hotel, Kuala Lumpur	Chairman : Mr Alan Chung Speaker : LHDNM	Chairman : Mr Alan Chung Panelists : LHDNM Mr Thenesh Kannaa	Chairman : Mr Mohd Noor Abu Bakar Speakers : Mr Zen Chow Mr Vijey M Krishnan

iii) OUTSTATION

Date / Event Code	Venue	Session 1: 9:00 am – 10:15 am	Session 2: 11:00 am – 12:15 pm	Session 3: 2:00 pm – 4:00 pm
		Summary of 2020 Budget Proposals	Forum Discussion on 2020 Budget Proposals – Its Changes & Impact to Taxpayers	Tax Updates & Latest Developments
20 Nov 2019 (Wednesday) BS/003	Ramada Plaza, Melaka	Chairman : Mr Choo Ah Kow Speaker : LHDNM	Chairman : Mr Choo Ah Kow Panelists : LHDNM Ms Stefanie Low	Chairman : To be advised Speakers : Mr Chong Mun Yew Ms Irene Yong
21 Nov 2019 (Thursday) BS/004	Jen Hotel, Penang	Chairman : Ms Kellee Khoo Speaker : LHDNM	Chairman : Ms Kellee Khoo Panelists : LHDNM Ms Leow Mui Lee	Chairman : Mr Fan Kah Seong Speakers : Ms Gwendolyn Lau Mr S Saravana Kumar
21 Nov 2019 (Thursday) BS/005	Mutiara Hotel, Johor Bahru	Chairman : Mr Jesu Dason Speaker : LHDNM	Chairman : Mr Jesu Dason Panelists : LHDNM Thean Szu Ping	Chairman : To be advised Speakers : Mr David Lai Mr Vijey M Krishnan
25 Nov 2019 (Monday) BS/006	Weil Hotel, Ipoh	Chairman : Mr Lam Weng Keat Speaker : LHDNM	Chairman : Mr Lam Weng Keat Panelists : LHDNM Mr Thenesh Kannaa	Chairman : Mr Chak Kong Keong Speakers : Ms Emily Wong Ms Ivy Ling
25 Nov 2019 (Monday) BS/007	The Waterfront Hotel, Kuching	Chairman : Mr Kenny Chong Speaker : LHDNM	Chairman : Mr Kenny Chong Panelists : LHDNM Mr Soh Lian Seng	Chairman : To be advised Speakers : Ms Regina Lau Mr Alan Chung
26 Nov 2019 (Tuesday) BS/008	Le Meridien Hotel, Kota Kinabalu	Chairman : Ms Viviana Lim Speaker : LHDNM	Chairman : Ms Viviana Lim Panelists : LHDNM Datuk Goh Chee San	Chairman : Mr Philip Yong Speakers : Mr Chow Chee Yen Mr Jason Tan

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