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HIGHLIGHTS OF BUDGET 2019

+ Corporate Tax Rates-Malaysia and Beyond
+ Insights Into SST Appeal Process
+ Business Deductions: Prohibited Expenses (Part IV)

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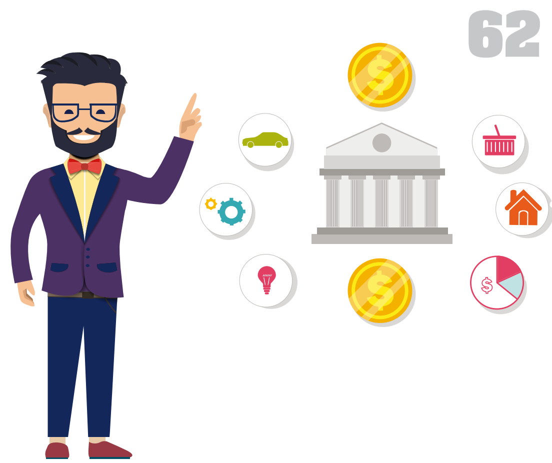

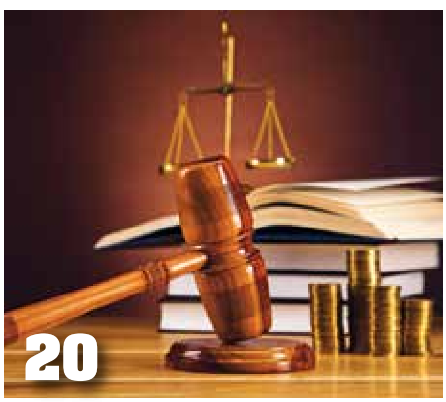

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INVITATION TO WRITE

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

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

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SEAH SIEW YUN

BUDGET 2019 – A RESURGENT MALAYSIA.....

The National Budget 2019 themed "A Resurgent Malaysia, A Dynamic Economy, A Prosperous Society" was announced on 2 November 2018 with several key focus areas and key strategies to restore the Malaysian economy as an Asian Tiger.

Some of the key take-aways from Budget 2019 and the Finance Bill 2018 (as amended at the point of writing of my speech) which I believe will affect members and their clients are: -

- Unabsorbed business losses shall be available for deduction for a maximum period of seven consecutive years of assessment.
- Unutilised reinvestment allowance (RA) be allowed to be carried forward up to a maximum period of seven consecutive years of assessment upon expiry of the qualifying period of RA.
- Removal of the word "technical" as contained in the definition of the special classes of income under Section 4A(ii) of the ITA, consequently widened the definition of services under Section 4A to cover both technical and non-technical services.
- Real Property Gains Tax (RPGT) rates of 10%, 5% and 10% for disposal of real property and shares in real property companies in the 6th and subsequent years affecting company, individuals (citizen/ permanent resident) and individual (non-citizen/non-permanent resident respectively (prior to these changes the RPGT rates were 5%, 0%, 5% respectively). In the case of disposals made by a citizen or permanent resident of Malaysia, the acquisition price of a chargeable asset acquired prior to 1 January 2000 shall be deemed to be the market value of the chargeable asset as at 1 January 2000.
- Payment by a Malaysian resident to any Labuan company is not allowed a tax deduction subject to any rules prescribed by the Minister of Finance. The election for income tax at fixed rate of RM20,000 under Labuan Business Activities Tax Act (LBATA) 1990 will be abolished together with the restriction on transactions conducted in Ringgit Malaysia and the restriction on transactions between a Labuan entity and a resident of Malaysia.
- Service tax will be imposed on taxable services imported into Malaysia which will be implemented in two phases: -
  - Services imported by businesses (B2B) to be implemented from 1 January 2019
  - Services imported by consumers (B2C) to be implemented from 1 January 2020

Special Voluntary Disclosure Programme

Special Voluntary Disclosure

Programme (SVDP), unveiled in Budget 2019, is a special programme that will offer reduced penalty rates for voluntary disclosure (VD) of tax non-compliance for YA 2017 and preceding YAs. This SVDP is effective from 3 November 2018 to 30 June 2019.

The penalty rates on the incremental income tax payable under this SVDP are as follows: -

Period when VD is made	Penalty rate
From 3 November 2018 – 31 March 2019	10%
From 1 April 2019 – 30 June 2019	15%

Effective from 1 July 2019, the tax penalty rates will range between 80% to 300%. The IRBM will accept in good faith all VDs made under the SVDP. Further review will not be made on the reported information and tax audit investigation action will not be taken on the year of assessment where VD has been made. The IRBM has also issued Operational Guidelines and Frequently Asked Questions with regards to the SVDP which has been reported to members via e-CTIMs.

Submissions to various authorities on issues raised by members on the 2019 Budget Speech and Finance Bill 2018: -

- **Joint Memorandum to the IRBM**
  CTIM, together with other professional bodies had submitted a Joint Memorandum to the Director General of IRBM, Dato' Sri Sabin Samitah on issues arising from 2019 Budget Speech and the Finance Bill 2018 in relation to the proposed amendments to tax legislations.
- **Memorandum to the RMCD**
  The Institute has also submitted a Memorandum to the Director General of RMCD, Dato' Sri Subromaniam Tholasy on indirect tax issues arising from 2019 Budget Speech and the Finance Bill 2018 such as imposition and scope of service tax on taxable services imported into Malaysia and the service tax due on imported taxable service.

National Indirect Tax Conference

I am pleased to inform that CTIM, in collaboration with the RMCD is planning to organise a National Indirect Tax Conference by the end of February 2019. Members can look forward to this event as there will be many indirect tax issues on the recently implemented Sales Tax Act 2018 and Service Tax Act 2018 that will be discussed during the conference.

CPD Events

CTIM successfully held a series of 2019 Budget Seminars from 21 November 2018 to 12 December 2018 in Kuala Lumpur and various locations nationwide that had almost full capacity attendance. Members can look up our CPD Event Calendar for Quarter 1 of 2019 (January 2019 to March 2019) in this *Tax Guardian* and the CPD events listed in the Institute's website (www.ctim.org.my) for more details on coming CPD events.

CTIM "Practitioner's Series" In Collaboration With Bank Negara Malaysia

The Public Practice Committee had successfully organised the CTIM "Practitioner's Series" in collaboration with Bank Negara Malaysia on the topic of "Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001". The half-day talk was held on 30 October 2018 in CTIM's training room with participants' positive feedback.

Membership

The "Member Get Member campaign" is still ongoing and the offer will expire on 14 March 2019. I would strongly encourage members to take up this offer as this campaign benefits members and the Institute.

On 28 November 2018, the Institute was invited by the Persatuan Pegawai Kanan LHDNM to give a briefing on CTIM's membership recruitments. The event was held at LHDNM Headquarters, Cyberjaya and was supported by the Director General of LHDNM in order to encourage Persatuan Pegawai Kanan LHDNM members to become CTIM members.

Editor's Note

YEO ENG PING

It was hardly a quiet year-end for tax stakeholders and as we headed into the last quarter of 2018, we had the Budget 2019 unveiled on 2 November, followed by the then eagerly-awaited Finance Bill more than two weeks later. It was the maiden budget for the new government and was watched with interest by various groups including the rating agencies, which have reacted quite mildly despite the upward revision of the deficit from 2.8% to 3.7% and GDP growth projection of 4.8% for 2019. The budgeted direct tax collection (excluding 2019 tax measures) was estimated at RM135b, though the Inland Revenue Board Malaysia (IRBM) has not yet announced their actual tax collection target for 2019. But three weeks later, oil prices plunged 30% to its lowest level since late 2017, and has since hovered at the "mid-50s" (USD) per barrel. While the budget was prepared based on oil price at USD72 per barrel, the Minister of Finance had in December said the government will recalibrate the 2019 budget only if the average crude oil price dips below USD50 per barrel. Though the recalibration scenario is not likely based on the latest forecasts on oil price at the low 60s, it will not be a stretch to say the lower oil price will increase the pressure to collect more tax. At the same time, the global economy in the last two months of 2018 became more volatile with mounting trade tensions and fears of a tightening of US monetary policy. Those headwinds continue to blow into 2019, and will no doubt influence the direction of our tax policy and enforcement in Malaysia.

So lets pivot to the 2019 tax measures. These are elaborated in detail in our Budget 2019 article, but there are a few interesting observations. Overall, the tax measures were geared towards expanding the base or preserving tax revenue for the government – these include a higher RPGT rate for disposals after the 5th year, limitation of losses and capital allowances, limitation of group relief, introducing the concept of "permanent establishment" in the local legislation, new earning stripping rules, expansion of scope of "related parties" subject to transfer pricing rules, limitation of deduction for certain payments to Labuan companies, limitation of stamp duty exemptions, and imposing service tax on imported

services. There were few new tax incentives introduced.

But, on the positive side, the government is listening. This came through loud and clear on the original proposal (which were already drafted in the Finance Bill 2018) to limit the carry-forward of reinvestment and investment tax allowances i.e. RA and ITA in addition to the limitation of losses and capital allowances. There was strong feedback against the introduction of the whole idea, and in particular, businesses felt that RA and ITA should be seen differently as taxpayers had made investments in reliance of such incentives. In the end the government agreed to allow RAs and ITAs to continue to be carried forward indefinitely. There was of course also modification to the proposed limitations on payments to Labuan companies.

The biggest current topic now is probably the special voluntary disclosure programme (SVDP). Any income reported from 3 November 2018 to 30 June 2019 will be subjected to reduced penalty rates (depending on timing of the disclosure), and penalties will increase substantially (a least 80% of tax undercharged) thereafter. The IRBM is actively promoting the SVDP through talks and media. Many questions have been raised by taxpayers including whether the IRBM will indeed accept the disclosures in good faith, and will not subject the taxpayer to additional years of audit or use the information obtained from the SVDP for other tax audit purposes. The take-up rate and success of this programme would add to tax collections, and some (unverified) estimate this at about RM10b. By the way, you may be one of the 80,000 who might have received a computer-generated letter or email from the IRBM at the end of 2018 personally informing you of the SVDP. This is meant to be a standard notification, but more importantly, this is a powerful display of the IRBM's database and technology capability.

Finally, the Tax Review Committee has also been active, and it is understood that they have called for discussions on a number of work streams, including the tax policy around the tax incentives regime going forward.

Going by the current external and local economic challenges, we can expect a busy tax year for 2019 and we hope the government will continue to listen. Wishing all success and happiness this year!

CPD EVENTS

The following CPD events were conducted in the 4th quarter of 2018:

- Workshop: Managing Tax Investigation & Tax Audits & Your Property Transaction
- Seminar: Topical Tax Issues Facing SMEs
- Seminar: Recent Tax Cases
- Workshop: Recent Developments on Practical Issues on Sales Tax & Service Tax
- 2019 Budget Seminars

The workshop on "Managing Tax Investigation & Tax Audits" was conducted by Ms. Yeo Mei Sim in Kota Kinabalu & Kuching. The speaker highlighted the do's & don'ts during the tax audits and investigations as well as presented some examples of tax avoidance issues based on the IRBM list of hot tax issues.

The Institute organised a series of seminars entitled "Topical Tax Issues facing SMEs" in Kuala Lumpur (2 October 2018), Melaka (4 October 2018), Ipoh (8 October 2018) Johor Bahru (17 October 2018), Penang (18 October 2018), Kota Kinabalu (22 October 2018) and Kuching (23 October 2018). The speakers were Ms. Farah Rosley, Mr. K Sandra Segaran, Mr. Chow Chee Yen, Ms. Leow Mui Lee, Ms. Stefanie Low, Mr. Lam Weng Keat, Mr. Christopher Low and Mr. Harvindar Singh. A total of 466 participants attended the above seminars of which 215 participants are CTIM members from small and medium firms and eligible for a subsidised fee of 30% from the actual registration fee. The subsidy is the balance of a Ministry of Finance grant made available to CTIM members.

Mr. S Saravana Kumar of Lee Hishammuddin, Allen & Gledhill conducted a seminar on "Analysis of Recent Tax Cases 2018" in Kuala Lumpur on 18 October 2018. The speaker will be conducting the same seminar for outstation members in Ipoh, Johor Bahru, Penang, Kota Kinabalu and Kuching in the first quarter of 2019.

The workshop on "Recent Developments on Practical Issues on Sales Tax & Service Tax" was conducted by Ms. Annie Thomas of the RMCD on 29 November 2018 in Kuala Lumpur and attended by more than 35 participants. The speaker highlighted the key recent developments arising from the Sales and Service Tax Act 2018, Sales and Service Tax Regulations 2018, 2019 Budget Updates and the Director General's decisions (amendments)/SST Directive.

THE 23RD CTIM GRADUATION CEREMONY 2018

The 23rd CTIM Graduation Ceremony 2018 was held on 20 October 2018 at the Sheraton Imperial Kuala Lumpur Hotel. The Guest of Honour, the Chief Executive Officer, Inland Revenue Board Malaysia, YBhg Dato' Sri Sabin Samitah graced the joyous occasion with the graduates and their families, Council Members, examiners and moderators.

2019 BUDGET SEMINARS

On 21 November 2018, CTIM successfully conducted its annual Budget Seminar at the Renaissance Hotel, Kuala Lumpur. The first session of the seminar was on the "Summary of 2019 Budget Proposals" presented by Ms. Masyita Ismail, Principal Assistant Secretary of Direct Tax Policy, Ministry of Finance Malaysia.

The second session which was on "Forum Discussion on 2019 Budget Proposals – Its Changes & Impact to Taxpayers" was dealt by the panel members as follows:

Chairman:
Mr. K Sandra Segaran,
Council Member of CTIM.

Panellists:
1. **Ms. Mahfuzah Baharin**
   Section Head of Direct Tax Policy, Ministry of Finance Malaysia.
2. **Mr. Abu Tariq Jamaluddin**
   Director of Legal Department, Inland Revenue Board Malaysia.
3. **Ms. Annie Thomas**
   Senior Assistant Director of Technical Management Internal Tax Division, Royal Malaysian Customs Department.
4. **Mr. Chow Chee Yen**
   Council Member of CTIM.

The third session of the seminar was on "The Future of Taxation – Looking over the Horizon" moderated by CTIM's President, Ms. Seah Siew Yun. The speakers presented the following topics:

- **Taxation of the Digital Economy**
  By Mr. Yee Wing Peng, Chief Executive Officer, Deloitte Malaysia
- **Tax Reforms in the Region**
  By Mr. Bhupinder Singh, Vice-President, Group Tax, PETRONAS
- **2019 Economic: Outlook and Analysis**
  By Mr. Lee Heng Guie, Executive Director, Socio-Economic Research Centre

The last session of the seminar was the panel discussion session moderated by the President and participated by the above speakers. Dr. Veerinderjeet Singh was invited as panellist to present on the Tax Revenue Enhancement & Tax Reform Framework. The seminar was attended by over 670 participants comprising of tax practitioners and members from commerce and industry.

CTIM also successfully organised a series of 2018 Budget Seminars in November and December 2018 at the following locations namely Penang (30 November 2018), Kota Kinabalu (3 December 2018), Petaling Jaya (4 December 2018), Johor Bahru (5 December 2018), Subang (7 December 2018), Kuching (10 December 2018), Melaka (10 December 2018), Ipoh (11 December 2018) and Kuala Lumpur (12 December 2018).

SEMINAR PERCUKAIAN KEBANGSAAN (SPK) 2018

CTIM representatives were invited by the Inland Revenue Board Malaysia to participate in their Seminar Percukaian Kebangsaan (SPK) 2018 as panellist at various locations across the country between 13 November 2018 and 6 December 2018. The representatives from CTIM for the IRBM SPK 2018 are Ms. Seah Siew Yun (Kuala Lumpur, Kota Bharu, Ipoh, Kuala Terengganu, Muar & Kluang), Mr. Zen Chow (Bukit Mertajam), Ms. Farah Rosley (Johor Bahru), Ms. Kellee Khoo (Sungai Petani), Mr. Choo Ah Kow (Melaka), Mr. Kenny Chong (Kuching), Mr. Thenesh Kannaa (Seremban & Tawau) , Mr. Chow Chee Yen (Kota Kinabalu), Mr. Soh Lian Seng (Penang), Mr. Wong Seng Chong (Kuantan), Mr. Koong Lin Loong (Bintulu), Mr. Lam Weng Keat (Taiping) and Mr. K Sandra Segaran (Shah Alam).

BRANCH COMMITTEE MEETINGS

The Deputy President, Ms. Farah Rosley has visited two CTIM branches namely Penang and Kota Kinabalu on 18 October 2018 and 22 October 2018 respectively to meet the Branch Committee Members. Several issues were discussed during the Meetings i.e CTIM membership promotion via Member Get Member Campaign, collaborations on the CPD events with local authorities, career talk with local universities and courtesy visits to IRBM local branches.

HIGHLIGHTS OF BUDGET 2019

Following the tabling of the Malaysian Budget 2019 in Parliament on 2 November 2018 by the Finance Minister, YB Lim Guan Eng, the Finance Bill 2018 has become the talk of the town, with taxpayers and practitioners busy reviewing the changes and implications that would be brought about by the new Budget where some of the proposed changes were unpopular amongst taxpayers, the major one being the seven years limitation to be imposed on business losses and tax reliefs. This had led to many discussions which culminated into the proposals made by the Amendment In Committee dated 5 December 2018 which were then accepted as amendments to the Finance Bill 2018 - the most welcomed amendment would be the decision to not impose the seven years limitation on capital allowance and investment tax allowance. It is highlighted that at the time of publication of this article, the relevant bills and orders would have been gazetted and taken effect accordingly. Here's a summary of the key features of the updated Finance Bill 2018:

S. Saravana Kumar, Ivy Ling Yieng Ping & Steward Lee Wai Foong

INCOME TAX

A. DEFINITION OF RESEARCH AND DEVELOPMENT ("R&D")

Section 4 of the Finance Bill 2018 introduces a definition to the phrase "research and development" in the Income Tax Act 1967 ("**ITA**"). At present, the definition is only contained in the Promotion of Investment Act 1986 ("**PIA**"). The proposed definition is:

> *"'research and development' means any* ***systematic, investigative and experimental study*** *that involves* ***novelty or technical risk*** *carried out in the field of* ***science or technology*** *with the object of acquiring* ***new knowledge or using the results of the study*** *for the production or improvement of materials, devices, products, produce, or processes, but does not include-*
> *(a) quality control or routine testing of materials, devices or products;*
> *(b) research in the social sciences or the humanities;*
> *(c) routine date collection;*
> *(d) efficiency surveys or management studies;*
> *(e) market research or sales promotion;*
> *(f) routine modifications or changes to materials, devices, products, processes or production methods; or*
> *(g) cosmetic modifications or stylistic changes to materials, devices, products, processes or production methods."*

The definition contained in the PIA is also amended accordingly via Section 32 of the Finance Bill 2018.

It is noted that this restrictive definition is aimed to tighten the allowance of the various tax incentives currently available for companies involved in research activities (see Sections 34A and 34B of the ITA). The Inland Revenue Board Malaysia (**IRBM**) did mention in the National Tax Seminar 2018 on 13 November 2018 that by restricting the type of activities which would fall under this new definition, it hopes that only companies involved in genuine R&D would be given the incentive, i.e. R&D which would lead to the production of intangibles that companies would want to patent or protect through intellectual property laws. In other words, there must be an element of innovation or novelty.

Although this might be a favourable step to align the allowance of this incentive with its purpose, the scope of this definition is still open to interpretation and application.

B. AMENDMENT TO SECTION 4A

Section 4A(ii) of the ITA which provides for a special class of taxable income, i.e. 'technical advice, assistance or services' rendered by non-residents, has also been widened through the removal of the word 'technical' and amended as such:

> *"(ii) amounts paid in consideration of* ***any*** *advice given, or assistance or services rendered in connection with the management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; or"*

The effect of this amendment is that the scope of this class of income is significantly widened whereby "technicality" is no longer an element required for a service to be taxed under this provision.

C. PLACE OF BUSINESS

Section 12 of the ITA is amended to include a wide definition for 'place of business' which mirrors the definition given to 'permanent establishment' that is commonly found in all Double Taxation Agreements ("**DTA**"). This would be a deeming provision which would deem any business income attributable to a 'place of business' to be derived from Malaysia and hence, subject to tax in Malaysia. In light of the OECD's Base Erosion and Profits Shifting ("**BEPS**") Action 7, this inclusion is to provide clarity and to address the nexus issue which is commonly found in cases pertaining to permanent establishments.

Also, this provision aims to address situations where a non-resident from a country which has not entered into a DTA with Malaysia carries on a business in Malaysia by applying the same test consistent with the test applicable for a resident of a DTA country.

The definition for 'place of business' is given as:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a warehouse;
(g) a building site, or a construction, an installation or an assembly project;
(h) a farm or plantation; and
(i) a mine, an oil or gas well, a quarry or any other place of

extraction of natural resources;

A person is also deemed to have a place of business in Malaysia if that person:

(a) carries on supervisory activities in connection with a building or work site, or a construction, an installation or an assembly project; or

(b) has another person acting on his behalf who-
- habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification;
- habitually maintains a stock of goods or merchandise in that place of business from which such person delivers goods or merchandise; or
- regularly fills orders on his behalf.

However, the definition of 'permanent establishment' found in existing DTAs would still prevail over this new deeming provision in the ITA.

D. LIMITATION TO CARRY FORWARD BUSINESS LOSSES

Prior to this, in general, companies could carry forward their business losses from a particular year of assessment ("**YA**") to the following years without any limitation. Now, the proposed amendment would restrict the utilisation of carry forward business losses to only **seven years** and any business losses remaining thereafter would be disregarded and no longer be available.

Based on the first draft of the Finance Bill 2018, it would seem that this restriction would not apply to business losses incurred before 2018. However, following the proposal made by the Amendment In Committee, the limitation for business losses would now apply to **all losses**, i.e. including losses incurred before the YA 2018. In other words, all of the existing carried forward business losses must be utilised by the year 2025. The updated Finance Bill 2018 specifically provided that if any business losses that were incurred in the YA 2018 or any preceding YAs remain unutilised after the year 2025, they would be disregarded and no longer be available.

In essence, this restriction is aimed to prevent companies from utilising business losses as a method of tax planning and to curb tax leakages. Further, this would impose an additional responsibility on taxpayers to track and prepare a record on the business losses incurred for each particular YA.

However, it is viewed that the government should not have imposed a catch-all limitation and certain exceptions or flexibility should have been made available to accommodate certain industries which require a long gestation period before they can even break even and make profit. Further, certain companies would have incurred substantial expenses before they even commence business and no profits would be available for these expenses to be deducted until several years down the road – in certain cases, the losses incurred may have expired before they can even be claimed.

Although the move by the government to not impose the limitation for capital allowance is an encouraging sign of them being mindful of taxpayers, it is still hoped that the government would also reconsider and refine the strictness of this limitation on business losses in order to prevent any instances of unfairness to taxpayers who have genuinely suffered losses but are denied the benefit of carrying them forward.

E. LIMITATION TO REINVESTMENT ALLOWANCE ("RA"), INVESTMENT ALLOWANCE FOR SERVICE SECTORS ("IASS"), AND PIONEER LOSSES ("PL")

A seven year time limit has also been imposed on the carrying forward of unutilised RA, IASS, and PL and the calculation of this time limit shall commence after the expiry of their relevant qualifying period:

Type of Tax Incentive	Commencement of Seven Years' Time limit
RA	15 years after the allowance of RA
IASS	Five years after the allowance of IASS
PL	Expiry of the pioneer status

F. GROUP RELIEF FOR COMPANIES

As a method of tax planning, companies were allowed to 'surrender' up to 70% of their adjusted losses to one or more of its related companies with no time limitation. However, the new amendment to Section 44A of the ITA has restricted this group relief to only new companies and can only be claimed for three consecutive YAs.

In other words, only a new company is allowed to surrender its losses after 12 months from the date it first commences operation and the losses can only be surrendered for a period of three consecutive YAs only. Further, if the company claiming the losses has unutilised investment tax allowances or adjusted loss from a pioneer business, they would not be entitled to this group relief.

A transitional provision is also provided for surrendering companies that had commenced their operations since the YA 2015:

1st YA When the Surrendering Company Commences its Operations	YA Group Relief Can Be Claimed
2015	2019
2016	2019 & 2020
2017	2019, 2020, 2021

G. DEFINITION OF CONTROLLED COMPANIES FOR TRANSFER PRICING

In recognition of circumstances where a company could still exert control over another company without a majority shareholding in the latter, the insertion of Section 140A(5A) in the ITA aims to provide a wider definition apart from purely shareholding elements.

Under the proposed amendment, Company A would be deemed to be related to Company B if:

- one company holds at least 20% shareholding in the other company (previously more than 50%); or
- a holding company holds at least 20% shareholding in both companies;

AND
(either one of the following)

- the business operations of Company A depends on the proprietary rights (e.g. patents, trademarks, or technological know-how) provided by the holding company or Company B; or

- the business activities of Company A (e.g. purchases, sales, prices and conditions relating to the supply of goods or services) are influenced by the holding company or Company B; or
- where the holding company or Company B appoints at least one of the directors of Company A.

With this expanded scope, group of companies or conglomerates are advised to reassess the shareholding structure and relationship of each company to determine whether they would be captured under this new amendment and deemed to be a related company for transfer pricing purposes. This is to ensure that these newly deemed associated companies would comply with the transfer pricing obligations imposed under the ITA and to avoid unwarranted penalties.

H. RESTRICTION ON THE DEDUCTIBILITY OF INTEREST EXPENSES

Similar to the concept of arm's length in transfer pricing, the introduction of Section 140C would limit the amount deductible for interest expenses incurred in any financial assistance provided in a controlled transaction, or in other words, earning stripping rules ("**ESR**"). Under this section, the definition given to financial assistance and interest expenses are as follows:

- Financial assistance
  - includes loan, interest bearing trade credit, advances, debt, or the provision of any security or guarantee.
- Interest expense
  - interest on all forms of debt or payments economically equivalent to interest

(excluding expenses incurred in connection with the raising of finance).

The definition for controlled transaction in this section would adopt the definition provided for transfer pricing purposes (including the proposed expanded scope of control as mentioned above).

The introduction of this section is also a response to the OECD's BEPS Action 4 [Limiting Base Erosion Involving Interest Deductions and Other Financial Payments]. This would likely result in the disallowance of certain interest expenses for certain companies in the future and taxpayers are advised to review their intercompany loan transactions after the guideline is published.

Since the scope and details on the application of this ESR provision has not been provided, it is anticipated that a rule would be made by the Minister in relation to the guidelines applicable for this restriction and the method of computing the maximum amount deductible.

I. DEDUCTION FOR EPF CONTRIBUTION AND LIFE INSURANCE

Prior to the Budget 2019, taxpayers are allowed to claim a deduction for premiums paid for any insurance or contributions made to any approved funds such as the Employees Provident Fund ("EPF") up to a maximum of RM6,000. Although this cap has been increased to RM7,000 in total under the new amendments, this relief has been broken down as follows:

- Takaful contributions/ Life insurance premiums: RM3,000
- Contributions to approved funds : RM4,000

For civil servants who have opted for pension retirement scheme, the income tax relief for sums paid for any insurance is given up to RM7,000.

This would mean that taxpayers who did not subscribe to any insurance previously would only be allowed to claim a deduction of up to RM4,000 for their EPF contributions instead of the previous RM6,000. It would seem that this new breakdown is an initiative to encourage taxpayers to plan further for their retirement and to promote the subscription of insurance.

Our Views

Corporate taxpayers are advised to consider the operation of these amendments as a matter of urgency, given their far-reaching implications and limited time before they come into effect. Analysis would be critical to a group of companies that have been utilising unabsorbed business losses and group relief in their tax planning as some may be required to pay tax much sooner than they expect. Further, taxpayers are advised to review the tax incentives and deductible interest expenses claimed to see whether they would still be eligible after the amendments come into effect.

LABUAN BUSINESS ACTIVITY TAX ACT 1990 ("LBATA")

Other than the changes seen in corporate tax, certain amendments were made to the LBATA in light of Malaysia's participation in the Forum on Harmful Tax Practices ("FHTP") by the OECD. Summary of the major amendment of LBATA is as follows:

A. DEFINITION OF LABUAN BUSINESS ACTIVITY

Section 2(1) of the LBATA was amended to remove ring fencing on Labuan business activity. The new proposed definition for Labuan business activity is:

> *"Labuan business activity means a Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan, excluding any activity which is an offence under any written law."*

Prior to the amendment, Labuan business activity was ring fenced and restricted to only transactions traded in any currency other than Malaysian currency and would not include transactions between a Labuan entity and a resident. Following the amendment, a wider definition was given to Labuan business activity as it now covers all trading and non-trading activities in, from or through Labuan without the two restrictions mentioned above.

However, this does not mean all Labuan business activity is chargeable under LBATA by default as Section 3 of LBATA clearly spells out that only a Labuan entity carrying on a Labuan business activity shall be charged to tax in accordance with LBATA.

B. DEFINITION OF LABUAN ENTITY

The definition of a Labuan entity under Section 2B(1) of LBATA has undergone a major revamp as Section 72 of the Finance Bill 2018 removes the definition of Labuan entity under Section 2(1) of the LBATA while introducing a new definition as follows:

> *"The Labuan entities—*
> *(a) shall be as specified in the Schedule; and*
> *(b) shall, for the purpose of the Labuan business activity, have—*
> *(i) an adequate number of full time employees in Labuan; and*
> *(ii) an adequate amount of annual operating expenditure in Labuan, as prescribed by the Minister by regulations made under this Act.".*

The eye-catching criteria laid down in Section 2B(1) of the LBATA are "adequate number of full time employees" and "adequate amount of annual operating expenditure". As observed, there is an ambiguity hovering around the word "adequate" as the scope of what would amount to "adequate" is subject to interpretation and application. It would be understood why the Parliament did not place a definite number or amount as adequacy is subjective to each taxpayer respectively and each Company would have different modes of business operation, organisation structure, and resources arrangement based on their respective industry and principal business activity.

Should the Minister of Finance prescribe a figure of what would amount to an "adequate number" and "adequate amount", existing Labuan entities might encounter a big hiccup as the prescribed number or amount might render their business operations in Labuan no longer viable.

C. ABOLISHMENT OF TAX CHARGED UPON ELECTION

Prior to the amendment, taxpayers have the discretion to elect either one of the following:

- to pay a tax at a fixed amount of RM20,000 for a year of assessment under Section 7 of the LBATA; or
- to allow their chargeable profit to be charged at the rate of 3% under Section 4 of the LBATA.

However, Section 76 of the Finance Bill 2018 removed the option provided to taxpayers under Section 7 of LBATA. In other words, all Labuan entities which operate a Labuan business activity would now have their chargeable gains subjected to tax at the rate of 3% under Section 4 of the LBATA.

The above-mentioned amendment carries a domino effect whereby all taxpayers who are subject to the LBATA must now ensure that their audited accounts are prepared and made available for each year of assessment following Section 4(2) of the LBATA in order to file and submit their tax return pursuant to Section 5 of the LBATA. Therefore, taxpayers who are subjected to the LBATA would be advised to review their current business operation and take the necessary steps to ensure that compliance requirements are met.

Despite the abolishment of this election, it must be appreciated that LBATA still maintains its attraction. Section 4(1) of the LBATA is still flexing its muscle and capable of attracting local and foreign investors as a 3% tax rate is still an attractive rate when compared with the current prevailing corporate tax rate of 24% under the Income Tax Act 1967 ("**ITA**").

D. INCOME DERIVED FROM INTELLECTUAL PROPERTY RIGHTS

Section 75 of the Finance Bill 2018 amended Section 4 of LBATA by inserting the following:

> *"(3) For the avoidance of doubt, the net profits referred to in subsection (2) shall not include any income derived from royalty and other income derived from an intellectual property right if it is receivable as consideration for the commercial exploitation of that right.*
>
> *(4) Any income derived from intellectual property right referred to in subsection (3) is subject to tax under the Income Tax Act 1967.*
>
> *(5) For the purpose of this section, "intellectual property right" means a right arising from any patent, utility innovation and discovery, copyright, trade mark and service mark, industrial design, layout-design of integrated circuit, secret processes or formulae and know-how, geographical indication and the grant of protection of a plant variety, and other like rights, whether or not registered or registrable."*

As observed, the above insertion clearly demonstrates that any income derived from intellectual property rights ("**IPR**") would be subjected to tax under the ITA. In other words, the 3% tax rate under Section 4(1) of the LBATA is no longer available to any Labuan entity deriving income from IPR.

In this connection, it would be imperative for existing Labuan entities which are deriving income from IPR while enjoying the 3% tax rate to study the feasibility of their current structure and make the necessary provisions following the insertion of Sections 4(3), (4) and (5) of the LBATA.

E. PAYMENT MADE TO LABUAN COMPANY BY TAX RESIDENT FALLS UNDER SECTION 39 OF THE ITA

In essence, Section 39(1)(a) to (q) of the ITA lays down a list of specific expenditures which are not qualified as tax deduction in ascertaining the adjusted income of a taxpayer for that YA.

Clause 9 of the Finance Bill 2018 which was amended by the Amendment In Committee had introduced Section 39(1)(r) of the ITA which spells as follows:

> *"subject to any rules as may be prescribed by the Minister, any amount in respect of a payment made by a person, who is resident, to any Labuan company"*

In other words, any type of payments made to a Labuan company would not be entitled to a tax deduction under Section 33(1) of the ITA.

At the first glance, Section 39(1)(r) of the ITA appears to be harsh as tax residents would incur a higher tax liability for entering into a transaction with a Labuan entity. However, some form of flexibility is provided as the Minister is given the power and discretion to make an exception by prescribing rules in relation to payment made to a Labuan Company that would be eligible for tax deduction.

Recently, the Income Tax (Deductions Not Allowed For Payment Made to Labuan Company By Resident) Rules 2018 P.U(A) 375/2018 ("the Rules") was gazetted on 31 December 2018 where the Minister has prescribed the rules in relation to payments made to a Labuan Company that would be eligible for tax deduction and would be effective from 1 January 2019. Pursuant to the Schedule under Paragraph 2 of the Rules, the prescribed amount which are not allowed for deduction is as follows:

No.	Type of payment	Amount not allowed for deduction
1.	Interest payment	33%
2.	Lease rental	33%
3.	Other payments	97%

The limitation to the amount which would be eligible for tax deduction through the Rules would definitely leave a significant impact on existing Labuan entities. Effectively, the Rules discourages transactions between companies which are subjected to tax under the ITA and Labuan entitities as 97% of the amount for the "other payments" made to a Labuan entity would not be eligible for tax deduction. In addition, the attraction of Labuan entitities as vehicles for lease rental and financial arrangement businesses would be dampened as 33% of the payment for interest and lease rental is now disallowed for tax deduction. These restrictions would effectively dilute the commercial incentive of transacting with a Labuan entity as the amount not allowed for tax deduction would be an additional cost of business operation for the companies transacting with a

Labuan entity. Accordingly, companies outside of Labuan would have to think twice before entering into dealings with Labuan entities and it is paramount for existing group of companies in Labuan to study the feasibility of their current structure.

Our Views

It is undeniable that the abolishment of the tax payable election and the mandate to subject IPR income to the ITA has heavily discounted the inherent beauty of Labuan as a tax haven. However, it is observed that such amendments are the effort of Parliament in echoing Malaysia's participation in the FHTP and all the proposed amendments correspond to the FHTP recommendations under the OECD BEPS Action Plan 5 on Harmful Tax Practices. In an upshot, the proposed amendments have substantially changed the landscape of the LBATA.

STAMP DUTY

A. AUTHORISED PERSON TO COMPOUND INSTRUMENT

As the current law stands, Section 9 of the Stamp Act 1949 ("**SA**") empowers the Director General of Inland Revenue ("**DGIR**") to authorise the following persons to compound certain unstamped instruments:

- Banker, dealer, or insurer;
- Registrar of Companies; and
- Principal officer of Tenaga Nasional Berhad.

Further, each of the persons mentioned above were only allowed to compound certain types of unstamped instruments which are relevant to their respective field. For example, the Registrar of Companies are only allowed to compound unstamped Articles of Association and Memorandum of Association lodged with the Registrar.

Now, Section 9(1) of the SA is amended as follows:

"The Collector, may by notification in the Gazette, authorise any person including any banker, dealer or insurer, to compound for the payment of duty on unstamped instrument subject to the condition that the instrument be drawn or drawn up and issued on a form to be supplied or adopted by the said person."

Following this amendment, the DGIR is now given a wider power to authorise any person to compound any unstamped instrument (which may be restricted by the DGIR) and to collect duties and remit it back to the revenue authorities. It is viewed that this is an effort by the government to increase the effectiveness of ensuring stamp duties are duly paid and to curb tax leakages through non-stamping of instruments.

B. ADDITIONAL CONDITIONS FOR TRANSFER OF PROPERTY BETWEEN ASSOCIATED COMPANIES

Section 15A of the SA is an attractive section for group of companies as it provides for relief from stamp duty for the transfer of property between associated companies. However, the proposed amendment through the Finance Bill 2018 has imposed additional conditions for taxpayers to be qualified for this relief, namely:

- It has to be shown to the satisfaction of the DGIR that the transfer of the property is to achieve greater efficiency in operation;
- The company referred to as the transferee company in the transaction is incorporated in Malaysia;
- The parties of the company must remain as associated companies for three years after the transfer of the property; and
- The transferee company must hold the property for at least three years.

It is observed that no definition was given for "greater efficiency in operation" and it is still subjected to differing interpretations.

SALES AND SERVICE TAX ("SST")

Enhancement of the existing SST system

The Finance Minister proposed the following reforms for SST from 1 January 2019 onwards:

(a) Grant exemptions for specific business-to-business service tax for registered service tax entities to prevent an increase in the cost of doing business as a result of compounded taxation and protect the competitiveness of our local service industry.

(b) Introduce a credit system for sales tax deduction to prevent compounded taxation and in turn lower the cost of doing business for small manufacturers who purchase their products from importers instead of registered manufacturers.

(c) Subject imported services to service tax to ensure local service providers are not unfairly disadvantaged against foreign competitors.

Digital tax

The Finance Minister also proposed that online services such as the downloading of software, music, and videos or digital advertising be subject to service tax from 1 January 2020 onwards. Businesses would be required to pay service tax if they acquire these services, while foreign service providers would be required to register with Customs and charge and remit the relevant service tax if these services are acquired by the consumers. This is said to neutralise the cost of the disadvantage faced by the physical retailers against their virtual storefront counterparts, especially those operated by foreign entities.

The proposed amendments to the current Sales Tax Act 2018 and Service Tax Act 2018 are as follows:

Sales Tax Act 2018

Valuation method for contract manufacturer

(a) Pursuant to Section 9(3) of the Sales Tax Act 2018, the sales value in the case of a registered contract manufacturer for taxable goods, subject to the approval of the Director General of Customs (**DG**), shall be the amount charged for work performed. It is proposed that Section 9(3) be amended for such valuation method to be extended to contract manufacturers who are not registered through the deletion of the word "registered" in the said section.

A credit system for sales tax

(b) It is proposed that Section 41A be inserted to allow the Minister to make regulations prescribing the form and manner, the condition, and the amount of sales tax to be deducted in respect of taxable goods purchased by any registered manufacturer.

It is also proposed that such deduction is only allowed for taxable goods consisting of raw materials, components or packaging material used solely in the manufacturing of taxable goods. It is further proposed that should any registered manufacturer fail to comply with any of the conditions, sales tax that has been deducted shall be deemed to become due and payable by the registered manufacturer on the date on which any of the conditions has not been complied with.

(c) It is also proposed that it will be an offence for any person to improperly obtain a deduction of sales tax.

Service Tax Act 2018

Service tax on imported services

(a) It has been proposed that Section 7 of the Service Tax Act 2018 be amended so that service tax is also imposed on any imported taxable service.

It is also proposed that "imported taxable service" be defined as any taxable service acquired by any person in Malaysia from any person who is outside Malaysia and the value of imported service is to be prescribed by the Minister later.

(b) As opposed to service tax on taxable services which is due on a payment basis, it has been proposed that service tax on imported taxable services is due at the time when:

(i) Payment is made; or

(ii) Invoice is received for the service whichever is the earlier.

(c) A new Section 26A has been proposed to be inserted into the Service Tax Act 2018 for businesses that acquire imported taxable services to account and pay for service tax due in a prescribed declaration. The prescribed declaration shall be furnished and the service tax on imported taxable services shall be paid to Customs by the last day of the following month in which service tax is due.

(d) The Finance Bill 2018 has also proposed that both criminal sanctions and late payment penalties be imposed if non-service tax registered businesses fail to comply with the new requirement to furnish the prescribed declaration and to pay service tax on imported taxable services.

(e) Relevant amendments under Section 27 of the Service Tax Act 2018 have also been proposed for the DG to

raise best judgement assessments on any businesses that acquire imported taxable services, but fail to furnish a return or furnish an incomplete or incorrect return.

On 5 December 2018, the Customs released Borang VD, a form for taxpayers to make any voluntary disclosure for sales tax and service tax under the following scenarios:

(a) Taxpayer collected sales tax before registration with the Customs;
(b) Taxpayer wrongfully collected sales tax on non-taxable goods;
(c) Taxpayer collected service tax before registration with the Customs; and
(d) Taxpayer wrongfully collected service tax on non-taxable services.

However, it is clearly stated in the Borang VD that once an audit or investigation has commenced by the Customs, voluntary disclosure will not be allowed.

Our views

Sales tax

Based on the above, a credit system would be introduced with effect from 1 January 2019 to allow registered manufacturers who acquire taxable raw material and component and packaging material for the manufacturing of taxable goods to deduct sales tax paid. Currently, sales tax exemption is given to registered manufacturers who acquire taxable goods from another registered manufacturer. We believe that with the introduction of the credit system, the manufacturing cost for registered manufacturers who purchase taxable raw materials and component and packaging material directly from importers can be reduced as the embedded sales tax can now be deducted.

Service tax

The Finance Bill 2018 has proposed a service tax on imported taxable services that is consistent with the announcement made by the Minister during Budget 2019. However, based on the current proposed amendments, only businesses that acquire imported taxable services are required to make declarations and pay for service tax.

In respect of the proposed service tax exemptions for business-to-business transactions where the parties are registered for service tax, we believe such exemptions would be reflected in the amendment to the First Schedule of the Service Tax Regulations 2018.

Digital tax

As for the "digital tax" which has been widely reported by social media, we believe this would be reflected in the Finance Bill in the year 2019 for it to be implemented in 2020. Under Section 8 of the current Service Tax Act, the Minister has the power to prescribe any service to be a taxable service and the list of taxable services can be found in the First Schedule of the Service Tax Regulations 2018.

If the government intends to introduce digital tax starting from 1 January 2020, such introduction can be achieved by amending the list of taxable services under the First Schedule of the Service Tax Regulations 2018 to include online services as a taxable service.

That being said, we are of the view that the government's intention to request foreign service providers to register, charge, and remit the relevant service tax with the Malaysian Customs when these online services are provided to consumers in Malaysia cannot be achieved without amending the Service Tax Act. Even if such amendment is made, Customs would face considerable challenges in carrying out the necessary enforcement actions against a foreign entity that has no physical presence in Malaysia.

Voluntary disclosure

Currently, voluntary disclosure is only allowed in respect of sales tax and services tax wrongfully collected by a taxpayer. We take the view that such facilities should also be extended to sales tax and services tax underpaid and any GST underpaid by the taxpayers in the past given that the Customs is currently conducting GST closure audits on businesses.

Businesses should be encouraged to come forward for any non-compliance made in the past either by having their penalty waived or significantly reduced. This would save time and cost of Customs conducting the audits and foster a proactive business attitude/ culture in managing their tax liabilities.

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TAX COURTS IN SELECTED JURISDICTIONS

Zaleha Adam

Recent news on the setting up of a tax reform committee[1] is timely. One of the areas ripe for reform is the court of the Special Commissioners of Income Tax ('SCIT'). Due to the increasing volume of cases, it may take up to three years before an appeal is heard if an aggrieved taxpayer files his appeal before the SCIT today and requests for a trial date. The delay can also be painful for taxpayers as the Income Tax Act 1967 ('the ITA') requires him to pay the tax even though he is objecting to the assessment raised against him. Some taxpayers bypass the SCIT and take their grievances straight to the High Court by filing judicial review applications to quash assessments and at the same time applying for stay orders regarding the payment of tax against the Director General of Inland Revenue ('DGIR'). The DGIR has consistently challenged such applications.

Only in exceptional circumstances, taxpayers have succeeded to obtain leave for judicial review. Otherwise, the courts have maintained that taxpayers need to exhaust the domestic remedy available under the ITA and take their appeals against tax assessments to the SCIT first.

The SCIT sits in a panel of three Commissioners to hear a case[2], and presently there are only four Commissioners appointed. The office of the SCIT is in Putrajaya, where they mainly sit to hear appeals. As the SCIT handles tax appeals from the whole of Malaysia, they often travel to various locations across the country to hear appeals. The complexity of tax cases and having Commissioners with no background in tax who generally do not serve long enough to develop tax expertise, hamper the speedy disposal of cases.

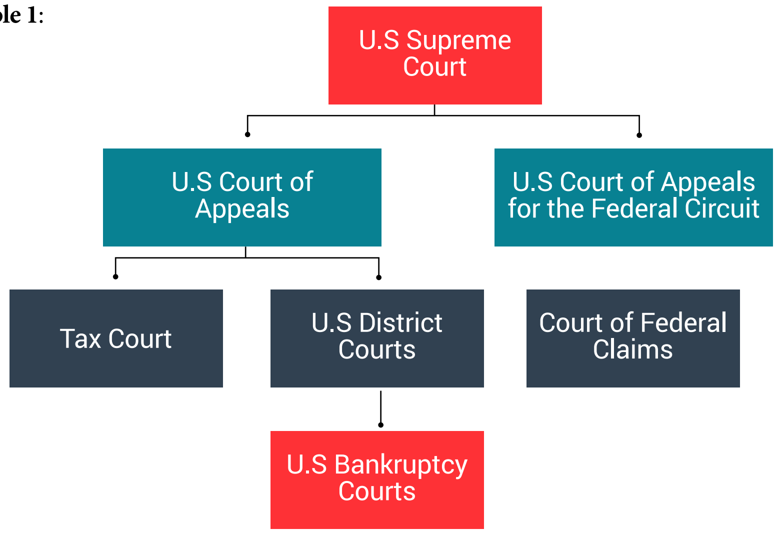
Reform of the SCIT needs to be holistic. However, it is not the intention of this article to enumerate in detail the possible areas of reform, save to mention a few. This article examines tax courts in the United States of America (U.S.), Canada, United Kingdom (U.K.), Australia and Singapore, in search of best practices that may be adopted.

UNITED STATES OF AMERICA

Taxpayers in the U.S. may litigate their tax dispute in three different forums which are the U.S. Tax Court, the Court of Federal Claims or the federal district courts[3]. There is no requirement to pay tax before the case is heard before the U.S Tax Court, unlike the Court of Federal Claims and federal district courts. Appeals from decisions of the U.S. Tax Court and federal district court go to any of the twelve circuit courts of appeal, while appeal from the Court of Federal Claims go to the Court of Appeals for the Federal Circuit. The court hierarchy is as shown in the diagram below as **Table 1**:

The U.S Tax Court is an independent judicial body under the legislative branch and is established

Table 1:



Source: Franklin County Law Library at https://fclawlib.libguides.com/taxlawresearch

under Article 1 of the U.S. Constitution in 1969. It adjudicates disputes over tax deficiencies or overpayments determined by the Commissioner of Internal Revenue. There are 19 judges appointed by the President of the United States with the advice and consent of the Senate, and

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[1] *Statement by Mr. Tony Pua, Special Officer to Minister of Finance on 22 July 2018 as reported in https://www.malaysiakini.com/news/435323*

[2] *Paragraph 1(1) Schedule 5 to the Income Tax Act 1967.*

[3] *Court Jurisdiction of Tax Issues and Appellate Structure at https://fclawlib.libguides.com/taxlawresearch/ jurisdiction*

the Chief Judge is elected biennially from among them. The judges must have expertise in tax laws, be less than 65 years old when appointed, and a judge's tenure is up to 15 years upon which he becomes eligible for retirement.[4]

For individual taxpayers, they may elect for simplified procedures for trials where the tax in dispute is USD50,000 or less for any year. Decisions of the court under simplified procedures, however, are final and not subject to review by any courts.[5] Other decisions of the U.S. Tax Court may be appealed to the U.S. Courts of Appeal. Further appeals to the U.S. Supreme Court may be brought upon the grant of a writ of *certiorari*.

The court's jurisdiction is wide and covers amongst others, issues relating to income, gift, estate, and transfer taxes. It also hears cases on transferees or fiduciaries who have been issued notices of liability by the Commissioner.

The office of the U.S Tax Court is in Washington, D.C. The court travels to various locations in the U.S as are practicable to taxpayers. The hearing is by a single judge or a special trial judge, and proceedings are public. Practice before the court is however restricted to practitioners who have been admitted under the court's rules.

CANADA

An appeal is brought by a taxpayer before the Tax Court of Canada by filing a notice of appeal within 90 days of the date of the notice of reassessment or notice of confirmation issued by the Canada Revenue Agency ('CRA') on a notice of objection lodged by the taxpayer. A taxpayer may also file a notice of appeal if no decision is received from the CRA. The taxpayer may elect for an informal procedure where the disputed sum of tax and penalties is not more than $25,000 per assessment, or the disputed amount is not more than $50,000 per determination, or where interest on tax and on penalties is the only matter in dispute.[6] It is possible to resolve disputes quickly under the informal procedure as the Tax Court does not have to adhere to strict rules of evidence. The only set back is that decisions of the Tax Court under the informal procedure do not form precedent for other cases. An individual taxpayer may choose to represent himself or appoint a lawyer to represent him, while a corporation must be represented by a lawyer. The default procedure is the general procedure where the Tax Court follows formal court rules with regards to filing of appeal, rules of evidence, and in examination and production of documents.

A taxpayer may appeal a decision by the Tax Court under general procedure to the Federal Court of Appeal within 30 days of the court's judgement. Leave from the Supreme Court need to be obtained before a taxpayer undertakes a further appeal to the Supreme Court.[7]

Collection of tax is usually postponed until the decision of the Tax Court only, even then, interest will accrue on the amount payable. If a taxpayer decides to appeal against the Tax Court decision, the CRA usually accepts security for payment of tax and will refund with interest if the taxpayer is successful.

The Tax Court of Canada was formed in 1983. The Court's jurisdiction covers the Income Tax Act, the GST portions of the Excise Tax Act, The Employment Insurance Act and The Canada Pensions Plan. The appointment of judges of the Court is by the Minister of Justice on recommendation of the Judicial Advisory Committee. As to the qualification of the judges, they are lawyers with at least 10 years' experience, some from private sector tax practices and others from the Canadian Department of Justice's Tax Law Services group.[8]

UNITED KINGDOM

An appeal against the decision of Her Majesty's Revenue and Customs ('HMRC') starts at the First Tier Tribunal.[9] Upon receiving a notice of appeal, the Tribunal will allocate the case into one of four categories which are the default paper cases, the basic cases, the standard cases or the complex cases.[10] Default paper cases are for simple appeals that may require only submissions by parties for example appeals against late filing penalties. Basic cases are those that require minimal exchange of documents and will be disposed of after a hearing, while standard cases may require more detailed case management before the hearing. Complex cases are those that require lengthy hearing, involve complex or important issues or principles, or large sums of taxes. Payment of tax is required for an appeal.

Parties may file further appeal to the Upper Tribunal if they are granted permission on grounds that there is an error of law in the First Tier Tribunal decision.[11] Other than hearing appeals from the First Tier Tribunal, the Upper Tribunal may hear complex cases as a court of first instance. A further appeal from the Upper Tribunal to the Court of Appeal is only on question of law and upon grant of leave to appeal. If the upper Tribunal refuses leave to appeal, approval may be sought from the Court of Appeal by showing the existence of important points of principle or practice or a compelling reason.[12]

As Her Majesty's Courts and Tribunal Service (HMCTS) is now undergoing reforms launched in 2016, more changes are expected in the coming months as it seeks to streamline processes to make the courts and tribunal service more efficient and responsive to the needs of judges, legal professionals and the public. The reforms cover criminal, civil and family courts and also the tribunal justice system. One of the changes undertaken is making sure the panels that make decisions in tribunals are designed to best suit the circumstances of the case and the appropriate expertise is allocated to cases.[13] For tax cases, two persons sits on the First Tier Tribunal, where one is a qualified judge and the other is a member who is not a lawyer but a person who possesses the relevant experience, such as an accountant.[14] The Upper Tribunal cases are usually heard by two judges. They are High Court judges or experienced First Tier Tribunal judges who possess tax knowledge and have been appointed Upper Tribunal judges.[15] Selection of judges are done by the Judicial Appointments Commission, U.K.

AUSTRALIA

Taxpayers may dispute certain decisions of the Australian Taxation Office ('ATO') through an internal objection process, while a direct appeal to the Administrative Appeals Tribunal ('AAT') or the Federal Court of Australia ('Federal Court') may apply for other issues. Guidelines on the ATO dispute policy is available on its website. Generally, time limit

[4] *Background information on the U.S Tax Court available at its website at https://www.ustaxcourt.gov/about.htm, accessed on 26 July, 2018.*

[5] *Ibid.*

[6] *Information obtained from CRA website at https://www.canada.ca/en/revenue-agency/services/forms- publications/publications/p148.html*

[7] *Ibid, at https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/31-0/objections-appeals.html*

[8] *Mike Dolson, 'The Tax Court of Canada: An Introduction', LawNow Magazine (2012), at http://www.lawnow.org/the-tax-court-of-canada-an-introduction/*

[9] *Information from HMRC's website at https://www.gov.uk/tax-tribunal, accessed on 26 July, 2018.*

[10] *Practice Statement of the First Tier Tribunal, 29 April 2013 accessed at https://www.judiciary.uk/wp- content/uploads/2014/12/categorisation-of-case-in-the-tax-chamber.pdf*

[11] *Information from HMRC's guidance manuals at https://www.gov.uk/hmrc-internal-manuals/appeals-reviews- and-tribunals-guidance/artg8020, accessed on 26 July, 2018.*

[12] *The Appeals from the Upper Tribunal to the Court of Appeal Order 2008, 29 October 2008 accessed at https://www.judiciary.uk/wp-content/uploads/2014/08/si-court-appeal-order-2008.pdf*

[13] *Transforming our justice system: summary of reforms and consultation, September 2016, https://www.bl.uk/britishlibrary/~/media/bl/global/social-welfare/pdfs/non-secure/t/r/a/transforming-our-justice- system-summary-of-reforms-and-consultation.pdf, accessed on 31 July 2018, pp. 10 and 19.*

[14] *The Tax Tribunal, https://www.out-law.com/topics/tax/tax-litigation--disputes-/the-tax-tribunal/, accessed on 25 July 2018.*

[15] *Ibid.*

for filing objections differ according to the subject matter of appeal but payment of tax is necessary despite the objection.[16]

The AAT is an independent body that has powers to vary, confirm or set aside some decisions made by the ATO. Taxpayers may appear in person before the AAT as the proceedings are less formal, or he may appoint someone to represent him. It is also less costly for taxpayers than a court case. A further appeal may be brought against the decision of the AAT to the Federal Court on a question of law.

An appeal to the Federal Court must be made in writing and lodged within 60 days of the notification by the ATO of its decision or the decision of the AAT.[18] Here too, a taxpayer may appear in person or be represented by a legal practitioner. The proceedings before the Federal Court are formal, and costlier than a tribunal hearing as an unsuccessful litigant may have to bear the costs of the winning party. If a taxpayer is aggrieved with the decision of a single Judge of the Federal Court, he has a right to appeal to the full court of the Federal Court. A further appeal from a decision of a full court may lie to the High Court upon obtaining a special leave from the High Court.

Information obtained from the AAT website[19] states that it is made up of the President and other members who may be appointed as Deputy Presidents, Senior Members, or Members. Members of the AAT are appointed by the Governor-General on a full-time or part-time basis. Appointments may be made for a term of up to seven years and they may be re-appointed. The President of the AAT must be a judge of the Federal Court of Australia while other members may be judges of the Federal Court or Family Court of Australia (part-time Deputy Presidents), lawyers of at least five years' standing, or persons with relevant knowledge or skills.

There are many divisions in the AAT organised according to the subject matters under its jurisdiction, which includes the Taxation & Commercial Division. A Deputy President or a Senior Member of the AAT may be the Head or Deputy Head of a division while the President is responsible for the overall management of the AAT. As there are many different divisions under the AAT, its members too come from a wide range of backgrounds with expertise in areas such as accountancy, disability, law, medicine, migration, military affairs, public administration, science and social welfare.

SINGAPORE

A taxpayer has 30 days from the date of service of a notice of assessment to file a notice of objection with the Comptroller of Income Tax ('CIT').[20] The CIT has six months to review the objection and come to a decision. The CIT has powers to call for additional documents from the taxpayer for review[21] and if the taxpayer does not cooperate, the CIT may after two years issue a notice of refusal to amend. The CIT will also issue a notice of refusal to amend if upon review, it does not agree with the taxpayer. On the other hand, if the CIT agrees with the taxpayer, the CIT will amend the assessment. If the taxpayer agrees with the CIT, the matter will be regarded as final and conclusive.[22]

After the issue of notice of refusal to amend, the taxpayer has 30 days from the date of such notice to appeal to the Income Tax Board of Review ('ITBR').[23] The decision of the ITBR is not appealable to the High Court except on a question of law, or on a question of mixed fact and law, and where the disputed tax exceeds $200.[24] The decision of the High Court is appealable to the Court of Appeal.

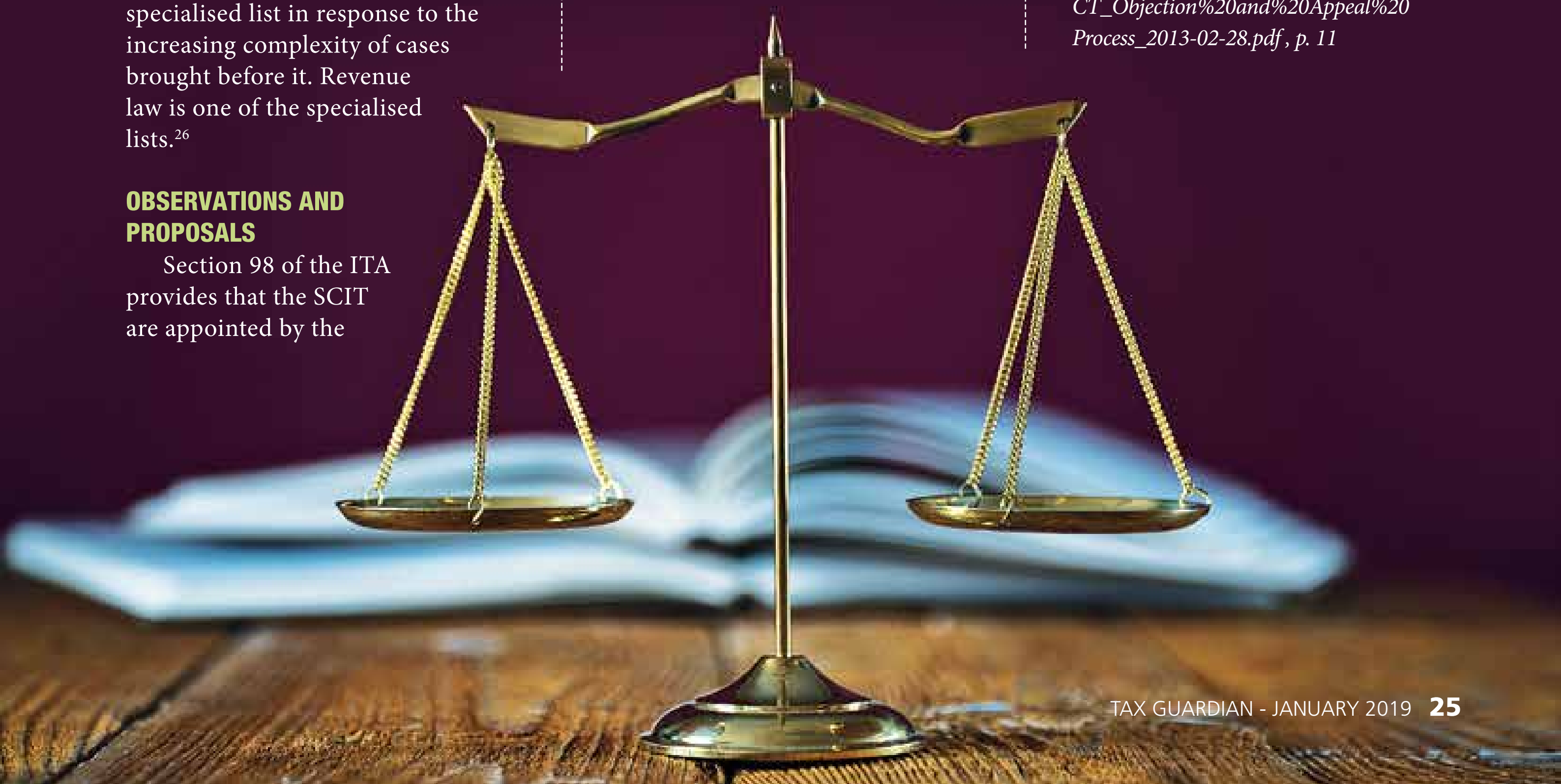
The members of the ITBR are appointed by the Minister and not more than 30 members may be appointed at any one time.[25] Presently, their names and position are published on the board's website. They hold office for a period determined by the Minister and are eligible for re-appointment. Section 78(6) of the Income Tax Act (Cap 134) requires that the Chairman or Deputy Chairman of the ITBR must be someone who is qualified to be a District Judge or is an accountant. The exercise of the function of the ITBR may be performed by a committee consisting of at least three members of the ITBR, of which one member is the Chairman or Deputy Chairman of the ITBR.

A single judge presides over proceedings in the High Court. The High Court may also appoint one or more persons with expertise in the subject matter of the proceedings to assist the court. The Singapore High Court has also set up various specialised list in response to the increasing complexity of cases brought before it. Revenue law is one of the specialised lists.[26]

OBSERVATIONS AND PROPOSALS

Section 98 of the ITA provides that the SCIT are appointed by the Yang Di-Pertuan Agong and shall include persons with judicial or other legal experience, and each of the SCIT shall hold office for a period as specified by the Minister of Finance. An appeal shall be heard by a panel of three SCIT, and one of the panel must be a person with judicial or legal experience. The present serving SCIT members are officers from the government judicial and legal service. Previous SCIT came from private practice and also retired senior officers of the Inland Revenue Board Malaysia ('IRBM').

Although the SCIT can hear appeals concurrently, there are not enough SCIT appointed to do so. Appointing more SCIT is important, but what is more important is to appoint persons with the correct expertise and experience. As we are not short of SCIT with legal background, appointing additional SCIT with tax expertise would greatly help the appreciation of complex tax cases before the SCIT. As we have learnt from the countries stated above, the UK First Tier Tribunal and the Singapore ITBR have tax experts as members, while judges of the U.S. Tax Courts are experts in tax laws. If necessary, the ITA may be amended to enable appointment of international experts as SCIT on an ad hoc basis to hear complex cases or as advisors to the SCIT, on terms specified by the



[16] *Information on objecting to an ATO decision at https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO- decision/Object-to-an-ATO-decision/, accessed on 26 July, 2018.*

[17] *Information on AAT at https://www.ato.gov.au/General/dispute-or-object-to-an-ato-decision/seek-an-external- review-of-our-decisions/administrative-appeals-tribunal-(aat)/, accessed on 26 July, 2018.*

[18] *Information on the Federal Court of Australia at https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Seek-an-external-review-of-our-decisions/Federal-Court/, accessed on 26 July, 2018.*

[19] *Official Website of the AAT at http://www.aat.gov.au/about-the-aat/who-we-are, accessed on 26 July, 2018.*

[20] *Section 76(3) of the Income Tax Act (Cap. 134).*

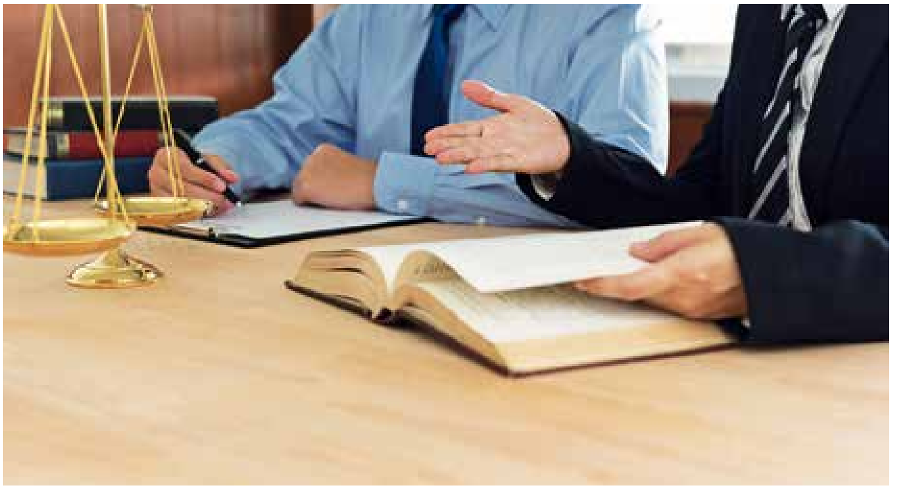
[21] *Ibid, Section 76(5).*

[22] *IRAS e-tax guide on Corporate Income Tax- Objection and Appeal Process, https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e- Tax_Guides/etaxguides_CT_Objection%20and%20Appeal%20Process_2013-02-28.pdf , p. 11*

The tenure of service of the SCIT is another concern that should be addressed. The tenure should be of a period that would give them the confidence to serve and at the same time give confidence to taxpayers that their cases can be disposed of without having to appoint a new panel member halfway through the hearing of the case to take the place of a commissioner who has completed his term of service or be heard de novo. Insecurity of tenure was a cause for difficulty in attracting qualified specialists[27] to serve on the Tax Appeal Board of Canada, before the government adopted the recommendations of the Royal Commission on Taxation (the Carter commission) and brought about changes and the formation of the Tax Court of Canada.

Also, there have been complaints from taxpayers that cases stated were not prepared when the SCIT panel members who heard their cases have completed their terms, or have transferred. The result of this is that appeals before the High Court cannot be heard as tax appeals from the SCIT are by way of case stated. Hence it is important that the SCIT prepare case stated for cases where there are appeals against their decision.

Another outstanding feature of tax courts in other jurisdictions is the simplified or informal procedure for small taxpayers. Tax Courts in U.S., Canada, UK and Australia facilitate small taxpayers and assist them in handling their tax appeals under this separate procedure where rules of court on evidence are not strictly applied. While the IRBM has internal review processes to assist taxpayers, some taxpayers want their appeal to be heard by the Commissioners but are wary of the costs involved in appointing solicitors. Although the law permits taxpayers to appear in person, it has become impracticable



as proceedings before the SCIT has now become formal. The SCIT as a tribunal, should be as friendly to small taxpayers as they are to big corporations. The SCIT should adopt simplified or apply informal procedures for this category of taxpayers to facilitate access to justice.

Currently, the SCIT is organised as a tribunal under the Ministry of Finance. As it is a judicial body perhaps its position can be reorganised together with other tribunals in various other Ministries and brought under one separate body for supervision, administrative support and reporting purposes, similar to the court structure. The AAT of Australia and the HMCTS of the U.K. are good examples. Alternatively, there are lessons to be learnt from the setting up of the Tax Court of Canada. Originally known as the Tax Review Board, the perception of the public is that the Board was a branch of the Department of National Revenue, and hence lack judicial independence.[28] This prompted the government to enact the Tax Court of Canada Act, and subsequent amendments conferred the Tax Court of Canada with exclusive original jurisdiction over income tax appeals which it previously did not have.[29] The elevation of the status of the court improved its prestige and garnered respect from the public and tax community.

CONCLUSION

Exercise of justice in tax cases must be swift as taxpayers generally have paid tax before bringing their appeals to the courts. Reform of the SCIT is needed to enable it to carry out its functions more efficiently and restore taxpayers' confidence in the justice system. It is hoped that the tax reform committee would undertake a holistic study of the organisation of the SCIT towards building a formidable and respected institution.

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23 Section 79(1) of the Income Tax Act (Cap. 134).

24 Ibid, Section 81(2).

25 Ibid, Section 78(1).

26 Structure of the Courts, https://www.supremecourt.gov.sg/about-us/the-supreme-court/structure-of-the-courts, accessed on 26 July, 2018.

27 Ian MacGregor, et al., 'The Development of the Tax Court of Canada: Status, Jurisdiction, and Stature', Canadian Tax Journal 58 (Supp.) (2010) pp 87-100 at p. 89

28 Ibid, pp. 90-91.

29 Ibid, p. 93.

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CORPORATE TAX RATES MALAYSIA AND BEYOND

Kenneth Yong Voon Ken & Lee Fook Koon

INTRODUCTION

For many months leading up to Budget 2019, one consistent message has been emanating from the Ministry of Finance: brace for a tough budget.

With such negative undertones looming pre-Budget, any prospect of tax rate reductions had been banished to the realm of wishful thinking as circumspect forecasters anticipated the arrival of new taxes to shore up government revenues.

Defying expectations though, Budget 2019 proposed a pull down in the tax rate for Small Medium Companies (SMC) to 17% (i.e. 1% drop) for Year of Assessment 2019, thus spreading smiles across the SMC segment and perpetuating a trend of declining tax rates that had graced corporate Malaysia for decades.

GOVERNMENT REVENUE

But a reduction in tax rates seemed at odds with warnings of tougher times ahead. After all, taxes form a substantial portion of government revenues, which is essential to support government operations and public spending.

Originally, the introduction of GST – and the resulting spike in government revenues – had provided for much opportunity for corporate tax cuts. After all, the government's indirect tax collections had been at an all-time-high with GST raking in excess of RM40 billion per year – nearly twice that of Sales and Services Tax (SST).

Quite understandably, the shutdown of GST, and subsequent reintroduction of SST 2.0, has slashed government collections by some RM20 billion, thus depriving the Treasury of its ability to lower income tax rates indiscriminately. Given this backdrop, it was a delightful surprise that the SMC tax rate was stepped down by 1% under Budget 2019.

MALAYSIAN TAX RATE TREND

But on reflection, the story of Malaysia's corporate tax rates has been one of gradual and progressive reductions – a plotline that has played out over the past few decades. **Figure 1** tracks Malaysia's corporate tax rate since 1988 till 2018.

It can be observed that corporate tax rates in Malaysia has shown a clear downward trend, from the high 40% of 1980s to the current 24% (2018/2019) – nearly a halving of the tax rate.

This has been positive for Malaysian companies because lower corporate tax rates leave more profits and cash on their balance sheets for reinvestment. However, the rate declines in the 1990s were definitely more substantial compared to that of more recent periods.

SMC TAX RATE

Interestingly, in 2003, policymakers introduced differential tax rates for SMCs and non-SMCs, thus splitting corporate taxpayers into two distinct segments. (SMCs are defined as those with paid up ordinary share capital of not more than RM2.5m at the beginning of the basis period where all related companies also have ordinary share capital not exceeding RM2.5m).

For the first time starting 2003, SMCs were taxed at 20% on the first RM100,000 of chargeable income (which was 8% lower than non-SMCs), giving them a small but palpable tax advantage over non-SMCs. This was an important turning point, for it signalled the government's recognition of the economic potential that SMCs embodied.

From 2004 onwards, this was further enhanced to 20% on the first RM500,000 of chargeable income, conferring SMCs with a sizeable tax savings of up to RM40,000 each year compared to non-SMCs, ushering in what could be a golden age for SMC taxes.

GOLDEN AGE FOR SMC TAXES

The years of assessment 2004 to 2006 represented the pinnacle in relative tax savings for SMCs due to the differential tax rates between SMCs and non-SMCs (20% versus 28%) as no other time in corporate tax history did Malaysian SMCs witness such a large divergence in corporate tax rates.

However, good things seldom last. The years 2007 to 2015 saw this SMC tax advantage slowly eroded away as Malaysia chiselled down the non-SMC tax rate from 28% (2006) to 25% (2015) over the decade, while the SMC tax rate was held constant at 20%; perhaps allowing non-SMC tax rates to play catch up along the downward curve.

But corporate tax rates were poised for more reductions. The introduction of GST in April 2015

empowered (or perhaps compelled) policymakers to bring down corporate tax rates even further, partly in fulfilment of earlier GST policy pledges. For year of assessment 2016, both the SMC tax rate and non-SMC tax rate saw another 1% drop to 19% and 24% respectively; thus, providing some cheer amidst rising GST collections.

While the non-SMC rate of 24% remains unchanged from 2017 to 2019, SMCs enjoyed a tax rate reduction to 18% (YA 2017 and 2018) and 17% (proposed under Budget 2019), thus widening the differential tax savings in favour of SMCs once again.

SPECIAL TAX RATE FOR 2017 AND 2018

Although not commonly celebrated among the business circle, Malaysia actually introduced a novel policy of selective tax rate reduction based on increase in chargeable income from YA 2016 to YA 2017 and from YA 2017 to YA 2018.

This incentive provides selective reductions to the non-SMC tax rate from the usual 24% to 23%, 22%, 21% and even 20%, depending on the percentage of increase in chargeable income from business (ICIB) achieved. This incentive pulls down the effective corporate tax rates for qualifying companies.

However, the computation of the selective reduction in tax rates was riddled with complications and uncertainties, such that even a year after announcement, professional bodies were still in communication with the Inland Revenue Board Malaysia (IRBM) discussing how the detailed computation is to be done.

One thorny issue that caused much confusion was how to treat the ICIB when a portion of it fell below the RM500,000 SMC-threshold while the remaining portion was above the RM500,000 mark.

It was only clarified by the IRBM (after many months of deliberation) that the portion of ICIB that dipped below chargeable income of RM500,000 would be subjected to 18%, and only the portion of ICIB (if any) above the RM500,000 line can enjoy the selective tax rates (20% to 23%).

GLOBAL TAX RATE TREND

But is the trend of reducing corporate tax rates unique to Malaysia?

Recent global research (Steinmuller, Thunecke, Wamser, 2018) sheds some light on this. A survey covering 178 countries over 21 years (1996 till 2016) revealed that the Statutory Tax Rate (STR) has seen steady declines throughout the world; 141 countries have cut their STRs, only 22 have increased it, and 15 countries have kept it constant. Bottom line: an overwhelming majority of countries are reducing their tax rates.

Furthermore, the reduction in global STR between 1998 to 2011 is especially evident: a 7.8% drop in global corporate tax rates on average. However, between 2011 to 2016, the reduction in STR was only 0.7%, a more muted cut in corporate tax rates.

In 2016, the average global STR converged to about 22%. As a comparison, Malaysia's corporate tax rate in 2016 was 19% for SMCs (on first RM500,000 of chargeable income) and 24% for non-SMCs, which is fairly representative of the global average.

This means Malaysia was not alone in lowering its corporate tax rates over the past two decades, but was part of a larger global trend. Some notable comparisons include Hong Kong (16.5%), Singapore (17%) and United Kingdom (19%).

REASONS FOR GLOBAL TREND

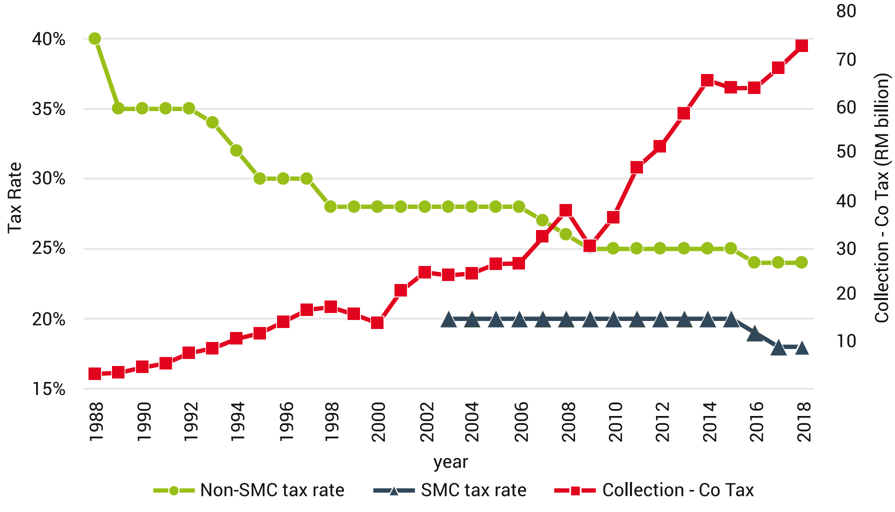
So why? Why are countries throughout the world jumping onto a bandwagon of lowering corporate taxes? Have high tax rates become unfashionable over the years? A possible answer might be tax competition.

More and more countries are resorting to lowering corporate tax rates to lure Foreign Direct Investments (FDI) to their shores to setup operations and create employment opportunities – something that no government can afford to miss out on.

And as can be seen in recent capricious times, when neighbouring countries are reducing their tax rates, any inaction by a particular country can trigger physical plant relocations or transfer pricing exercises as corporate profits are surreptitiously shifted to tax-advantaged locations.

But tax competition aside, is there a deeper rationale fuelling a global reduction in corporate tax rates?

Figure 1: Malaysian corporate tax rates (1988-2018)



LAFFER CURVE EFFECTS

The Laffer Curve, popularised by Professor Arthur Laffer in the 1970s, postulates that when tax rates are reduced, the tax base widens, such that overall tax collections will increase. In short: push tax rates down, and tax revenues go up.

The Laffer Curve is depicted as an inverted U-shaped curve with tax rates as the horizontal axis and tax revenues as the vertical axis. The mechanism behind the Laffer Curve is an interplay between tax rates and the tax base. By lowering tax rates, it is argued, the tax base will widen as more taxpayers / businesses are incentivised to be more productive and more tax compliant.

The observed drop in statutory tax rates across the world over the past few decades provides credence that countries may be pursuing strategies to widen their tax base.

MALAYSIA'S TAX RATES AND TAX BASE

What about Malaysia? Has the overall decline in corporate tax rates contributed to bolster tax collections?

Historical data from Malaysia revealed that in the last three decades, corporate income tax collections increased from RM3.1 billion (1988) to RM70.2 billion (2018 forecast). By all accounts, this represented a significant surge, and offers support for the Laffer Curve effects. See **Figure 1**.

REVENUE-MAXIMISING TAX RATE

However, the Laffer Curve effect only works to a certain extent. There comes a point when a reduction in tax rates is no longer able to widen the tax base sufficiently to offset any loss of revenue from the tax rate reduction.

This special point is known as the "revenue maximising tax rate" – a magic number which, if discovered, would no doubt be highly prized by governments around the world. So what exactly is this special tax rate number?

Brill and Hassett (2007) suggested that the revenue maximising corporate tax rate was about 34% in the late 1980s but has since declined to about 26% for 2005. Steinmuller, Thunecke and Wamser (2018) found that it is somewhere around 31%.

However, given that the average global statutory tax rate was roughly 22% (2016), it appears that many countries were setting statutory tax rates below the optimum rate for maximising tax revenues, possibly due to active tax competition among countries.

TAX BASE IN RECENT TIMES

Another important international observation is that in the 1980s and 1990s, reductions in tax rates were accompanied by a widening tax base to offset the tax rate cuts. However, in the past 13 years (2004 to 2016), tax rate cuts did not bring about a sufficient compensatory widening of the tax base (Steinmuller, Thunecke and Wamser, 2018).

This means in recent times, the tax base was not widening at a rate fast enough to fully offset any reduction in

tax rates, suggesting that lowering tax rates alone may no longer prop up tax revenues.

This revelation, if proven applicable in Malaysia, will force governments to rely less on tax rate reductions as a fiscal instrument, and instead, to seek out new and novel approaches to ramp up productivity or tax compliance.

WHEN TAX RATES GO TO ZERO

What if taxes could go to zero? By all accounts, this would be a dream come true for all taxpayers if the word "taxation" is banished from pay-slips and Profit & Loss accounts. Would that bring about greater economic activity?

These were the aspirations of policymakers in Kansas, a state in the United States of America where certain tax rates were driven down all the way to zero in a bold political and economic move back in year 2012.

In part, the "Kansas experiment", as it had come to be known, was a litmus test of the Laffer Curve effect and for a functioning free-market system whereby zero taxes should, according to the theory, catalyse businesses to spread, to expand and most importantly, to employ; thus, creating a source of economic sustenance for the populace.

So did zero-taxes bring about economic improvements to the state of Kansas? Unfortunately, the drastic reduction in tax rates only saw modest business growth, but too little too slow. Meanwhile, deprived of precious tax revenues, the state had to shut down schools and other public amenities as state finances dried up, eventually leading to an abandonment of the zero-tax policy.

If anything, the "Kansas experiment" was a gentle reminder that some non-zero level of tax was perhaps necessary for a functioning government system – at least at the state level.

CONCLUSION

For the past three decades in Malaysia, corporate tax rates have only moved in one direction: downwards. The gradual decline from the lofty 40% in 1988 to the new low of 17% for SMCs (Budget 2019 proposal) speaks eloquently of this fact.

Unintuitively, this has resulted in a meteoric rise of corporate income tax collections from RM3b (1988) to RM72b (2018 forecast), an attestation to the adage that you can sometimes get more from less.

But just as taxpayers will always appeal for ever lower tax rates, governments need to balance their own funding needs and provision of public goods/ services while maintaining global competitiveness in attracting Foreign Direct Investments – a tall order that is proving very difficult to pivot as more countries scramble to lower their tax rates.

Meanwhile, Malaysian small medium companies can once again look forward to another round of lower corporate tax rates in the coming year, a now 'recurrent' affair that SMCs welcome with open arms.

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INSIGHTS INTO SST APPEAL PROCESS

S. Saravana Kumar & Ivy Ling Yieng Ping

INTRODUCTION

9 May 2018 marked the dawn of the new beginning for Malaysia. On 16 May 2018, the government announced that the rate of the controversial goods and services tax ("**GST**") will be reduced to 0%. This was quickly followed by the abolishment of GST effective from 1 September 2018 onwards with the legislation of the GST (Repeal) Act 2018. The sales tax and service tax ("**SST**") were reintroduced with

some modifications to replace the GST from 1 September 2018. Just like the GST, the SST has its fair share of confusion and uncertainties arising from its implementation coupled with many guidelines which seem to have made the new SST to be more complex than its predecessor[1]. This is coupled with technical issues which are bound to arise over time due to differing stand points adopted by the Royal Malaysian Customs ("**the Customs**") and SST practitioners. It must be noted that the Sales Tax Act 2018 and Service Tax Act 2018 ("**SST Acts**") also contain a rather comprehensive penalty regime which, from its drafting and intent, appear to be more punitive in nature[2]. During the various roadshows nationwide, the Customs have assured businesses and SST practitioners alike that the Customs will take a soft approach on SST implementation, which the layman may interpret to mean that the penalty provisions under the SST Acts will be applied sparingly[3]. However, it must be noted that this assurance is not legally binding and in any event, the Customs is not estopped from applying the full strength of the law if it wishes to impose penalty[4].

With this background in mind, the authors aim to discuss the SST appeal processes in Malaysia. This article will cover two major appeal avenues available to taxpayers namely the Customs Appeal Tribunal and judicial review application.

CUSTOMS APPEAL TRIBUNAL

The ordinary appeal route that is envisaged by Parliament when a taxpayer is aggrieved by the decision of the Customs in respect of SST matters is to appeal to the Customs Appeal Tribunal ("**Tribunal**")[5]. Both the SST Acts expressly provide that the Tribunal refers to the one established under Section 141B of the Customs Act 1967 ("**CA 1967**")[6]. The Tribunal has the jurisdiction to determine appeals in respect of SST matters except those relating to compound[7]. No reason has been provided by Parliament for making this exception and neither do the SST Acts provide any alternative appeal remedy to taxpayers in the event that they are aggrieved by the decision of the Customs in matters relating to compound. It is unfortunate that the SST Acts are silent on this as the authors opine that Parliament should have either provided an appeal process for such matters or at least acknowledged that such matters could be appealed by way of judicial review application. It is the authors' opinion that taxpayers who are aggrieved by decisions in respect of matters relating to compound may seek legal recourse by way of judicial review application, which is discussed below.

The salient features of the Tribunal are:

1. Membership

The membership of the Tribunal is rather wide and the appointment of Tribunal members is determined by the Minister of Finance[8]. The Chairman and the Deputy Chairman of the Tribunal will be appointed amongst the officers from the Judicial and Legal Service[9]. The Minister is required to appoint not less than seven members whom in the opinion of the Minister have special knowledge and experience in customs or taxation matters[10]. The Tribunal members shall hold office for a term not exceeding three years and are eligible for reappointment up to three consecutive terms[11]. The Minister shall also determine the terms and conditions of appointment and the remuneration of the members of the Tribunal including the Chairman[12].

In the following circumstances, the appointment of a member of the Tribunal may be revoked by the Minister under Section 141E of the CA 1967 read with Section 5 of the Customs (Amendment) Act 2018 ("**C(A)(A) 2018**"):

(a) his conduct, whether in connection with his duties as a member of the Tribunal or otherwise, has been such as to bring discredit to the Tribunal;
(b) he has become incapable of properly carrying out his duties as a member of the Tribunal;
(c) there has been proved against him, or he has been convicted -of, a charge or charges in respect of-
  (i) an offence involving fraud, dishonesty or moral turpitude;
  (ii) an offence under any law

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[1] *https://www.thestar.com.my/news/nation/2018/09/05/vague-and-confused-over-sst-traders-and-consumers-unclear-over-new-taxation-system/*

[2] *https://www.malaysiakini.com/news/436721*

[3] *https://www.nst.com.my/business/2018/08/402777/government-will-use-soft-approach-implement-sst*

[4] *Teruntum Theatre Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2006] 3 CLJ 123*

[5] *Section 81(5) of the Service Tax Act 2018 ("STA 2018") and Section 96(5) of the Sales Tax Act 2018 ("SaTA 2018")*

[6] *Section 2(1) of the STA 2018 and Section 2(1) of the SaTA 2018*

[7] *Section 81(4) of the STA 2018 and Section 96(4) of the SaTA 2018*

[8] *See Section 141C(1) of the CA 1967.*

[9] *See Section 141C(1)(a) of the CA 1967.*

[10] *See Section 141C(1)(b) of the CA 1967 read with Section 4(a) of the C(A) A 2018.*

[11] *See Section 141C(2) of the CA 1967.*

[12] *See Section 141G of the CA 1967 read with Section 4(b) of the C(A)A 2018.*

relating to corruption;

(iii) an offence under the CA 1967, the Excise Act 1976, the SST Acts or the repealed Sales Tax Act 1972, Service Tax Act 1975 or GST Act 2014;

(iv) any other offence punishable with imprisonment for more than two years;

(d) he is adjudicated a bankrupt;

(e) he has been found or declared to be of unsound mind or has otherwise become incapable of managing his affairs; or

(f) he absents himself from three consecutive sittings of the Tribunal without leave of the Chairman.

A member appointed by the Minister may also resign from his office at any time by giving a three months' notice in writing to the Minister[13].

Section 141H of the CA 1967 provides for the appointment of a Secretary and a number of officers as may be necessary to ensure the functions of the Tribunal are discharged accordingly. The officials are expected to report to the Chairman of the Tribunal. Like any other tribunals, no action or suit could be instituted or maintained in any court against the members of the Tribunal for any act or omission done in good faith in the performance of their functions and exercise of powers[14].

2. Hearing of appeals

Any taxpayer who is aggrieved by the decision of the Director General of Customs in respect of a SST matter (except for the matters relating to compound – which is non-appealable) has 30 days from the date the disputed decision was made known to the taxpayer to lodge an appeal. The appeal is to be made using the prescribed form[15] together with the prescribed fee[16]. The taxpayer is required to provide his particulars and state the grounds of appeal along with the remedy sought in the notice of appeal.

If a taxpayer has missed the thirty days dateline, he may make an application in writing to the Tribunal for an extension of time[17]. The Tribunal may grant the extension if it is satisfied that it is reasonable in all circumstances to do so. The Tribunal is required to grant the Customs the right to be heard before making its decision[18].

An appeal is ordinarily heard by a panel of three members where it may be presided by the Chairman, Deputy Chairman or any member of the Tribunal[19]. However, if the Chairman deems it fit in the interest of achieving expeditious and efficient conduct of the appeal, the appeal can be heard and disposed of by a single member panel who could be the Chairman, the Deputy Chairman or any other member of the Tribunal [20]. The taxpayer may conduct his case himself or may be represented by any person whom he may appoint for that purpose or an advocate or solicitor[21]. Meanwhile, the Director General of Customs may be represented by an authorised officer[22].

Although it is stated that any proceedings before the Tribunal shall be conducted without regard to formality and technicality, the Tribunal have the authority to exercise the following[23]:

a) procure and receive evidence on oath or affirmation, whether written or oral, and examine any person as a witness, as the Tribunal thinks necessary to procure, receive or examine;

(b) require the production before it of books, papers, documents, records and things;

(c) administer such oath, affirmation or statutory declaration, as the case may be;

(d) seek and receive such other evidence and make such other inquiries as it thinks fit;

(e) summon the parties to the proceedings or any other person to attend before it to give evidence or to produce any document, record or other thing in his possession or otherwise to assist the Tribunal in its deliberations;

(f) receive expert evidence; and

(g) generally direct and do all such things as may be necessary or expedient for the expeditious determination of the appeal.

Section 141Y of the CA 1967 states that no proceedings, decision or document of the Tribunal

shall be set aside or quashed for want of form. The Tribunal is also empowered to award costs against the taxpayer and the Director General of Customs in the circumstances prescribed under Section 141TA of the CA 1967.

The Tribunal is required to pronounce their decision without delay and where practicable, within sixty days from the first day the hearing before the Tribunal commences[24]. The Tribunal has the power to affirm, vary or set aside the Director General of Customs' decision[25] and is required to give reasons for its decision[26].

3. Further appeal

A party aggrieved by the decision of the Tribunal has the right to appeal to the High Court on a question of law or of mixed fact and law[27]. It must be noted that ordinarily in an appeal, no new or further evidence could be adduced on appeal. Further, the Tribunal members would be the judges of fact and upon examining all the evidence admitted to them, the Tribunal would form an opinion and draw conclusions from those facts. Although any error of law committed by the Tribunal could be set aside on appeal, it must be appreciated that an appellate court is usually reluctant to disturb the finding of facts unless it could be established that the facts found by the Tribunal are not supported by evidence or another reasonable Tribunal in the same circumstances would not have found the same.

The final court in respect of SST appeals originating from the Tribunal would be the Court of Appeal. A party dissatisfied with the decision of the High Court may lodge an appeal to the Court of Appeal within 30 days upon the pronouncement of the said decision.

As SST appeals do not originate from the High Court, it is the authors' view that it may not satisfy Section 96(a) of the Courts of Judicature Act 1964 and thus, an appeal from the Court of Appeal to the Federal Court will not be possible for matters that originate from the Tribunal[28].

4. Negotiation

It is encouraging to observe that the mere fact that an appeal had been lodged before the Tribunal does not bar taxpayers and the Director General of Customs from engaging in discussions and negotiations with the view of resolving the dispute amicably out of court.

In fact, Section 141P of the CA 1967 expressly provides that in appropriate circumstances, the Tribunal may assist parties to the proceedings to negotiate an agreed settlement in relation to the appeal. Where the parties reach an agreed settlement, the Tribunal shall approve and record the settlement and the settlement shall take effect as if it were a decision of the Tribunal[29]. However, in circumstances where it appears to the Tribunal that it would not be appropriate for it to assist the parties to negotiate an agreed settlement in relation to the appeal or the parties

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13 See Section 141F of the CA 1967 as amended by Section 6 of the C(A)A 2018.
14 See Section 141AA of the CA 1967.
15 The prescribed form is FormA, see regulation 2(1) of the Customs (Appeal Tribunal) Regulations 2007.
16 The prescribed fee is RM100, see regulation 2(2) of the Customs (Appeal Tribunal) Regulations 2007
17 See regulation 3 of the Customs (Appeal Tribunal) Regulations 2007.
18 See regulation 3(3) of the Customs (Ap peal Tribunal) Regulations 2007.
19 See Section 141J(1) of the CA 1967 as amended by Section 8 of the C(A)A 2018
20 See Section 141K of the CA 1967 as amended by Section 9 of the C(A)A 2018
21 See Section 141Q of the CA 1967 as amended by Section 11 of the C(A)A 2018
22 See Section 141Q(a) as amended by Section aa of the C(A)(A)2018
23 See Section 141s of the CA 1967
24 See Section 141T(1) of the CA 1967.
25 See Section 141T(2) of the CA 1967.
26 See Section141T(3) of the CA 1967.
27 See Section 141W of the CA 1967.
28 Terengganu Forest Products Sdn Bhd v Cosco Container Lines Co Ltd & Anor and other applications [2011] 1 MLJ 25
29 See Section 141P(3) of the CA 1967.

are unable to reach an agreed settlement in relation to the appeal, the Tribunal shall proceed to determine the appeal[30].

JUDICIAL REVIEW

The ***Federal Court in Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 3 MLJ 145*** recognised that judicial review provides a means by which judicial control of administrative actions is exercised. The Malaysian Civil Procedure 2013 amongst others, succinctly explains that judicial review refers to the process of supervisory jurisdiction exercised by the High Court over decisions of persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties.

In respect of SST matters, the authors foresee judicial review applications taking place when a taxpayer intends to bypass the Tribunal or is aggrieved by a matter relating to compounds. A decision susceptible to judicial review is not only open to challenge on the ground of procedural impropriety, but also on the grounds of illegality, irrationality and proportionality (see ***R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147**). Unlike the Tribunal where no leave is required to lodge an appeal, in order to commence judicial review proceedings, the taxpayer must first obtain leave from the High Court. As held by the Federal Court in ***Mohd. Nordin Johan v The Attorney-General, Malaysia* [1983] CLJ (Rep) 271**, the sole question at the leave stage in a judicial review application is whether the application is frivolous. If leave is granted, the taxpayer may then commence his judicial review application and if successful, the taxpayer may pray for the High Court to exercise its jurisdiction to grant various remedies including an order of *certiorari* to quash the impugned decision, grant declaratory relief and award damages including interest.

As explained earlier, the Tribunal is precluded from hearing matters relating to compound and the SST Acts do not provide any appeal remedy in respect of such matters. In such circumstances, a taxpayer aggrieved by the decision of the Customs in respect of any such matters, may seek legal recourse by applying for judicial review. In ***Goh Eng Hwa v Ketua Pengarah Lembaga Hasil Dalam Negeri & Anor* [2008] 8 CLJ 777**, the taxpayer was issued a travel restriction notice under Section 104 of the Income Tax Act 1967 by the Director General of Inland Revenue. Such notice was not appealable to the Special Commissioners of Income Tax as it was not an assessment, and neither was there a remedy provided under the Income Tax Act 1967. The taxpayer sought a declaratory relief from the High Court inter alia to declare that he did not owe any outstanding tax and thus, the travel restriction notice was not sustainable. He commenced his proceedings by way of an originating summons and not by way of judicial review. The High Court dismissed the taxpayer's case on the premise that his approach to commence the matter by way of an originating summons was an abuse of process.

Two points are to be noted from the High Court's decision in Goh Eng Hwa (supra) namely:

(a) if a taxpayer intends to challenge a public authority like the Director General of Inland Revenue, the appropriate legal recourse was to apply for judicial review; and

(b) in instances where the domestic remedy provided under the governing legislation has no jurisdiction to hear a decision made by a public authority under the same legislation and the said governing legislation does not provide for an alternative legal remedy or is silent on the same, then a taxpayer aggrieved by such a decision may seek legal recourse by way of judicial review.

In this regard, the authors are of the opinion that a taxpayer aggrieved by the decision of the Customs in respect of the matters precluded from being heard by the Tribunal, may seek legal recourse by way of judicial review.

Meanwhile, in exceptional circumstances, matters which are appealable to the Tribunal could be pursued at the High Court by way of judicial review. The exceptional circumstances are clear lack of jurisdiction, failure to perform a statutory duty and breach of natural justice. The existence of the Tribunal does not prevent taxpayers from commencing judicial review proceedings in exceptional circumstances as held by a number of decisions namely the Federal Court in ***Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama Serbaguna Sungai Gelugor dengan Tanggungan***[31] and the High Court in ***Metacorp Development v Ketua Pengarah Hasil Dalam Negeri***[32]. It is notable that the decision of the High Court in Metacorp was unanimously affirmed by the Court of Appeal and the Director- General of Inland Revenue's leave application was dismissed unanimously by the Federal Court.

The Federal Court in Sungai Gelugor (supra) examined in detail the alternative remedy argument after studying various local and English authorities on this point. The Federal Court concluded that where genuine grounds for judicial review are alleged, it is the refusal rather than grant of relief which is the exceptional course. It was further stated that:

"the reason for this is that whilst in theory the courts there frequently recite the incantation that alternative remedies must be exhausted before recourse may be had to Judicial Review, in practice, the courts are often much kinder to the applicant with a good case on the most probably entertain his application as an exception".

The above clearly establishes that if taxpayers choose not to exercise the statutory appeal remedy, namely the Tribunal, the Courts' jurisdiction to hear such applications is not excluded. In fact, as a matter of practice the Courts are often inclined to grant judicial review to applications that have merit. This observation was unanimously endorsed by the Federal Court in Sungai Gelugor. The judicial pronouncements cited above illustrate that it is the refusal to grant judicial review which is an exception rather than the granting of judicial review in cases where there is an alternative remedy

The authors opine that if an appeal is necessitated on the premise that the Director General of Customs had abused his authority by applying the law erroneously and had acted beyond the powers conferred to him, then judicial review appears to be a better legal remedy to the taxpayers. This is because unlike the Tribunal, the High Court has the jurisdiction to stay the enforcement of the decision. The Director General of Customs' authority is not absolute and is open to judicial review. In ***Kim Thye Co. v Ketua Pengarah Hasil Dalam Negeri***[33], despite the existence of the Special Commissioners of Income Tax, the Director General of Income Tax accepted as "a matter of law that he is not immune from the process of judicial review and made no procedural objection" to the taxpayer's application in that case.

[30] *See Section 141P(4) of the CA 1967.*
[31] *[1999] 3 MLJ 1*
[32] *[2011] 5 MLJ 447.*
[33] *[1991] 3 CLJ 2507.*
[34] *https://www.pressreader.com/malaysia/new-straits-times/20180819/281659665886615*

CONCLUSION

It is essential that taxpayers and SST practitioners are aware of their legal rights and the legal recourses available to them. Once they have determined the suitable legal recourse that they wish to pursue i.e. appeal before the Tribunal or judicial review application, then they must ensure that they comply with the necessary procedural requirements. Meanwhile, the Customs as the public authority entrusted with the implementation of the SST Acts must ensure that it exercises its powers and discretion equitably and judiciously. Decisions should not be made arbitrarily and equally important, decisions should not be influenced by publicly declared target[34]. The authors respectfully conclude this article by highlighting the reminder issued by the ***Federal Court in Government of Malaysia v Jasanusa Sdn Bhd* [1995] 2 CLJ 701** whereby the courts need to balance the need of the government to realise the taxes and the need of the taxpayer to be protected against arbitrary or incorrect assessments. The Courts are ever vigilant against taxpayers who may use procedures like applying for a stay of execution to defer or postpone payment of his dues or to abscond by migration or to dissipate the assets to defeat the judgment. The Courts should also bear in mind the possibility of arbitrary or incorrect assessments, brought about by fallible officers who have to fulfill the collection of a certain publicly declared targeted amount of taxes and whose assessments, as a result, may be influenced by the target to be achieved rather than the correctness of the assessment.

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BASE EROSION AND PROFIT SHIFTING (BEPS) AND INTANGIBLES

TRACKING THE UNSEEN AND EXAMINING THE UNEXAMINED – PART I

Venkataraman Ganesan

"The real magic is in making the intangible idea, the creative impulse, manifest and live in our reality." - Mark Ryan

A. INTRODUCTION

At the core of value creation in most businesses, lies the unseen yet indispensable factor of intangible assets. In a seamlessly connected world bound by the untrammelled advance of globalisation and an unrelenting stream of innovations, intangibles have assumed an importance the likes of which have not been seen before. From a Transfer Pricing perspective this development assumes significant importance as transfer of technology competes with the transfer of goods.

As has been postulated by various tax professionals, investments in intangible capital have become larger and assumed more gravity *vis-a-vis* investments in tangible property in many jurisdictions across the globe. (***Avi-Yonah, 2010***). Identifying

an appropriate arm's length arrangement for such transfers poses veritable challenges from the perspective of both the taxpayer and the tax administration. Such a challenge is amply demonstrated by the high profile "State-Aid" cases that have brought into unenviable limelight companies such as Starbucks (***Hurk, 2014***), Fiat (***COMMISSION, 2015***) and Apple (***COMMISSION, ec.europa.eu, 2014***). While a detailed deliberation of these three judicial precedents are beyond the remit of this article, suffice to say that a perusal of these decisions provide a contextual and topical flavour regarding the profound import attained by the issue of intangibles in a borderless world. Hence, Transfer Pricing of intangibles has occupied the time, efforts and attention of many tax authorities spanning the globe. If not exactly forming the eye of a storm, the issue of intangibles at least occupies a vital periphery.

As a result, the Transfer Pricing treatment of intangibles has been at the centre of the Organisation for Economic Co-operation and Development (OECD)'s BEPS project and updated Malaysian Transfer Pricing Guidelines. This Charter considers both what assets and activities constitute an intangible, mechanism for its pricing, and what businesses ought to do where the intangibles are hard to value. Businesses must comprehend these aspects, and document them clearly, if their Transfer Pricing of intangible property is to be robust and airtight.

The OECD with a view to clamping down on aggressive tax planning, and to curb tax evasion strategies, decided in 2012, in tandem with the G20 to provide guidance to mitigate Base Erosion and Profit Shifting (BEPS) (***OECD***). Such guidance took the colour and hue of Action Item Plans and a Charter.

On the 5 October 2015, the OECD released the final reports on fifteen (15) focus areas (***OECD, OECD BETTER POLICIES FOR BETTER LIVES, 2015***).

Action Items 8-10 titled, "Intangibles, Risks and Capital and High Risk Transactions" contain Transfer Pricing guidance to assure that transfer pricing outcomes are in line with value creation in relation to intangibles, including hard-to-value ones, to risks and capital, and to other high-risk transactions.

The OECD followed up with two more reports for providing added guidance on the Transfer Pricing aspects related to intangibles. Hence for the purposes of the current discussion the relevant Action Items and Guidance Notes would be:

- Action Items 8 -10, titled "Intangibles, Risks and Capital and High Risk Transactions" issued by the OECD on the 5 October 2015 (***OECD, OECD BETTER POLICIES FOR BETTER LIVES , 2015***);
- "Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles - BEPS Action 8" issued by the OECD on the 21 June 2018 (***OECD, OECD BETTER POLICIES FOR BETTER LIVES, 2018***); and
- "Revised Guidance on the Application of the Transactional Profit Split Method - BEPS Action 10" issued by the OECD on the 21 June 2018 (***OECD, OECD BETTER POLICIES FOR BETTER LIVES, 2018***)

B. BROAD CONTOURS OF THE SERIES

The current article would concentrate primarily on Action Items 8 in general (9 & 10 are on Intra Group charges and Low Value Added Services respectively) with specific emphasis on the definition of intangibles and the

DEMPE functions that endeavour to allocate risks and returns relating to intangibles across the enterprise value chain by seeking to ensure that Transfer Pricing outcomes are in line with value creation.

Part 2 of the ensuing series would deal with the two additional Guidance Notes issued by the OCED on Hard-To-Value Intangibles as well as the application of the Transactional Profit Split Method. The series will also attempt to illustrate the applicability of the guidance with specific references to examples as provided by the OECD.

C. DEFINITION OF THE TERM 'INTANGIBLES'

The OECD has elected to adopt a very broad sweep and a wide scope in their endeavour to define 'intangibles.' According to Action Item 8, an intangible is defined as something:

a) That is not a physical asset or a financial asset;
b) That is capable of being owned or controlled for use in commercial activities; and
c) Whose use or transfer would have been compensated had it occurred in a transaction between independent parties and under comparable circumstances

It needs to be emphasised that the definition as set out above is not withstanding anything contained in any accounting definitions or characterisations. In other words, to paraphrase a key excerpt from Paragraph 6.7 of Action Item 8, "intangibles that are important to consider for Transfer Pricing purposes are not always recognised as intangible assets for accounting purposes. For example, costs associated with developing intangibles internally through expenditures such as research and development and advertising are sometimes expensed rather than capitalised for accounting purposes and the intangibles resulting from such expenditures therefore are not always reflected in the balance sheet. ***Such intangibles may nevertheless be used to generate significant economic value and may need to be considered for Transfer Pricing purposes." (emphasis supplied)***.

The Action Item proceeds to provide a category of items that could be termed intangibles for the purposes of tax. The following table summarises the said category of items as **Table 1**:

Table 1

Serial No	Intangibles from a Tax Perspective	Not Intangibles from a Tax Perspective
1.	Trademarks, Trade names and Brands	Assembled Workforce
2.	Patents	Group Synergies
3.	Know-how and Trade Secrets	Location Savings and Local consumer purchasing power
4.	Rights under contracts and government licenses (including commitments under contracts to make a workforce available)	
5.	Goodwill and Going Concern Value	
6	Licenses and similar limited rights in intangibles	

According to the Guidance contained within the Action Item, in conducting a Transfer Pricing analysis, it is essential to identify the relevant intangibles in a clear and specific manner, and that vaguely specified or undifferentiated intangibles are neither adequate nor sufficient for such identification purposes.

KEY TAKEAWAYS FROM A TAXPAYER PERSPECTIVE

Upon an analysis of the definition of what constitutes an intangible it is very clear that the boundaries of inclusion have been drawn significantly wide. Accommodating such requirements would require the taxpayer to undertake material efforts in identifying intangibles, evaluating their contribution and determining their linkages across the enterprise value chain.

This is where a comprehensive Function, Asset and Risk (FAR) analysis would be required, since only upon such a FAR analysis can the following be accomplished:

1. Identification of the intangibles present throughout the enterprise Value Chain;
2. Evaluation of the undergirding mechanism by which such intangibles contribute to the creation of value at each point (wherever appropriate) in the enterprise Value Chain;

3. Ascertaining the key related party transactions that are associated with the intangibles identified in point 1 above;
4. Evaluation of the undergirding mechanism by which such intangibles contribute to the related party transactions (if any) identified in Point 3 above; and
5. Determination of implicit and explicit linkages between intangibles and tangible assets and the business

LINKAGES WITH ACTION ITEM 13

The revised definition of intangibles also assumes importance in light of its mention in the OECD Action Item 13 relating to Transfer Pricing documentation and Country-by-Country Reporting (**OECD, OECD BETTER POLICIES FOR BETTER LIVES, 2015**). Action Item 13 requires that the transfer pricing master file transfer should contain, among other things:

- A description of the group's overall strategy for development, ownership and exploitation of intangibles, including the location of principal Research & Development (R&D) facilities and R&D management;
- A list of the group's intangibles, which are important for Transfer Pricing purposes, and details of which entities legally own them;
- A list of agreements, including cost contribution arrangements, service agreements and license agreements;
- A general description of the group's Transfer Pricing policies; and
- Details of any transfers of interest in intangibles undertaken

With this requirement for taxpayers to identify and document their intangible assets more explicitly, there will be much more visibility in future for tax authorities on the intangible assets driving business value and taxable profit.

D. DEMPE

If at all there has been one acronym that has redefined the contours of Transfer Pricing, it is (and will in the near future) undoubtedly be "DEMPE". Expanded to read, 'Development, Enhancement, Maintenance, Protection and Exploitation', DEMPE strives to align Transfer Pricing outcomes with value creation. In other words, DEMPE's avowed objective is to prevent a situation where the creation of value is far removed from the activities leading to such a creation. This novel concept has already succeeded in rankling emotions and raising eyebrows.

With the introduction of DEMPE, one can expect substantial changes in allocation of costs and the associated returns by Multinational Enterprises (MNEs). An exhaustive FAR analysis will now precede the allocation of returns across an enterprise value chain to ensure that every entity is compensated in accordance with the functions performed, assets deployed and risks assumed in the development, enhancement, maintenance, protection and exploitation of intangibles. Michael McDonald, an economist in Treasury's Office of Tax Analysis, told a conference on 28 March 2017, "One concept that not only runs through the intangibles chapter but the rest of the guidelines is 'let's not get hung up on labels. When you get hung up on labels, sometimes you take your eye off the ball." (Bloomberg, 2017)

The succeeding paragraphs provide a detailed analysis with reference to each of the functions in the DEMPE continuum:

Development

The development of intangibles encompasses all the functions, assets and risks related to the ideation of a brand/ product, planning the creation and developing strategies. Hence an entity that is solely responsible for the initial brand development as well as for tasks such as acquisition of the relevant technology licenses would be entitled to receive an arm's length remuneration that is commensurate with only the functions performed, assets deployed and risks assumed – **IN RESPECT OF SUCH** (***emphasis supplied***) brand development and acquisition of technology licenses.

Enhancement

Once the relevant intangibles as well as the entity/(ies) that are responsible for the development of such intangibles has/have been clearly identified, the next key attribute in the DEMPE continuum would be 'Enhancement.' This term in the BEPS Action Item 8 context, would refer to a continuing work on the intangibles that have already been developed with a view to continuously enhance their value, performance and reputation.

Thus, the entity/(ies) that are responsible for having developed the intangible might not be involved in enhancing the actual potential or worth of the intangible. Therefore, a detailed FAR analysis ought to be undertaken across the value chain to identify the entities that are actually involved in enhancing the intangible and an evaluation needs to be made about the arm's length remuneration which such entities would be entitled to. Again as has been reiterated in the discussion on the development stage, such a remuneration ought to be commensurate with only the functions performed, assets deployed and risks assumed – **IN RESPECT OF SUCH** (***emphasis supplied***) enhancement activities.

Maintenance

This function involves, *inter alia*, maintaining adequate, comprehensive and exhaustive historical documentation that conclusively establishes the entity's rights in intellectual properties. This is a very critical activity for aiding and assisting the entity in enforcing its rights in accordance with prevailing local legislations. Maintaining an intangible requires:

- preserving records, letters, invoices, receipts and other documents related to the adoption, first use and ownership of the relevant intellectual property;
- preserving copies of advertisements that use an entity's intellectual property, along with records of expenses incurred towards advertising, marketing and promoting such intellectual property;
- records relating to any changes in the intellectual property

Again, a detailed FAR analysis ought to be undertaken across

the value chain to identify the entities that are actually involved in maintaining the intangible and an evaluation needs to be made about the arm's length remuneration which such entities would be entitled to. This remuneration ought to be commensurate with only the functions performed, assets deployed and risks assumed – **IN RESPECT OF SUCH** (***emphasis supplied***) maintenance activities.

Protection

Protection of intangible assets is vital for ensuring that the value of a brand's assets remains strong. Activities routinely involved in protecting an intangible includes:

- securing Intellectual Property legal rights;
- preventing the copying or mimicking of ideas and proprietary technologies;
- preventing the copying or mimicking of proprietary know-how;
- regularly and consistently monitoring competitor's activities;

Again, a detailed FAR analysis ought to be undertaken across the value chain to identify the entities that are actually involved in protecting the intangible/(s) and an evaluation needs to be made about the arm's length remuneration which such entities would be entitled to. This remuneration ought to be commensurate with only the functions performed, assets deployed and risks assumed – **IN RESPECT OF SUCH** (***emphasis supplied***) protection activities.

Exploitation

For an intangible to generate profits, such an intangible must be exploited. Such an exploitation will be done by first bringing the brand to the customer, implementing the licensed technology as part of the manufacturing process; selling the products; establishing an online/digital connect the customers; and helping clients reap benefits from the products. A thorough FAR analysis across the value chain will assist in identifying the entities that are actually involved in exploiting the intangible/(s) and an evaluation needs to be made about the arm's length remuneration which such entities would be entitled to. This remuneration ought to be commensurate with only the functions performed, assets deployed and risks assumed – **IN RESPECT OF SUCH** (***emphasis supplied***) exploitation activities.

KEY TAKEAWAYS FROM A TAXPAYER PERSPECTIVE

Upon an analysis of the definition of what constitutes an intangible it is very clear that the boundaries of inclusion have been drawn significantly wide. Accommodating such requirements would require the taxpayer to undertake material efforts in identifying intangibles, evaluating their contribution and determining their linkages across the enterprise value chain.

This is where a comprehensive Function, Asset and Risk (FAR) analysis would be required, since only upon such a FAR analysis can the following be accomplished:

1. An entity that is involved in actually controlling and assuming the relevant risks, will be entitled to reap the rewards and assume the losses associated with those risks;
2. As a direct corollary to point 1 above, an entity that neither controls nor assumes risks, will not be entitled to either enjoy the rewards nor incur losses associated with those risks;
3. Prior to the introduction of the DEMPE concept, compensation for the use of an intangible accrued to the entity having the legal rights to that intangible. However, in the event another entity in the enterprise value chain has

participated in the DEMPE activities, has made available funding, or assumes various risks, each of such activities must be analysed separately to determine the risk and reward continuum;

4. The legal owner of an intangible might not assert the right to earn any profits simply by virtue of such an ownership;
5. It is extremely vital that the contracts entered into between the transacting entities involving intangibles clearly demarcate the functions, assets and risks attributable to each such party to the transaction;
6. In the event there are apparent inconsistencies or contradictions between the contractual obligations and the actual conduct, the DEMPE tenets necessitate that the actual conduct prevails over contractual obligations;
7. DEMPE states that a party providing funding and exercising control over financial risks without assuming and controlling operational risks, will only be entitled to a risk-adjusted return, such as the cost of capital;

E.CONCLUSION

Action Item 8 of the BEPS Charter and the DEMPE postulates contained within, assume that intangibles are the key/primary drivers of a business. Determining returns from such intangibles or in many cases, a series of inter-linked intangibles will pose intractable challenges to MNEs. Hence it is imperative for an MNE to contemporaneously document the functions, assets and risks assumed by each party assuming and controlling such functions and risks.

A necessary adjunct is, an identification of comparable companies and the adoption of the 'Most Appropriate Method' (MAM) for determining the arm's length price for the allocation of rewards arising from the development, use and exploitation of intangibles. When the intangibles are complex and Hard-To-Value, this challenge will be exacerbated.

The nature of Hard-To-Value-Intangibles, the use of the most appropriate method to be employed and the comparability factors would be explained in depth in Part -2 of this series.

"The unexamined life is not worth living" so uttered Socrates at his trial for impiety and corrupting youth, for which he was subsequently sentenced to death in 399 BC. 2,500 years on, his utterance still reverberate in our midst. It is indeed time now to indulge in some serious examination!

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

CHINA (PEOPLE'S REP.)

Detailed rules on depreciation published

On 23 August 2018, the State Administration of Taxation (SAT) issued a notice (Notice [2018] No. 46) announcing detailed rules regarding depreciation for purposes of enterprise income tax. These new rules are set out below.

- From 1 January 2018 to 31 December 2020, any costs incurred for purchasing new machinery and equipment with a value less than CNY5 million may be deducted in the current period (which means that they do not need to be included in the balance sheet as assets for depreciation).
- The term "machinery and equipment" refers to fixed assets other than buildings and constructions.
- The term "purchase" includes self-manufacturing of machinery and equipment.
- All costs of machinery and equipment may be deducted in the month following that in which the machinery and equipment is taken into use.
- Enterprises are free to choose whether to adopt the one-off deduction method. If the one-off deduction is adopted, the discrepancy between accounting and tax treatments with regard to the relevant fixed asset is permitted.
- Once enterprises elect not to adopt the one-off deduction method, they cannot reverse their earlier choice in the following years.
- With respect to machinery and equipment with a value exceeding CNY5 million, the depreciation rules contained in corporate income tax law and implementation regulations (Circular [2014] No. 75, Circular [2015] No. 106, Notice [2014] No.64 and Notice [2015] No.68) continue to apply.

VAT refund rates for certain products increased

On 5 September 2018, the Ministry of Finance (MoF) and the SAT

jointly issued a circular (Circular [2018] No. 93) increasing the VAT refund rates for exports of electromechanical, cultural and other products. Details of the adjustments, which will be effective from 15 September 2018, are summarized below.

- an increase in the export tax refund rate for multi-component integrated circuits, non-electromagnetic interference filters, books, newspapers and other products to 16%;
- an increase in the export tax refund rate for bamboo carvings, wood fans and other products to 13%; and
- an increase in the export tax refund rate for basalt fibre and related products, safety pins and other products to 9%.

Exports of goods and services are in principle zero-rated in China. However, the input tax on these products is only partially refunded, with the VAT refund rates being determined by the government. The refund rates are adjusted from time to time, depending on a variety of political and economic considerations. The aforementioned adjustments are believed to be a response to the imposition of import tariffs by the United States.

A list of nearly 400 products and their applicable VAT refund rates is attached to this circular.

Application rules of new standard deduction and tax brackets released

On 31 August 2018, amendments to the individual income tax were passed by the Standing Committee of the People's Congress. Pursuant to the amendments, the monthly standard deduction has been increased and will be implemented, along with new tax brackets, from 1 October 2018.

On 7 September 2018, the MoF and the SAT jointly issued Circular [2018] No. 98, clarifying that the rules related to the application of the new monthly standard deduction and tax brackets will apply in the fourth quarter of 2018. The circular provides that the increased monthly standard deduction of CNY5,000 and the new tax brackets will apply to wages and salaries received on or after 1 October 2018.

The monthly standard deduction of CNY5,000 will also apply to business income derived by individual entrepreneurs, including partners of a partnership, and the income will be subject to the new tax rate table in the fourth quarter of 2018. For income derived in the first three quarters, the monthly standard deduction remains CNY3,500, and the old tax rate table is applicable.

It can be deduced from the circular that only wages and salaries will be taxed according to the new monthly standard deductions and tax brackets. Labour services, income from copyright and royalties that will be added to the income, which is taxed at progressive rates, will be subject to the new tax rules only as from 1 January 2019. It is not yet clear how the allocation of income (wages/salaries or business income) to the months in the fourth quarter must be made (i.e. on a cash or accrual basis).

The new tax rates are outlined below.

Effective from 1 October 2018, the following tax rates will apply to wages and salaries:

Monthly taxable income (CNY)			Marginal tax rate (%)
up to		3,000	3
3,001	-	12,000	10
12,001	-	25,000	20
25,001	-	35,000	25
35,001	-	55,000	30
55,001	-	80,000	35
over		80,000	45

Effective from 1 October 2018, the following tax rates will apply to business income of individual entrepreneurs:

Taxable income on an annual basis (CNY)			Rate on excess (%)
up to		30,000	5
30,001	-	90,000	10
90,001	-	300,000	20
300,001	-	500,000	30
over		500,000	35

The circular also states that Circular [2011] No. 62 on the deduction standard for individual entrepreneurs will be abolished from 1 October 2018.

VAT exemption for interest on loans granted to small enterprises and sole traders

On 5 September 2018, the MoF and the SAT jointly issued a circular (Circular [2018] No. 91) exempting interest income derived by financial institutions on loans granted to small enterprises and sole traders. According to the circular, interest derived by qualified financial institutions on loans granted to small enterprises and sole traders is exempt from VAT in the period between 1 September 2018 and 31 December 2020 provided that the amount of the loan does not exceed CNY10 million and the interest charged on the loan is less than 150% of the contemporaneous benchmark interest rate of the People's Bank of China.

Interest derived by financial institutions on loans amounting to less than CNY1 million to small enterprises and sole traders is already exempt from VAT under Circular [2017] No. 77). In the case of a loan of less than CNY1 million, the Circular [2017] No. 77 continues to apply. In effect, the new circular (Circular [2018] No.91) is an expansion of the exemption of circular [2017] No. 77.

Super deduction for R&D activities increased

On 20 September 2018, the MoF, the SAT and the Ministry of Science and Technology jointly issued a circular (Circular [2018] No. 99) increasing the super deduction for research and development activities (R&D). According to the Circular, the actual costs and expenses incurred on R&D activities of an enterprise may be increased by 75% for deduction in determining the enterprise's profits if the R&D activities have not yet resulted in an intangible. In cases where the R&D activities have created an intangible, the amortisation base of that intangible may be increased by 175% for enterprise income tax purposes in the period between 1 January 2018 and 31 December 2020.

For the eligibility of the super deduction, Circular [2015] No.119, Circular [2018] No 64 and SAT Public Notice [2015] No.97 remain applicable.

Scope of withholding tax deferral on dividends/profits derived by foreign investors expanded

Following the publication of the Circular [2017] No. 88 and SAT Public Notice [2018] No. 3, the MoF, the SAT, the National Development and Reform Committee and the Ministry of Commerce (MOFCOM) jointly issued another circular (Circular [2018] No. 102) on 29 September 2018 expanding the application scope of the withholding tax deferral on reinvested dividends and distributed profits. The Circular retroactively applies from 1 January 2018 and replaces Circular [2017] No. 88 on the same date (thus, Circular [2017] No.88 is abolished).

Applicable scope of temporary exemption

Dividends/profits distributed by resident enterprises to non-resident foreign investors are temporarily exempt from withholding tax, provided that non-resident foreign investors re-invest such income in an encouraged or permitted foreign investment project. Under the abolished Circular [2017] No. 88, only reinvestment in encouraged foreign investment was eligible for the deferral of withholding tax. As a result of the Circular [2018] No. 102, the deferral also applies to all of the permitted foreign investments of "Catalogue for Guidance of Foreign Investment Industries" or "Industrial Catalogue of Foreign Investment in the Middle and Western Regions".

Conditions

To be eligible for the deferral, all of the following conditions must be satisfied:

- investments made by using distributed profits must be direct investments. The forms of reinvestment include increase of the capital of an existing enterprise, investment in the establishment of a new enterprise and the acquisition of an equity interest etc. In concrete terms, it means:
    - increase in capital or conversion of premium on shares or other capital reserves into paid-in capital of a domestic company resident in China;
    - investment made in connection with the establishment of a new resident company within China;
    - acquisition of an equity interest in a Chinese resident company from an unrelated party; and
    - other forms of the investment prescribed by the MoF and SAT.

The investments mentioned above do not apply to the listed companies unless it concerns a strategic investment and is specially approved by the government.

The profits distributed belong to the investment income such as dividends and profits actually distributed to foreign investors from existing retained earnings. If a cash direct investment is made, the payment must directly be transferred from the bank account of the company distributing the profits into that of the invested company. In cases where the investment is made in the non-monetary form (assets or securities), the ownership of the assets or securities must directly be transferred from the company distributing the profits to the invested company.

Other issues

The foreign investor who wants to enjoy the tax deferral treatment has to file a request with the tax authority and provide the company distributing the dividends/profits with supporting documents. After the verification of the entitlement, the distributing company may not withhold the tax as stipulated under article 37 of the Enterprise Income Tax Law.

Foreign investors that are entitled to the tax deferral, but have not used it and paid the withholding tax, may reclaim the taxes within three years from the date of the tax payment.

Foreign investors must recoup the deferred tax within seven days in the event of the withdrawal of the investment caused by the disposition of the equity, share buy-back or liquidation, if the withdrawn investment has enjoyed the tax deferral treatment. A qualified tax-free reorganisation of the invested company will not affect the tax deferral treatment.

New tax policy on tax treatment of pension fund published

On 20 September 2018, the MoF and the SAT jointly issued a circular (Circular [2018] No. 95) (the Circular) announcing new tax rules regarding the tax treatment of the pension fund for the basic pension insurance managed and supervised by the National Council for Social Security Fund (SSF) and the Pension Fund Investment Management Agency. The circular applies from the date of issuance and its content is set out below.

Value added tax (VAT) exemption

Interest on loans or similar income and income from the transfer of financial products are exempt from VAT.

Enterprise income tax exemption

Investment income accrued to the SSF by using funds saved for pensions is non-taxable income. However, income from pension fund management activities carried out by the Pension Fund Investment Management Agency and Trust Institution will be subject to corporate income tax.

Stamp duty exemption

Securities trading by the pension fund is exempt from stamp duty. However, the duty charges must be collected in advance and will be refunded at a later stage. The transfer of securities between security accounts within the pension fund will not be subject to stamp duty. The same exemption from stamp duty applies to the transfer of equity interests in non-listed companies by the pension fund.

Tax exemptions on export of retail goods through integrated cross-border e-commerce pilot zone published

On 28 September 2018, the MoF, the SAT, the Ministry of Commerce and the General Administration of Customs jointly issued a circular (Cai Shui [2018] No. 103) exempting the export of retail goods through the cross-border e-commerce comprehensive pilot zone from value-added tax (VAT) and consumption tax. The circular takes effect from 1 October 2018.

According to the circular, if the exporting enterprise is unable to present the relevant input (purchase) documents relating to the retail goods exported through an integrated e-commerce pilot zone, the exemption from VAT and consumption tax will still apply, provided that the following conditions are satisfied:

- the exporting enterprise has registered the export date, cargo name, unit of measurement, quantity, unit price and amount of the transaction at the cross-border e-commerce service platform;
- the exporting enterprise has settled the customs procedures for the declaration of e-commerce export with the customs authority based in the integrated pilot zone; and
- the exported goods are not sanctioned by the MoF or SAT as goods not eligible for the export VAT refund (exemption).

Draft implementation rules on individual income tax law published for public consultation

On 20 October 2018, the MoF and the SAT jointly published the draft revised implementation rules on the Individual Income Tax Law on their respective websites for public consultation. The public may submit their opinions and comments via the websites or letters before 4 November 2018.

The following implementation rules were revised:

- the scope of taxable income for individual residents who do not have a domicile in China;
- the scope of income sourced from China;
- provisions on taxable income, including income from production and business operations, deemed income from transfer of property, special deductions, the method used to calculate the taxable income sourced from foreign jurisdictions and the credit method applied to foreign income;
- introduction of anti-avoidance measures; and
- tax collection and administration requirements.

Deduction of liability insurance premiums clarified

On 31 October 2018, the SAT issued a public notice (SAT Public Notice [2018] No. 52) stating that insurance premiums paid by entities for employer liability insurance and public liability insurance are deductible for corporate income tax purposes.

This notice applies to the settlement of corporate income tax for 2018 and subsequent years.

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

TechnicalUpdates

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

INCOME TAX

Income tax exemption for Islamic banking and takaful business transacted in foreign currencies extended to 31 December 2020

The Income Tax (Exemption) (No. 3) Order 2018 [P.U.(A) 251], gazetted on 5 October 2018, extends the income tax exemption granted to Islamic banking and takaful business activities carried out in foreign currency through the International Currency Business Unit (ICBU), which was due to expire in the year of assessment (YA) 2016, to YA 2020.

The incentive is available to the following entities if approved by the Central Bank of Malaysia:

(a) The ICBU in:
   i. An Islamic bank licensed under the Islamic Financial Services Act 2013 (IFSA);
   ii. An institution licensed or authorised under the Financial Services Act 2013 (FSA);
   iii. A licensed takaful operator under the IFSA;

(a) A licensed international Islamic bank under the IFSA; or
(b) A licensed international takaful operator under the IFSA

PR No. 3/2018 – Qualifying Expenditure and Computation of Industrial Building Allowances

PR No. 3/2018: Qualifying Expenditure and Computation of Industrial Building Allowances, dated 12 September 2018, explains the concept of qualifying building expenditure (QBE) and the computation of Industrial Building Allowances (IBA). The PR further clarifies the date the QBE is deemed to have been incurred in various situations and the criteria to be satisfied in order for a person to be eligible for the IBA claim. The PR also provides further guidance and examples on the eligibility for IBA claims,as well as the computation of IBA for various scenarios.

PRs No. 4/2018, 5/2018 and 6/2018 – Taxation of a Resident Individual

The IRBM published the following PRs on 3 September 2018, to provide guidance on the taxation of individuals who are resident in Malaysia:

- PR No. 4/2018: Taxation of a Resident Individual Part I – Gifts or Contributions and Allowable Deductions
- PR No. 5/2018: Taxation of a Resident Individual Part II – Computation of Total Income and Chargeable Income
- PR No. 6/2018: Taxation of a Resident Individual Part III – Computation of Income Tax and Tax Payable

The IRBM has advised that these three PRs should be read together, and will replace the following PRs:

- PR No. 1/2005 dated 5 February

2005;
- PR No. 2/2005 dated 6 June 2005;
- Addendum to PR No. 2/2005 dated 6 July 2006; and
- Second Addendum to PR No. 2/2005 dated 3 January 2008

The new PRs are broadly similar to the earlier PRs, but the content has been updated to incorporate and explain the legislative changes from 2008.

PR	Description
PR No. 4/2018: Taxation of a Resident Individual Part I – Gifts or Contributions and Allowable Deductions	The new PR provides clarification in relation to gifts or contributions which can be claimed by a resident individual in determining the total income for a YA, as well as the tax deductions that are allowable to a resident individual in computing his/her chargeable income for a YA.
PR No. 5/2018: Taxation of a Resident Individual Part II – Computation of Total Income and Chargeable Income	The new PR explains the computation of total income and chargeable income of a resident individual who derives income from business, employment and other sources.
PR No. 6/2018: Taxation of a Resident Individual Part III – Computation of Income Tax and Tax Payable	The new PR explains the computation of income tax and the tax payable for an individual resident in Malaysia.

PR No. 7/2018 – Accelerated Capital Allowance

PR No. 7/2018: Accelerated Capital Allowance, dated 8 October 2018, replaces the earlier PR No. 4/2013 issued on 15 April 2013. The new PR is broadly similar to the earlier PR and provides clarification in relation to the definition of qualifying expenditure, the conditions that must be fulfilled by a person to qualify for Accelerated Capital Allowance (ACA), the qualifying period to claim ACA, the tax treatment where assets are disposed of within two years, and the non-application provisos. It has, however, been updated to reflect the ACA P.U. Orders which are still in force.

PR No. 8/2018 – Tax Incentives for BioNexus Status Companies

PR No. 8/2018: Tax Incentives for BioNexus Status Companies, dated 9 October 2018, explains the tax treatment in respect of tax incentives for a BioNexus Status Company (BSC) in Malaysia. The PR clarifies the definition of a BSC, the application process for BioNexus status, the tax incentives available for a BSC, and treatment of losses incurred by a BSC.

PR No. 9/2018 – Taxation of Unit Holders of Real Estate Investment Trusts / Property Trust Funds

PR No. 9/2018: Taxation of Unit Holders of Real Estate Investment Trusts / Property Trust Funds, dated 12 October 2018, explains the tax treatment of income distribution by real estate investment trusts (REITs) / property trust funds (PTFs) in Malaysia to unit holders. The new PR replaces PR No. 7/2012, which was published on 29 October 2012.

The content of the new PR is broadly similar to the earlier PR. It has, however, been updated to reflect the legislative change in Budget 2017, where Section 61A(2) of the ITA was amended such that only a unit trust approved by the Securities Commission (SC) and listed on Bursa Malaysia is exempt from tax, where the 90% distribution threshold is met. Prior to the amendment, a unit trust approved by the SC as a REIT or PTF would have been exempt from tax if 90% or more of its total income was distributed to the unit holders, which included an unlisted REIT / PTF..

The new PR also stipulates that where a unit holder is tax-exempt under Section 127(3)(b), 127(3A) or Schedule 6 of the ITA, and the distribution of income from a REIT / PTF has been subjected to withholding tax under Section 109D of the ITA, that unit holder would be entitled to a refund under Section

111 of the ITA.

Where a REIT/PTF is not exempted from tax under Section 61(1A) of the ITA, its unit holders would be entitled to claim a tax credit under subsection 110(9A) of the ITA when they declare the taxable distribution from the REIT / PTF in their income tax returns.

Amended guidelines on deductions for secretarial fees and tax filing fees

The IRBM has published on its website amended guidelines, in Bahasa Malaysia, dated 17 August 2018, on deductions for secretarial fees and tax filing fees (Guidelines), titled "Pindaan Garis Panduan Potongan Bagi Perbelanjaan Berhubung Dengan Yuran Kesetiausahaan Dan Yuran Pemfailan Cukai". A summary of the clarification is set out below.

Deduction of secretarial fees (Paragraph 4.2.3 of the Guidelines)

The original Guidelines had stated that a deduction for secretarial fees for a YA shall be allowed in that YA if the fees are incurred and paid in the basis period for that same YA.

The amended Guidelines state that the deduction for secretarial fees shall be allowed for a YA only:

- Upon receipt of service;
- If a liability has arisen and can be captured in the Profit & Loss accounts in accordance to the accounting standards; and
- If the fees have been paid

Examples 1 to 3 of the Guidelines have also been updated accordingly to reflect the above further clarification.

Deduction of tax filing fee (Example 4 of Guidelines)

In the earlier Example 4, the IRBM had clarified that the tax filing fee for YA 2015, which was incurred in YA 2016 and paid in YA 2017, was not deductible, as the fee was not incurred and paid in the basis period immediately following that YA (i.e. YA 2016) (refer to Rule 2(1)(b)(i) of the Rules).

The Guidelines have now been amended to reflect that a deduction will be allowed in YA 2017 when the payment of the fee is made.

Guidelines on Income Tax Exemption for Religious Institution or Organisation under the Income Tax (Exemption) Order 2017

The Income Tax (Exemption) Order 2017 [P.U.(A) 52] (Exemption Order), gazetted on 15 February

2017, provides a 100% income tax exemption on all sources of income of a religious institution or organisation and absolves such institutions or organisations from any requirement to furnish an income tax return pursuant to Section 77 of the Income Tax Act 1967 (ITA). The Exemption Order took effect from YA 2017.

The IRBM has issued the "Guidelines on Income Tax Exemption for Religious Institution or Organisation under the Income Tax (Exemption) Order 2017 [P.U.(A) 52/2017]" dated 3 October 2018 to explain the meaning of a religious institution or organisation within the context of the income tax exemption under Paragraph 13(1)(b) of Schedule 6 of the ITA, pursuant to the Exemption Order.

The Guidelines reiterate that the "religious institution or organisation" must be established in Malaysia exclusively for the purpose of religious worship or the advancement of religion and is not operated or conducted primarily for profit. The Guidelines also clarify that the religious institution or organisation must be registered with the Registrar of Societies Malaysia, or under any written law governing such religious institution or organisation.

The Guidelines also stipulate that although a religious institution or organisation eligible for the tax exemption is exempted from submitting the Income Tax Return Form, it is still subject to other provisions under the ITA. An example would be submitting a Form E to the IRBM by the designated date if the organisation employs individuals (Section 83 of the ITA).

Extension of Common Reporting Standard (CRS) submission deadline

Following the enactment of the relevant rules for the Automatic Exchange of Information by the Malaysian government under the Common Reporting Standard (CRS), Malaysian Financial Institutions (MYFIs) are required to collect and report to the IRBM the financial account information of non-residents. The IRBM will exchange this information with the relevant participating foreign tax authorities from 2018.

The IRBM has recently announced on its website that the due date for the first CRS report filing, which was

originally due by 31 July 2018, and subsequently extended to 15 August 2018, had been further extended to 30 August 2018. The IRBM has stated that no further extensions will be granted.

STAMP DUTY

Stamp duty exemption for home financing facility granted under a state housing loan fund

The Stamp Duty (Exemption) (No. 2) Order 2018 [P.U. (A) 258], gazetted on 12 October 2018, provides a stamp duty exemption on all instruments executed in relation to any home financing facility granted under a state housing loan fund, which is a fund specified in paragraph 10(1)(b) of the Financial Procedure Act 1957. "Financing" is defined to mean conventional loan, or financing according to *syariah*, as the case may be. The Order will come into operation on 1 January 2019.

Stamp duty exemption for instruments relating to the restructuring or rescheduling of loans or financing

The Stamp Duty (Exemption) (No. 3) Order 2018 [P.U. (A) 259] was gazetted on 15 October 2018. The Exemption Order provides a stamp duty exemption on all instruments relating to the restructuring or rescheduling of loans or financing executed between a participant of the debt management programme which has been approved by the Credit Counselling and Debt Management Agency (CCDMA), and a credit provider.

The application for an exemption is to be accompanied by a letter of offer from the CCDMA to the said participant for the restructuring or rescheduling of the loan or financing under a debt management programme which has been approved by the CCDMA.

The Order is effective for the period 1 January 2018 to 31 December 2020 and applies to instruments executed within the same period.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 5) Order 2018

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 5) Order 2018 [P.U.(A) 266] was gazetted on 18 October 2018. The Order provides that any tax payable under the ITA and any stamp duty payable under the Stamp Act 1949 in relation to the following, shall be remitted in full:

a) Islamic Medium Term Notes and Islamic Commercial Papers issued or to be issued by DanaInfra Nasional Berhad pursuant to the Islamic Medium Term Notes and the Islamic Commercial Papers Programme in nominal values of up to RM15 billion, provided that the combined aggregate of the outstanding nominal value of the Islamic Medium Term Notes and Islamic Commercial Papers, and the outstanding principal amount under the Syndicated Revolving Credit-i Facility (SFF-i Facility, see (b) below), shall not exceed RM15 billion;
b) SFF-i Facility obtained or to be obtained by Suria Strategic Energy Resources Sdn Bhd in the aggregate principal amount not exceeding RM1.6 billion, subject to the combined aggregate referred to in (a) above; and
c) Guarantee provided or to be provided by the government of Malaysia in relation to the Islamic Medium Term Notes and the SFF-i Facility

CUSTOMS DUTIES

Customs Regulations (Appeal Tribunal) (Amendment) 2018

The Customs Regulations (Appeal Tribunal) (Amendment) 2018 [P.U. (A) 215],gazetted on 29 August 2018 and that came into operation on 1 September 2018, provide for an amendment to regulation 3 by substituting the words "subsection 68(2) of the Sales Tax Act 1972 [Act 64] or subsection 50(2) of the Service Tax Act 1975 [Act 151]' with the words "subsection 96(5) of the Sales Tax Act 2018 [Act 806] or subsection 81(5) of the Service Tax Act 2018

[Act 807], and an amendment to sub-regulation 4(1) by substituting the words "the Sales Tax Act 1972 or the Service Tax Act 1975" with the words "the Sales Tax Act 2018 or the Service Tax Act 2018" under the Customs Regulations (Appeal Tribunal) 2007 [P.U.(A) 210/2007].

Customs Duties (Exemption) (Amendment) (No.3) Order 2018

The Customs Duties (Exemption) (Amendment) (No.3) Order 2018 [P.U. (A) 216] was gazetted on 29 August 2018 and came into operation on 1 September 2018. This Order provides for amendments in Part I of the Schedule in relation to items 10 and 11 under the Customs Duties (Exemption) Order 2017 [P.U. (A) 445/2017].

Customs (Amendment) Regulations 2018

The Customs (Amendment) Regulations 2018 [P.U. (A) 217] were gazetted on 29 August 2018 and came into operation on 1 September 2018. The Regulations provide for amendments in the Second Schedule under the heading "FORMS" in Part I & II of the Customs Regulations 1977 [P.U. (A) 162/1977].

Customs (Prohibition of Exports) (Amendment) (No.2) Order 2018

The Customs (Prohibition of Exports) (Amendment) (No.2) Order 2018 [P.U. (A) 222] was gazetted on 29 August 2018 and came into operation on 1 September 2018. This Order provides for an amendment in the Second Schedule in relation to item 20 under the Customs (Prohibition of Exports) Order 2017 [P.U. (A) 102/2017].

Customs (Prohibition of Imports) (Amendment) (No.2) Order 2018

The Customs (Prohibition of Imports) (Amendment) (No.2) Order 2018 [P.U. (A) 223] was gazetted on 29 August 2018 and came into operation on 1 September 2018. This Order provides for amendments to item 9 in Part I of the Second Schedule and item 2 in Part II of the Fourth Schedule under the Customs (Prohibition of Imports) Order 2017 [P.U. (A) 103/2017].

Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) (Amendment) Order 2018

The Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) (Amendment) Order 2018 [P.U. (A) 224] was gazetted on 30 August 2018 and came into operation on 1 September 2018. This Order provides for amendments in the Second Schedule in Chapters 16, 84 and 87 of the Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2017 [P.U. (A) 100/2017].

Customs Duties (Amendment) Order 2018

The Customs Duties (Amendment) Order 2018 [P.U. (A) 226] was gazetted on 30 August 2018 and came into operation on 1 September 2018. This Order provides for amendments in the First Schedule in Chapters 16, 84 and 87 of the Customs Duties Order 2017 [P.U. (A) 5/2017].

Customs (Anti-Dumping Duties) (Administrative Review) Order 2016 (Amendment) 2018

The Customs (Anti-Dumping Duties) (Administrative Review) Order 2016 (Amendment) 2018 [P.U. (A) 242] was gazetted on 3 October 2018 and is effective for the period 1 April 2017 to 29 March 2019. This Order provides for amendments in paragraph 4 and the Schedule under the Customs (Anti-Dumping Duties) (Administrative Review) Order 2016 [P.U. (A) 239/2016].

Customs (Anti-Dumping Duties) (Expedited Review) (No.2) Order 2014 (Amendment) 2018

The Customs (Anti-Dumping Duties) (Expedited Review) (No.2) Order 2014 (Amendment) 2018

[P.U. (A) 243] was gazetted on 3 October 2018 and was effective for the period1 April 2017 to 15 November 2018. This Order provides for amendments in paragraph 4 and the Schedule under the Customs (Anti-Dumping Duties) (Expedited Review) (No.2) Order 2014 [P.U. (A) 258/2014].

Customs (Anti-Dumping Duties) (No.3) Order 2013 (Amendment) 2018

The Customs (Anti-Dumping Duties) (No.3) Order 2013 (Amendment) 2018 [P.U. (A) 244], gazetted on 3 October 2018, was effective for the period 1 April 2017 to 15 November 2018. This Order provides for amendments in paragraph 4 and the Schedule under the Customs (Anti-Dumping Duties) (No.3) Order 2013 [P.U. (A) 339/2013].

Customs (Anti-Dumping Duties) (No.4) Order 2013 (Amendment) 2018

The Customs (Anti-Dumping Duties) (No.4) Order 2013 (Amendment) 2018 [P.U. (A) 245] was gazetted on 3 October 2018 and is effective for the period 1 April 2017 to 4 January 2019. This Order provides for amendments in paragraph 4 and the Schedule under the Customs (Anti-Dumping Duties) (No.4) Order 2013 [P.U. (A) 390/2013].

Customs (Anti-Dumping Duties) Order 2014 (Amendment) 2018

The Customs (Anti-Dumping Duties) Order 2014 (Amendment) 2018 [P.U. (A) 246] was gazetted on 3 October 2018 and is effective for the period 1 April 2017 to 29 March 2019. This Order provides for amendments in paragraph 4 and the Schedule under the Customs (Anti-Dumping Duties) Order 2014 [P.U. (A) 81/2014].

Customs (Anti-Dumping Duties) Order 2015 (Amendment) 2018

The Customs (Anti-Dumping Duties) Order 2015 (Amendment) 2018 [P.U. (A) 247] was gazetted on 3 October 2018 and is effective for the period 1 April 2017 to 13 February 2020. This Order provides for amendments in paragraph 4 and the Schedule under the Customs (Anti-Dumping Duties) Order 2015 [P.U. (A) 24/2015].

Customs (Anti-Dumping Duties) (No.2) Order 2015 (Amendment) 2018

The Customs (Anti-Dumping Duties) (No.2) Order 2015 (Amendment) 2018 [P.U. (A) 248] was gazetted on 3 October 2018 and is effective for the period 1 April 2017 to 13 March 2020. This Order provides for amendments in paragraph 4 and the Schedule under the Customs (Anti-Dumping Duties) (No.2) Order 2015 [P.U. (A) 45/2015].

Customs (Anti-Dumping Duties) Order 2016 (Amendment) 2018

The Customs (Anti-Dumping Duties) Order 2016 (Amendment) 2018 [P.U. (A) 249] was gazetted on 3 October 2018 and is effective for the period 1 April 2017 to 23 February 2021. This Order provides for amendments in paragraph 4 and the Schedule under the Customs (Anti-Dumping Duties) Order 2016 [P.U. (A) 11/2016].

Customs (Anti-Dumping Duties) (No.2) Order 2016 (Amendment) 2018

The Customs (Anti-Dumping Duties) (No.2) Order 2016 (Amendment) 2018 [P.U. (A) 250] was gazetted on 3 October 2018 and is effective for the period 1 April 2017 to 23 May 2021. This Order provides for amendments in paragraph 4 and the Schedule under the Customs (Anti-Dumping Duties) (No.2) Order 2016 [P.U. (A) 144/2016].

Customs Duties (Exemption) (Amendment) (No.4) Order 2018

The Customs Duties (Exemption) (Amendment) (No.4) Order 2018 [P.U. (A) 275] was gazetted on 30 October 2018 and came into operation on 31

October 2018. This Order provides for an amendment in Part I of the Schedule in relation to item 68 under the Customs Duties (Exemption) Order 2017 [P.U. (A) 445/2017].

Customs (Provisional Anti-Dumping Duties) Order 2018

The Customs (Provisional Anti-Dumping Duties) Order 2018 [P.U. (A) 289] was gazetted on 8 November 2018 and is effective for the period 8 November 2018 to 7 March 2019. The anti-dumping duties shall be imposed on specific goods under the Customs Duties Order 2017 [P.U. (A) 5/2017].

SALES TAX

Sales Tax Regulations 2018

The Sales Tax Regulations 2018 [P.U. (A) 203] were gazetted on 28 August 2018 and came into operation on 1 September 2018. The following are included in the Regulations:

- Registration
- Invoice, credit note and debit note
- Return
- Payment of sales tax
- Refund and repayment
- Drawback
- Provisions relating to petroleum
- Electronic services
- Miscellaneous
- First Schedule
- Second Schedule

Sales Tax (Customs Ruling) Regulations 2018

The Sales Tax (Customs Ruling) Regulations 2018 [P.U. (A) 204] were gazetted on 28 August 2018 and came into operation on 1 September 2018. These Regulations provide the procedure and required documents and information when making an application for a Customs ruling. An application for a Customs ruling shall be made in the form prescribed in the First Schedule and accompanied by a processing fee of RM200.

Sales Tax (Determination of Sale Value of Taxable Goods) Regulations 2018

Sales Tax (Determination of Sale Value of Taxable Goods) Regulations 2018 [P.U. (A) 205] were gazetted on 28 August 2018 and came into operation on 1 September 2018. These Regulations provide guidance or basis for the determination of the sale value of taxable goods.

Appointment of Effective Date for Charging and Levying of Sales Tax

The Appointment of Effective Date for Charging and Levying of Sales Tax [P.U. (B) 507] was gazetted on 28 August 2018. The Minister appointed 1 September 2018 as the effective date for the charging and levying of the sales tax.

Sales Tax (Imposition of Sales Tax In Respect of Designated Areas) Order 2018

The Sales Tax (Imposition of Sales Tax In Respect of Designated Areas) Order 2018 [P.U. (A) 206] was gazetted on 28 August 2018 and came into operation on 1 September 2018. Under the Order, sales tax shall be charged and levied at the rate fixed under subsection 10(2) of the Sales Tax Act 2018 on the importation of wine, spirit, beer, malt liquor, tobacco and tobacco products into designated areas; marble and anchovies into Langkawi; and motor vehicles into Tioman.

Sales Tax (Imposition of Sales Tax In Respect of Special Areas) Order 2018

The Sales Tax (Imposition of Sales Tax In Respect of Designated Areas) Order 2018 [P.U. (A) 207] was gazetted on 28 August 2018 and came into operation on 1 September 2018. Under the Order, sales tax shall be charged and levied at the rate fixed under subsection 10(2) of the Sales Tax Act 2018 on imported goods specified in Schedule A and to be used or consumed in the free zone under the section 2 of the Free Zones Act 1990 [Act 438]; or on the importation of wine, spirit, beer, malt liquor, tobacco and tobacco products into the Tasik Kenyir Duty Free Area.

Sales Tax (Exemption from Registration) Order 2018

The Sales Tax (Exemption from Registration) Order 2018 [P.U. (A) 208] was gazetted on 28 August 2018 and came into operation on 1 September 2018. This Order provides an exemption for the registration of persons whose manufacturing operations are solely in any one of those operations specified in Schedule A of the Sales Tax (Exemption from Registration) Order 2018, irrespective of the total sale value of the taxable goods in a period of 12 months.

Sales Tax (Total Sale Value of Taxable Goods) Order 2018

The Sales Tax (Total Sale Value of Taxable Goods) Order 2018 [P.U. (A) 209] was gazetted on 28 August 2018 and came into operation on 1 September 2018. The Order provides that the total sale value of the taxable goods for the purpose of registration of any manufacturer under subsection 12(1) of the Sales Tax Act 2018 shall be RM500,000.

Sales Tax (Persons Exempted from Payment of Tax) Order 2018

The Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [P.U. (A) 210] was gazetted on 28 August 2018 and came into operation on 1 September 2018. This Order provides an exemption from payment of sales tax for persons specified under Schedules A, B and C of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018, subject to conditions.

Sales Tax (Goods Exempted from Tax) Order 2018

The Sales Tax (Goods Exempted from Tax) Order 2018 [P.U. (A) 219] was gazetted on 28 August 2018 and came into operation on 1 September 2018. This Order provides an exemption from payment of sales tax for the goods specified under Schedule A of the Sales Tax (Goods Exempted from Tax) Order 2018.

Sales Tax (Compounding of Offences) Regulations 2018

The Sales Tax (Compounding of Offences) Regulations 2018 [P.U. (A) 220] were gazetted on 29 August 2018 and came into operation on 1 September 2018. The offences specified in the First Schedule are prescribed to be compoundable offences. The compoundable offences may be compounded with the consent in writing of the Public Prosecutor in Form 1 of the Second Schedule under the Sales Tax (Compounding of Offences) Regulations 2018. The method and payment of the compound are stated in the Regulations.

Sales Tax (Rates of Tax) Order 2018

The Sales Tax (Rates of Tax) Order 2018 [P.U. (A) 221] was gazetted on 29 August 2018 and came into operation on 1 September 2018. Under the Order, the sales tax rate of 10% shall be charged and levied on all goods except goods which are included in any exemption order made under Section 35 of the Sales Tax Act 2018; and goods imported on or with any person entering Malaysia or in the baggage of such person and the goods are not for commercial use, excluding motor vehicles, alcoholic beverages, spirits, tobacco, cigarettes, tyres and tubes.

Sales tax shall be charged at 5% on the goods specified in the First Schedule, and at the specific rate on the goods appearing in the Second Schedule of the Sales Tax (Rates of Tax) Order.

Sales Tax (Goods Exempted from Tax) (Amendment) Order 2018

Sales Tax (Goods Exempted from Tax) (Amendment) Order 2018 [P.U. (A) 228] was gazetted on 30 August 2018 and came into operation on 1 September 2018. This Order provides for amendments in Schedule A by inserting the new items and particulars relating to it

after subheading 8711.20.94 90 under the Sales Tax (Goods Exempted from Tax) Order 2018 [P.U. (A) 219/2018].

Sales Tax (Rates of Tax) (Amendment) Order 2018

Sales Tax (Rates of Tax) (Amendment) Order 2018 [P.U. (A) 233] was gazetted on 6 September 2018 and came into operation on 6 September 2018. This Order provides for amendments in the First Schedule under the Sales Tax (Rates of Tax) Order 2018 [P.U. (A) 221/2018].

Sales Tax (Goods Exempted from Tax) (Amendment) (No.2) Order 2018

Sales Tax (Goods Exempted from Tax) (Amendment) (No.2) Order 2018 [P.U. (A) 234] was gazetted on 6 September 2018 and came into operation on 6 September 2018. This Order provides for amendments in Schedule A under the Sales Tax (Goods Exempted from Tax) Order 2018 [P.U. (A) 219/2018].

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2018

The Sales Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2018 [P.U. (A) 239] was gazetted on 27 September 2018 and came into operation on 1 October 2018. This Order provides for amendments in Schedule A in relation to items 36, 53, 54 and 57 under the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [P.U. (A) 210/2018].

Sales Tax (Goods Exempted from Tax) (Amendment) (No.3) Order 2018

The Sales Tax (Goods Exempted from Tax) (Amendment) (No.3) Order 2018 [P.U. (A) 253] was gazetted on 8 October 2018 and came into operation on 9 October 2018. This Order provides for amendments in Schedule A under the Sales Tax (Goods Exempted from Tax) Order 2018 [P.U. (A) 219/2018].

Sales Tax (Rates of Tax) (Amendment) (No.2) Order 2018

The Sales Tax (Rates of Tax) (Amendment) (No.2) Order 2018 [P.U. (A) 254] was gazetted on 8 October 2018 and came into operation on 9 October 2018. This Order provides for amendments in the First Schedule under the Sales Tax (Rates of Tax) Order 2018 [P.U. (A) 221/2018].

SERVICE TAX

Appointment of Effective Date for Charging and Levying of Service Tax

The Appointment of Effective Date for Charging and Levying of Service Tax [P.U. (B) 509] was gazetted on 28 August 2018. The Minister appointed 1 September 2018 as the effective date for the charging and levying of the service tax.

Service Tax (Customs Ruling) Regulations 2018

The Service Tax (Customs Ruling) Regulations 2018 [P.U. (A) 211] were gazetted on 28 August 2018 and came into operation on 1 September 2018. These Regulations provide the procedure and required documents and information when making an application for a Customs ruling. An application for a Customs ruling shall be made in the form prescribed in the First Schedule and accompanied by a processing fee of RM200.

Service Tax (Imposition of Tax for Taxable Service in respect of Designated Areas and Special Areas) Order 2018

The Service Tax (Imposition of Tax for Taxable Service in respect of Designated Areas and Special Areas) Order 2018 [P.U. (A) 212] was gazetted on 28 August 2018 and came into operation on 1 September 2018. This Orders provides that the services specified under the Schedule shall be chargeable to service tax.

Service Tax (Rate of Tax) Order 2018

The Service Tax (Rate of Tax) Order 2018 [P.U. (A) 213] was gazetted on 28 August 2018 and came into operation on 1 September 2018. This Order provides that service tax shall be charged and levied at 6% of the price, value, premium or takaful contribution of a taxable service other than a taxable service relating to credit card or charge card services. A fixed rate of RM25 shall be charged for taxable services relating to credit card or charge card services.

Service Tax Regulations 2018

The Service Tax Regulations 2018 [P.U. (A) 214] were gazetted on 29 August 2018 and came into operation on 1 September 2018. The following are included in the Regulations:

- Taxable persons, taxable services, etc.
- Provisions relating to betting and gaming
- Registration
- Invoices, credit note and debit note
- Return
- Payment of service tax, etc.
- Refund and repayment
- Electronic service
- Miscellaneous matters
- First Schedule
- Second Schedule
- Third Schedule

Service Tax (Compounding of Offences) Regulations 2018

The Service Tax (Compounding of Offences) Regulations 2018 [P.U. (A) 218] were gazetted on 29 August 2018 and came into operation on 1 September 2018. The offences specified in the First Schedule are prescribed to be compoundable offences. The compoundable offences may be compounded with the consent in writing of the Public Prosecutor in Form 1 of the Second Schedule under the Service Tax (Compounding of Offences) Regulations 2018. The method and payment of the compound are stated in the Regulations.

Service Tax (Amendment) Regulations 2018

The Service Tax (Amendment) Regulations 2018 [P.U. (A) 231] were gazetted on 6 September 2018 and came into operation on 6 September 2018. These Regulations provide for an amendment in the First Schedule, Group I, in relation to item 9 by inserting after the words "domestic consumer", the words "other than the domestic consumers in the designated areas" under the Service Tax Regulations 2018 [P.U. (A) 214/2018].

Service Tax (Imposition of Tax for Taxable Service in respect of Designated Areas and Special Areas) (Amendment) Order 2018

The Service Tax (Imposition of Tax for Taxable Service in respect of Designated Areas and Special Areas) (Amendment) Order 2018 [P.U. (A) 232] was gazetted on 6 September 2018 and came into operation on 6 September 2018. This Order provides for amendments in the Schedule by inserting after the words "accommodation premises", the words "in special areas" in relation to item 3; and after the word "beverages", the words "in special areas" in relation to item 4 under the Service Tax (Imposition of Tax for Taxable Service in respect of Designated Areas and Special Areas) Order 2018 [P.U.(A) 212/2018].

Service Tax (Amendment) (No. 2) Regulations 2018

The Service Tax (Amendment) (No. 2) Regulations 2018 [P.U. (A) 255] were gazetted on 8 October 2018 and came into operation on 9 October 2018. These Regulations provide for amendments in the First Schedule, in Group B by inserting after the words "other services", the words ", other than services of rental space," and by deleting the words "tobacco products and" under the Service Tax Regulations 2018 [P.U.(A) 214/2018].

*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

LAVENDER CONFECTIONARY & BAKERY SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI

BRIEF FACTS

The taxpayer has claimed industrial building allowances (**IBA**) pursuant to Schedule 3 of the Income Tax Act 1967 (**ITA**) in respect of the capital expenditure incurred on the renovation of their factory. The taxpayer also claimed reinvestment allowance (**RA**) for capital expenditure incurred in the purchase of additional plants and machineries which are placed in one of their retail outlets. The taxpayer's claim for IBA and RA was dismissed by the Director General of Inland Revenue (**DGIR**) and an appeal was filed to the Special Commissioners of Income Tax (**SCIT**).

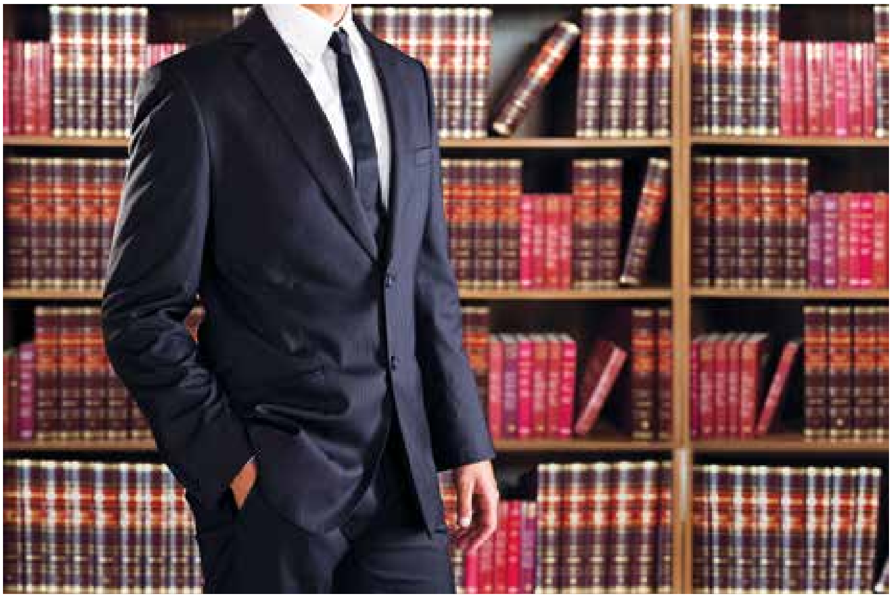
INDUSTRIAL BUILDING ALLOWANCE

The taxpayer claimed for IBA for monies spent on items such as the additional demolition of substructures, concrete topping to driveway, interlocking pavement, front entrance, culvert, fencing and gate, metal sheet boundary, and a guard house. The DGIR however, did not allow the IBA claim on the basis that the demolition of structures does not qualify under the definition of IBA and the other disputed items did not form part of the factory as they are physically located outside the factory.

LAVENDER'S ARGUMENTS AND HIGH COURT'S DECISION

The taxpayer argued that in order to be qualified for IBA, a taxpayer needs to fulfil the requirements stipulated in Section 42 and Schedule 3 of the ITA. Under the ITA, a taxpayer is entitled to claim for IBA when he has qualifying building expenditure. A qualifying building expenditure is capital expenditure incurred on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be, as an industrial building.

The taxpayer further argued that the items in dispute fulfilled the definition of an industrial building as provided in the ITA. It is stated that, *building is an industrial building* if it is *used for the purposes of a business and it is used as a factory*. On the other hand, the word factory *includes other building for the housing of machinery or plant of any description for* the manufacture of any product or *the subjection of goods or materials to any process* or the generating of power used for the purposes of that manufacture or process;"



The taxpayer argued that they had fulfilled the requirements prescribed by the ITA to qualify for IBA as the building is used for the purposes of the bakery business and the building is used for the housing of machinery or plant of any description for the subjection of goods or materials to any process.

Besides, the taxpayer argued that the DGIR neglected the 'entirety test' to determine their eligibility to claim IBA as laid down in the landmark case of ***Director General of Inland Revenue v C. Company of Malaysia Bhd [1980] 10 M.T.J. 67***. The test requires the taxpayer's business and factory to be viewed in its entirety and to ascertain whether any items in dispute is necessary and integral to the taxpayer's factory.

The High Court agreed with the taxpayer's counsel that the SCIT had misdirected themselves in law by disregarding the decisions in the landmark cases of ***Director General of Inland Revenue v C. Company of Malaysia Bhd [1980] 10 MTJ 67*** and ***Ryoshindoh Manufacturing Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2014) MSTC 30-072***, which stated that a factory building for IBA purposes is not merely restricted to the physical building but may include adjuncts or structures used in relation to the building; if it can be shown that they are integral and necessary to ensure the adequate functioning of the factory.

The High Court rejected the Inland Revenue Board Malaysia (IRBM)'s contention that IBA is only allowed for the construction of new buildings and that these items were not necessary for the proper functioning of the taxpayer's business. It was accepted that the IRBM has no authority to dictate the manner in which taxpayers are to conduct their business.

REINVESTMENT ALLOWANCE

The taxpayer claimed RA for several items such as electronic baking machineries and network cabling system. The DGIR did not allow the taxpayer's RA claim as the items in dispute were purportedly not part of the factory. The taxpayer's claim was rejected on the basis that their outlet was not a factory and did not have a manufacturing licence pursuant to the Industrial Co- ordination Act 1975 (**ICA**).

LAVENDER'S ARGUMENTS AND HIGH COURT'S DECISION

In deciding that the ICA has no bearing in the determination of a taxpayer's eligibility for RA, the High Court agreed that the IRBM is not allowed to read into the ITA an additional condition for the allowance of RA. As stated in the case of ***Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265***, the literal interpretation is to be applied in interpreting taxing statutes, i.e. nothing is to be read in and implied. If Parliament had intended for such licence under the ICA to be a prerequisite, it would have been stipulated clearly in Schedule 7A of the ITA.

Further, it was decided that plants and machineries are not required to be placed in a factory for the purposes of claiming RA. This is so long as the plants and machineries are used in Malaysia for the expansion, modernisation, automation or diversification of the taxpayer's business.

Therefore, the High Court decided that the taxpayer's RA claim should be allowed as an incentive in the present case

Counsel for taxpayer:
MR. S. SARAVANA KUMAR & MR. STEWARD LEE WAI FOONG

Counsel for the IRBM:
PUAN DUNA MOHD ISA & PUAN FARREN EVA DAUD

CASE 2

ORA V KETUA PENGARAH HASIL DALAM NEGERI

BRIEF FACTS

ORA is a non-resident company providing offshore shipping services in Malaysia and international waters. As part of its operations, ORA had dealings with WS Sdn Bhd (WS), a Malaysian company, where ORA was paid for the services that it provided to the latter.

The company has not subjected its income to income tax in Malaysia by virtue of Article IX of the DTA entered into between Malaysia and ORA's home country. Article IX of the DTA clearly states that the profits derived by an enterprise of a contracting state from the operation of ships or aircraft in international traffic shall be taxable only in its home country.

Notwithstanding this, the Director General of Inland Revenue (**DGIR**) took the stance that the payments made to ORA should have been subjected to withholding tax pursuant to Section 4A(iii) of the ITA. Accordingly, the DGIR invoked Section 39(1)(j) of the ITA to disallow the deduction of the payments made to ORA by WS Sdn Bhd and raised notices of additional assessments with penalty for the sum of over RM100 million against WS Sdn Bhd.

ITA v DTA

Aggrieved by the DGIR's decision, ORA commenced judicial review proceedings against the DGIR. The challenge was mounted on the basis that the DGIR's decision was contrary to, among others, the decisions of our courts in ***Ketua Pengarah Hasil Dalam Negeri v Damco Logistics Malaysia***

Sdn Bhd (Rayuan Sivil W-01-424-11), Maersk Malaysia Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2013) MSTC-046 and ***Thomson Reuters Global Resources v Ketua Pengarah Hasil Dalam Negeri (2015) MSTC 10-048***. These decisions have held that provisions of the DTA would prevail over those of the ITA.

At the leave stage hearing at the High Court, ORA succeeded in obtaining leave to apply for judicial review and a stay order against the DGIR.

DGIR'S ARGUMENTS

At the substantive hearing, the DGIR submitted among others that:

(a) ORA's application is premature because there had not been any decision made by the Respondent; and

(b) ORA does not fall within the ambit of the DTA such that Article IX applies.

Further, the DGIR sought to rely on the Federal Court's decision in ***Lembaga Hasil Dalam Negeri Malaysia v Alam Maritim Sdn Bhd [2014] 3 CLJ 421*** which had held that the taxpayer is not entitled to relief from double taxation under the Malaysia-Singapore DTA if the payments fall under Section 4A of the ITA, as this provision has created a special class of income under which the taxpayer's income should be taxed in Malaysia

ORA'S ARGUMENTS AND HIGH COURT'S DECISION

The appellant argued that there is a 'decision' for the purpose of Judicial Review. Silence can amount to a decision amendable by judicial review under Order 53 of the Rules of Court 2012 (**ROC 2012**) which provides for a wider ambit of reviewable decisions as opposed to the previous position under the Rules of High Court (**RHC 1980**) The RHC 1980 states "Any person who is adversely affected by the decision of any public authority shall be entitled to make the application." On the other hand, the wordings in the ROC 2012 have revised the ambit of reviewable decision to include not only decisions but also actions and omissions in relation to the exercise of the public duty. This shows that the Parliament intended to broaden the ambit of the word 'reviewable decision' to include the above acts, against which an application for judicial review can be brought.

The appellant further argued that it is trite law whenever there is a conflict between the DTA and ITA, the provisions of the DTA will prevail over the ITA as has been decided by the Malaysia Courts at all levels.

The DGIR's arguments were rejected by the High Court. According to the High Court, based on the evidence available, ORA had shown that its vessels did travel to international waters and thus fell within the ambit of Article IX of the Malaysia-Denmark DTA. Further, the DGIR itself had also previously given effect to the DTA by refunding overpayment of taxes to the company for certain earlier years of assessments.

The High Court adopted, among others, the legal precedents in ***Damco Logistics, Maersk Malaysia and Thomson Reuters*** to reinforce the trite principle that DTA provisions are to prevail over that of the ITA in the event of a conflict.

Finally, the High Court also agreed that the Federal Court's decision in ***Alam Maritim*** can be distinguished. In ***Alam Maritim***, the Federal Court had given recognition to and affirmation of the general prominence of the DTA. However, it was held that Article IV of the Singapore- Malaysia DTA, could not afford relief to the taxpayer as Parliament had subsequently enacted Section 4A of the ITA in 1984. By so doing, Parliament had intended Section 4A to prevail over the DTA.

Counsel for taxpayer:
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Counsel for the IRBM:
ENCIK AHMAD ISYAK HASSAN & PUAN RUZAIDAH YAACOB

__Nur Amira__ is a pupil-in-chambers at __Lee Hishammuddin Allen & Gledhill__. She read law and obtained her LL.B. (Hons) at Universiti Teknology MARA (UiTM). She handles matters pertaining to tax disputes with the firm's Tax, SST and Customs Practice Group.

BUSINESS DEDUCTIONS
PROHIBITED EXPENSES (PART IV)

Siva Subramanian Nair

The prohibitions in Section 39(1) are further analysed in this article with emphasis on subsections (g) and (k).

In (g) *any sum, by whatever name called, payable (otherwise than to a State government or with the approval of the Minister, a statutory authority, or other body the capital or fund of which is wholly or substantially owned by a State government or a statutory authority) for the use of a license or permit to extract timber from a forest in Malaysia.*

Dr Veerinderjeet. Singh states "this provision was specifically enacted to curtail unhealthy practices in the timber logging industry whereby a person is given a timber concession and he in turn gives away his rights under the concession to a third party for a payment. Such a payment by the third party is disallowed as a deduction in computing the adjusted income of the third party."

Several cases have been decided based on the above provision.

DGIR v LTS [1975] 2 MLJ 30

FACTS OF THE CASE

Two persons, who held a permit to extract timber from the State government, allowed a timber merchant to extract the timber on their behalf. The consideration paid by the merchant was RM1 for every ton of timber extracted plus he agreed to pay all royalties, premiums and any fines imposed by the Forest Department on behalf of the permit holders. For the relevant year of assessment, the merchant paid RM5,586 and RM78,000 in respect of commission to the permit holders and royalties in the name of the permit holders to the State government respectively.

DECISION OF THE COURT

The commission to the permit holders was **NOT deductible** under Section 39(1)(g) **BUT** the royalties paid in the name of the permit holders to the State government, was deductible under Section 33(1).

From this decision candidates should note that the above prohibitive provision only applies to payments *for the use of a license or permit to extract timber from a forest in Malaysia* therefore for all other payments the general rule will apply i.e. as long as it is revenue in nature and incurred wholly and exclusively for the production of that source of income, it would be deductible

This was also apparent from the decision in **DGIR v Hup Cheong Timber (Labis) Sdn. Bhd. [1985] 2 MLJ 322**

FACTS OF THE CASE

The company entered into an agreement with Persatuan Peladang Negeri Johor whereby the latter granted to the former the exclusive right to work out, fell, exploit and extract timber on a certain piece of land in consideration of the sum of $(now RM) 1.4 million to be paid by the company. The Revenue disallowed the deduction and assessed the company for this amount on grounds that it was for the use of a license or permit to extract timber from a forest in Malaysia and that it was capital in nature. The company appealed against the assessment.

DECISION OF THE COURT

The Special Commissioners dismissed the appeal but the High Court reversed the decision of the Special Commissioners. On further appeal by the Revenue to the Federal Court, it was held that the sum was not for the use of a license or permit to extract timber because amongst other reasons, it was the company and not the Persatuan which held the licence and it would be absurd to suggest that the company paid the $1.4 million for the use of its own licence. The court also held that the said sum was not a capital expenditure but a revenue expenditure which is deductible under Section 33(1) of the Income Tax Act 1967.

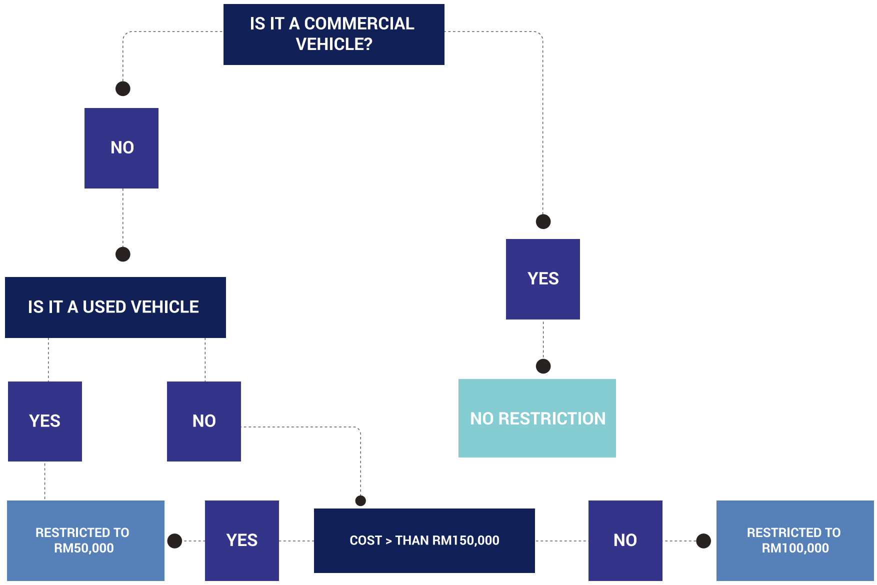
The next subsection we shall look at is Section 39(1)(k) i.e. *any sum paid by way of rental in respect of a motor vehicle, other than a motor vehicle licensed by the appropriate authority for commercial transportation of goods or passengers, in excess of fifty thousand ringgit.*

Provided that if the motor vehicle has not been used by any person for any purpose prior to the rental and the total cost of the motor vehicle does not exceed one hundred and fifty thousand ringgit, any sum paid by way of rental in excess of one hundred thousand ringgit.

Provided further that the maximum amount of deduction in respect of rentals of such motor vehicle in the year of assessment and subsequent years of assessment shall not in the aggregate exceed fifty thousand ringgit or one hundred thousand ringgit, as the case may be, in respect of that motor vehicle.

This is an area frequently tested in tax examinations. The following flowchart clearly illustrates the law as stated above in respect of lease rentals paid in respect of motor vehicles as in **Table 1.**

Table 1



So basically if the question is referring to a commercial vehicle, (the common ones being lorry, truck, bus, van, station wagon and taxi) then there is no restriction on the deduction available for the amount of lease rentals paid i.e. whatever is reflected in the income statement needs no adjustment in the tax computation assuming the latter commences with profit before tax.

For non-commercial vehicles (generally cars for staff), if it is a used car then the limit is RM50,000 irrespective of the cost of the car. However, for new cars, the relevant question to ask is whether the cost of the car is more than RM150,000 or not, i.e. for the former the maximum claim is RM50,000 whereas the latter commands a claim of RM100,000. A point to remember here is that the limit are on a cumulative basis and not per year basis. This is clearly illustrated in the past year questions detailed as follows:

JUNE 2018 BUSINESS TAXATION Q1

A company with a 31 December 2017 year-end, leased a new car (Nissan) for the use of its Marketing Manager. The cost of similar new car was RM255,000. The 40 month lease commenced in July 2015, with a monthly lease payment of RM2,000. The monthly lease payments commenced in July 2015.

For the year of assessment 2017, the adjustment to be made in the tax computation was as follows:	
Maximum lease payment allowed:	RM 50,000
YA 2015 & 2016: claim for lease payment: RM2,000 x 18 months =	RM 36,000
Balance claimable for YA 2017 (50,000 – 36,000) =	RM 14,000
Lease rental expensed to the income statement RM2,000 x 12 months	RM 24,000
Lease rental disallowed	RM 10,000

JUNE 2016 BUSINESS TAXATION Q1

The company (year-end 30 June) leased three vehicles from a leasing company. The lorry was used for the transport of goods to retailers. The cars were used by the company's marketing manager and director. The lease details are as follows:

Vehicle type	Original cost of new vehicle RM'000	Payments up to year ended 30 June 2014 RM'000	Payments for the year ended 30 June 2015 RM'000
Lorry	130	38	38
Motorcar 1	145	23	23
Motorcar 2	320	41	41
Total		**102**	**102**

For year of assessment 2015, the amount added back to the profit before tax figure in ascertaining the adjusted income is as follows

Lorry - Nil adjustment as it is a commercial vehicles

Car 1 - Nil adjustment as the cumulative lease rentals paid of RM46,000 (23 + 23) is below the statutory limit of RM100,000 since the cost of the car is not more than RM150,000.

Note that for YA 2016 also there will be no adjustment assuming the lease rental was RM23,000, BUT if it was a used car then RM19,000 will not rank for a deduction.

Car 2 – The cumulative lease rental for 2014 and 2015 is RM82,000 i.e. exceeding the RM50,000 by RM32,000 which is disallowed for year of assessment 2015.

In an older question way back in ***December 2005 Tax II (equivalent of Business Taxation now) Q3(c)*** a computation was required for two years of assessment for 6 marks, as detailed below:

Kolej Garry N Tee Sdn Bhd (year end 31 August) leased a new Proton Perdana and a BMW costing RM108,000 and RM250,000 respectively for its two principals. The company paid a lease rental of RM5,000 per month for the Proton Perdana commencing from November 2003 and RM8,000 per month for the BMW commencing from January 2004.

Common errors made by candidates for this deduction ranges from NOT taking the cumulative figures (i.e. using the figure for that year of assessment) to not realising that it is a second-hand car. In one case the examiner had stated "costing not more than RM150,000" and many candidates had turned a blind eye to the word "not" and used a cumulative total of RM50,000 when it should be RM100,000! Also I have seen questions where the cumulative figure has already been exhausted in an earlier year of assessment, in which case candidates should add back the whole amount expensed to the income statement for that particular car (as depicted in the last example above for the BMW, for year of assessment 2005)

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

Required: Compute the amount of lease rentals that would be disallowed for years of assessment 2004 and 2005 in respect of each car.

YA	Proton Perdana		BMW	
	In P & L A/c (RM)	Amount disallowed (RM)	In P & L A/c (RM)	Amount disallowed (RM)
2004	50,000 (5,000 x10 months)	NIL	64,000 (8,000 x 8 months)	14,000
2005	60,000 (5,000 x 12 months)	10,000	96,000 (8,000 x 12 months)	96,000

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FURTHER READING

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

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: JANUARY – MARCH 2019

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
JANUARY 2019								
Workshop: Public Rulings 2017 & 2018 – Understanding the Legal and Practical Aspects	7 Jan	9a.m. - 5p.m.	Kota Kinabalu	Kularaj	350	450	500	8 WS/001
Workshop: Malaysian Property Tax, Income Tax, Estate & Trusts	7 Jan	9a.m. - 5p.m.	Melaka	Dr. Tan Thai Soon	350	450	500	8 WS/011
Workshop: Public Rulings 2017 & 2018 – Understanding the Legal and Practical Aspects	9 Jan	9a.m. - 5p.m.	Kuching	Kularaj	350	450	500	8 WS/002
Workshop: Employers Tax Statutory Requirements in 2019	9 Jan	9a.m. - 5p.m	Penang	Sivaram Nagappan	350	450	500	8 WS/018
Workshop: Managing Tax Audits & Investigations	10 Jan	9a.m. - 5p.m	Kuala Lumpur	Harvindar Singh	400	500	600	8 WS/004
Workshop: Malaysian Property Tax, Income Tax, Estate & Trusts	14 Jan	9a.m. - 5p.m	Johor Bahru	Dr. Tan Thai Soon	350	450	500	8 WS/012
Workshop: Public Rulings 2017 & 2018 – Understanding the Legal and Practical Aspects	16 Jan	9a.m. - 5p.m	Ipoh	Kularaj	350	450	500	8 WS/003
Workshop – Dealing with the Complexities of Withholding Tax **(Postponed from 13 Dec 2018)**	17 Jan	9a.m. - 5p.m	Kuala Lumpur	Thannee	400	500	600	8 WS/037
Seminar: Recent Tax Cases **(Postponed from 30 Nov 2018)**	18 Jan	9a.m. - 5p.m	Johor Bahru	Saravana Kumar & Jason Tan	450	550	650	8 SE/023
Seminar: Recent Tax Cases	22 Jan	9a.m. - 5p.m	Kota Kinabalu	Saravana Kumar & Jason Tan	450	550	650	8 SE/025
Seminar: Recent Tax Cases	24 Jan	9a.m. - 5p.m	Kuching	Saravana Kumar & Jason Tan	450	550	650	8 SE/026
Workshop: Managing Tax Audits & Investigations	24 Jan	9a.m. - 5p.m	Penang	Harvindar Singh	350	450	500	8 WS/005
Seminar: Intensive SST & Customs Seminar 2019: Legal & Operational	29 Jan	9a.m. - 5p.m	Kuala Lumpur	Various	450	550	650	8 SE/001
Seminar: Recent Tax Cases **(Postponed from 12 Nov 2018)**	30 Jan	9a.m. - 5p.m	Ipoh	Saravana Kumar & Jason Tan	450	550	650	8 SE/022
Seminar: Recent Tax Cases **(Postponed from 6 Dec 2018)**	31 Jan	9a.m. - 5p.m	Penang	Saravana Kumar & Jason Tan	450	550	650	8 SE/024
Public Holiday ***(New Year: 1 Jan, Thaipusam: 21 Jan)***								
FEBRUARY 2019								
Workshop: Malaysian Property Tax, Income Tax, Estate & Trusts	18 Feb	9a.m. - 5p.m	Kota Kinabalu	Dr. Tan Thai Soon	350	450	500	8 WS/013

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: JANUARY – MARCH 2019

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
FEBRUARY 2019								
Workshop: Managing Tax Audits & Investigations	21 Feb	9a.m. - 5p.m	Ipoh	Harvindar Singh	350	450	500	8 WS/006
Workshop: Malaysian Property Tax, Income Tax, Estate & Trusts	25 Feb	9a.m. - 5p.m	Kuching	Dr. Tan Thai Soon	350	450	500	8 WS/014
Workshop: Managing Tax Audits & Investigations	28 Feb	9a.m. - 5p.m	Melaka	Harvindar Singh	350	450	500	8 WS/007
Public Holiday ***(Federal Territory Day: 1 Feb, Chinese New Year: 5-6 Feb)***								
MARCH 2019								
Workshop: Malaysian Property Tax, Income Tax, Estate & Trusts	4 Mar	9a.m. - 5p.m	Penang	Dr. Tan Thai Soon	350	450	500	8 WS/015
Workshop: Managing Tax Audits & Investigations	6 Mar	9a.m. - 5p.m	Kota Kinabalu	Harvindar Singh	350	450	500	8 WS/008
Workshop: Submission of Return Forms	6 Mar	9a.m. - 5p.m	MAICSA Training Room, Kuala Lumpur	Vincent Josef	400	500	600	8 JV/003
Workshop: Managing Tax Audits & Investigations	7 Mar	9a.m. - 5p.m	Kuching	Harvindar Singh	350	450	500	8 WS/009
Workshop: Tax Planning for Individuals	14 Mar	9a.m. - 5p.m	MAICSA Training Room, Kuala Lumpur	Vincent Josef	400	500	600	8 JV/001
Workshop: Malaysian Property Tax, Income Tax, Estate & Trusts	18 Mar	9a.m. - 5p.m	Ipoh	Dr. Tan Thai Soon	350	450	500	8 WS/016
Workshop: Managing Tax Audits & Investigations	21 Mar	9a.m. - 5p.m	Johor Bahru	Harvindar Singh	350	450	500	8 WS/010
Workshop: Employers Tax Statutory Requirements in 2019	21 Mar	9a.m. - 5p.m	Kuala Lumpur	Sivaram Nagappan	400	500	600	8 WS/019
Seminar: Intensive SST & Customs Seminar 2019: Legal & Operational	22 Mar	9a.m. - 5p.m	Ipoh	Various	450	550	650	8 SE/002
Workshop: Malaysian Property Tax, Income Tax, Estate & Trusts	25 Mar	9a.m. - 5p.m	Kuala Lumpur	Dr. Tan Thai Soon	400	500	600	8 WS/017
Workshop: Employers Tax Statutory Requirements in 2019	28 Mar	9a.m. - 5p.m	Johor Bahru	Sivaram Nagappan	350	450	500	8 WS/020

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

CHARTERED TAX INSTITUTE OF MALAYSIA

MEMBER GET MEMBER CAMPAIGN

The Institute is pleased to inform all members that the Institute has launched the "**Member Get Member Campaign**". The campaign will end on 14 March 2019.

A member who introduces a person who subsequently applies and successfully qualifies to be a new member is entitled to claim a free seat for any CPD seminar or workshop that is solely organized by CTIM. The free seat is subject to availability of seats.

Members are encouraged to participate in this campaign and take advantage of this offer. The MGMC form for information of MGMC Introducer is attached to the Membership application under the Membership Tab on the CTIM website.

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