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SPECIAL PROGRAMME ON VOLUNTARY DISCLOSURE FOR DIRECT TAXES

+ The Rapid Growth Technology Case: Tax Relief For Relying On Erroneous Public Ruling
+ Broadening the Tax Net Under Sections 12(3) and 12(4) of the Income Tax Act 1967
+ Business Deductions: Prohibited Expenses (Part V)

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

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INVITATION TO WRITE

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

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

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From the President’s Desk

SEAH SIEW YUN

MANAGING ECONOMIC CHALLENGES

The Economic Action Council (“EAC”) comprising of sixteen individuals including two members of the Council of Eminent Persons (which ended its tenure in August 2018), was set-up on 11 February 2019. The EAC aims to address Malaysia’s economic issues including the costs of living, labour, poverty and home ownership. The Institute welcomes this initiative by the government which is a positive development from an economic strategy perspective.

The Institute also welcomes the Minister of Finance’s announcement that businesses can look forward to refunds of Income Tax and Goods and Services Tax (“GST”) due to them of approximately RM37 billion in 2019. It is hoped that the refunds will translate into reinvestments by businesses such as in capital expansion. Such reinvestments will play a major role in supporting economic expansion for 2019 where Malaysia’s gross domestic product (“GDP”) growth is projected to be 4.9% according to some sources compared to 4.7% for 2018.

There have been significant developments in indirect tax with the amendments to the Service Tax Regulations 2018 (gazetted at the end of 2018) which have widened the service tax net by expanding taxable services to include new services such as amusement park services, brokerage and underwriting services, cleaning services, and training or coaching services with effect from 1 January 2019. Consequently, the Institute is required to charge service tax for CPD events from 1 March 2019 onwards. The expanded taxable services are expected to reduce the difference in the tax collection under the Sales and Service Tax Regime compared to the GST Regime which was abolished in September 2018.

In my President’s Message for the *Tax Guardian* for Quarter 4 of 2018, I mentioned that the Tax Reform Committee (“TRC”) was formed under the auspices of the Ministry of Finance (“MoF”). The essence of the tax reform envisaged is the undertaking of a holistic review of the national tax system in assisting to broaden the tax base and reduce the crippling national debt, while supporting economic growth and social wellbeing. The TRC has been engaging with various stakeholders including the Institute on focus areas such as tax administrative improvements, digital economy, new taxes, tax incentives, personal tax reform, corporate tax reform, etc. Proposals received by the TRC are being considered, and if they are implementable and meet the tax reform objectives, they may be adopted in future Budgets, new tax legislations or amendments to existing tax legislations.

Next, I am pleased to highlight key activities involving the Institute in Quarter 1 of 2019 below.

Dialogue with the Tax Authorities on Issues Arising from the 2019 Budget and Finance Bill 2018

IRBM chaired a dialogue on 24 January 2019 with the Institute, other professional bodies and the MoF on the Institutes’ Joint Memorandum on Post-2019 Budget issues and CTIM’s Memorandum on additional Post-2019 Budget issues. Issues arising

from recent tax legislation in relation to Labuan were also discussed. The minutes of the dialogue will be circulated to members when it is made available by the IRBM. Meanwhile, the MoF has provided an update to the Institute on the status of the 2014 to 2018 Budget Proposals not yet legislated, which has been circulated to members via e-CTIM.

OECD's Proposals to Address the Tax Challenges of the Digital Economy

The Institute, other professional bodies, the IRBM and stakeholders were invited by the MoF to provide feedback/comments on the Organisation for Economic Co-operation and Development ("OECD")'s proposals to address the tax challenges of the Digital Economy from Malaysia's perspective. The OECD's proposals consider profit allocation and nexus rules through the user participation model, marketing intangible method and significant economic presence method, and seek to address the remaining BEPS challenges through the income inclusion rule and tax on base eroding payments. The MoF will vet through the feedback/comments received and submit a response on the proposals to the OECD.

IRBM-CTIM Half-Day Talk

The IRBM and CTIM have participated in the half-day talks organised by the Associated Chinese Chambers of Commerce and Industry in March 2019 at venues in Melaka, Pahang, Terengganu, Selangor, Kelantan and Johor. Various speakers from the IRBM and CTIM spoke on the topic of the "Special Voluntary Disclosure Programme" and the topic of "Taxable Online Business Income and Tax Issues on Payment of Online Advertisement Expenses". Members of the business community and the public found the talks useful as they were updated on the subject matters that were covered and had opportunities to raise questions or concerns to the respective speakers.

National Indirect Tax Conference

The one-day National Indirect Tax Conference, which is a collaboration between CTIM and the Royal Malaysian Customs Department ("RMCD"), took place on 4 April 2019 at the Sime Darby Convention Centre in Kuala Lumpur. It covered many indirect tax issues arising from the Sales Tax Act 2018, Service Tax Act 2018, subsidiary legislations and guides which are of significant interest to those who are involved in sales tax and service tax. On behalf of the Institute, I would like to take this opportunity to express appreciation to YBhg Dato' Sri Subromaniam Tholasy, who retired from the position of the Director General of Customs on 8 March 2019, for his tireless efforts in promoting co-operation and fostering ties between the RMCD and the Institute over the years.

Upcoming CPD Events

Members can look forward to upcoming CPD events by looking up our CPD Event Calendar for Quarter 2 of 2019 (April 2019 to June 2019) in this issue of *Tax Guardian* and the Institute's website (www.ctim.org.my) for more details.

Membership

The Institute's "Member Get Member Campaign" which commenced in Quarter 4 of 2018 will be extended to 30 June 2019. I am pleased to inform that this campaign to-date has brought in approximately 40 membership applications to the Institute. The Institute presently has approximately 3,540 associate and fellow members. Kudos to the individuals who have made this possible.

The CTIM Annual General Meeting ("AGM") is scheduled to take place on 22 June 2019. This will be my last AGM in the capacity of CTIM President in view that my second term on the CTIM Council will be coming to an end. It has been a great honour for me to serve and lead the Institute. I am also thankful to the Council Members and various stakeholders and individuals for their support during my tenure.

Editor'sNote

YEO ENG PING

Tax audits will continue to be an important theme in 2019 for taxpayers and tax practitioners. The Inland Revenue Board of Malaysia (IRBM) launched the Special Voluntary Disclosure Programme (SVDP) which spans 3 November 2018 to 30 September 2019. This programme was effected through letters to taxpayers, particularly those with overseas bank accounts, and also through the media, and had created quite a stir among taxpayers as many were not sure how to react. To their credit the IRBM had subsequently issued a number helpful media releases late February and early March to clarify, and reiterated their position that the declarations will be accepted "in good

faith and no audit or investigation will be carried out in the future for the period in which the declaration was made." I am also heartened by a statement in one of the media releases that the IRBM will not hesitate to take action on its officers for misconduct during audits, or who act in an unprofessional manner and fail to abide by procedures. Beyond 30 June 2019, it is expected that the IRBM will expand their tax audit focus on taxpayers that did not participate in the SVDP - so the looming questions include how intense will these audit be? and what amount of penalties will be levied? We certainly hope for a sensible approach and outcome from the IRBM. Most recently, the IRBM has introduced the requirement for taxpayers to disclose significantly more information in their tax returns for YA2019 onwards, which no doubt will aid the IRBM's identification of risk areas and tax audit.

The GST closure audits are also ongoing. To ramp up speed and add to effectiveness, the Royal Malaysian Customs Department (RMCD) introduced a progressive initiative of getting assistance for licensed GST agents in private practice to conduct some audits on behalf of the RMCD. The latest announcement in February 2019 by the Director General of Customs, Dato' Sri Subromaniam Tholasy (who has since retired on 8 March 2019), was that GST refunds are being done in stages until this year end, and interestingly, for claims worth more than RM50,000, the full release of refunds will be made only after a site visit to the taxpayer and audit. He also said for claims exceeding RM100,000, a bank guarantee requirement will be required to secure the portion of refunds released prior to the audit clearance, which is of course yet another progressive initiative by the RMCD.

The RMCD has also recently, on 6 December 2018, launched a voluntary disclosure programme for Sales Tax and Service Tax, targeting these areas i.e. (i) where tax was collected before being registered (ii) where there was an "accidental" collection of tax, which refers to situations for example where tax was imposed on goods or services that is not within the tax scope. It is understood that waivers of penalty will be on a case to case basis, and the programme will not apply if there is already an ongoing audit; in any event the RMCD reserves the right to take action. While on this topic the RMCD also announced their expectation of collecting beyond the RM22billion target for 2019, which could be partly attributed to the expansion of the service tax scope (cleaning services, operating amusement parks, brokerage and underwriting service fees, and training) from 1 March 2019.

At the same time, we are also seeing a spike in the RMCD's activities on Customs matters, to ensure compliance, to fight fraudulent activities and to increase fraud-prevention. For example, the RMCD announced taking a tough stance to immediately revoke the licence of any import and export shipping agents who are found making false declarations, which they had already acted upon. Another example is the proposed upgrade of the (sticker) stamp used for cigarettes, to include additional security features that will help limit smuggling and other fraud.

There are also other interesting tax-related matters made by the Prime Minister Tun Dr. Mahathir in March 2019, these included:-

- No new taxes for 2019, other than sugar tax which was announced at the last budget. On this, the implementation of sugar tax will be postponed to 1 July 2019. I add a quick side note here to mention that however, the Finance Minister, YB Lim Guan Eng was recently reported as hinting that banks may face a "windfall tax" unless banks start being more flexible in lending.

- The Tax Reform Committee is finalising their proposals to enhance tax revenues, address tax leakages including the underground economy, enhance tax administration and find new sources of revenue.
- Tax incentives will be rationalised/streamlined, and so will the agencies administering the myriad incentives available in Malaysia.

Apart from the above, there are a number of ongoing tax technical issues that require immediate attention, for example, the detailed rules for Earning Stripping Rules which will affect the quantum of interest deduction from 1 January 2019; clarity on the tax incentive framework following the review of Malaysia's incentives under the OECD's Forum on Harmful Tax Practices (e.g. tax incentives covering income from intellectual property); issues on the Labuan tax regime; and tax treatment of e-commerce issues such as digital advertising, to name a few.

So, there are many tax developments occurring, which places great onus for us as tax professionals to not only keep up with the latest both technically and from a policy perspective, but also, in upholding the highest standards of professional conduct as we advise and assist taxpayers in the tax audit process. I hope this edition of the *Tax Guardian* will contribute in a small way to the richness of your practice.

InstituteNews

DISCUSSION ON NTC 2019 PROGRAMME

CPD EVENTS

A series of events were conducted in the 1st quarter 2019 as follows:

- Dealing with the Complexities of Withholding Tax
- Malaysian Property Tax, Income Tax, Estate & Trusts
- Analysis of Recent Tax Cases 2018
- Managing Tax Audits & Investigations
- Intensive SST & Customs Seminar 2019: Legal & Operational
- Public Ruling 2017 & 2018 – Understanding the Legal & Practical Aspects

CTIM organised a seminar on "Dealing with the Complexities of Withholding Tax" on 17 January 2019 at the Renaissance Hotel, Kuala Lumpur. The speakers Mr. SM Thanneermalai of Thannees Tax Consulting Services Sdn. Bhd. Mr. Vijey Krishnan of Raja Darryl & Loh and Ms. Ooi Chooi Peng of the IRBM shared and provided insights on the scope of withholding tax as well as the rationale for imposing it.

Several workshops on "Malaysian Property Tax, Income Tax, Estate & Trusts" were conducted at all major cities by Dr. Tan Thai Soon who covered many aspects of Malaysian tax law, regulations and public ruling. In particular, coverage included Real Property Gains Tax, Real Property Company, Tax treatment of Income from real property, Investment Holding Company, Estates and Trusts.

Mr. S Saravana Kumar & Mr. Jason Tan of Lee Hishammuddin, Allen & Gledhill conducted a seminar on "Analysis of Recent Tax Cases 2018" at Johor Bahru (18 January 2019) and Penang (31 January 2019) respectively. The speakers discussed selected important 2018 income tax cases.

The workshops on "Managing Tax Audits & Investigations" was conducted by Mr. Harvindar Singh at several venues i.e Kuala Lumpur, Penang, Ipoh & Melaka. The speaker

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

As Customs intensify their audits and investigations to enhance compliance amongst taxpayers, the special seminar on 'Intensive SST & Customs Seminar 2019: Legal & Operational' was conducted on 29 January 2019 in Sheraton Hotel, Kuala Lumpur. The speakers for the seminar were Ms. Annie Thomas, Mr. Chow Chee Yen, Mr. S Saravana Kumar, Mr. Jason Tan and Ms. Ivy Ling. This seminar will also be conducted in various other locations.

Mr. K. Kularaj conducted a workshop on "Public Ruling 2017 & 2018 – Understanding the Legal & Practical Aspects" in Weil Hotel, Ipoh on 16 January 2019. This workshop provided participants with an understanding of income tax laws and regulations pertaining to the issues in the Public Rulings which were discussed together with practical examples from selected tax cases.

CTIM PERAK BRANCH NEWS

CAREER TALK AT POLITEKNIK UNGKU OMAR, IPOH

CTIM Perak Branch Chairman, Lam Weng Keat delivered a career talk to 60 students pursuing accountancy and finance courses in Politeknik Ungku Omar, Ipoh on 6 March 2019. The Branch Chairman gave an overview of the role and function of CTIM, the various routes to become a CTIM member, types of membership and the benefits of CTIM membership amongst others. The speaker also shares his experience, knowledge and view of the taxation profession and stressed the importance of maintaining their professional values and relevance to the market place when they are CTIM members. Finally, the students were strongly encouraged to pursue their career in taxation and to apply for CTIM membership upon fulfilling the necessary requirements. The Deputy Branch Chairman, Chak Kong Keong was also present to share some of his views.

HALF-DAY TALK JOINTLY ORGANISED BY CTIM-IRBM-ACCIM

The Institute together with the Inland Revenue Board of Malaysia (IRBM) and the Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM) had successfully completed the half-day talk on "Taxable Online Business Income and Special Voluntary Disclosure Programme (SVDP)" at various locations namely Melaka (2 March 2019), Kuantan (3 March 2019), Kuala Terengganu (8 March 2019), Kota Bharu (11 March 2019), Batu Pahat (13 March 2019) and Jerantut (17 March 2019). The speakers for the talk were representatives from the IRBM and CTIM. Approximately, 600 people had attended the talk at the abovementioned locations.

The event in Kota Bharu was officiated by the Chief Executive Officer of IRBM, YBhg Dato' Sri Sabin Samitah. Also present at the event were Ms. Seah Siew Yun, President of CTIM and Mr. Yap Heng Or, President of Kelantan Chinese Chamber of Commerce & Industry.

DISCUSSION ON NTC 2019 PROGRAMME AND NTC 2018 CHEQUE PRESENTATION CEREMONY

On 14 March 2019, YBhg Dato' Sri Sabin Samitah, CEO of IRBM chaired a meeting held between the two co-organising committees at his office in Menara Hasil, Cyberjaya to discuss on the programme of the NTC 2019. Also present were Ms. Seah Siew Yun, CTIM President and Farah Rosley, CTIM Deputy President, Deputy CEO of IRBM and committee members of CTIM. A cheque presentation was also held after the meeting to mark the successful organising of NTC 2018.

The 2019 NTC will be held from 5 - 6 August 2019 at the Kuala Lumpur Convention Centre.

SPECIAL PROGRAMME ON VOLUNTARY DISCLOSURE FOR DIRECT TAXES

Dr. Zainal Abidin Md Yassin

The level of tax compliance in developing countries is relatively lower than advanced and developed countries. The latest study estimated that the size of the underground economy in Malaysia was about 30 per cent of GDP (Marliza, 2012)[1]. According to the World Bank and the International Monetary Fund, Malaysia has a tax gap of between 20 and 30 per cent and this is considered to be high compared to that of between five and six per cent for other countries[2].

The high tax gap rate indicates that the rate of non-compliance is high too. The main factors of non-compliance behaviour are failure to register as taxpayers, failure to submit tax returns, failure to submit correct tax return forms, and failure to pay taxes on time. In 2017, the number of registered taxpayers was 9,097,425[3] of which only 61 per cent or 5,536,265 were active. The balance 39 per cent were categorised as dead files or marked as "No Return (NR)" whereby taxpayers did not have to submit their tax returns until such time that their income becomes chargeable to tax.

Many countries have introduced Voluntary Disclosure Programmes to their taxpayers especially when government revenue drops significantly due to bad economic conditions. In 2008 during the financial crisis in Europe and the United Sates, many developed countries were affected by it which led to severe deficit in the governments financial position. As a result, the effected nations were beginning to realise that many multinational companies were not paying their fair share of tax as their income was parked in tax haven countries that charged only a minimal tax on their income. These issues created an awareness among the public that they began to scrutinise large corporations paying small amount of taxes. People questioned the reason behind the small amount of tax charged to these large corporations. As a result, Special Voluntary Programmes were introduced in the US, UK and other countries solely on issues relating to using of tax shelters to reduce tax liabilities.

In Malaysia, the government announced the Special Voluntary Disclosure Programme (SVDP) on 2 November 2018 during the tabling of the 2019 Budget. The objectives of the programme is to increase the government's revenue to finance the operating and development expenditures of the country as well as to allow taxpayers to voluntarily declare any unreported income, including income held in offshore accounts.

Information on cross-border financial transactions is readily available to the Inland Revenue Board of Malaysia (IRBM) by the implementation of the Common Reporting Standard (CRS) in Malaysia through the Automatic Exchange of Information (AEOI)

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1 *Marliza Mohamed (2012) "Estimating the Underground Economy from the Tax Gap: The Case of Malaysia", Malaysian Journal of Economic Studies, 49(2): 91-109 http://www.myjurnal.my/filebank/published_article/20166/1_Marliza.pdf*

2 *Bernama (2016), "IRB offers 15-20 pct reduction of late filing penalties', sighted on 06/02/20116 at http://english.astroawani.com/business-news/irb-offers-15-20-pct-reduction-late-filing-penalties-97239*

3 *IRBM Annual Report 2017 (Bahasa Malaysia version) http://lampiran1.hasil.gov.my/pdf/pdfam/laporan_tahunan_2017.pdf*

since September 2018. The AEOI is initiated by the Organisation for Economic Cooperation and Development (OECD).

Taxpayers participating in the SVDP will enjoy low penalty rates of 10 per cent or 15 per cent. The programme runs from 3 November 2018 to 30 September 2019. This eleven-month programme will provide an opportunity for the public and registered taxpayers to regularise their tax affairs as the penalty is 10 per cent if they participate between the period of 3 November and 30 June 2019 and 15 per cent for the period of 1 July to 30 September 2019. The penalty is imposed on additional tax for income or Real Property Gains Tax (RPGT) which is underreported or on income which is not reported due to failure to submit a tax return. This programme is open to all categories of taxpayers which encompasses individuals and businesses that have failed to register with the IRBM in instances where they have annual income or gains in real property transactions which is taxable. The programme is also offered to taxpayers who are already registered with IRBM but fail to furnish their tax returns or RPGT forms and to taxpayers who have furnished their tax returns but the amount of income reported in their tax return form is not correct.

In addition to that, taxpayers who fail to stamp their stampable instruments within a stipulated period of time are also eligible to participate in the Programme[4]. The SVDP is also applicable for transfer pricing issues, but the implementation method and penalty rates are in accordance with the Transfer Pricing Audit Framework currently in force.[5]

As mentioned above, penalty rates imposed under the SVDP will be at 10 per cent or 15 per cent on tax payable, depending on the period in which the declaration is made, based on reported income. As an illustration, Mr. Ali has yet to register with the IRBM although he earns annual income which is taxable. He comes forward to participate in the SPVD on 3 January 2019 to declare unreported income of RM100,000 earned in 2016 and 2017. The income is divided equally for each year, i.e. RM50,000 a year. After deducting all available reliefs, the amount of tax payable is RM1,200 and RM1,000 for 2016 and 2017 respectively. As a result, he has to pay penalties of RM120 and RM100 respectively based on the penalty rate of 10 per cent. In order to enjoy the full benefit of the SVDP, the payment of the tax and penalties should be done on or before 1 July 2019. If Mr. Ali fails to pay the tax in full, IRBM may further impose an increase in tax pursuant to Section 103 of the Income Tax Act 1967 (ITA 1967).[6]

Again based on the same facts as above, If Mr. Ali decides to do the voluntary disclosure on 3 July 2019, then the penalty rate applicable on tax payable will be 15 per cent, that is, RM180 and RM150 for 2016 and 2017 respectively. However, he has to settle in full the tax and penalties on or before 1 October 2019 to avoid an increase on tax under Section 103 of the ITA 1967.[7]

As for taxpayers who have furnished their tax returns but may have reported incorrect information in relation to income chargeable to tax, similar penalty rates is imposed on additional tax on the under-reported income. Taxpayers are not entitled to participate in this Programme if it results in the reduction of tax liabilities.

The penalty rates for tax non-compliance will be increased to a minimum 45% after this Programme. The higher penalty rates would encourage public and registered taxpayers to take the opportunity offered by the SVDP to regularise their tax matters. With the emphasis on transparency by the new government in administering the country's economic activities, this Programme should be the approach needed by the public to come forward voluntarily to report their income and pay the appropriate amount of tax.

The SVDP is anticipated to generate additional tax of RM10

billion[8] with the participation taxpayers of various categories. As Malaysia's taxation system is based on territorial basis of assessment, the repatriation of assets from offshores is not necessarily taxable unless they were generated from activities related to Malaysia.

The main challenge for this Programme is to convince the public and taxpayers that there is no hidden motif or agenda to lure them for other purposes. The voluntary disclosure made by the public or taxpayers is accepted in good faith by the IRBM and they will not be scrutinised further to determine the accuracy of the disclosure made. The IRBM will not raise previous years' tax affairs of taxpayers who participate in this Programme.

However, this Programme is only to be applied to issues that would result in additional tax only. Disclosures in relation to adjustments that results in additional taxes that would be recouped in later years are not included in this Programme. For instance, disclosures relating to reduction in unabsorbed losses or allowances brought forward to future years would have no effect on tax payable in current or previous years of assessment. Secondly, taxpayers are only allowed to participate in the Programme covering current and previous years of assessment. Therefore, there is no SVDP for the year of assessment 2018, even though there are companies which have financial years ending in April to November 2018 and have to summit their tax returns within seven months after the financial year ends, that is, November 2018 to June 2019 respectively.[9]

The IRBM has outlined strategies to ensure that people are aware of this Programme and understand it well to avoid misconceptions and scepticism. At the initial stage, all information about the SPVD is uploaded on the IRBM's portal. The information comprises of statements issued by the Chief Executive Officer of the IRBM, operational guidelines and Frequently Asked Questions (FAQ)[10] on the Programme. Subsequently, the information on the Programme was disseminated through print and digital media such as newspapers, banners, social media, radio and television. Similarly, cooperation was sought with other government agencies and private sectors to disseminate the information on the Programme for greater outreach to the public. Direct engagements with various segments of taxpayers and their representatives are on-going nationwide. To support the Programme in terms of further queries from the public on procedures to participate in the SVDP, the IRBM's Call Centre provides the necessary assistance. In addition, each department, state and branch office has a dedicated team of officers to manage and administer taxpayers participating in the Programme.

General letters and e-mails have been sent to taxpayers notifying them

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4 This Special Programme only applies to income reported or gains on disposal of assets for the year of assessment 2017 and preceding years of assessment as well as instruments not stamped after six (6) months from the stamping period as stated in the Operational Guidelines No. 1/2018 Inland Revenue Board Of Malaysia on the Special Programme For Voluntary Disclosure dated 30/11/2018. The guidelines can be accessed at http://lampiran1.hasil.gov.my/pdf/pdfam/GO_012018_02.pdf

5 - ditto –

6 Frequently Asked Question Special Programme For Voluntary Disclosure at http://lampiran1.hasil.gov.my/pdf/pdfam/FAQVD_BI_01022019.pdf

7 Refer to online Income Tax Act 1967 which is available in IRBM Portal - http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Pindaan%20Act%2053%20-%2023%2011%202017.pdf

8 The Star (2019) "Taxman expects RM10b in collection under amnesty period" dated 9th January 2019, sighted on 08/02/2019 at https://www.thestar.com.my/business/business-news/2019/01/09/taxman-expects-rm10b-in-collection-under-amnesty-period/#VmJGUJyGatYFyORC.99

9 Frequently Asked Question Special Program For Voluntary Disclosure at http://lampiran1.hasil.gov.my/pdf/pdfam/FAQVD_BI_01022019.pdf about this Programme. Hence, they have 11 months to decide whether to participate in the Programme to regularise their tax affairs and start on a clean slate with regard to their tax matters. There is continuous effort on the part of the IRBM in managing the Programme, various measures are introduced to make it easier for taxpayers to participate. For taxpayers who have received notices informing about an audit process to be undertaken on them based on risk indicators, their voluntary disclosure process is different than that of taxpayers who have not received the notice. The

disclosure made by the former has to be scrutinised by the IRBM's tax auditors to ensure the correctness of the information as compared to the taxpayers in the later category, where information given, will be received in good faith, that is, without any further review by the IRBM. However, taxpayers marked for audit process would be invited to participate in the SVDP with the discounted penalty rates of 10 per cent or 15 per cent upon the settlement of the audit process. This will result in prompt settlement of the audit process which will prove beneficial to taxpayers as well the IRBM.

In the case of taxpayers who are in the midst of an audit process, the approach is illustrated as follows. Syarikat ABC Sdn Bhd is being audited based on the analysis of its financial statement in the tax return for year of assessment 2017. The company decides to make a voluntary disclosure under the SVDP on 20 March 2019. The amount of tax payable stated in the tax return for 2017 is RM100,000. However, during the audit process, there were some findings resulting in an additional tax of RM70,000. Subsequently, during the audit process, Syarikat ABC Sdn Bhd decided to make a voluntary disclosure to take advantage of the preferential penalty rates that are being offered under the SPVD that results in another additional tax of RM30,000. Therefore, the total additional tax becomes RM100,000 due to the audit findings as well as the voluntary disclosure. However, the preferential penalty rates of 10 per cent will not be applied to the RM100,000 additional tax as the amount due to audit process will be segregated from the amount derived from voluntary disclosure. The penalty on additional tax of RM70,000 resulting from the audit process is 45 per cent[11] or RM31,500 and additional tax on voluntary disclosure of RM30,000 is at 10 per cent or RM3,000.

The SVDP would create the impetus for Malaysians to contribute their fair share in the development of the country. This one-time Programme would pave the way for improvement of tax compliance rate in Malaysia in the years to come that would be comparable to other developed nations.

In conclusion, the SVDP introduced by the government provides an opportunity to the public to declare their unreported income and regularise their tax affairs without worrying on tax issues in the previous years as well as to enjoy the lower penalty of 10 per cent and 15 per cent. The disclosure process is easy to follow and the IRBM accepts in good faith all the information that is provided by the taxpayers. The penalty rates for tax non-compliance will be increased to 45 per cent after this Programme. The emphasis on transparency by the government would create awareness for the public to be more willing to report their income and pay the appropriate amount of tax voluntarily.

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[10] *Frequently Asked Question Special Program For Voluntary Disclosure at http://lampiran1.hasil.gov.my/pdf/pdfam/FAQVD_BI_01022019.pdf*

[11] *Refer to Tax Audit Framework available in IRBM Portal - http://lampiran2.hasil.gov.my/pdf/pdfam/RKAC_2017.pdf*

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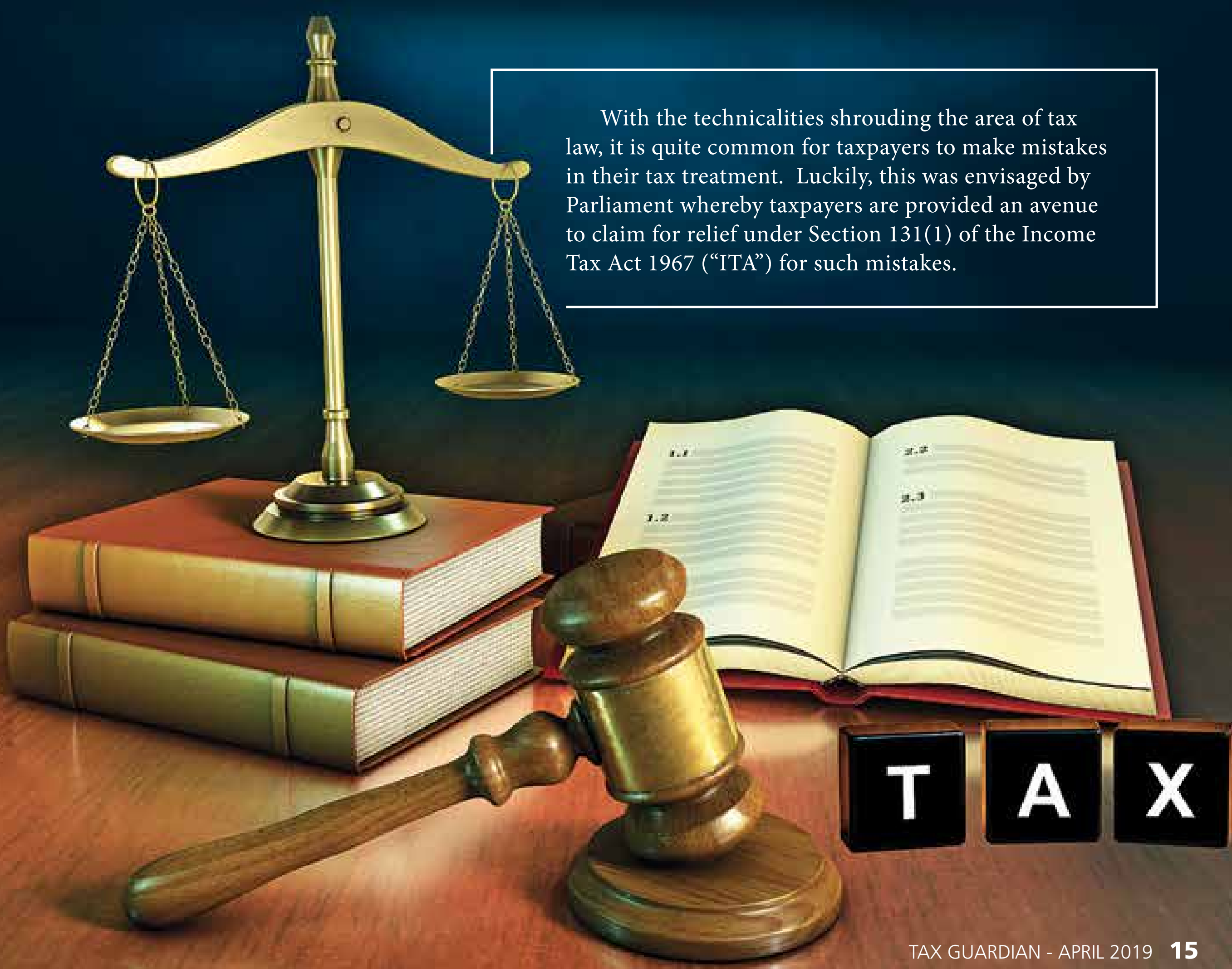
THE RAPID GROWTH TECHNOLOGY CASE:

TAX RELIEF FOR RELYING ON ERRONEOUS PUBLIC RULING

S. Saravana Kumar & Steward Lee



With the technicalities shrouding the area of tax law, it is quite common for taxpayers to make mistakes in their tax treatment. Luckily, this was envisaged by Parliament whereby taxpayers are provided an avenue to claim for relief under Section 131(1) of the Income Tax Act 1967 ("ITA") for such mistakes.

However, the question arises whether a taxpayer may still avail to Section 131(1) relief if the taxpayer had relied on an erroneous Public Ruling issued by the Director General of Inland Revenue (**"Director General"**). Section 138A(1) of the ITA empowers the Director General to issue Public Rulings in relation to the application of any provisions of the ITA. In the foreword of every Public Ruling, the following statement by the IRBM would also be found:

> *"A Public Ruling is published **as a guide for the public** and officers of the Inland Revenue Board of Malaysia. It sets out the **interpretation of the Director General of Inland Revenue in respect of the particular tax law** and the policy as well as the procedure applicable to it."*

As stated by the Director General, the Public Ruling is "a guide for the public" setting out the Director General's own interpretation of the tax law in Malaysia. Be that as it may, the legal effect of such Public Rulings has been unclear as our Courts have on certain occasions agreed with the contention that Public Rulings issued by the Director General have attained the status of a subsidiary legislation[1], while ruling that a specific Public Ruling had no force of law and was not binding on the Court in a separate case[2]. With respect, the authors are of the view that Public Rulings do not carry any legal effect.

This is because the contention that Public Rulings are legally binding would have far reaching effects as even the Director General would not be immune to error or mistakes and this could lead to grave tax implications to taxpayers at large who rely on the guidance provided through such Public Rulings when filing their tax returns. The consequences would prove to be significant, especially when the Director General has recently relied on Section 131(4) of the ITA to contend that any taxpayer who made a mistake or error in the filing of their tax returns due to their reliance on a Public Ruling would not qualify for relief under Section 131 of the ITA. This stance adopted by the Director General would be incredulous and unfair to taxpayers as it would require taxpayers to literally pay for any mistake committed by the Director General in their interpretation of the law; especially given the fact that taxpayers are required to disclose whether they have abided by the relevant Public Rulings when filing their tax returns.

In the recent Court of Appeal case of ***Rapid Growth Technology Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri***, a taxpayer was forced to face the brunt of this position. The Director General rejected their application for relief on the basis that the error committed by the taxpayer was due to their reliance on a Public Ruling. The rejection of the relief was puzzling as it was acknowledged that the Public Ruling was indeed erroneous and does not constitute the correct position in law. Fortunately, the taxpayer in this appeal was successful in persuading the Court of Appeal that although the taxpayer's error was due to their reliance on a Public Ruling, Section 131(4) of the ITA does not oust their right to claim for relief.

FACTS

The taxpayer claimed reinvestment allowance for the capital expenditure incurred for the construction of a new factory. At that point in time, Public Ruling No. 2/2008 stated that reinvestment allowance was limited to the production areas of the factory only and thus, the taxpayer decided to comply with this Public Ruling to avoid the risk of being penalised. In doing so, they excluded certain expenditure incurred which did not constitute part of the production areas in their reinvestment allowance claim as per the Public Ruling.

Upon filing its tax return, the

taxpayer was made aware of recently decided court cases which had ruled that the Director General's stance as per the Public Ruling was erroneous. This was consequent to the court's decisions in cases like ***Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformers Manufacturer Sdn Bhd***[3] and ***Firgos (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri***[4] which made it clear that reinvestment allowance cannot be restricted to "production areas" alone and whatever items that proves integral or necessary to the taxpayer's manufacturing activity would be eligible.

In light on these decisions, the taxpayer claimed relief under Section 131(1) to recover the reinvestment allowance for the capital expenditure incurred which it had restricted previously. The taxpayer's application was then rejected by the Director General based on Section 131(4) of the ITA. Aggrieved by this decision, an appeal was lodged to the Special Commissioners of Income Tax (**"SCIT"**).

THE LAW

Section 131(1) reads as follows:

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

Essentially, Section 131(1) requires the following criteria to be met for the claim of relief:

(a) The taxpayer has paid excessive tax;
(b) The excessive tax paid was by reason of some error or mistake in the return;
(c) The application must be made within five years after the relevant year of assessment; and
(d) The application must be made in writing to the Director General.

The term "mistake" is not defined in the ITA but was given judicial consideration in ***J Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri***[5]:

> *"Some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence. A state of mind not in accord with reality.* ***A mistake exists when a person, under some erroneous conviction of law*** *or fact, does, or omits to do, some act which,* ***but for the erroneous conviction, he would not have done or omitted****. It may arise either from unconsciousness, ignorance, forgetfulness, imposition, or misplaced confidence."*

It would be apparent that the taxpayer's predicament would have easily fell under the category of misplaced confidence in the Public Ruling or having some erroneous conviction of the law while filing their tax return and thus

be qualified to claim for relief. If it was not for their compliance with the Public Ruling, the taxpayer would not have omitted the non-production areas of the factory in their reinvestment allowance claim. Notwithstanding this, the Director General relied on Section 131(4) which states:

> *"No relief shall be given under this section in respect of an error or mistake as to the basis on which the chargeability of the applicant ought to have been computed if the return or statement containing the* ***error or mistake was in fact made on the basis*** *of, or in accordance with, the* ***practice of the Director General generally prevailing at the time when the return or statement was made"***

This provision serves as an exception to the operation of Section 131(1) and it was contended by the Director General that Public Rulings issued by the Director General would fall under the 'practice of the Director General generally prevailing at the time'. Thus, the taxpayer in this case would be barred from claiming any relief as their mistake was on the basis of a Public Ruling. Due to the absence of any judicial consideration on this particular phrase, the taxpayer had no other recourse but to seek for the Court's interpretation of the section as ultimately, the power to interpret the law lies with the Court.

Although the SCIT ruled in favour of the taxpayer, the High Court allowed the Director General's appeal and held that the Public Ruling represented the Director General's general practice prevailing at the time in respect of reinvestment allowance claims. Aggrieved by the High Court's decision, the taxpayer filed an appeal to the Court of Appeal which is the final appeal court for tax appeals originating from the SCIT.

ARGUMENTS BY THE TAXPAYER

On behalf of the taxpayer, it was submitted that the High Court had erred in its interpretation of Section 131(4) for the following reasons:

(1) 'Public Rulings made under Section 138A are not 'practice'

(a) Public Rulings are the Director General's interpretation of the law and could only serve as a guideline to the public. If Parliament had intended for the 'practice of the Director General prevailing at the time' to include Public Rulings, this would have been stipulated explicitly in the ITA and also in the Public Rulings itself.

(b) A clear distinction between Public Rulings and practice of the Director General was made by Parliament in Section 99(4) of the ITA where it is stated that:

> *"This section shall not apply to an assessment made under subsection 90(1) or Section 91A, except where a person in respect of such assessment is aggrieved by the public ruling made under Section 138A or any practice of the Director General generally prevailing at the time when the assessment is made."*

(c) Further, the Director General had also distinguished Public Rulings from the practice of the Director General prevailing at the time in a separate Public Ruling. Paragraph 4.8.2 (b) of Public Ruling No. 7/2015 – Appeal Against an Assessment or Application for Relief, reads:

> *"If a person who has submitted ITRF for a year of assessment is not liable to tax or is liable to tax on other income such as interest but has no statutory income from a business source and intends to appeal against a tax treatment mentioned in any PR or any known stand, rules and practices made by the DGIR, the person has to apply to the IRBM in writing for a NONC."*

(d) Pursuant to ***Hap Seng Plantation (River Estates) Sdn Bhd v Excess Interpoint Sdn Bhd & Anor***[6], it is axiomatic that when different words are used in a statute, they refer to different things.

(2) 'Practice' does not include interpretation of the law

The principles of law relating to

the interpretation of a taxing statute have been aptly laid down by the Federal Court in ***Palm Oil Research and Development Board of Malaysia v Premium Vegetable Oils Sdn Bhd***[7] :

(a) Words are to be given their ordinary meaning
'Practice' is not defined in the ITA. Hence, in its plain and ordinary meaning, it means what is customary, habitual, expected procedure or way of doing something and does not include interpretation of the law. In *J Sdn Bhd* (supra), 'practice' in Section 131(4) was confined to matters relating to administrative machinery only and not to matters that will result in violation of explicit provisions of the ITA.

(b) No room for intendment and nothing is to be implied
The High Court had erred in stating that 'practice' in Section 131(4) may include interpretation of the law. Since Section 131(4) made no mention of the phrase 'interpretation of the law', the High Court has erred in implying such inclusion.

(3) Fairness to the taxpayers

(a) If the interpretation of Section 131(4) as submitted by the Director General is accepted, this provision would bar a law-abiding taxpayer from claiming relief due to their reliance on the erroneous interpretation of the Director General. In effect, any good taxpayer would be bound by the mistaken interpretation of the Director General and would have to bear the consequences for the Director General's mistake.

(b) A good and law-abiding taxpayer should not be discriminated and prejudiced solely for choosing to adhere to a Public Ruling issued by the Director General. The taxpayer acted in good faith to comply with the law and endeavoured to properly file their tax return by referring to all the guidelines provided by the Director General. Hence, it would be a gross injustice to then penalise the taxpayer for properly carrying out their duty as good taxpayers if they are then barred from claiming relief under Section 131(1) due to the onerous interpretation of the word 'practice' in Section 131(4).

(c) Public Rulings are not binding on the Courts or taxpayers as the power to interpret laws that are binding lies solely with the Court itself and not the Director General. The public should only be bound by the clear provisions of the ITA itself.

After considering the arguments put forth by both parties, the Court of Appeal unanimously reversed the decision of the High Court and ruled in favour of the taxpayer.

CONCLUSION

Although this landmark decision does not clearly put to rest the question of whether Public Rulings are legally binding, it fortifies the contention that Public Rulings are merely interpretations of the law made by the Director General and should not be imbued with any other characteristics that were not intended by Parliament. Further, this decision also sheds light to taxpayers and tax practitioners on the scope of Section 131 of the ITA in providing relief - taxpayers who have erroneously relied on a Public Ruling may now claim for relief from the Director General without any impediment. Although taxpayers may be expected to consider the Director General's stance as contained in the Public Rulings when filing their tax return, taxpayers are encouraged to obtain proper legal advice on the correctness of such interpretation when in doubt and to challenge any Public Rulings which are in conflict with the ITA.

It is also hoped that this decision would serve as a step in the right direction on the legal effects of a Public Ruling, i.e. they are mere interpretations of the law by the Director General which serves as a guide to the public and the power to interpret the taxation law in the country with binding effect still lies with the Court alone.

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5 *[1999] MSTC 3037*
6 *[2016] 4 CLJ 641*
7 *[2004] 2 CLJ 265*

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Datuk D.P. Naban *and* ***Saravana*** *successfully represented the taxpayer in this case before the Court of Appeal.*

BROADENING THE TAX NET UNDER SECTIONS 12(3) AND 12(4) OF THE INCOME TAX ACT 1967

Chong Mun Yew

Malaysia has recently introduced an amendment to Section 12 of the Income Tax Act 1967 ("ITA"). This amendment may be far reaching especially to those who are unsure whether they are conducting a business in Malaysia and therefore are taxable on the profits derived from that business.

Ordinarily, it is not difficult to know whether a person is conducting a business in Malaysia. However, there may be cases where businesses are more transient whereby the operations may be conducted without a full set of business premises and the sales are secured via agents or via the business' website. For these borderline cases, one may need to refer to the relevant Double Tax Agreement ("DTA") that the country of the person has entered into with Malaysia ("DTA countries"). Only where the person has a "permanent establishment" in Malaysia, will this person be held to be taxable in Malaysia on his profits (excluding specific income such as interest, royalty and technical fees). If he is from a country which does not have a DTA with Malaysia ("non-DTA countries"), there is not much guidance in the ITA. Resultantly, the question as to whether a person is "doing business in Malaysia or doing business with Malaysia" is a question of facts and circumstances. This nebulous concept oftentimes introduces ambiguity and complication into the Malaysian tax law. Hence, persons from the USA, Bahamas, Serbia, Cyprus, Ecuador, etc. which either do not have any DTA with Malaysia or have a limited double tax treaty with Malaysia, will find their tax position to be uncertain.

So, do these new changes in Section 12 provide more clarity or introduce more confusion as to the source of income for Malaysian tax purposes?

MALAYSIAN TAXATION SYSTEM

The discussion on whether an income of any person is sourced in Malaysia or from Malaysia or outside Malaysia has always been a debatable subject. However, it is important to determine the source of income for a person in order to ascertain whether such income is subject to tax in Malaysia.

Under Section 3 of the ITA, income tax shall be charged for each year of assessment upon the income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia.

Before we dive into the amendments made by the Finance Act 2018, let us refresh ourselves on the existing Section 12 of the ITA prior to the amendments which states:

(1) Where for the purposes of the ITA it is necessary to ascertain any gross income of a person derived from Malaysia from a business of his, then –

(a) subject to subsection (2), so much of the gross income from the business as is not attributable to operations of the business carried on outside Malaysia shall be deemed to be derived from Malaysia;

(b) notwithstanding paragraph (a), if the business consists wholly or partly of the manufacturing, growing, mining, producing or harvesting in Malaysia of any article, product, produce or other thing –

(i) the gross income from any sale of the article, product, produce or other thing taking place outside Malaysia in the course of carrying on the business; or

(ii) where the article, product, produce or other thing is exported in the course of carrying on the business and subparagraph (i) does not apply, an amount equal to the market value of the article, produce, product or other thing at the time of its export, shall be deemed to be gross income of that person derived from Malaysia from the business.

(2) Where in the case of a business to which paragraph (1)(a) applies –

(a) the business or a part thereof is carried on in Malaysia;

(b) any of the gross income of the business (from wherever derived) consists of a dividend or interest to which subsection 24(4) or (5) applies; and

(c) the dividend or interest relates either –

(i) to a share, debenture, mortgage or other source which forms or has formed part of the stock in trade of the business or, where only part of the business is carried on in Malaysia, of that part of the business; or

(ii) to a loan of the kind mentioned in subsection 24(5) granted in the course of carrying on the business or that part of the business, as the case may be, so much of that gross income as consists of that dividend or interest shall be deemed to be derived from Malaysia.

Briefly, Section 12(1) says that if you cannot prove that your business operation is conducted outside of Malaysia, it will then be considered to be conducted from Malaysia. Hence, income from this operation is subject to Malaysian income tax.

Similarly, Section 12(2) generally stipulates that any dividend or interest income which relates to a business in Malaysia will be considered as Malaysian income, and therefore subject to Malaysian income tax.

Conversely, based on the case *Ketua Pengarah Hasil Dalam Negeri v Aneka Jasaramai Ekspress Sdn Bhd (2005) MSTC 4095*, where there is no evidence to support that the income is accrued in or derived in Malaysia, the income received from this operation is not from Malaysia, therefore, not subject to Malaysian income tax.

However, based on existing Malaysian case law, there does not appear to be much guidance from the courts to determine when a person is held to be having a source of income in Malaysia. Some scenarios of uncertainties regarding their taxability in Malaysia are as follows:

A person from a non-DTA country which places goods in a warehouse in Malaysia but otherwise do not have any business office in Malaysia.

A person who has an agent in Malaysia who cannot conclude sales contracts on his behalf with customers in Malaysia.

In these cases, should the businesses be treated as deriving income from Malaysia and therefore taxable in Malaysia? In this regard, the rules relating to "derivation of income" can be found in Section 12 of the ITA.

Having looked at the current Section 12, next we will examine the new amendments made to Section 12 of the ITA below as tabled in the Budget 2019.

Introducing the new subsection 12(3) and (4) into the ITA

BUDGET 2019

On 2 November 2018, our newly appointed Finance Minister, YB Lim Guan Eng, tabled his maiden Budget Speech for year 2019 in the Parliament. However, the Finance Bill 2018 was only formally released to the general public on 19 November 2018. The Finance Bill 2018 has since become law with the enactment of the Finance Act 2018 on 27 December 2018.

WHAT WAS PROPOSED WITH REGARDS TO SECTION 12 OF THE ITA?

Under this section, amendment is made to Section 12 of the ITA in relation to derivation of business income.

The new subsections introduced in Section 12 are as follows:

(3) Notwithstanding subsections (1) and (2), the income of a person from a business that is attributable to a place of business in Malaysia shall be deemed to be the gross income of that person derived from Malaysia from the business.

(4) For the purpose of subsection (3), a place of business includes –
- *(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,*

and without prejudice to the generality of the foregoing, a person shall be deemed to have a place of business in Malaysia if that person –
- *(i) carries on supervisory activities in connection with a building or work site, or a construction, an installation or an assembly project; or*
- *(ii) has another person acting on his behalf who —*
  - *(A) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification;*
  - *(B) habitually maintains a stock of goods or merchandise in that place of business from which such person delivers goods or merchandise; or*
  - *(C) regularly fills orders on his behalf."*

Briefly, Section 12(3) says that other than the derivation of business income stated in Section 12(1) and (2) of the ITA, the income of a person who has a place of business in Malaysia mentioned in Section 12(3) will also be subject to tax. Section 12(4) provides a list of what will be included under "a place of business in Malaysia". For this discussion, we shall refer to the places of business referred to in Section 12 as "Section 12 PE".

Hence, from the above, one can conclude that if a non-DTA person were to carry out a business in Malaysia via arrangements or via places which fall under Section 12(3) and 12(4) above, he will be considered to be carrying on a business in Malaysia and therefore taxable on his profits in Malaysia. The tax net has therefore been clarified in such cases.

On the other hand, paragraph 28(1) of Schedule 6 of the ITA states that *income of any person, other than a resident company carrying on the business of banking, insurance or sea* *or air transport, for the basis year for a year of assessment derived from sources outside Malaysia and received in Malaysia* will be exempted from tax. However, in order to be eligible for such exemption, a person should be able to proof that such income is a foreign sourced income.

WHAT IS THE INTENTION OF INTRODUCING THE AMENDMENTS TO SECTION 12?

Accompanying the Budget 2019, the Explanatory Statement of the Finance Bill 2018 provided further insights into the reasons for the amendment which reads as follows:

1. This is to amend Section 12 of the ITA so as to provide that the income of a person from a business that is attributable to a place of business in Malaysia shall be deemed to be gross income of that person derived from Malaysia from the business.
2. The meaning of "place of business in Malaysia" is defined under Section 12(4).
3. The provision addresses the situation where a non-resident from a country which has not entered into a DTA with Malaysia carries on a business in Malaysia.
4. The new amendment comes into operation on the coming into operation upon the passing of the Finance Bill 2018.

The purpose of the legislation appears to provide clarity concerning whether a non-DTA person is carrying on a business in Malaysia and therefore taxable in Malaysia on his profits.

Having looked at the latest legislation, we will now elaborate on the details in Section 12(3) and 12(4), and compare these "Section 12 PEs" with the Permanent Establishments ("PEs") in the DTAs.

COMPARISON BETWEEN ITA AND DTA

The amendments to Section 12 introduced a few new concepts to the meaning of "derivation of income" in the ITA. These concepts can be found in most DTAs such as in the PE article, although, the detail definition may vary between one DTA and another.

What is a DTA? Simply, a DTA is an agreement signed between two countries to avoid or alleviate territorial double taxation of the same income by two countries. Based on the case law *Director General of Inland Revenue v Euromedical Industries Ltd (1950-1985) MSTC 256*, a DTA overrides domestic tax law. Therefore where domestic law conflicts with the provisions of a DTA, the DTA will take precedence. However, the Malaysian tax authority seems to have a different view on this. Based on the case *Lembaga Hasil Dalam Negeri Malaysia v Alam Maritim (M) Sdn Bhd (2013) MSTC 30-068*, regardless of the prominence of the DTA, the charging law is the Act, and not the DTA. The DTA was merely the mechanism to eliminate double taxation or to grant relief and it had no jurisdiction as regards the imposition or creation of tax. Hence, the ITA takes precedence in this particular case.

What is a PE? In most DTAs, a PE is a fixed place of business whereby the business of an enterprise is wholly or partly carried on. The important elements of a PE are broken down into the following:

A place of business – whereby the existence of a facility such as machinery, equipment, premises, etc.

Fixed place – whereby the place to carry out such business must be fixed, i.e. it is a distinct place with a degree of permanence.

The business of an enterprise is carried on wholly or partly – this implies that the person who conducts the business activity or the person who represents the enterprise is dependent on the enterprise to conduct the business through this fixed place of business.

Generally, a PE will not be deemed to exist where the activity performed is preparatory or auxiliary in nature, i.e. if the activity performed does not form an essential part of the business as a whole. By introducing this amendment, the ITA is implying that any person who has a PE in Malaysia shall be treated as having a source of income in Malaysia and therefore taxable in Malaysia.

HOW DOES A "SECTION 12 PE" DIFFER FROM A NORMAL PE IN A DTA?

The new subsections 12(3) and (4) mirror Article 5 on PEs in the DTA with some amendments.

Most DTAs with Malaysia, for example China, the United Kingdom, Canada, France, Germany, etc. provide a positive list of examples of fixed bases as in **Table 1**:

Conversely, the DTA also generally provides a negative list to include certain activities of preparatory or auxiliary in nature which do not constitute a PE. "A negative list" means an exclusion list which will exclude a person from having a PE in a jurisdiction e.g. Malaysia. The exclusion list which will not trigger a PE includes the following as in **Table 2**:

Implications on persons from non-DTA countries

Under the new amendments, these few categories of business operations in Malaysia can be treated as a source of income in Malaysia, for example, a warehouse and an agent who traditionally negotiates orders which are routinely accepted by the principal. These amendments will therefore affect the following persons and situations:

NOTES:

1. Warehouse

As stipulated in most DTAs, the word "warehouse" or equivalent (i.e. use of facilities, maintenance of a stock of goods or merchandise solely for the purpose of storage) is excluded from triggering a PE. As a result, many companies that only have warehouses in Malaysia but do not have other premises are treated as not having a business source in Malaysia. For instance, currently many e-Commerce companies place their goods at logistics companies such as and outsource their online operation logistics, in which the e-Commerce companies' inventory management software is integrated with the logistics companies. When customers place orders with the e-Commerce company, the distribution centre will be notified and the goods will be delivered to customers in a shorter time frame. With the introduction of the new subsections, these foreign e-Commerce companies may have created a PE in Malaysia if those goods belonging to foreign e-Commerce companies are stored in warehouses within Malaysia. In the event that these foreign e-Commerce companies belong to countries which do not have DTA with Malaysia, the new subsections introduced will prevail. That being said, the new subsections do not override the DTA.

2. Building site

Not all DTAs with Malaysia e.g. Singapore and United Kingdom, have a PE clause that includes *"a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months"*. Without this clause, a construction worksite does not constitute a PE in Malaysia. For example, a Singapore company with a construction worksite in Malaysia will not be treated as having a source in Malaysia if the duration of the project is less than six months. However, a construction site owned by a person from a non-DTA country will not have this exclusion.

3. Time frame for supervisory activities

In most DTAs, a person who is

Table 1

Place of business	Commonly found in most DTAs	Found in Section 12 PE
a place of management	Yes	Yes
a branch	Yes	Yes
an office	Yes	Yes
a factory	Yes	Yes
a workshop	Yes	Yes
a warehouse	No	Yes (Note 1)
a building site, or a construction, an installation or an assembly project	Yes for some DTAs	Yes (Note 2)
a farm or plantation	No but assumed to be a PE since this is a fixed place of business	Yes
a mine, an oil or gas well, a quarry or any other place of extraction of natural resources	Usually yes	Yes
carries on supervisory activities in connection with a building or work site, or a construction, an installation or an assembly project	No	Usually yes (Note 3)
has another person acting on his behalf who — *(A) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification;* *(B) habitually maintains a stock of goods or merchandise in that place of business from which such person delivers goods or merchandise; or* *(C) regularly fills orders on his behalf*	Usually does not include "routinely concluded"[1]	Yes (Note 4)

[1] *Malaysia adopts the Base Erosion and Profit Shifting ("BEPS") – Action 7 which recommends ways to prevent the Artificial Avoidance of PE Status by enterprises. As such, the relevant DTAs will be amended in the Multilateral Instrument.*

carrying on supervisory activities in connection with a building or work site, or a construction, an installation or an assembly project will be given a time frame, i.e. six months, before a PE is triggered. However, no time frame is prescribed under the new Section 12(3) and (4) of the ITA. This means that even if a person from a non-DTA country is in Malaysia for a day, that person is likely considered to have a place of business in Malaysia.

4. Dependent agents

For Section 12 PEs, there are concerns on the concept of "deemed dependent agents". Many digital companies which do not have a PE in Malaysia have dependent agents that habitually play the principal role leading to the conclusion of contracts that are routinely concluded without material modification. These agents habitually maintain goods or merchandise in that place of business and deliver such merchandise to customers. With the amendments made to Section 12 of the ITA, such digital companies are likely considered to be carrying on a business in Malaysia via these "deemed dependent agents".

5. Exclusion list

In most DTAs, the items mentioned under the negative list (a) to (e) above will not trigger a PE.

Currently, many countries which have entered into a DTA with Malaysia are leveraging on the exclusion clause to be excluded from creating a PE in Malaysia.

Without this exclusion list, it means that a person is considered to be having a place of business in Malaysia even if its work is auxiliary or preparatory in nature with the consequence that the income of that person in Malaysia is subject to Malaysian income tax. In this case, Section 12 PE does not get the protection of "auxiliary or preparatory activities" being exempted from being a PE.

Table 2

Deemed NOT T0 BE a place of business	Commonly found in most DTAs	Compared against Section 12 PE
(a) *The use of facilities solely for storage, display or delivery of goods/merchandise belonging to the enterprise.*	Yes (Note 5)	No
(b) *The maintenance of a stock of goods/ merchandise solely for storage, display or delivery.*		
(c) *The maintenance of a stock of goods/ merchandise solely for processing by another enterprise.*		
(d) *Maintaining a fixed place of business solely for purchasing or collection of information for the enterprise.*		
(e) *Maintaining a fixed place of business solely for the carrying out any other activity of preparatory or auxiliary character.*		
(f) *Maintaining a fixed place of business solely for any combination of activities mentioned in (a) to (e), provided that the overall activity resulting from such combination is preparatory or auxiliary in character*		

CONCLUSION

Certainly the Malaysian government is on a mission to raise the country's tax revenue. Lowering the existing PE threshold could be seen as one of the measures to achieve this. As such, the new subsections 12(3) and (4) are introduced.

It can be concluded that the introduction of these two new subsections is to curb income tax leakages and provide clarity concerning whether a non-DTA person is carrying on a business in Malaysia and therefore taxable in Malaysia on his profits. The introduction of these two new subsections also plugs any gap highlighted in the BEPS Action 7, which recommends ways to prevent the Artificial Avoidance of PE Status by enterprises.

Disclaimer: The article does not seek to address all tax issues associated with Section 12 of the Income Tax Act 1967 and all views expressed are purely the personal opinion of the author.

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NAVIGATING THE INTRICACIES OF EXPORTED SERVICES AND IMPORTED SERVICES

Alan Chung

SALES TAX AND SERVICE TAX WERE REINTRODUCED ON 1 SEPTEMBER 2018 TO REPLACE THE MUCH LOATHED GOODS AND SERVICES TAX OR GST. WHILE THEY ARE COLLECTIVELY ABBREVIATED AS SST, WE MUST REMIND OURSELVES THAT THEY ARE TWO SEPARATE TAXES AND THEY ARE DISTINCT FROM THE APPLICATION OF GST. HENCE, IT IS IMPORTANT TO DISTINGUISH THEIR RESPECTIVE APPLICATIONS LEST WE GET CONFUSED AND WRONGLY INTERPRET THE PROVISIONS OF THE LEGISLATIONS.

It is not uncommon for taxpayers and businesses to apply the incorrect SST tax treatment using GST concepts and principles that creep in when they try to determine the tax treatment. Some GST concepts and principles are not applicable to SST and applying them for SST purposes could also cause confusion amongst taxpayers and businesses, and may potentially result in a wrong SST treatment.

EXPORTED SERVICES

GST concepts and principles can be wrongly applied to either sales tax or service tax. It is acute in many service tax scenarios and one of the most common of which is the rationale in determining exported services. Exported services is a term applied to services that are zero-rated for GST purposes or not subject to service tax because the services are provided to a person outside Malaysia at the time the services were performed or connected to subject matters outside of Malaysia. While it is a commonly used term, exported services are not defined in the GST or service tax legislations. The legislations merely provide for certain conditions to be fulfilled in order to qualify as exported services.

GST is conceptually a consumption tax that is applicable at the place of consumption and the service provider resides in the same jurisdiction. In the case of exported services, the jurisdiction where the service is consumed will have the right to impose its GST or VAT. If the services were consumed in Malaysia, then Malaysian GST would have been applicable. Conversely, if the services were consumed outside of Malaysia, GST would have been charged at zero-rate.

It is easy to determine the place of consumption for certain services such as hotel services or food and beverage. You would normally consume them at the location you acquired them. However, the nature of other services such professional services, makes it difficult to determine the place of consumption. Generally, GST applies the destination and belonging concepts to determine where the services are consumed - the service is delivered to a destination where the acquirer belongs to and he is deemed to have consumed the services there. If a person belongs to a country outside of Malaysia, he is deemed to have consumed the services in that country provided the service is not related to land or goods situated in Malaysia, and that country would have the taxing rights. The Malaysian who provided the service would regarded it as an exported service and zero-rate it for GST.

Despite the clear application of the destination and belonging concepts, GST was not always correctly applied for exported services. Prior to the repeal of GST, exported services were often incorrectly subject to GST and vice-versa, due to the wrong perception that GST is applicable at the place the service was performed. Many had incorrectly zero-rated GST when the services were performed outside of Malaysia. Ironically, now that service tax has been reintroduced, the GST concepts of destination and belonging are still being applied in determining if the service qualifies to be exported services for service tax purposes. The destination is not a factor considered to determine exported services for service tax.

For the purposes of service tax, exported services are excluded from as taxable services if specified conditions are fulfilled. These conditions are only available for selected types of taxable services and they do not cover all taxable services and are confined to taxable services in Group G: Professionals, and selected taxable services in Group I: Other Service Providers[1]. The exclusion was further expanded to include information technology services with effect from 1 January 2019[2].

While the conditions for exclusion may vary from one taxable service to another taxable service, a common feature that is applicable to many taxable services in Group G: Professionals is the provision of services in connection with a subject matter, goods or land situated outside of Malaysia. Such services are excluded as taxable services and are not subject service tax. An example of this is when an appraisal is conducted on a piece of land located in Singapore. Such services are regarded as exported services because the land in question is not in Malaysia[3].

While location of goods or land is not difficult to establish, it is not unusual that some people will have challenges determining if the

[1] *First Schedule, Service Tax Regulations 2018.*

[2] *Clause 10(d)(ii)(B), Service Tax (Amendment) (No.3) Regulations 2018*

subject matter is related to Malaysia. There is no clear guidance on what constitutes as the subject matter in connection to Malaysia and mistakes can occur if something unrelated to Malaysia is assumed to be its subject matter.

Certain taxable services in Group I: Other Service Providers also provide for exclusion from taxable service. In principle, if the service relates to matters outside of Malaysia, the service is not a taxable service. Nonetheless, the practical application of this principle can be quite different. One of them

is for the provision of advertising services. If an advertising service is for promotion outside of Malaysia, then the advertising services will not be subject to service tax[4]. The location of the goods is not a factor that is considered when it comes to determining whether advertising services are exported. Promotion outside of Malaysia is still not subject to service tax even if the goods are located in Malaysia.

The exclusions and conditions in determining exported services are provided separately in each description of taxable services in the second column of the First Schedule of the Service Tax Regulations 2018. Obviously, reference must be made to the descriptions in the respective types of taxable services in order to determine whether a service can qualify as exported services. Due care has to be exercised as the conditions for exclusion are not common across the types of taxable services. The conditions are provided specifically for each of type of taxable service and will only apply to that taxable service.

IMPORTED SERVICES

When service tax was reintroduced on 1 September 2018, the legislation was largely based on the previous service tax legislation that was in effect prior to the implementation of GST on 1 April 2015 which did not include the concept of imported services.

An inequality will occur when service tax is not applicable to imported services whereby a taxable service acquired from a local service provider will be charged service tax but service tax is not applicable if the same service was acquired from a service provider outside of Malaysia. There is no tax neutrality as it will be more costly to acquire the services locally. This is increasingly more acute as globalisation and improvements in communications and internet-of-things made cross border services more easily accessible.

The definition of imported taxable service was recently introduced in the Service Tax Act 2018[5] and service tax was imposed on imported taxable services effective[6] from 1 January 2019. An imported taxable service is defined as any taxable service acquired by a person in Malaysia, from a person outside of Malaysia[7]. At this juncture, a distinction must be made that not all services that are imported will be subject to service tax. In order for an imported service to be an imported taxable service, it must firstly be a taxable service as prescribed in the Service Tax Regulations 2018. This is to ensure that there is no disparity between the application of service tax to imported services and locally acquired services, and to maintain the tax neutrality between local services and imported services.

GUIDE ON IMPORTED TAXABLE SERVICES

The Royal Malaysian Customs Department (RMCD) had on 9 January 2019, issued a guide on imported taxable services. This guide is available only in Bahasa Malaysia at the time of writing. It is one of four recently released guides that are not available in English despite a lapse of approximately two months since the Bahasa Malaysia version was released.

CONSUMPTION OF IMPORTED SERVICES

The legislation relating to imported services as it stands, does not give consideration to the place of where the imported services are consumed. Imported taxable services are defined as "any taxable service acquired by any person in Malaysia from any person who is outside Malaysia"[8]. Technically,

a taxable service acquired and consumed overseas, is still subject to service tax in Malaysia. This anomaly could potentially result in unfair double taxation - the foreign country in which the services are performed could also subject the services to foreign GST or VAT as the services were consumed in its jurisdiction.

One service that may result in double taxation is payments for hotel accommodation. The GST or VAT legislation in the foreign country is likely to subject the hotel accommodation to its GST or VAT. And when the payments constitute as imported taxable services in Malaysia, it will be subject to service tax, resulting in double taxation. The RMCD has specifically addressed this in its guide, in the frequently asked questions section with a question and answer on hotel accommodation. In its answer, the RMCD stated that accommodation overseas does not constitute as an imported taxable service and is not subject to service tax[9]. In this example, the RMCD has adopted the stance that if a particular service acquired and consumed overseas, the same service will not be regarded as an imported service in Malaysia.

However, the RMCD's interpretation in a guide is not a substitute for specific provision in the law. Moreover, there is no mention of similar application for other taxable services such as the provision of food and beverages. The legislation should ideally be amended to avoid such disputes.

TAXABLE SERVICES WITHIN THE SAME GROUP OF COMPANIES

It is common practice for companies in the same group to provide intra-group services to each other. These services may be centrally procured services which are then provided to the other companies in the group. The acquiring company will recover such costs from the respective companies based on their usage or consumption of the acquired services. The services would have been charged service tax when they were centrally acquired by the group. If the subsequent recharge is also subject to service tax, the acquired services would be subject to double taxation as service tax, unlike GST, is not claimable by the acquiring company as input tax credit.

Consequently, provisions were made in the First Schedule of the Service Tax Regulations 2018 to alleviate this. When services relating to legal, accounting, real estate, engineering, architectural, consultancy, information technology or management are provided to another company within the group, they are not taxable services[10]. This special treatment is also available to group of companies with centralised functions as the services need not be acquired from outside the group of companies. However, one notable absence from this list of services that is commonly provided between companies in a group of companies is the provision of advertising services.

In order to treat its services to companies in the group as a non-taxable service, the company must only provide that service exclusively to companies in the group. If the company also provides the same service to companies outside the group, the service to the companies within the group cannot be regarded as a non-taxable service[11].

IMPORTED TAXABLE SERVICES WITHIN THE SAME GROUP OF COMPANIES

In the interest of tax neutrality, it would be logical that imported taxable services within the same group of companies are also accorded the same special treatment as non-taxable services. However, when the Service Tax (Amendment) (No. 3) Regulations

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[3] *Item (d)(i) of the second column, Group G: Professionals, First Schedule, Service Tax Regulations 2018*

[4] *Second column of Item 8, Group I:Other Service Providers, First Schedule, Service Tax Regulations 2018*

[5] *Clause 84, Finance Act 2018/Section 2, Service Tax Act 2018*

[6] *Clause 85, Finance Act 2018/Section 7(b), Service Tax Act 2018*

[7] *Section 2, Service Tax Act 2018*

[8] *Section 2, Service Tax Act 2018*

[9] *Question and answer No. 1, Panduan Perkhidmatan Bercukai Diimport Sehingga 9 Januari 2019*

[10] *Paragraph 3, First Schedule, Service Tax Regulation 2018*

[11] *Paragraph 8, First Schedule, Service Tax Regulations 2018*

2018 was made on 31 December 2018, there was a brief period of confusion initially as imported taxable services acquired from a foreign company within the group was subject to service tax. A provision in Service Tax (Amendment) (No. 3) Regulations 2018 specifically provided that the special treatment as non-taxable services does not apply to imported taxable services.[12]

It was not until the guide on imported services was released more than a week later on 9 January 2019 that it became apparent the special treatment is accorded by way of the Minister of Finance ("MoF") exercising the powers under Section 34(3) of the Service Tax Act 2018. The guide stated that the Minister had issued a letter granting an exemption from payment of service tax on such imported taxable services provided by a foreign company within the group of companies. Unfortunately, this letter has not been made available and it is not certain if there are conditions stated therein to be fulfilled to enjoy this exemption.

One may also wonder whether the same requirement that the company does not provide the same service to a company outside the group, also applies to imported taxable services. This proviso is provided under Paragraph 8 of the First Schedule of the Service Tax Regulations 2018 and it applies to the special treatment for intra-group services granted under the First Schedule. The special treatment for intra-group imported taxable services is granted by the Minister of Finance in his letter, not by the First Schedule. In the absence of the letter from the MoF, it appears that the requirement of Paragraph 8 which applies only to the First Schedule, is not applicable to imported taxable services. Therefore, the foreign company is not restricted from providing the same service to a company outside the group for the special treatment to apply to imported taxable services. Nonetheless, the Minister's letter granting the exemption as mentioned, has not been made available. It is not known if the letter contains conditions, amongst of which could potentially be a requirement not to provide the service outside the group. Subject to this, it is presently presumed that the foreign company can provide the same service to others outside the group.

WITHHOLDING TAXES

Imported taxable services are payments to non-tax residents that may require the Malaysian payer to withhold a portion of the payment and remit it to the Inland Revenue Board of Malaysia (IRBM) as withholding taxes. Naturally, some payers will pose the question whether service tax should be accounted on the gross amount including the withholding taxes or nett amount after deducting the withholding taxes.

This question was not posed as often when GST was in effect, as the output taxes in most cases were claimable as input tax credit. However, service tax is not claimable and is a cost to the payer. The payer would understandably like to optimise the incidence of service tax.

The amount that the payer withholds is technically a portion of the gross payment to the non-resident. Service tax, therefore, should be accounted for on the gross amount of the payment to the non-resident, including the withholding taxes. The withheld amount is a tax payable or advance tax paid on behalf of the non-resident. Notwithstanding the practice of the Malaysian payer bearing the withholding taxes, it is not the Malaysian payer's tax. Consequently, service tax on the withheld amount does not represent a tax-on-tax situation.

Nonetheless, it is not an uncommon practice in the real world that Malaysian payer will bear the applicable withholding taxes as a cost to acquiring the services of the non-tax resident. Service tax on the withheld amount remitted to the IRBM is perceived as an additional tax on a withholding tax and will become a grouse to the Malaysian payer. In such situations, the Malaysian payer should take note of the application of service tax and factor it into consideration as an additional cost.

[12] *Clause 10, the Service Tax (Amendment) (No. 3) Regulations 2018/Paragraph 3A, Service Tax Regulations 2018*

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WHY WITHHOLDING TAX STILL REMAINS A MYSTERY AFTER MANY DECADES (PART 1)

SM Thanneermalai

Withholding tax remains a mystery to many taxpayers and a cause of concern for many taxpayers despite the laws surrounding withholding tax were in our statute books since the inception of the Income Tax Act 1967 (ITA).

In 1967, withholding tax principally only applied to interest and royalty payments to non-residents. It was in 1983 that the next wave of change to withholding tax came in with the introduction of Section 107A (contract payments) and Section 109B (special classes of income). The other major change was the introduction of Section 109F (other gains and profits) in 2009.

The confusion has arisen largely due to the constant changes being made to the legislation, introduction of secondary legislation via gazette orders, changes to the public rulings issued by the Inland Revenue Board of Malaysia (IRBM), and equally important is the different interpretations adopted at different times by the IRBM. To add to this conundrum, different officers within the IRBM have in the past interpreted the withholding tax legislations in different ways. Finally, the case law decisions added another dimension to this puzzle which the IRBM at times disagreed with and carried on pursuing their own interpretation based on the premise that the facts, or the underlying situation of each case is different from the judgements given by the judiciary.

Over the decades, the tax treatment provided in the double tax agreements did not reconcile with our legislation.

Today, some of these problems have disappeared, some remained, and some have been aggravated. An example of the current dilemma many taxpayers face is: How to deal with the payments made to non-residents for digital transactions undertaken over the Internet?

The business world is adopting technology and digitalising its businesses and in particular, most Malaysian businesses, whether SMEs or bigger companies, are carrying on businesses with non-residents through the internet.

Currently, the thinking of the tax policy makers is to somehow bring such offshore payments by Malaysian businesses to tax in Malaysia either through indirect taxes such as service tax, or through income tax using the permanent establishment route, or the withholding tax route.

We will confine this article to dealing with the issues of common concern to many taxpayers with respect to the various withholding tax provisions in the ITA.

This article is **Part I** which covers the following withholding taxes:

- Special classes of income (Section 4A(i), (ii) and (iii))
- Contract payments (Section 107A)
- Other income (Section 4(f))
- Other issues relating to withholding taxes

Part II which will be published in the next issue will cover issues relating to royalties and interest.

A. SPECIAL CLASSES OF INCOME - SECTION 4A(i) / SECTION 109B

- ***How to read Section 4A(i)*** – There are two limbs to Section 4A(i):
    - amounts paid in connection with the use of property or rights (this includes both legal and beneficial ownership) belonging to; or
    - the installation or operation of any plant, machinery or other apparatus purchased from such person

Many taxpayers tend to forget the importance of the first limb. Examples of payments to non-residents that would be subject to withholding tax would include maintenance fees for software, or any service payments in connection with any other intangible property such as know-how, brands, copyrights, etc.

- ***Bundling of service fees with equipment price*** – Bundling the fees for services rendered together with the purchase of the equipment as part of the equipment price without disclosing the service fee separately is not recommended. The tax authorities have the right to unbundle it on the basis of information contained in any contract or by means of reasonable apportionment. Withholding tax will be applied to the services portion. Such bundling or concealing the payment for services can be viewed by the tax authorities at the extreme as tax evasion.

B. SPECIAL CLASSES OF INCOME - SECTION 4A(ii) / SECTION 109B

- ***Technical vs non-technical services*** – The interpretation of Section 4A(ii) in relation to the word "technical" within its definition has provided continuous uncertainty since the introduction of the legislation on 21 October 1983 due to the changes in the interpretation by the IRBM officials from time to time, and due to the case law decisions. The latest case law decision that widened the scope of Section 4A(ii) to include both technical and non-technical services was the case of *KPHDN v Teraju Sinar Sdn Bhd (2014) MSTC 30-080 (Court of Appeal).*

This culminated in the legislation being changed again in 1 January 2019 where the word "technical" was removed from Section 4A(ii). In the recent 2019 budget seminars, the IRBM officials alluded to the fact that services had to be provided in connection with the management or administration of any of any scientific, industrial or commercial undertaking, venture, project or scheme in order to be caught within Section 4A(ii).

In the domestic legislation, this is no longer an issue as it covers all services.

However, the issue surrounding the phrase "technical" is still relevant when double tax agreements are invoked. Double tax agreements containing the technical services article specifically refers to technical services and there is no definition for the word "technical". An example would be the double tax agreement with United Kingdom which reads as follows:

> "The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature."

Guidance in defining the word "technical" is provided for in the United Nations Model Convention under Paragraph 62 of Article 12A, which states that:

"Article 12A applies **only to fees for technical services**, and not to all payments for services. Paragraph 3 defines "fees for technical services" as payments for managerial, technical or consultancy services. Given the ordinary meanings of the terms "managerial," "technical" and "consultancy," the fundamental concept underlying the definition of fees for technical services is that the services must involve **the application by the service provider** of specialised knowledge, skill or expertise on behalf of a client or the transfer of knowledge, skill or expertise to the client, other than a transfer of information covered by the definition of "royalties" in Article 12, paragraph 3. **Services of a routine nature that do not involve the application of such specialised knowledge, skill or expertise are not within the scope of Article 12A."**

Wherever the double tax agreements are invoked, non-technical services covered under Section 4A(ii) will not be subject to withholding tax under Section 109B.

- ***Contradiction with Income Tax Exemption Order*** – There is a contradiction that needs to be sorted out by the policymakers: The Income Tax (Exemption) (No. 9) Order 2017 which uses the word "technical" needs to be amended to exclude the word "technical" in order to align it with the latest changes in Section 4A(ii) which excludes the word "technical". If this remains unchanged, there will a dilemma for taxpayers. In practice, since the main legislation has been changed, the gazette order cannot be in contradiction to the main legislation.

C. SECTION 4A(i) AND SECTION 4A(ii) – COMMON ISSUES

- ***Transitional issues on derivation of Section 4A(i) and (ii) income*** – Taxpayers should carefully note the dates on which the changes were made to derivation section (Section 15A) dealing with the special classes of income (Section 4A) which excluded the offshore services performed by non-residents between 21 September 2002 to 16 January 2017, and from 6 September 2017 onwards (excluded under the Income Tax (Exemption)(No. 9) Order 2017). There were transitional issues for contracts straddling 17 January 2017 and 6 September 2017, and these were dealt with Practice Notes No. 1/2017 and No. 3/2017.

- ***Contradiction between legislation and public ruling*** – Paragraph 11.1 of the Public Ruling No. 11/2018 (PR 11/2018) states that advance payments and non-refundable deposits paid to a non-resident payee for services to be rendered will be subject to withholding tax under Section 109B. This is not in accordance with Section 4A / Section 109B where the requirement to impose withholding tax is only applicable upon the services being rendered, and not before the services are rendered.
- ***Contradiction between public ruling and income tax exemption order*** – The Inland Revenue Board of Malaysia is of the view that advance payments and non-refundable deposits for services to be rendered outside of Malaysia is subject to withholding tax under Section 109B of the ITA. Paragraph 11.2 of the PR 11/2018 reads as follows:

> "Advance payments and non-refundable deposits for technical services performed in and outside Malaysia are deemed derived from Malaysia and chargeable to tax under Paragraph 4A(ii) of the ITA."

This appears to contradict with the Income Tax (Exemption)(No. 9) Order 2017 which exempts a non-resident from the payment of income tax in respect of Section 4A(i) and 4A(ii) income derived from Malaysia, which are rendered and performed by the person outside Malaysia.

Both Paragraph 11.1 and 11.2 of PR 11/2018 need to be changed in order to align itself with the legislation and the exemption order.

- ***Regrossing no longer applicable*** – Prior to 5 December 2018, when a taxpayer bears the withholding tax on the payment to the non-resident, the payment to the non-resident needs to be regrossed for the purpose of computation of withholding taxes.

With the issuance of PR 11/2018 on 5 December 2018, Paragraph 12.1 of the public ruling states that where withholding tax under Section 109B is borne by the payer, the payment made to the non-resident need not be regrossed to determine the amount of withholding tax.

At the moment, this seems to be only applicable to withholding tax under Section 109B is borne by the taxpayer. Whether withholding tax under other sections (Section 109, 109F, 107A) borne by the taxpayer will still be subject to regrossing was not mentioned.

The IRBM needs to ensure the same treatment needs to be accorded to when computing the withholding taxes under Sections 109, 109F and 107A.

D. SPECIAL CLASSES OF INCOME – SECTION 4A(iii) / SECTION 109B

- ***Rent or other payments*** – Other payments would either include payments equivalent to rental payments, or it would extend to compensation payments relating to the rental of movable property.
- ***Movable vs Non-movable property*** – PR 11/2018 does not define what is a movable property, but only gives examples of it under Paragraph 8.1 of the public ruling which are:

> "Paragraph 4A(iii) of the ITA consists of rents or other payments made to non-residents for the use of any moveable property which include rents or other payments made for the use of oil rigs, boats, ships, cars, aircraft or other equipment in or outside Malaysia……"

In order to determine whether a property is movable or not, one needs to take into consideration whether the asset can be transported either in its original condition or can be dismantled and reassembled without significant damage to the asset. Each property has to be considered on its own merits.

- ***Section 4A(iii) vs Shipping income*** – PR 11/2018 takes the position that various types of hire in the shipping industry (e.g. slot hire, time charter, voyage charter, etc.) fall within Section 4A(iii). However, this is disputed by many practitioners who believe that some of the above categories of income should fall within the shipping income provisions (Section 54 and Section 54A). This issue is still unresolved.

E. ISSUES FOR CONTRACT PAYMENTS - SECTION 107A

- ***Refund of excess Section 107A withholding taxes*** – To obtain a refund, the taxpayers have to follow the strict procedures dictated by the IRBM. This can be time consuming as there will be a need to produce substantial documentation before the refund will be approved.
- ***Overlap between Section 109B and Section 107A*** – Section 107A will be triggered if the non-resident has a permanent establishment in Malaysia under a double tax agreement or if the non-resident is from a non-treaty country and have a business presence in Malaysia via Section 12 of the ITA.

Effectively, all other services provided by non-residents who do not have a permanent establishment or business presence in Malaysia will be subject to Section 4A / 109B withholding tax provisions.

F. OTHER INCOME – SECTION 4(f) / SECTION 109F

Section 109F is the latest in the series of withholding taxes introduced by Malaysia. It would appear to be a "catch-all" withholding tax provision to tax non-residents for services provided that do not fall within Section 4A

Section 4(f) has been part of our legislation since 1967 and it was not intended to be taxed via a withholding tax mechanism. However, from 1 January 2009 onwards, any payments for services rendered by non-residents that fall outside the Section 4A class of income (whether services are provided in or out of Malaysia) will attract the 109F withholding tax provisions if the criteria set-out in Paragraph 4.3 of PR 1/2010 applies.

The only exception is when the payer is able to prove that non-resident will bring such income to tax in their country of residence as business income.

- ***Difficulty in ascertaining whether the non-resident will be taxing the income received as business income in his home country*** – The practical difficulty here is to obtain records from the non-resident to prove that such income is being brought to tax as business income. The difficulties could be the language of the returns or the complexity of the taxation rules in each country or the way which the income is shown in the tax returns may not clearly provide the answers the IRBM requires. The non-residents may also not be prepared to disclose their tax returns on the grounds of confidentiality.

G. OTHER ISSUES RELATING TO WITHHOLDING TAXES

- ***Time bar*** – In the ITA, there are no specific provisions that deal with the time bar as far as the payer is concerned. However, under Paragraph 5.2 of the *Withholding Tax Audit Framework 2015*, it states that the coverage of the withholding tax audit will be limited to five years with the exception of cases involving fraud, evasion and negligence.

The audit framework indicates that despite an unlimited period to collect withholding tax, the IRBM has provided a concession to limit its coverage to five years.

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International News

The column only covers selected developments from countries identified by the CTIM and relates to the period 16 November 2018 to 15 February 2019.

CHINA (PEOPLE'S REPUBLIC)

Supplementary rules for withholding tax deferral on dividends/profits reinvested by non-resident investors published

On 29 October 2018, the State Administration of Taxation (SAT) issued SAT Public Notice [2018] No.53 providing further rules in respect of Circular [2018] No.102 regarding the deferral of withholding tax on dividends/profits reinvested by non-resident investors. The Notice applies retroactively from 1 January 2018 and replaces Notice [2018] No.3 on the same date. The Notice clarifies the implementation issues of Notice [2018] No.3 as discussed below.

The withholding tax deferral applies to foreign investment in all industries and sectors that are not prohibited under Chinese law and regulations.

The following situations are treated as having fulfilled the conditions of the deferral as described under Circular [2018] No. 102:

- the non-resident investor uses the distributed dividends or profits to pay up the subscribed shares, or increase the share capital or mandatory company reserves; and
- a designated deposit account for reinvestment in CNY is used to transfer the payment from the bank account of the company distributing the dividends/profits (hereafter referred to as the distributing company) to that of the invested company for the purposes of reinvestment which is eligible for the tax deferral.

If the deferred withholding tax needs to be recouped by the tax authority, the non-resident investor may apply the withholding tax rate provided in the tax treaty applicable at the time that the dividends or profits are distributed unless a later tax treaty provides otherwise.

The non-resident investor that enjoys the withholding tax deferral treatment must file the "Reporting Form on Information of Withholding Tax Deferral by Non-Resident Enterprise" with the distributing company. The form which is included in Circular [2018] No.102 is an attachment. The distributing company is required to examine the information submitted by the non-resident investor and implement the withholding tax deferral upon confirmation of the correctness and completeness of the information. Furthermore, the company implementing the tax deferral must submit the following documents to the competent tax authority within seven days after the dividend/profits distribution:

- "Reporting Form on Withholding of Enterprise Income Tax" completed by the distributing company; and
- "Reporting Form on Information of Withholding Tax Deferral by Non-Resident Enterprise" submitted by the non-resident investor and supplemented by the distributing company.

In cases where an equity interest of a non-resident investor is disposed of and that disposed interest comprises both the tax deferred interest and interest that has never enjoyed tax deferral treatment, the entire disposed interest must be treated as tax deferred interest.

A foreign investor or distributing company may appoint a tax agent to handle the tax deferral by filing the matter with the relevant tax authority.

Temporary exemption for interest on bonds derived by foreign institutions

On 7 November 2018, the Ministry of Finance (MoF) and the SAT issued Circular [2018] No. 108 announcing that interest on bonds derived by foreign institutions from the Chinese bond market is temporarily exempt from enterprise income tax and value added tax from 7 November 2018 to 6 November 2021. The Circular states, however, that this temporary exemption does not apply to interest on bonds derived by Chinese establishments or sites of foreign institutions where that interest is effectively connected with such an establishment or site.

Changes to tax policy on e-commerce

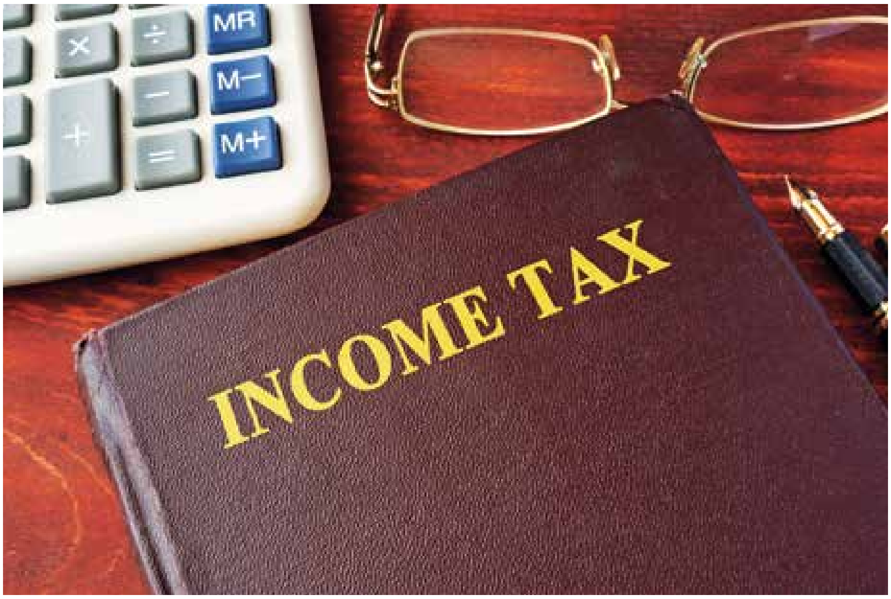
On 21 November 2018, the MoF reported on its website that the State Council had decided to extend and improve the policy on the import of retail goods through e-commerce. It was decided that, from 1 January 2019, the current administrative policy on import through e-commerce, which is not subject to import permits, registration or filing, will be continued. Such import will continue to be treated, administratively, as import by individuals for personal use.

Furthermore, the current policy will be extended from 15 cities to 22 cities, including Beijing, Shenyang, Nanjing, Wuhan, Xian and Xiamen. Other cities may introduce the same policy for import through direct purchase.

Moreover, the number of goods eligible for zero customs duty, and partial exemption from import VAT and consumption tax will be increased by 63 products, with the current tax incentives being amended. At present, import VAT and consumption tax are imposed on 70% of the taxable amounts, with import duty being zero if the value of a single import transaction does not exceed CNY 2,000 and the annual amount of total transactions conducted per person is less than CNY20,000. From 1 January 2019, these limits will be increased to CNY5,000 and CNY26,000, respectively.

As part of the decision, it was also announced that export through e-commerce will be promoted further, and the related input tax (VAT) refund on export will be studied in more detail.

The State Council also called for the further development of logistics and information infrastructure for e-commerce purposes.



Individual income tax treatment of gains on disposal of shares of NEEQ listed companies clarified

On 30 November 2018, the MoF, the SAT and the Securities Regulatory Commission (SRC) jointly issued a circular (Circular [2018] No.137) clarifying the individual income tax treatment of gains on the disposal of shares of companies listed on the National Equities Exchange and Quotation (NEEQ). The NEEQ, also known as the "New Third Board", is China's third national stock market following the Shanghai and Shenzhen Stock Exchanges. The NEEQ is an over-the-counter market that mainly serves innovative, entrepreneurial and growth-oriented small-to-medium enterprises.

According to the Circular, from 1 November 2018, gains derived by individuals from the disposal of non-founder shares of NEEQ-listed companies are exempt from individual income tax, whereas gains derived by individuals from the disposal of founder shares remain subject to individual income tax as "income from transfer of property" at a rate of 20%. Founder shares are shares issued at the time the company is listed on the NEEQ.

Before 1 September 2019, transferees of shares are required to withhold the tax, but from 1 September 2019, the security agencies holding the security account of the disposed shares will be responsible for withholding the tax. The concrete collection measures refer to those laid down in Circular [2009] No.167 and Circular [2010] No.70 with respect to restricted shares (i.e. shares issued when an enterprise is converted into a limited liability company or in the case of an initial public offering, and in both cases the shares are not permitted to be transferred within a certain timeframe).

The China Securities Depository and Clearing Corporation Limited (CSDC) must clearly distinguish between founder and non-founder shares within the registration and settlement system. The CSDC and security agencies are required to actively cooperate with the tax authorities in the tax collection.

Regulation on special additional deductions from individual income tax published

On 13 December 2018, the State Council issued the Interim Regulation on "Special Additional Deductions from

Individual Income Tax" (Notice of State Council [2018] No. 41). The Regulation applies as from 1 January 2019 and, with the exception of a number of deviations, is based on the draft interim regulation published in October 2018. All deductions must be made in the current tax year and cannot be carried forward.

Deduction for children's education

The deduction amounts to CNY 1,000 per child per month if the child or children follow pre-school education (from the age of three) or elementary, middle school, high school, college or university education. Both parents may claim 50% of the deductible amount each or elect to allocate the total deductible amount to one parent.

Deduction for continuous education

A fixed deduction of CNY400 per month is available for domestic academic education, and CNY3,600 in the year in which a relevant certificate for vocational education is obtained, to be claimed by either the taxpayer himself as a deduction for continuous education purposes, or by the parents of the taxpayer as a deduction for children's education. The deduction period for continuing education for the same qualification (degree) cannot exceed 48 months.

Deduction for major illness

A deduction of up to CNY 80,000 per year is allowed if medical expenses exceed CNY15,000 and are borne by the taxpayer himself (and not reimbursed under medical insurance) on an annual basis. The taxpayer must substantiate the expenses by submitting receipts.

Deduction for interest on a mortgage loan

A deduction of up to CNY 1,000 per month (with a maximum deduction period of no more than 240 months) is allowed for a mortgage loan in connection with the purchase of a first residential property, provided that the loan is granted by a commercial or housing fund. Both spouses may choose who will apply the deduction. Taxpayers can only enjoy the interest deduction of one and the first residential property.

Deduction for housing rent

If the taxpayer or his/her) spouse does not have his/her own dwelling, a deduction for rent paid for housing in connection with work is allowed as follows:

- up to CNY1,500 per month in municipalities or cities at a provincial level, and other cities designated by the State Council;
- up to CNY1,100 per month in cities with a population of more than 1 million; or
- up to CNY800 per month in cities with a population of less than 1 million.
- The main working city of the spouses is the same, and only one party can deduct the housing rental expenses.

This deduction cannot be claimed together with the deduction for interest of a mortgage loan.

Deduction for supporting the elderly

A fixed deduction of CNY2,000 per month is allowed for supporting the elderly aged 60 or higher, regardless of the number of elderly people involved. If there is more than one child, the fixed deduction may be divided among the children.

Implementation rules on individual income tax amended

On 18 December 2018, the State Council published the revised Implementation Rules on Individual Income Tax (IIT) Law (State Council Decree No. 707, the Decree). The Decree takes effect from 1 January 2019. Its main amendments include the following:

- foreign income derived by an individual who is not domiciled in China but has rwwesided continuously for less than six years (previously five years) in China is exempt from IIT if such income is neither sourced in China nor paid by a Chinese enterprise or individual;
- the new special additional deductions also apply to

production and business operations income derived by an individual who does not earn any income from wages and salaries, personal services, author's remuneration and royalties; and
- the contribution to a qualified enterprise's annuity, occupational annuity, commercial health insurance, tax deferred commercial pension insurance and other items prescribed by the State Council is deductible.

In addition, tax collection and administration requirements relating to special additional deductions are regulated.

Rules on withholding individual income tax released

On 19 December 2018, the SAT issued a notice (SAT Public Notice [2018] No. 56) announcing the computation methods of withholding individual income tax (IIT) on wages and salaries, personal services, author's remuneration and royalties derived by individuals. The Notice will apply from 1 January 2019 and the details are set out below.

Withholding method for residents

Those who make payments of wages and salaries, payments for personal services, fees for copyrights and royalties to resident individuals must act as withholding agents, withhold IIT and file the return. Where the IIT payable calculated based on the annual income is different from the IIT withheld, the individual must file the annual withholding IIT return and settle the final tax liability during the period from 1 March to 30 June of the following year. Depending on the outcome of the final tax settlement, the taxpayer may have to pay a supplement due to underpayment or claim a refund because of overpayment.

Withholding IIT on employment income

When paying wages and salaries, a withholding agent is required to use the so-called accumulative method in computing withholding tax on a monthly basis, and file the return for all employees.

The accumulative method is as follows:

Withholding tax payable for the current period = (accumulated withholding taxable income x withholding rate - the quick calculation deduction) – accumulated tax deduction – accumulated withholding tax paid.

Accumulated withholding taxable income = accumulated income – accumulated exempt income – accumulated standard deduction – accumulated special deduction – accumulated special additional deductions – accumulated other lawful deductions.

Withholding IIT on personal services income, author's remuneration and royalties

When paying personal services income, author's remuneration or royalties, a withholding agent is required to withhold IIT either on a per payment basis or on a monthly basis. The taxable income is determined as follows:

- The difference between revenue per payment and expenses is considered to be taxable income from personal services, author's remuneration or royalties; however, only 70% of author's remuneration is included in this income;
- CNY800 may be deducted as expenses in cases where the payment at a time does not exceed CNY4,000; and
- where each payment is more than CNY4,000, 20% of the revenue may be deducted as expenses.

Personal services income is subject to progressive withholding tax rates ranging from 20% to 40% whereas author's remuneration or royalties are subject to a flat withholding tax rate of 20%.

Withholding method for non-residents

When paying the four items of income mentioned above, a withholding agent is required to withhold the IIT on a per payment basis or on a monthly basis.

The taxable income for each item of income is calculated as follows:

- Wages and salaries: wages and

salaries of the employee minus CNY 5,000 per month;

- Personal services income and royalties: each payment minus 20% of the payment; and
- Author's remuneration: 70% of the payment after deducting 20% of the payment.

Three withholding tax tables are included in the Notice, two for residents and one for non-residents.

Individual income tax measures for transitional period clarified

Individual income tax was substantially reformed in 2018. On 27 December 2018, the MoF and the SAT jointly issued a circular (Circular [2018] No.164) clarifying the measures on individual income tax during the transitional period. The measures apply from 1 January 2019 and are summarised below.

Tax treatment of year-end bonus and other performance related annual remuneration

- Subject to certain conditions (which are laid down in Circular [2005] No.9), year-end bonuses derived by a resident individual may be calculated and taxed as a separate monthly salary before 31 December 2021.
- The tax payable is calculated as follows:

Taxable monthly income (CNY) (year-end bonus/12)	Rate on excess (%)
0 - 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

  - Tax payable = [(the total lump-sum year-end bonus/12) x the applicable tax rate (see the rate table below)] – quick calculation deduction.
- A resident individual taxpayer may elect to include year-end bonuses in comprehensive income and to be taxed accordingly. From 1 January 2022, it will be compulsory to include year-end bonuses and other performance related remuneration in comprehensive income.

Tax treatment of stock incentive scheme granted by listed companies

- Before 31 December 2021, the total amount of annual income from stock incentives, such as stock options, stock appreciation, restricted shares and stock awards, may be calculated and taxed as a separate monthly salary to which the rate table for comprehensive income applies. The tax payable is calculated as follows:
  - Tax payable = (income from stock incentive scheme x applicable tax rate) – quick calculation deduction

Tax treatment of such income from 1 January 2022 will be reconsidered.

Tax treatment of commissions received by insurance agent or broker

Income received by an insurance agent or a stock broker is regarded as personal services income and may be taxed as part of comprehensive income. The taxable income is calculated as follows:

- Taxable income = income received (excluding VAT) - deemed expenses (20% of the income received) - deemed cost - additional taxes and fees.
- 25% of income received (excluding VAT) less deemed expenses is considered to be deemed cost.
- An appointed withholding agent is required to withhold the tax when paying commissions to an insurance agent or broker.

Tax treatment of annuities

When an employee reaches the pension age and receives an annuity from his former employer or an occupational annuity, the payment received may be taxed separately on a monthly or annual basis, depending on whether it is paid in monthly, quarterly or annual instalments.

Tax treatment of lump-sum payment due to dismissal, early retirement or internal semi-retirement

Lump-sum payments (including financial compensation, subsistence payment and other allowances) due to dismissal from employment are exempt from individual income tax if the amount of the payment does not exceed three times the local average salary in the preceding year. The excess may be taxed separately.

Lump-sum payments due to early retirement may be divided by the number of years between the early retirement and mandatory retirement age and taxed separately.

Lump-sum payments due to internal semi-retirement may be divided by the number of months between the internal semi-retirement and mandatory retirement age and added to the monthly salary received as prescribed in SAT Notice [1999] No.58 and taxed accordingly.

Tax treatment of employee benefit on acquiring a residential property at low price

The benefit (the difference between market price and the actual price paid) from acquiring a residential property at a low price may be divided by 12 and taxed separately.

Tax treatment of benefits in kind for foreign workers

From 1 January 2019 to 31 December 2021, foreign individuals resident in China may choose to apply special additional deductions or benefits in kind under the benefit scheme prior to 1 January 2019. Once the choice is made, it may not be altered within 1 year.

From 1 January 2022, the benefit scheme prior to 1 January 2019 for foreign individuals will be abolished and foreign individuals working in China may enjoy special additional deductions, the same as Chinese individuals.

With the publication of this Circular, the following regulations (Circular or Notice) are abolished or amended:

- Abolished: Guo Shui Fa [1998] No. 9; Guo Shui Fa [1998] No.13; Guo Shui Fa [1999] No. 178; Guo Shui Fa [2000] No. 77; Guo Shui Han [2006] No. 454; and SAT Public Notice [2012] No. 45.
- Amended: Circular [2001] No. 157 (Article 1); Circular [2005] No. 35 (Article 4, item 1); Circular [2007] No. 13 (Article 3); Circular [2013] No. 103 (Article 3 item 1 and 3); Guo Shui Fa [2005] No. 9 (Article 2); Guo Shui Han [2006] No. 902 (Article 7 and 8); Guo Shui Fa [2007] No. 118 (Article 1); and SAT Public Notice [2011] No. 6 (Article 2).

HONG KONG

Three concessionary tax measures in Budget 2018/19 implemented

The Inland Revenue (Amendment) (No.5) Bill 2018 was passed by the Legislative Council on 14 November 2018. It gives effect to three concessionary tax measures proposed in the 2018-19 Budget. Effective from the year of assessment 2018/19, these measures include,:

- allowing husband and wife the option of electing for personal assessment separately;
- allowing enterprises to claim a 100% tax deduction for capital expenditure incurred in procuring environmental protection installations in one year instead of over five years; and
- extending the scope of tax exemption for debt instruments under the Qualifying Debt Instrument Scheme.

Bill on tax deductions for annuity premiums and MPF voluntary contributions gazetted

The Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Bill 2018 was gazetted by the government on 7 December 2018. The Bill seeks to implement the 2018-19 Budget initiative of introducing tax deductions for deferred annuity premiums and Mandatory Provident Fund Tax Deductible Voluntary Contributions (MPF TVCs) to encourage voluntary savings for retirement. The maximum tax-deductible limit on contributions to MPF TVCs and deferred annuity premiums for each taxpayer will be HKD60,000 per year. A joint assessment for couples will be allowed to claim a total deduction of HKD120,000, provided that the deductions claimed by each taxpayer do not exceed the individual limit of HKD60,000.

The Bill will be introduced into the Legislative Council on 12 December 2018.

Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018 gazetted

The Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018 was gazetted by the government on 7 December 2018 to provide profits tax exemption for eligible funds operating in Hong Kong.

Under the current Inland Revenue Ordinance (IRO), both onshore and offshore public offered funds are exempted from profits tax. For private offered funds, only offshore funds and onshore privately offered open-ended fund companies are exempted from profits tax. Other onshore private offered funds cannot enjoy profits tax exemption like their offshore counterparts.

By introducing new and self-contained provisions in the IRO, the Bill aims to ensure that all funds operating in Hong Kong, regardless of their structure, location of central management and control, size or the purpose that they serve, can enjoy profits tax exemption from their transactions in specified assets subject to certain conditions. A fund can also enjoy profits tax exemption from its investment in both overseas and local private companies.

To minimise the risk of tax evasion, the Inland Revenue Department will put in place certain anti-abuse measures, including certain requirements on a fund's investment in private companies in relation to holding of immovable property and assets, as well as holding period. In addition, the current anti-round tripping provisions for resident persons will be retained.

The Bill was introduced into the Legislative Council on 12 December 2018.

INDIA

Interim Budget 2019/20 – key proposals

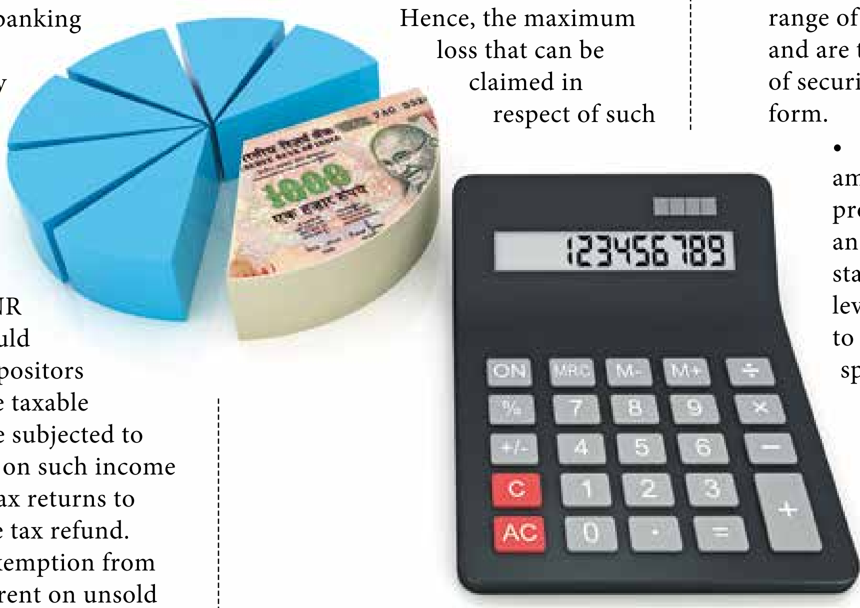
The Finance Minister presented the Interim Union Budget 2019/20 in Parliament on 1 February 2019. The key proposals are summarised below.

Corporate Tax

- The end date for obtaining approval from the competent authority to claim the profit-

linked deductions by taxpayers engaged in the business of developing and building affordable housing projects is extended from 31 March 2019 to 31 March 2020. This will allow developers more time to complete ongoing projects which are otherwise qualified.

- The threshold in a financial year for deducting tax at source for payment of rent is increased from INR180,000 to INR240,000.
- The threshold in a financial year for deducting tax at source on interest income from deposits with a banking company or co-operative society engaged in banking business or post office business is increased from INR10,000 to INR 40,000. This would benefit small depositors who do not have taxable income but were subjected to withholding tax on such income and had to file tax returns to claim an income tax refund.
- The period of exemption from tax on notional rent on unsold inventory of land and buildings is extended from one year to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority. This is intended to provide relief to real estate developers.



Personal tax

- The eligible rebate from income tax payable is increased to INR 12,500 for resident individuals whose total income does not exceed INR500,000. Hence, resident individuals having a total income up to INR500,000 will have no tax payable.
- The standard deduction for salaried individuals in a financial year is increased from INR40,000 to INR50,000 per annum.
- The second self-occupied property will not be subject to tax on a notional rent basis. The limit to claim house property loss in respect of interest on loans taken for both the properties in aggregate will continue to be INR200,000. Hence, the maximum loss that can be claimed in respect of such properties in one financial year is INR200,000.
- Income tax exemption on long-term capital gains from the sale of a residential house will be extended from re-investment in one residential house to two residential houses in India on a once in a life time basis provided such long-term capital gains do not exceed INR20 million.

Indian Stamp Act, 1899

- The levy and administration of stamp duty on the issue and transfer of financial instruments by the states is to be streamlined through stock exchanges, clearing corporations and depositories.
- The following definitions will be available in the Stamp Act: “allotment list”, “debenture”, “market value”, and “securities”, and the definition of “marketable security” will be amended.
- The levy of stamp duty will be on the market value of the securities and the rates are 0% for government securities and for other securities in the range of 0.00001% to 0.015%, and are to be levied on transfer of securities in dematerialised form.
- The proposed amendments include the procedure for payment and collection of such stamp duty. The proposed levy would also be subject to detailed rules to be specified in this regard.

Prevention of Money Laundering Act, 2002

The period for which the attachment or retention of property involved in money laundering or records seized or frozen will continue during an investigation is extended from 90 days to 365 days.

The final Budget is expected to be presented later during the year, after the general elections (around June-July 2019).

INDONESIA

Foreign tax credit rules revised

The Minister of Finance (MoF) issued Regulation 192/PMK.03/2018

(PMK 192) regarding the implementation of credit for tax paid on income from abroad. PMK 192 became effective from 31 December 2018 and replaced MoF Decision 164/KMK.03/2002 of 19 April 2002.

PMK 192 provides clarification and detailed instructions regarding the procedure for calculating the amount of foreign tax credit that could be recognised and the procedures for reporting it, which include the following:

- determination of country of source of foreign income e.g. the calculation of the amount of foreign tax credit that could be credited is done separately based on the type of income and the source country;
- determination of the amount of foreign income e.g. the foreign income included as taxable income is the net income;
- determination of the amount of foreign income tax that could be credited;
- rules regarding tax credit of husband and wife who carry out their tax obligations separately e.g. tax credits are determined separately for each husband or wife;
- administrative requirements e.g. the only documents required to substantiate foreign tax paid are the proof of tax payment or proof of foreign tax withholding; and
- rules concerning foreign tax credit for income from trusts.

THAILAND

Transfer pricing law – enacted

On 21 November 2018, the Transfer Pricing Act was published on the Royal Gazette website and will take effective from 1 January 2019.

The key provisions of the Act are summarised below.

- Tax officers are empowered to assess the additional revenue on related-party transactions.
- "Related parties" are defined as two or more legal entities wherein:
  - a person holds at least 50% (directly or indirectly) of the share capital of the other entity;
  - a shareholder holds at least 50% (directly or indirectly) of the share capital of both entities; or
  - a person has a dependent relationship through participation in the capital, management or control of another entity as prescribed by the Ministerial Regulations.
- An entity with annual revenue less than THB200 million will be exempted from requirements to prepare and submit a report.
- A maximum fine of THB200,000 will be imposed if any required report is not filed or in the case of submission of incomplete/ incorrect documents without sufficient reason.

International Business Centre scheme gazetted

On 28 December 2018, the Royal Decree No. 674 was gazetted. This decree was enacted to repeal the following tax incentives regime and replace them with a single International Business Centre (IBC) regime:

- regional operation headquarters;
- international headquarters and treasury centre; and
- international trading centre.

An IBC is a company incorporated in Thailand and engaged in the following activities with its affiliates in Thailand and other countries:

- providing administrative and technical support services;
- providing international trading services; and/or
- providing money management services.

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.*

The technical updates published here are summarised from selected government gazette notifications published between 15 November 2018 and 16 February 2019 including Public Rulings (PRs) and guidelines issued by the Inland Revenue Board of Malaysia (IRBM), the Royal Malaysian Customs Department and other regulatory authorities.

INCOME TAX

Income tax exemption for takaful operators and insurance companies in respect of statutory income from a shareholders' fund (Effective: Year of assessment (YA) 2018)

The Income Tax (Exemption) (No. 4) Order 2018 [P.U. (A) 310], gazetted on 29 November 2018, provides takaful operators and insurance companies an exemption from the payment of income tax in respect of the statutory income from a shareholders' fund that is derived from the following businesses:

(a) A life fund;
(b) A family fund;
(c) A general fund;
(d) Any composite insurance business which consists of a life fund and a general fund; or
(e) Any composite takaful business which consists of a family fund and a general fund

The exemption is equivalent to the first levy or annual levy paid from the shareholders' fund to the Malaysia Deposit Insurance Corporation (MDIC).

Income tax exemption on management fee income for Sustainable and Responsible Investment (SRI) funds (Effective: YA 2018 to YA 2020)

The Income Tax (Exemption) (No. 5) Order 2018 [P.U. (A) 356], gazetted on 27 December 2018, provides that a company that provides fund management services is exempted from tax on the statutory income derived from the business of providing fund management services for SRI funds approved by the Securities Commission (SC) under the Capital Markets and Services Act 2007 (CMSA) in Malaysia.

Amendment to the deduction rules for premiums paid to MDIC by takaful operators and insurance companies (Effective: YA 2018)

The Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) Rules 2013 [P.U.(A) 131], gazetted on 4 April 2013, provide that member institutions of MDIC are allowed to deduct an amount equivalent to their first or annual premium paid to MDIC.

The Income Tax (Deduction for Payment of Premium to Malaysia Deposit Insurance Corporation) (Amendment) Rules 2018 [P.U.(A) 311], gazetted on 9 November 2018, stipulate that the Rules will no longer apply to takaful operators or insurance companies.

Review of incentives pursuant to Malaysia's participation in the Forum on Harmful Tax Practices (FHTP)

Malaysia is a member of the Forum on Harmful Tax Practices (FHTP), pertaining to Base Erosion and Profit Shifting (BEPS) Action 5. Various tax incentives have been identified for FHTP evaluation, and Guidelines (including grandfathering rules) have been provided to ease the transition into the new regime. In order to adhere to the timeline to amend the existing incentives, a number of Orders as outlined below were gazetted on 31 December 2018.

The two notable changes in most of the Orders due to the FHTP requirements are as follows:

1.SUBSTANTIVE REQUIREMENTS

The company must:

(a) Have an adequate number of full-time employees; and
(b) Incur an adequate amount of annual operating expenditure or investment in fixed assets to carry on the qualifying activity or core income generating activity (as the case may be).

2.EXCLUSION OF INTELLECTUAL PROPERTY (IP) INCOME

In ascertaining the "statutory income" for the purpose of the Exemption Orders, intellectual property (IP) income derived from the qualifying activities / core income-generating activities (as the case may be) shall be excluded. This means that the IP income will not qualify for the tax exemption and such IP income will instead be subject to tax under the ITA.

In line with the commitments above, the following Regulations and Orders were gazetted:

- **Multimedia Super Corridor (MSC) incentive**

Gazette Order	Description	Effective date
Promotion of Investments (Exclusion of Income for MSC Status Company) Regulations 2018 [P.U.(A) 332] (Gazetted on 26 December 2018)	These Regulations apply to an MSC- status company which has been granted pioneer status under the Promotion of Investments Act 1986 (PIA) on or before 30 June 2018. The Regulations stipulate that in ascertaining the income of an MSC-status company for the purpose of tax relief, the following shall be disregarded: **Exclusion of IP income** (a) From 1 July 2018 to 30 June 2021, royalty and other income derived from a new IP right, and not from an existing IP right, of which the MSC-status company is the owner or licensee; and (b) For the period on or after 1 July 2021, royalty and other income derived from all IP rights of which the MSC-status company is the owner or licensee **Exclusion of non-IP income** (a) An MSC-status company which has been granted pioneer status on or before 16 October 2017: (i) Non-IP income derived after 30 June 2021; and (ii) Non-IP income derived after 31 December 2018 from any promoted activity approved after 16 October 2017 as the pioneer business of the MSC-status company b) Non-IP income derived after 31 December 2018 for an MSC-status company which has been granted pioneer status after 16 October 2017 The above will be relevant to MSC-status companies which are currently enjoying tax incentives.	1 July 2018
Promotion of Investments (Determination of Assets under Section 29B in respect of MSC Status Companies) (Revocation) Order 2018 [P.U.(A) 335] (Gazetted on 26 December 2018)	This Order provides for the revocation of the Promotion of Investments (Determination of Assets under Section 29B in respect of MSC Status Companies) Order 2001 [P.U.(A) 50], which pertains to capital expenditure qualifying for investment tax allowance under Section 29B of the PIA. As a transitional rule, the Order also provides that any investment tax allowance given under Section 29B of the PIA to any MSC-status company before 1 January 2019 is to remain status quo.	1 January 2019
Income Tax (Exemption) (No. 10) Order 2018 [P.U.(A) 389] (Gazetted on 31 December 2018)	The Order provides an income tax exemption on the statutory income derived by a qualifying company from core income-generating activities for each YA. The exemption is for a period of five (5) years, commencing from a date which is determined by the Minister. The qualifying company is to request for the determination of the commencement date of the exemption period within 24 months from the date of the award of the MSC status. The income tax exemption provided is 70% or 100% of the statutory income which is derived from core income-generating activities, in accordance with Schedule 2 of the Order and specified in the approval letter. The Order also provides that the Minister may determine that the statutory income referred to shall be the "value-added income". The methodology of computing the value-added income is explained in the Order. In addition, the Order also stipulates that the statutory income should not include any income from royalty and other income derived from an IP right if it is receivable as consideration for the commercial exploitation of that right.	1 January 2019
Income Tax (Exemption) (No. 2) 2015 (Amendment) Order 2018 [P.U.(A) 396] (Gazetted on 31 December 2018)	The Income Tax (Exemption) (No. 2) Order 2015 [P.U.(A) 50] provides an income tax exemption to a qualifying MSC-status company on 70% of the statutory income derived from a qualifying activity for a period of five (5) years beginning from the date determined by the Minister of Finance (MoF). Income Tax (Exemption) (No. 2) 2015 (Amendment) Order 2018 [P.U.(A) 396] has been gazetted to amend the abovementioned Order. The key changes are outlined below: 1. The Amendment Order stipulates that a qualifying company is now required to satisfy the two FHTP requirements highlighted earlier. 2. The Amendment Order provides that the extension of the exemption period may only be extended by the Minister on or before 30 June 2018.	1 July 2018 to 30 June 2021

- **Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) (Amendment) Order 2018 [P.U.(A) 336] (Effective: Deemed to be on 1 July 2018)**

The Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) Order 2012 [P.U.(A) 59], gazetted on 29 February 2012, outlines the list of promoted activities and products for high technology companies which are eligible for pioneer status consideration and investment tax allowance.

The Promotion of Investments (Promoted Activities and Promoted Products for High Technology Companies) (Amendment) Order 2018, gazetted on 26 December 2018, stipulates that in ascertaining the income of a high technology company arising from promoted activities and promoted products, the following shall be disregarded:

(a) From 1 July 2018 to 30 June 2021, royalty and other income derived from a new IP right, and not from an existing IP right, of which the high technology company is the owner or licensee; and

(b) For the period on or after 1 July 2021, royalty and other income derived from all IP rights of which the high technology company is the owner or licensee

- **Principal hub incentive**

A Principal Hub (PH) is a locally incorporated company that uses Malaysia as a base to conduct its regional and global businesses and operations, and to manage, control and support its key functions, including management of risks, decision-making, strategic business activities, trading, finance, management and human resource.

Following the evaluation of the PH incentive by the FHTP, the following Exemption Orders have been gazetted:

Gazette Order	Description	Effective date
• Income Tax (Exemption) (No. 6) Order 2018 [P.U.(A) 385] (Gazetted on 31 December 2018) • Income Tax (Exemption) (No. 6) 2018 (Amendment) Order 2019 [P.U.(A) 41] (Gazetted on 19 February 2019)	The Order provides an income tax exemption on the value-added income derived from core income generating activities. To qualify for this exemption, one of the criteria is that the PH is a company that is already operating in Malaysia. **Amendment Order** One of the conditions for a company to qualify as a PH is for the PH to provide at least three qualifying services to its network companies "which are located in three countries outside Malaysia" in a basis period for a YA. The Amendment Order removes the requirement for the network companies to be located in three countries outside Malaysia.	• YA 2018 • Applicable to applications made to the Malaysian Investment Development Authority (MIDA) between 1 January 2018 and 31 December 2020
• Income Tax (Exemption) (No. 7) Order 2018 [P.U.(A) 386] (Gazetted on 31 December 2018) • Income Tax (Exemption) (No. 7) 2018 (Amendment) Order 2019 [P.U.(A) 42] (Gazetted on 19 February 2019)	The Order provides an income tax exemption on the statutory income derived from core income generating activities. To qualify for this exemption, one of the criteria is that the PH is a company that does not have an existing entity or related entity in Malaysia which is carrying on any qualifying services in Malaysia prior to the application for the exemption. **Amendment Order** The requirement for the network companies to be located in three countries outside Malaysia has similarly been removed. In addition, the requirement to provide qualifying services or qualifying trading activities to a stipulated number of network companies outside Malaysia has been removed.	
• Income Tax (Exemption) (No. 8) Order 2018 [P.U.(A) 387] (Gazetted on 31 December 2018) • Income Tax (Exemption) (No. 8) 2018 (Amendment) Order 2019 [P.U.(A) 43]	The Order provides an income tax exemption on the value-added income derived from core income generating activities. To qualify for this exemption, one of the criteria is that the company is already operating in Malaysia and has been approved as an operational headquarters (OHQ), international procurement centre (IPC) or a regional distribution centre (RDC).	

<table>
<tr><th>Gazette Order</th><th colspan="2">Description</th><th>Effective date</th></tr>
<tr><td>(Gazetted on 19 February 2019</td><td colspan="2">Where a PH had been approved by the Minister as an OHQ, IPC or RDC, but whose incentives for a OHQ, IPC or RDC have not been approved, the minimum number of new full-time employees for the PH in Malaysia with a minimum salary of RM5,000/month is now 18 persons (previously “existing commitment + 20%” per the Guidelines).

Amendment Order

Similar to the above, the requirement for the network companies to be located in three countries outside Malaysia has been removed. In addition, the Order provides that the exempt YAs may be extended for another five YAs, subject to the PH fulfilling certain conditions. One of the conditions, as outlined below, has been amended vide the Amendment Order.</td><td></td></tr>
<tr><td></td><th>Exemption Order</th><th>Amendment Order</th><td></td></tr>
<tr><td></td><td>The total number of its new full-time employees in Malaysia (with a minimum salary of RM5,000 per month) is more than 30% of the total number of its new full-time employees in Malaysia at the end of the last year of the exempt YAs</td><td>The total number of its new full-time employees in Malaysia (with a minimum salary of RM5,000 per month) is more than 30% of the total number of its new full-time employees in Malaysia at the time the first application for the exemption was submitted to the Malaysian Investment Development Authority (MIDA)</td><td></td></tr>
<tr><td></td><td colspan="2">One of the substantive requirements outlined in Schedule 2 of the Exemption Order has also been amended vide the Amendment Order, as outlined below.</td><td></td></tr>
<tr><td></td><th>Exemption Order</th><th>Amendment Order</th><td></td></tr>
<tr><td></td><td>Minimum amount of annual operating expenditure in Malaysia: RM13,000,000.00</td><td>Minimum amount of annual operating expenditure in Malaysia: RM13,000,000.00</td><td></td></tr>
</table>

- **Sabah Development Corridor (SDC) incentive**

The Sabah Development Corridor (SDC) was launched on 29 January 2008 to accelerate the growth of Sabah's economy. At the end of the year 2012, the MoF approved a tax incentives package under the SDC to enable the Sabah Economic Development and Investments Authority (SEDIA) to promote Sabah as an ideal location for businesses and to attract foreign investors as well as local investors from other states in Malaysia to Sabah. The following Exemption Orders apply to applications made to SEDIA between 20 November 2012 and 31 December 2020, and applies for the period of:

(a) Five (5) consecutive years – for qualifying activities outlined in Schedule 1 of the respective Orders
(b) 10 consecutive years – for qualifying activities outlined in Schedule 2 of the respective Orders

Gazette Order	Description	Effective date
Income Tax (Exemption) (No. 11) Order 2018 [P.U.(A) 390] (Gazetted on 31 December 2018)	The Order provides an exemption on statutory income derived from a qualifying activity for a YA, equivalent to 100% allowance on qualifying capital expenditure incurred by a qualifying company. The exemption commences from the date the first qualifying expenditure is incurred by the qualifying company, as determined by SEDIA.	20 November 2012
Income Tax (Exemption) (No. 12) Order 2018 [P.U.(A) 391] (Gazetted on 31 December 2018)	The Order provides a full tax exemption on statutory income derived from a qualifying activity for each YA. The exemption commences from the first YA the qualifying company derives its statutory income from the qualifying activity.	20 November 2012

- **BioNexus Status Company (BSC) incentive**

BioNexus status is a special status awarded to qualified internatio nal and Malaysian biotechnology companies which undertake value-added biotechnology and/or life sciences activities. A company which has been awarded BioNexus status is able to enjoy a list of privileges as stipulated in the BioNexus Bill of Guarantees, for example, tax incentives, funding support and other benefits to assist the growth of the company.

To adhere to the FHTP requirements, two Amendment Orders were gazetted as follows as in **Table 1**:

Table 1

Gazette Order	Description	Effective date
Income Tax (Exemption) (No. 17) 2007 (Amendment) Order 2018 [P.U.(A) 395] (Gazetted on 31 December 2018)	The Income Tax (Exemption) (No. 17) Order 2007 [P.U.(A) 371] was gazetted on 3 July 2007, and is deemed to be effective 1 May 2005, to provide that a BioNexus Status Company (BSC) will enjoy an exemption of its statutory income in respect of: (a) 10 YAs commencing from the first YA the company has statutory income, for a new business; or (b) Five (5) consecutive YAs, for an expansion project The Amendment Order has been gazetted to amend the Order. The key changes are outlined below: 1. The words "approved business" are to be replaced with the words "qualifying activity". 2. The Amendment Order stipulates that a BSC is now required to fulfil the two FHTP requirements.	16 October 2017
Income Tax (Exemption) (No. 2) 2009 (Amendment) Order 2018 [P.U.(A) 381] (Gazetted on 31 December 2018)	The Income Tax (Exemption) (No. 2) Order 2009 [P.U.(A) 156] was gazetted on 9 April 2009 to provide that a BSC be given a concessionary tax rate of 20% on income derived from an approved business for a period of 10 consecutive years, upon the expiry of the tax exemption period. The Order was effective 2 September 2006. "Approved company" is defined to mean a BSC that has been given an exemption from the payment of income tax under the Income Tax (Exemption) (No. 17) Order 2007 or Income Tax (Exemption) (No. 18) Order 2007, as the case may be. Given the changes legislated via the Amendment Order above, similar transitional provisions would also apply.	16 October 2017

- **East Coast Economic Region (ECER) incentive**

The East Coast Economic Region (ECER) Master Plan was approved by the government in 2008 to develop the socio-economic status of the ECER by identifying projects and programmes to reduce regional socio-economic disparities, eradicate poverty, and improve income and wealth distribution in a sustainable manner.

To adhere to the FHTP requirements, two Amendment Orders were gazetted as follows:

Gazette Order	Description	Effective date
Income Tax (Exemption) (No. 6) 2016 (Amendment) Order 2018 [P.U.(A) 393] (Gazetted on 31 December 2018)	The Income Tax (Exemption) (No. 6) Order 2016 [P.U.(A) 159] provides 100% income tax exemption on the statutory income derived from qualifying activities (as specified in the Schedule of the Order) carried on in the ECER. The Amendment Order has been gazetted to amend the Order. The key changes are outlined below: 1. The Amendment Order stipulates that the qualifying person is now required to fulfil the two FHTP requirements. 2. The term "information, communication and technology" in the Schedule of the Order is to be replaced with "information, communication and technology related services".	16 October 2017
Income Tax (Exemption) (No. 7) 2016 (Amendment) Order 2018 [P.U.(A) 394] (Gazetted on 31 December 2018)	The Income Tax (Exemption) (No. 7) Order 2016 [P.U.(A) 160] provides 70% to 100% income tax exemption on the statutory income derived from special qualifying activities (as specified in the Schedule of the Order) carried on in the ECER. The Amendment Order has been gazetted to amend the Order. The amendments are similar to those that were proposed in the Income Tax (Exemption) (No. 6) 2016 (Amendment) Order 2018 [P.U.(A) 393]. Additionally, Schedule 2 has been included in the Amendment Order to outline the substantive requirements under each type of product / special qualifying activity accordingly.	16 October 2017

- **Iskandar Development Region (IDR) incentive**

To encourage investments in the Iskandar Development Region (IDR), a number of income tax exemption orders were gazetted in December 2007, including the Income Tax (Exemption) (No. 20) Order 2007 [P.U.(A) 418]. The Order provides that an "IDR status company" is exempted from income tax in respect of the income derived from a "qualifying activity".

The Income Tax (Exemption) (No. 20) 2007 (Amendment) Order 2018 [P.U.(A) 382] has been gazetted to amend the Order. The key changes are outlined below:

1. The definition of "qualifying activity" has been outlined in a new Schedule to the Amendment Order (previously, "qualifying activity" was to be "determined by the MoF").
2. The Amendment Order stipulates that an IDR-status company is now required to fulfil the two FHTP requirements.
3. The Amendment Order provides that the Minister may withdraw the exemption granted where an IDR-status company fails to comply with any condition imposed in relation to the exemption.
4. The Amendment Order extends the date of commencement of a qualifying activity in an approved node to 31 December 2020 (previously 31 December 2015).

The Amendment Order is deemed to be effective 16 October 2017.

- **Tax incentive for Green Technology (Effective: YA 2018)**

To further strengthen and develop the green technology industry, MIDA had issued guidelines on the application for tax incentives for the industry in 2015. The Income Tax (Exemption) (No. 9) Order 2018 [P.U.(A) 388] has been gazetted to provide a 100% income tax exemption to a qualifying company on statutory income derived from qualifying activities, for a period of five (5) years or until YA 2020, whichever is earlier. The incentive applies to applications made to MIDA between 1 January 2018 and 31 December 2020.

Rules on substantive requirements for insurer and takaful operators carrying on a re-insurance and re-takaful business respectively

In line with the government's commitment under the Forum of Harmful Tax Practices (FHTP) of the OECD, the Finance Act 2018 amended sections 60A and 60AA of the Income Tax Act 1967 (ITA) to stipulate that the sections would only apply to an insurer / takaful operator carrying on a re-insurance / re-takaful business (as the case may be), where the insurer / takaful operator has an adequate number of full-time employees and has incurred an adequate amount of annual operating expenditure in Malaysia, as prescribed by the Minister.

Pursuant to the above, the following Rules were gazetted on 31 December 2018:

Gazette Order	Description
Income Tax (Requirements for Insurer carrying on Re-insurance Business) Rules 2018 [P.U.(A) 383]	The Rules stipulate that the insurer will be required to: (a) Have at least 10 full-time employees in Malaysia; and (b) Incur an annual operating expenditure of at least RM4 million in Malaysia
(Effective: YA 2019)	
Income Tax (Requirements for Takaful Operators carrying on Re-takaful Business) Rules 2018 [P.U.(A) 384] (Effective: YA 2019)	The Rules stipulate that the takaful operator will be required to: (a) Have at least five (5) full-time employees in Malaysia; and (b) Incur an annual operating expenditure of at least RM4 million in Malaysia

Public Ruling No. 10/2018 – Tax Incentive for Investment in BioNexus Status Company

PR No. 10/2018: Tax Incentive for Investment in BioNexus Status Company, dated 4 December 2018, explains the tax incentives offered to an investor who has invested in a BioNexus Status Company (BSC) in Malaysia. Broadly, the PR explains the definition of a BSC, the application process for the tax incentive, the criteria for investors (both corporate and individuals) to qualify for the incentive, and the mechanism of the incentive.

Public Ruling No. 11/2018 – Withholding Tax on Special Classes of Income

PR No. 11/2018: Withholding Tax on Special Classes of Income, dated 5 December 2018, provides guidance on the special classes of income that are chargeable to tax under section 4A of the ITA, deduction of withholding tax (WHT) on these special classes of income and the consequences of non-compliance with the WHT rules. The new PR replaces PR No. 1/2014, which was published on 23 January 2014 and amended on 27 June 2018.

The new PR introduces several new paragraphs, including all the changes due to the amendments to Section 15A of the ITA, Income Tax (Exemption) (No. 9) Order 2017 and Practice Notes No. 1/2017, 2/2017 and 3/2017. Paragraph 13 in the earlier PR, which outlined certain payments that are not subject to WHT, has been removed from the new PR. Note that the proposed amendments to Sections 4A, 15A, 109B and Part V of Schedule 1 of the ITA in the Finance Act 2018 have not been included as the PR only takes into account the law in force as at the date the PR is issued.

Public Ruling No. 12/2018 – Income from Letting of Real Property

PR No. 12/2018: Income from Letting of Real Property, dated 19 December 2018, provides guidance on the tax treatment of letting of real property as a business source and a non-business source, pursuant to sections 4(a) and 4(d) of the ITA respectively. The new PR replaces PR No. 4/2011, which was published on 10 March 2014.

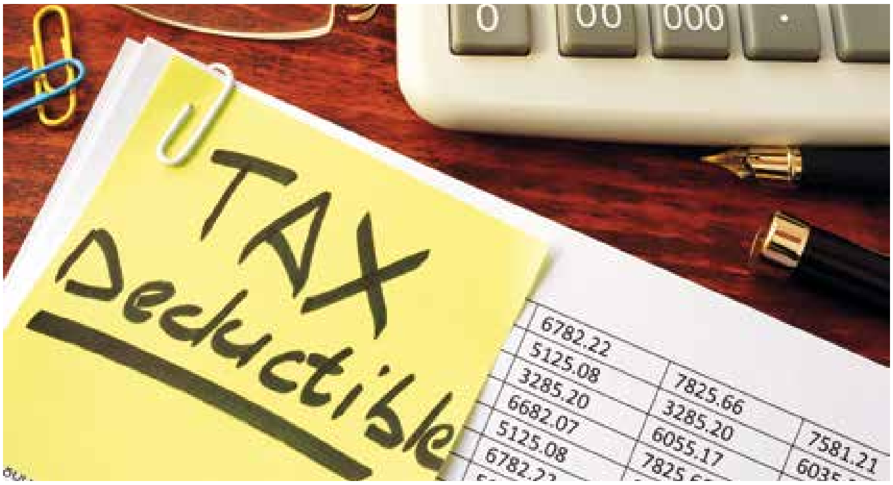
The content of the new PR is broadly similar to the earlier PR. It has, however, been updated to reflect the legislative changes in Budget 2016, as follows:

a) The amendment to Section 24(1)(c) of the ITA to stipulate that where a debt arises in a basis period in respect of the use or enjoyment of any property dealt "or to be dealt with", the debt amount is to be treated as gross income for that basis period.
b) The introduction of Section 24(1A) of the ITA to stipulate that where any sum is received in the course of the carrying on of a business in respect of rendering services or providing the use or enjoyment of property, the sum received shall be treated as gross business income even if the debt has not yet arisen. This effectively means that advance receipts from such business activities will be brought to tax when received.
c) The introduction of Section 34(7A) of the ITA to stipulate that where the advance sums received are subsequently refunded by the taxpayer, the taxpayer can claim a tax deduction on the refunded amounts in the basis period when the refund is made.

Public Ruling No. 1/2019 – Professional Indemnity Insurance

PR No. 1/2019: Professional Indemnity Insurance, dated 18 February 2019, explains the:

a. Tax deductibility of premiums paid for professional indemnity insurance (PII) policies; and
b. Tax treatment of insurance proceeds received and compensation paid in relation to a PII policy



The new PR replaces PR No. 8/2017, which was published on 19 December 2017. The new PR provides three additional clarifications and examples, as outlined below:

1. **Paragraph 5.1**
   If the professional is registered with a professional body outside Malaysia, the professional body must be recognised by written law or statute in Malaysia in order for the professional to qualify for the definition of "professional" for the purpose of the PR.
2. **Paragraph 8.4**
   The full amount of proceeds received from a PII is subject to tax and the taxability of the

proceeds is not restricted to the amount of compensation paid to the claimant.

3. **Paragraph 8.5**
The full amount of proceeds received from a PII is subject to tax even if the professional chooses not to claim a tax deduction for the PII premium expense.

Special Voluntary Disclosure Programme

The Special Voluntary Disclosure Programme (SVDP) announced during Budget 2019 on 2 November 2019 is offered to encourage taxpayers to voluntarily declare any unreported income, including income which is maintained in offshore accounts. The SVDP provides the opportunity to taxpayers to report the correct income and rectify errors made in the past, particularly in view of the implementation of the Common Reporting Standard (CRS) on 30 September 2018. Under the CRS, the IRBM will be receiving financial information of Malaysian taxpayers from foreign tax authorities. The SVDP is effective from 3 November 2018 until 30 September 2019.

The IRBM also encourages the category of persons highlighted below who have not registered as taxpayers and declared the relevant income to the IRBM, to take the opportunity to do so under the SVDP programme:

Individual	Monthly employment income of RM4,000 and above
Person carrying on a business other than a private limited company	Annual income of RM48,000 (or RM4,000 a month) after deducting approved operational expenses and capital allowances

Some of the key updates/changes are set out below.

Updates/changes	Description
• Impact to taxpayers who have submitted returns but have not reported the correct information	Taxpayers are required to submit a written declaration via letter or e-mail within the SVDP period, to inform the IRBM of income/gains on disposal of assets not previously declared. The IRBM now requires that the letter or e-mail state that the taxpayer makes a "full declaration" on the income or gains on disposal of assets which were not declared previously.
• Use of information received under the SVDP	The IRBM previously mentioned that while it will treat the information received under the SVDP in good faith and under strict confidentiality, action would be taken against the taxpayer if third party information indicates that there are incomplete or false disclosures. In the revised Operational Guidelines and FAQs, the IRBM has removed the statement that action may be taken based on third party information. Instead, the IRBM has confirmed that no further review will be made on the reported information and audit action will not be taken in the YA in respect of which a voluntary disclosure has been made.
• Withholding tax matters to be covered under the SVDP	The original FAQs had indicated that withholding tax omissions would not be considered as part of the SVDP. In the revised FAQs, the IRBM now allows withholding tax cases to be included in the SVDP.
• Voluntary disclosure under the SVDP based on unaudited management accounts	The IRBM will accept in good faith all voluntary disclosures made during the stipulated period. However, the IRBM also clarified that if subsequently there are differences between the management accounts and audited accounts, the taxpayer should report any additional tax payable. The IRBM will raise the additional assessment with penalties based on the penalty rates offered during the voluntary disclosure period.
• Taxpayers who have offshore bank accounts connected to Malaysian-sourced income	With the implementation of the Automatic Exchange of Information (AEOI) initiative by the Organisation for Economic Cooperation and Development (OECD), the IRBM will be receiving financial information of Malaysian taxpayers from foreign tax authorities. Therefore, taxpayers who have offshore bank accounts connected to Malaysian-sourced income which is liable to tax but has yet to be declared, should come forward to declare such income.
• Application of SVDP on cases related to transfer pricing issues	In line with the Operational Guidelines No. 1/2018, the FAQs stipulate that the SVDP is also applicable to transfer pricing (TP) issues. However, the penalty rates will be based on the existing Transfer Pricing Audit Framework (TPAF) dated 1 April 2013. The IRBM has now provided guidance on the procedures for voluntary disclosure pertaining to TP issues and has provided information on the audit process and timeframe for the closure of voluntary disclosure cases involving TP issues. In addition, the IRBM has stated that the existing TPAF will be revised with effect from 1 July 2019 (i.e. after the end of the SVDP period), to increase the penalty rates for tax adjustments relating to TP issues.

REAL PROPERTY GAINS TAX

Limited RPGT exemptions

In line with the Budget 2019 proposal, the Finance Act 2018 amended Schedule 5 of the Real Property Gains Tax Act 1976 (RPGTA) to increase the existing RPGT rates for disposals in the 6th year and subsequent years by 5% with effect from 1 January 2019. As part of the government's efforts to reduce the burden on individuals arising from the increased RPGT rate, the following two Exemption Orders have been gazetted and are effective 1 January 2019.

Exemption Order	Description
Real Property Gains Tax (Exemption) Order 2018 [P.U.(A) 360]	The Order provides that an individual who is a citizen, is exempted from RPGT on the chargeable gain derived from the disposal of a chargeable asset, other than shares, from 1 January 2019. This Order will apply only if: (a) The disposal of the chargeable asset is made in the 6th year after the date of acquisition of the chargeable asset, or any year thereafter; and (b) The consideration for the disposal of the chargeable asset is not more than RM200,000
Real Property Gains Tax (Exemption) (No. 3) Order 2018 [P.U.(A) 372]	The Order provides that an individual who is either a citizen or a permanent resident, is exempted from RPGT on the chargeable gain derived from the disposal of a chargeable asset, if the contract for the disposal was executed before 1 January 2019 but the relevant regulatory approvals were not yet obtained. This Order will apply only if: (a) The disposal of the chargeable asset is made in the 6th year after the date of acquisition of the chargeable asset, or any year thereafter; (b) The contract for the disposal of the chargeable asset is conditional, whereby it requires the approval of the government or a State government as provided under paragraphs 16(a) or (b) of Schedule 2 of the RPGTA, and is executed before 1 January 2019; and (c) The approval by the government or State government for the disposal is obtained in 2019 or any year thereafter

RPGT exemptions on disposals in the approved Node Medini

The Exemption Orders discussed below were gazetted on 31 December 2018 and are deemed to be effective 1 January 2010.

Exemption Order	Description
Real Property Gains Tax (Exemption) Order 2018 [P.U.(A) 368]	The Order provides that an individual who acquires a whole building / part of a building / parcel of a building ("building") directly from the developer, for residential or commercial purposes or both, in the Node Medini, is exempted from RPGT on the chargeable gain derived from the disposal of the building made between 1 January 2010 and 31 December 2020.
Real Property Gains Tax (Exemption) (No. 2) Order 2018 [P.U.(A) 369]	The Order provides that an Iskandar Development Region (IDR) status company, that acquires a whole building / part of a building / parcel of a building ("building") directly from the developer, for residential or commercial purposes or both, in the Node Medini, is exempted from RPGT on the chargeable gain derived from the disposal of the building made between 1 January 2010 and 31 December 2020.

STAMP DUTY

Stamp duty on the purchase of first residential home

In Budget 2019, to further encourage Malaysians to purchase their first home and to reduce the number of unsold residential units, the government has proposed that stamp duty exemptions be given on the instruments of transfer and loan agreements.

To legislate part of the proposal above, the following Orders have been gazetted:

Exemption/ Remission Order	Description	Effective date
Stamp Duty (Exemption) (No. 4) Order 2018 [P.U.(A) 321] (Gazetted: 21 December 2018)	The Order provides that any loan agreement to finance the purchase of a residential property valued up to RM300,000, will be exempted from stamp duty. This Order will apply only if: c) The SPA is executed between 1 January 2019 and 31 December 2020; and (d) The individual has never owned any residential property, including a residential property obtained by way of inheritance or gift, which is held either individually or jointly. The application for the exemption will have to be accompanied by a declaration by the individual confirming point (b) above.	1 January 2019
Stamp Duty (Remission) Order 2018 [P.U.(A) 320] (Gazetted: 21 December 2018)	The Order provides that stamp duty amounting to RM1,500 shall be remitted on any loan agreement to finance the purchase of a residential property valued from RM300,001 to RM500,000. This Order will only apply if: (a) The SPA is executed between 1 July 2019 and 31 December 2020; and (b) The individual has never owned any residential property, including a residential property obtained by way of inheritance or gift, which is held either individually or jointly. Similarly, the application for the remission of the stamp duty will have to be accompanied by a declaration by the individual confirming point (b) above.	1 July 2019
Stamp Duty (Exemption) (No. 6) Order 2018 [P.U.(A) 377] (Gazetted: 21 December 2018)	The Order provides that any instrument of transfer executed in relation to the purchase of a residential property valued up to RM300,000 (based on market value) by an individual, will be exempted from stamp duty. This Order will apply only if: (a) The SPA is executed between 1 January 2019 and 31 December 2020; and (b) The individual has never owned any residential property, including a residential property obtained by way of inheritance or gift, which is held either individually or jointly The application for the exemption will have to be accompanied by a declaration by the individual confirming point (b) above.	1 January 2019
Stamp Duty (Exemption) (No. 7) Order 2018 [P.U.(A) 378] (Gazetted: 21 December 2018)	The Order provides that any instrument of transfer executed in relation to the purchase of a residential property valued from RM300,001 to RM1 million (based on market value) by an individual, will be exempted from stamp duty. This Order will apply only if: (a) The SPA is executed between 1 January 2019 and 30 June 2019; (b) The SPA is executed between the individual and a property developer; and (c) The individual has never owned any residential property, including a residential property obtained by way of inheritance or gift, which is held either individually or jointly Similarly, the application for the exemption will have to be accompanied by a declaration by the individual confirming point (c) above.	1 January 2019

Stamp duty exemption on Tenang Insurance products (Effective date: 1 January 2019)

The Stamp Duty (Exemption) (No. 5) Order 2018 [P.U.(A) 359], gazetted on 31 December 2018, provides a stamp duty exemption for any insurance policies and takaful certificates for Perlindungan Tenang products, issued by a licensed insurer or a licensed takaful operator (from 1 January 2019 to 31 December 2020), with an annual premium or takaful contribution not exceeding RM100.

Stamp duty remission on increased rate for the transfer of property (Effective: 1 January 2019)

Pursuant to the Finance Act 2018, item 32(a) of the First Schedule of the Stamp Act 1949 (SA) is amended to revise the bands and rates of stamp duty for the transfer of property with effect from 1 January 2019 as follows:

Amount	Rates
First RM100,000	1%
RM100,001 to RM500,000	2%
RM500,001 to RM1,000,000	3%
RM1,000,001 and above	4% (previously 3%)

To ease the transition, the Stamp Duty (Remission) (No. 2) Order 2018 [P.U.(A) 376] was gazetted on 31 December 2018, to provide that stamp duty amounting to RM1 for every RM100 or part thereof (i.e. 1%), shall be remitted on the consideration or market value of the property (whichever is greater) which is in excess of RM1 million. This Order will only apply if:

(a) The instrument of transfer of the property is stamped between 1 January 2019 and 30 June 2019; and
(b) The value of the property (based on market value) is between RM1 million to RM2.5 million

Stamp duty exemption on the transfer of real property used for the purpose of carrying on a qualifying tourism project

The Order provides a stamp duty exemption for any instrument chargeable with ad valorem duty for the transfer of real property used for the purpose of carrying on a qualifying tourism project. This Order will only apply if:

(a) The instrument is executed between 20 November 2012 and 31 December 2020; and

(b) The person liable to pay the stamp duty produces a letter from the Sabah Economic Development and Investment Authority confirming

that the instrument is for the purpose of carrying on a qualifying tourism project

"Qualifying tourism project" has been defined in the Order to mean a project in relation to a hotel or resort which is carried on in the SDC and approved by the Minister.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 5) 2018 (Amendment) Order 2018 (Effective: 19 October 2018)

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 5) Order 2018 [P.U.(A) 266], which was gazetted on 18 October 2018, 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 Islamic Commercial Papers Programme in nominal values of up to RM15 billion, provided that the combined aggregate of the outstanding nominal values 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

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 5) 2018 (Amendment) Order 2018 [P.U.(A) 290] was subsequently gazetted on 9 November 2018, and provides that a reference to the Islamic Medium Term Notes and Islamic Commercial Papers Programme in paragraph (a) above shall be a reference to the Islamic Medium Term Notes and Islamic Commercial Papers Programme which have been upsized in nominal value from RM46 billion to a maximum aggregate value of up to RM61 billion.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 6) Order 2018

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 6) Order 2018 [P.U.(A) 319] was gazetted on 21 December 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 issued by Perbadanan Tabung Pendidikan Tinggi Nasional pursuant to the Islamic Medium Term Notes Programme in nominal values of up to RM3 billion; and

(a) Guarantee provided or to be provided by the government of Malaysia in relation to the Islamic Medium Term Notes referred to in (a) above

LABUAN

Limitation of tax deductions on payments to Labuan companies

The new Section 39(1)(r) of the Income Tax Act 1967 (ITA) provides that a tax deduction will not be allowed on payments by Malaysian residents to Labuan companies, subject to any rules that may be prescribed by the MoF. Section 39(1)(r) is effective from 1 January 2019.

The Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 [P.U.(A) 375], gazetted on 31 December 2018, came into operation on 1 January 2019 and set out the relevant rules relating to Section 39(1)(r).

Pursuant to the Rules, the types of payments made by a Malaysian resident to a Labuan company that are disallowed a tax deduction pursuant to Section 39(1)(r) are as follows:

Type of payment	Amount not allowed for deduction
Interest payment	33% of the payment amount
Lease rental	33% of the payment amount
Other payments	97% of the payment amount

Prescribed employee and annual operating expenditure requirements for Labuan companies

Section 2B of the Labuan Business Activity Tax Act 1990 (LBATA) provides that a Labuan entity carrying on a Labuan business activity must have an:

a) Adequate number of full-time employees in Labuan; and
b) Adequate amount of annual operating expenditure in Labuan

The Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 [P.U.(A) 392], gazetted on 31 December 2018, came into operation on 1 January 2019 and provide further details on the above requirements. The minimum number of full-time employees and amount of annual operating expenditure are specified based on the business carried on by the Labuan entity.

CUSTOMS DUTIES

Customs Duties (Amendment) (No.2) Order 2018

The Customs Duties (Amendment) (No.2) Order 2018 [P.U.(A) 325] was gazetted on 24 December 2018 and came into operation on 1 January 2019. This Order provides for amendments to the First Schedule under the Customs Duties Order 2017 [P.U.(A) 5].

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

The Customs Duties (Amendment) (No.3) Order 2018 [P.U.(A) 379] was gazetted on 31 December 2018 and came into operation on 1 January 2019. This Order provides for an amendment to subheading 8712.00.3000 in column (5), by substituting the figure "25%" with the figure "15%" in the First Schedule under the Customs Duties Order 2017 [P.U.(A) 5].

Customs (Anti-Dumping Duties) (Revocation) Order 2019

The Customs (Anti-Dumping Duties) (Revocation) Order 2019 [P.U.(A) 31] was gazetted on 31 January 2019 and came into operation on 9 February 2019. This Order provides for the revocation of the Customs (Anti-Dumping Duties) Order 2015 [P.U.(A) 24].

Customs (Prohibition of Imports) (Amendment) Order 2019

The Customs (Prohibition of Imports) (Amendment) Order 2019 [P.U. (A) 35] was gazetted on 12 February 2019 and came into operation on 1 June 2019. This Order provides for amendments to the Second Schedule and Fourth Schedule under the Customs (Prohibition of Imports) Order 2017 [P.U.(A) 103].

SALES TAX

Sales Tax (Amendment) Regulations 2018

Sales Tax (Amendment) Regulations 2018 [P.U.(A) 399] were gazetted on 31 December 2018 and came into operation on 1 January 2019. These Regulations provide for amendments to the Third Schedule, Regulation 2 and Regulation 7, and the insertions of new Regulations 16A, 16B, 16C, 16D and 16E under the Sales Tax Regulations 2018 [P.U.(A) 203].

Sales Tax (Rates of Tax) (Amendment) (No.3) Order 2018

The Sales Tax (Rates of Tax) (Amendment) (No.3) Order 2018

[P.U.(A) 400] was gazetted on 31 December 2018 and came into operation on 1 January 2019. This Order provides for amendments to the First Schedule under the Sales Tax (Rates of Tax) Order 2018 [P.U.(A) 221].

Sales Tax (Imposition of Sales Tax in Respect of Special Areas) (Amendment) Order 2018

The Sales Tax (Imposition of Sales Tax in respect of Special Areas) (Amendment) Order 2018 [P.U.(A) 401] was gazetted on 31 December 2018 and came into operation on 1 January 2019. This Order provides for amendments to Paragraph 2 and Schedule A under the Sales Tax (Imposition of Sales Tax in respect of Special Areas) Order 2018 [P.U.(A) 207].

Sales Tax (Customs Ruling) (Amendment) Regulations 2018

The Sales Tax (Customs Ruling) (Amendment) Regulations 2018 [P.U.(A) 402] were gazetted on 31 December 2018 and came into operation on 1 January 2019. These Regulations provide for amendments to the First Schedule under the Sales Tax (Customs Ruling) Regulations 2018 [P.U.(A) 204].

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No.2) Order 2018

The Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No.2) Order 2018 [P.U.(A) 403] was gazetted on 31 December 2018 and came into operation on 1 January 2019. This Order provides for amendments to Paragraph 4, Paragraph 5, Schedule A, Schedule B and Schedule C under the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [P.U.(A) 210].

Sales Tax (Goods Exempted from Tax) (Amendment) (No.4) Order 2018

The Sales Tax (Goods Exempted from Tax) (Amendment) (No.4) Order 2018 [P.U.(A) 404] was gazetted on 31 December 2018 and came into operation on 1 January 2019. This Order provides for amendments to Schedule A under the Sales Tax (Goods Exempted from Tax) Order 2018 [P.U.(A) 219].

SERVICE TAX

Service Tax (Custom Ruling) (Amendment) Regulations 2018

The Service Tax (Customs Ruling) (Amendment) Regulations 2018 [P.U (A) 373] were gazetted on 31 December 2018 and came into operation on 1 January 2019. These Regulations provide for amendments to the First Schedule under the Service Tax (Custom Ruling) Regulations 2018 [P.U.(A) 211].

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

The Service Tax (Persons Exempted from Payment of Tax) Order 2018 [P.U.(A) 380] was gazetted on 31 December 2018 and came into operation on 1 January 2019. This Order provides an exemption from payment of service tax for persons specified in Column [2] of the Schedule, for service tax on taxable services specified in Column [3] of the Schedule, subject to conditions specified in Column [4] of the Schedule, under the Service Tax (Persons Exempted from Payment of Tax) Order 2018 [P.U.(A) 380].

Service Tax (Amendment) (No.3) Regulations 2018

The Service Tax (Amendment) (No.3) Regulations 2018 [P.U. (A) 398] were gazetted on 31 December 2018 and came into operation on 1 January 2019. These Regulations provide for amendments to Regulations 10, 12, 14, 15, 16, 28, First Schedule and Third Schedule, and for the insertions of new Regulation 3A and new Part IIA for the provision relating to imported taxable services under the Service Tax Regulations 2018 [P.U.(A) 214].

*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

TIMB V KPHDN

BRIEF FACTS

The taxpayer carries on a general insurance business. The taxpayer claimed deduction on their Provision of Risk Margin for Adverse Deviation ("PRAD") expenses. The Director General of Inland Revenue ("DGIR") disallowed the taxpayer's claim for deduction and alleged that the PRAD expenses incurred by the taxpayer are not deductible as PRAD is a provision which contains an element of uncertainty. The DGIR then raised the impugned notices of additional assessment against the taxpayer. The taxpayer subsequently filed an application for leave for judicial review to quash the said impugned notices of additional assessment.

The issues were:

1) Whether the DGIR is entitled in law to disregard the decisions of our Courts by disallowing the deduction for the PRAD expenses incurred by the taxpayer; and
2) Whether the DGIR is entitled to disregard the clear provision of Section 60(5)(b)(i) of the Income Tax Act 1967 ("ITA") which provides that claims incurred by an insurer in a basis period are deductible in arriving at its adjusted income.

The Taxpayer's Argument

The taxpayer argued that the DGIR had failed to appreciate that Section 60(5)(b)(i) of the ITA provides that claims incurred by an insurer under its general policies in the basis period are allowed as a deduction in computing its adjusted income. The PRAD expenses clearly fall under such claims.

Besides that, the decisions of our Courts in *Exxon Chemical (Malaysia) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2005] 4 CLJ 810* and *Mercedes-Benz Malaysia Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2012) MSTC 30-052* have settled the law in respect of the meaning of the word "incurred" in Section 33(1) of the ITA whereby expenses incurred by a taxpayer are deductible so long as there is an obligation to pay, i.e. an accrued liability which is undischarged. Therefore, actual disbursement of the expenses is not required for the expenses incurred to be deductible. Accordingly, there are no facts in dispute in the present matter including the amount of the expenses or income. The only issues at hand pertain to questions of law.

Moreover, the Malaysian Budget Speech for year 1995 provides that the Incurred But Not Reported ("IBNR") claims as confirmed by Bank Negara Malaysia are to be treated as fully deductible expenses in the general insurance business of an insurer. This was eventually enacted into law by Parliament through Section 12(d)(ii) of the Finance Act 1995 which amended Section 60(5)(b)(i) of the ITA and is intended to further promote sound management practice and establish the true financial position of insurance companies, especially in reserving for liability claims.

The DGIR's Argument

The DGIR contested that where there is an alternative remedy of a Section 99 ITA appeal to the Special Commissioners of Income Tax ("SCIT"), leave for judicial review should only be granted in exceptional circumstances. The DGIR further contended that the issue of whether or not the PRAD expenses are deductible under Section 60(5)(b)(i) of the ITA involves question of facts and should therefore be resolved before the SCIT, which are the judges of fact.

The High Court's Decision

The learned High Court Judge agreed with the arguments advanced by counsel for the taxpayer and allowed the taxpayer's application for leave for judicial review.

Counsel for taxpayer:
S. SARAVANA KUMAR & NG KAR NGAI (PUPIL - IN - CHAMBERS)

COUNSEL FOR THE DGIR
MUHAMMAD FARID JAAFAR

CASE 2

GOVERNMENT OF MALAYSIA V RC (HC)

BRIEF FACTS

The taxpayer is a property developer. Owing to the uncertainties of the economy, the sales response to their housing project was lacklustre. In order to finance their housing project, the directors of the company had to use the houses that they have built as collateral to apply for loan from the bank. The taxpayer was able to sell some of the houses but there were several construction works that were not completed. Under such circumstances, the taxpayer was unable to produce an accurate and actual profit/loss made for the units that have already been given an occupation certificate pursuant to the requirements in paragraph 10.4 of the DGIR's Public Ruling No. 1/2009 which states that "where in a basis period for a year of assessment a property development is deemed to have been completed, the property developer shall ascertain the actual gross profit or loss from the project by preparing a final account for the project".

The taxpayer instead prepared the relevant accounts pursuant to the Malaysian Private Entities Reporting Standards ("MPERS') which is based on the "cost basis" which is consistent with Regulation 6(2) of the Income Tax (Property Development) Regulations 2007. However, the DGIR alleged that the taxpayer had under-declared their profit from the sale of houses due to the differences in reported sales figure and actual sales figure. The Director General of Inland Revenue ("DGIR") raised notice of additional assessment to which the taxpayer refused to pay.

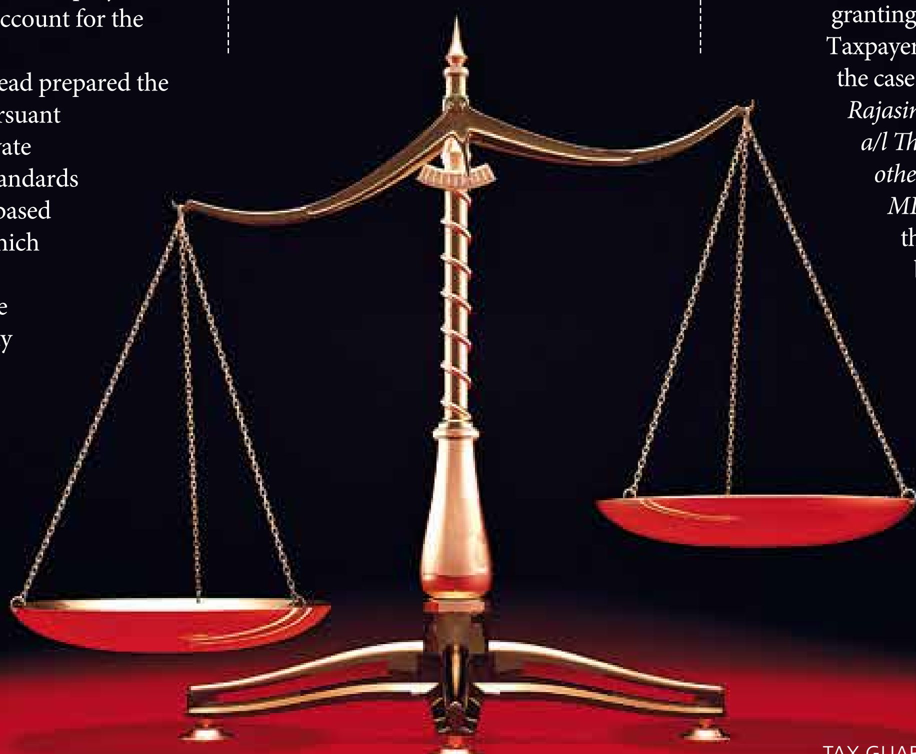
The DGIR filed a civil suit against the taxpayer for failure to make payments on the additional assessment raised pursuant to Section 103 of the Income Tax Act 1967 ("ITA") ("the Decision"). The taxpayer applied for a stay of proceedings pending the appeal at the Special Commissioners of the Income Tax ("SCIT") but the application for stay was dismissed by the High Court. Hence, the taxpayer applied for an interim stay of proceedings pending the appeal to the Court of Appeal against the dismissal of the application for stay against the civil suit brought by the DGIR.

The arguments advanced by the taxpayer were:

1) **The appeal to the Court of Appeal would be rendered nugatory**
   The DGIR would have the right to collect taxes under its Decision that is clearly the subject matter of the appeal before the SCIT, even before the correctness of the High Court's Decision has been tested at the next level of the judicial system.
2) **The appeal to the Court of Appeal is not a frivolous or vexatious appeal**
   The appeal to the Court of Appeal is grounded on a bona fide belief of success. The learned High Court Judge has not held that there are no merits to the taxpayer's substantive case in their appeal.
3) **Special Circumstances**
   There are special circumstances in this case that would warrant a stay of proceedings which among them are;

i. Abuse of power by the DGIR;
ii. Real threat of collection of unauthorised taxes by the DGIR; and
iii. Balance of convenience tilts heavily in favour of the granting of a stay

Taxpayer's counsel highlighted the case of *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals [2008] 2 MLJ 147*, and stated that the question to be answered in the present application is different from the previous matter, with



the question here being whether the status quo presently prevailing should remain undisturbed until the correctness of the decision to dismiss the stay of proceeding has been tested at the next level;

The arguments advanced by the DGIR were:

1) There are no special circumstances and merits in the taxpayer's case.
2) Taxes due and payable may be recovered by the government by civil proceedings as a debt due to the government pursuant to Section 106 of the ITA thus, the taxpayer must pay the additional assessment regardless whether the DGIR is right in raising the assessment.

High Court's Ruling

The learned High Court Judge agreed with the taxpayer's contention and allowed the taxpayer's application for a stay of proceedings to be granted. The learned High Court Judge held that the taxpayer's appeal to the Court of Appeal would be rendered nugatory if the taxpayer's application for stay was not allowed. The learned High Court Judge further held that it was for the DGIR to expedite the hearing at the SCIT.

Counsel for taxpayer:
JASON TAN JIA XIN AND NUR AMIRA AHMAD AZHAR

Counsel for the DGIR
MUHAMMAD AIMAN

CASE 3

FTM SDN BHD V KPHDN

BRIEF FACTS

The taxpayer's principal activities consist of those relating to the manufacturing and assembling of apparatus and component parts. The taxpayer wanted to claim for Increased Export Allowance ("IEA") in relation to the increased export of manufactured products. The taxpayer had fulfilled all the requirements stipulated under Rule 4 and Rule 8 of the Income Tax (Allowance for Increased Exports) Rules 1999 [PU(A) 128/1999] ("the Rules") in order to be eligible to claim for such allowance.

The Director General of Inland Revenue ("DGIR") allowed the taxpayer's claim; however, he proceeded to inform the taxpayer that as a matter of policy, the taxpayer must obtain the view of the Ministry of Finance ("MoF"). The MoF informed the taxpayer that they were not eligible to claim for IEA since the taxpayer did not incur a large part of the expenses for raw material. The Rules,

however, did not impose such condition. The conditions laid down under Rule 8 of the Rules are that, taxpayers who enjoyed an incentive under the Promotion of Investments Act 1986 or who claimed reinvestment allowance under the ITA are not eligible to claim IEA. Notwithstanding the explanation, the DGIR proceeded to agree with the MoF's decision and invoked Section 127(3A) of the Income Tax Act 1967 ("ITA") to disallow the taxpayer's claim.

The taxpayer disregarded the DGIR's decision and proceeded to claim IEA which was disallowed by the DGIR consequent to a tax audit. The DGIR then issued a notice of additional assessment with penalty. The taxpayer appealed against the impugned assessment to the Special Commissioners of Income Tax ("SCIT"), which ruled that Section 127(3A) of the ITA confers power to the Minister to exclude any person from the application of the provisions of the ITA, including the Rules. Aggrieved by and dissatisfied with the decision of the SCIT, the taxpayer proceeded to appeal at the High Court.

ISSUE

The issue was whether the MoF may invoke Section 127(3A) of the ITA to disallow the taxpayer's entitlement to claim IEA under the Rules.

Taxpayer's Argument and High Court's Decision

The High Court allowed the taxpayer's appeal with cost and reversed the decision of the SCIT. The High Court accepted the taxpayer's arguments that:

(a) Section 127(3A) of the ITA must be interpreted according to its literal meaning in the spirit and intendment of the ITA by looking fairly at the language used. There is no room for intendment and presumption.

(b) Section 127(3A) of the ITA is a provision to exempt a taxpayer from tax and not to exempt a taxpayer from benefitting from a tax incentive that he is rightfully entitled to. This is evident from the preamble of Part IX of the ITA. Further, reading the Hansard in respect of the Rules and the Explanatory Statement to the Finance Bill 2005 which introduced Section 127(3A), the SCIT had erred in law and misdirected themselves by agreeing with the DGIR's contention that the MoF is empowered under Section 127(3A) to exempt the taxpayer from the IEA.

(c) The interpretation endorsed by the SCIT is clearly against Parliament's intention in introducing the Rules and Section 127(3A) of the ITA as the objective of the former is to attract foreign direct investment. Meanwhile, the latter is an enabling provision which confers on MoF the power to exempt one from tax but not to exempt one from the application of the Rules.

It must be highlighted that this case stands as a landmark decision which discusses the scope of Section 127(3A) of the ITA and the powers of the MoF in applying the said provision.

Counsel for taxpayer:
S. SARAVANA KUMAR AND DESMOND LIEW ZHI HONG (PUPIL - IN - CHAMBERS)

Counsel for the DGIR
ABDUL AZIZ HARUN AND FARAH AFIQAH NORDIN

CASE 4

CPSSB V KPHDN

BRIEF FACTS

The taxpayer is a property developer, property investor and a lessor of properties. The taxpayer incurred an expenditure namely the valuation fee. This valuation fee is incurred to obtain valuation report for the purposes of preparing the taxpayer's financial statement which is required under the Financial Reporting Standard 140 ("FRS 140"). The taxpayer had incurred the Valuation Fee to determine the value of its property at each financial year end. In the YA 2012, the taxpayer had incurred valuation fee to ascertain the market value of their retail lots and car park bays. As the taxpayer deals with property, it could be said that the valuation fee was incurred in the ordinary course of its business. In a property development and property investment business, valuation of land and building is essential to ensure that all transactions relating to the same are at the prevailing market price. This is extremely necessary to ensure that the taxpayer fetches the best price when it is dealing with property. It is common for a company that deals with property to incur expenditure of this nature.

Notwithstanding the above, the Director General of Inland Revenue ("DGIR") proceeded to issue notice of additional assessment against the taxpayer. The taxpayer appealed against the DGIR's decision, to the Special Commissioners of Income Tax ("SCIT") however, the appeal was disallowed. The SCIT ruled that the valuation fee is not deductible because it was not a mandatory expenditure in the taxpayer's ordinary course of business and the expenditure did not lead to the production or increase in profits.

Disappointed and aggrieved by the decision of the SCIT, the taxpayer appealed to the High Court. The High Court agreed with the taxpayer's argument and reversed the decision of the SCIT. The High Court held that the SCIT had misdirected themselves in law by imposing an additional requirement that the

valuation fee must be a mandatory expenditure in order to qualify for deduction.

Taxpayer's Argument

i) The preparation of the FRS 140 Financial Statement falls under the scope of Section 33(1) of the Income Tax Act ("ITA") and is part of the taxpayer's income generating operation since the Valuation Fee was wholly and exclusively incurred in the production of the taxpayer's income and there is a nexus between the expenditure incurred and the taxpayer's business as a property developer and property investor.

ii) The preparation of the FRS 140 Financial Statement is part of the taxpayer's statutory audit fees expenditure and it is specifically allowed as a deduction under Paragraph 2 of the Income Tax (Deduction for Audit Expenditure) Rules 2006 ("the Rules") which states that for the purpose of ascertaining the adjusted income, there shall be allowed a deduction of an amount equivalent to the amount of statutory audit fees expenditure incurred in that basis period. The Rules are prescribed by the Minister pursuant to Section 154(1)(b) of the ITA.

iii) The DGIR's Public Ruling at Paragraph 5.8 of Public Ruling ("PR") No. 6/2006 (Tax Treatment of Legal and Profession Expenses) states that professional expenses incurred by a developer or dealer in property for valuation in land is a deductible expense. This PR specifically allows deduction for the Valuation Fee.

The High Court's Decision

i) **Necessity is not an ingredient for deduction.**

The High Court held that the SCIT had misdirected themselves in law by imposing an additional requirement that the valuation fee must be a mandatory expenditure in order to qualify for deduction. The case of Kok Fai Yin, states that one should not read into Section 33(1) of the ITA the word "necessarily" because it was not inserted by Parliament.

Besides, it was held in Kulim Rubber's case that as long as an expense was made bona fide in the course of business, and in the interest of the efficiency of the business, and even in order to indirectly facilitate the carrying on of the business, such expense would be incurred wholly and exclusively for the production of income. This is despite the expense being made voluntarily and not out of necessity. In this regard, the valuation fee in this case was incurred to obtain the market value of the assets to substantiate the taxpayer's compliance with the arm's length principle especially if a tax audit is conducted on the taxpayer by the Inland Revenue Board of Malaysia.

ii) **Production of actual profit is not required**

Following the Ryoshindoh Manufacturing case, the High Court also agreed that the SCIT had erred in reading the phrase "in the production of gross income" to mean that the valuation fee had to result in an actual production or increase of profit before it is deductible. If an expense was incurred in the operation of the taxpayer's business as a whole, the expense should be deductible and the question of whether the expenditure produces or increases profits is not within the contemplation of this section.

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

Counsel for the DGIR
PUAN DUNA MOHD ISA AND PUAN FARREN EVA

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 V)

Siva Subramanian Nair

This article deals with the last part on prohibitions under Section39(1) and we shall be looking at subsections (l) to (r) with the exception of (q) which has already been dealt with in the article on Vol.11/No.4/2018/Q4.

Subsection (l) reads a sum equal to fifty per cent of any expenses incurred in the provision of entertainment including any sums paid to an employee of that person for the purpose of defraying expenses incurred by that employee in the provision of entertainment:

PROVIDED THAT THIS PARAGRAPH SHALL NOT APPLY TO THE FOLLOWING EXPENSES:

(i) the provision of entertainment to his employees except where such provision is incidental to the provision of entertainment for others;

(ii) the provision of entertainment by a person who carries on a business which consists of or includes the provision for payment of entertainment to clients or customers of that business and that entertainment is provided for payment by the clients or customers in the ordinary course of that business;

(iii) the provision of promotional gifts at trade fairs or trade or industrial exhibitions held outside Malaysia

for the promotion of exports from Malaysia;

(iv) the provision of promotional samples of products of the business of that person;

(v) the provision of entertainment for cultural or sporting events open to members of the public, wholly to promote the business of that person;

(vi) the provision of promotional gifts within Malaysia consisting of articles incorporating a conspicuous advertisement or logo of the business;

(vii) the provision of entertainment which is related wholly to sales arising from the business of that person;

(viii) the provision of a benefit or amenity to an employee consisting of a leave passage to facilitate a yearly event within Malaysia which involves the employer, the employee and the immediate family members of that employee;

Basically the deduction is given based on the following conditions:

- the expense must be for entertainment
- it must be wholly and exclusively incurred for the production of income

Therefore, candidates should be familiar with the definition of entertainment as stated below:

"ENTERTAINMENT" INCLUDES:

(i) the provision of food, drink, recreation or hospitality of any kind; or

(ii) the provision of accommodation or travel in connection with or for the purpose of facilitating entertainment of the kind mentioned in paragraph (i) above, by a person or an employee of his, with or without any consideration paid whether in cash or in kind, in promoting or in connection with a trade or business carried on by that person;.

"RECREATION AND HOSPITALITY" WOULD INCLUDE:

(i) a trip to a theme park or a recreation centre;

(ii) a stay at a holiday resort;

(iii) tickets to a show or theatre; and

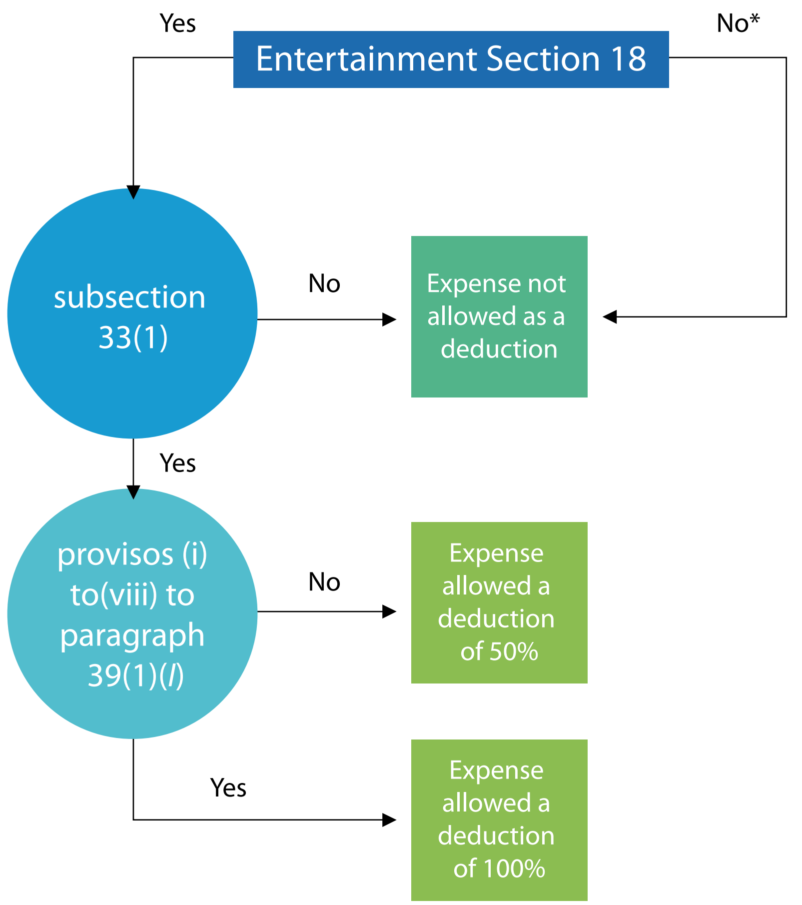
(iv) gifts and give-aways.

In the event the above conditions are met than if the expense qualifies under one of the eight exceptions to the general rule presented in the Act (as shown above) a 100% deduction is accorded otherwise it's a 50% deduction.

This definition of entertainment, which came into effect from year of assessment 2014, encompasses also promotional expenses which have an entertainment element i.e. either they enjoy a deduction of 100% or a 50% deduction assuming the earlier conditions are fulfilled. However, promotional expenses which do not have an entertainment element can enjoy a full deduction of 100% under Section 33(1)

A flowchart illustrating the above is reproduced from Public Ruling No.4/2015 as in **Table 1**:

Table 1: A flowchart illustrating the above is reproduced from Public Ruling No.4/2015:



*Expense is not allowed a deduction as entertainment expense. Expense can be identified to see whether it falls under any other kind of expenditure allowable under subsection 33(1) of the ITA.

Another table from the Public Ruling which illustrates the tax treatment for several examples of entertainment expense will also be useful for candidates in attempting examination questions and this is summarised below.

100% deductible	50% deductible	Not deductible
Entertainment given to potential or existing customers during the launching of company's new product	Gift without business logo for customer's annual dinner	Entertainment given to a potential customer in a closed transaction
Annual dinner for employees	Gift of flower for customer's opening of new outlet	Wedding gift to customer
Gift with business logo for customer's annual dinner	Entertainment to suppliers	Entertainment to employees of related companies
Free trip as an incentive to sales agent for achieving the sales target	Hampers for customers during festive seasons	Entertainment for annual general meeting of company
		Cash contribution for customer's annual dinner

Entertainment expenses is commonly tested in the CTIM examinations. Question 1 of June 2018 Business Taxation paper required candidates to ascertain the deductibility of the following entertainment expenses	RM
i. Annual dinner for employees of SPSB (the holding company)	RM35,000
ii. Annual dinner for employees of KSSB (the company for which the tax computation is being prepared)	RM45,000
iii.Dinner for potential customers to close transactions	RM25,000
iv. Air fare to Japan for dealers who achieved sales targets	RM20,000
v. Lunch & refreshment provided at KSSB's AGM	RM30,000

SOLUTION

When commencing the tax computation from profit before tax, no adjustments were needed in respect of the dinner for the employees as it clearly fell within the first proviso of entertainment of staff and for the airfare to Japan for dealers who achieved sales targets because it is an example of an expense which is wholly related to sales i.e. under proviso vii.

The other three i.e. dinner for the employees of the holding company of RM35,000, dinner for the potential customers of RM25,000 and lunch and refreshments expenses incurred for the AGM obviously did not rank for a deduction as they are not wholly and exclusively incurred in the production of income for this company.

In December 2017 Business Taxation paper Question 1 the deductibility of the following entertainment expenses was tested

Entertainment expenses comprises of:	RM
i. Disbursement of entertainment expenses of the marketing team	12,000
ii.Hampers to existing customers in conjunction with the festival season	4,300
iii.Chinese New Year dinner for the employees	11,550

SOLUTION

i. *Disbursement of entertainment expenses of the marketing team basically represents entertainment allowance which only qualifies for a 50% deduction and accordingly RM6,000 is added back to the profit before tax*

ii. *The festive hampers also qualify for a 50% deduction i.e. RM2,150*

iii. *This is entertainment of staff and falls squarely into the first proviso of the subsection thus commanding a 100% deduction.*

THE NEXT SUBSECTION IS:

(m) notwithstanding subparagraph (l)(i) and subject to subparagraph (l)(viii), any expenditure incurred in the provision of a benefit or amenity to an employee consisting of a leave passage within or outside Malaysia;

This subsection is very clear i.e. any leave passage provided by the employer is not deductible unless it is a company trip involving the employer, employee and their families as provided for under the proviso (viii) of entertainment expense (as stated above). Note that the company trip will only rank for a full deduction if the destination is a place in Malaysia & not if it is overseas.

Another common error in examinations are where the leave passages detail the number of trips locally & overseas with the amounts expensed. Some candidates tend to confuse this with the exceptions under Section 13(1)(b) whereby for an employee, three local trips and one trip overseas to a maximum of RM3,000 is not taxable. Please note that this is only for the employee; from the viewpoint of the company (or employer), all leave passages are not deductible except for the company trip discussed above.

(n) any remuneration or any similar payment paid to a partner of a limited liability partnership where such remuneration or payment is not specified or provided in the limited liability partnership agreement made in accordance with section 9 of the Limited Liability Partnerships Act 2012;

This subsection provides a restriction on the deduction for salary of a partner of a limited liability partnership (LLP), whereby even though the remuneration paid to the partner is an expense which is wholly and exclusively incurred in the production of income BUT it will be NOT deductible if is not specified or provided for in the LLP agreement. Public Ruling 5/2015 clarifies that remuneration refers to basic salary and fixed allowances but does not include employer's contributions to the Employees Provident Fund (EPF), Social Security Organisation (SOCSO) or insurance. The ruling also states that if there is a change of partners in the LLP, where new partners will be paid remuneration, the LLP must prepare a supplementary agreement or any document to record the change in order to qualify for a deduction.

(o) any amount paid or to be paid in respect of goods and services tax as input tax by the person if he is liable to be registered under the Goods and Services Tax Act 2014 and has failed to do so, or if he is entitled under that Act to credit that amount as input tax;

(p) any amount of output tax paid or to be paid under the Goods and Services Tax Act 2014 which is borne by the person if he is registered or liable to be registered under that Act;

The above two provisions are no longer relevant now as the GST legislation has been abolished.

(r) subject to any rules as may be prescribed by the Minister, any amount in respect of a payment made by a person, who is a resident, to any Labuan company.

The government has issued the **INCOME TAX (DEDUCTIONS NOT ALLOWED FOR PAYMENT MADE TO LABUAN COMPANY BY RESIDENT) RULES 2018 PU (A) 375** which was gazette on 31/12/2018 and comes into operation on 1 January 2019. In Rule 2 it prescribes the following:

For the purpose of paragraph 39(1)(r) of the Act, the Minister prescribed the amount not allowed for deduction for the types of payment made by a resident to a Labuan company as specified in the Schedule.

SCHEDULE

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

Basically, this discourages transactions between Malaysian tax residents and Labuan entities. As the gazette date is 31 December 2018, candidates will probably not be examined on this for the June 2019 examinations.

This concludes our discussion on prohibited expenditure under Section 39(1).

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FURTHER READING

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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: APRIL – JUNE 2019

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
APRIL 2019								
NATIONAL INDIRECT TAX CONFERENCE 2019	4 Apr	9a.m. - 5p.m.	Kuala Lumpur	Various	450	550	650	8 NITC/001
Seminar: Intensive SST & Customs Seminar 2019: Legal & Operational	10 Apr	9a.m. - 5p.m.	Johor Bahru	Various	450	550	650	8 SE/003
Seminar: Quarterly Tax Updates	15 Apr	9a.m. - 5p.m.	Kuching	Various	315 *Subsidised fee	550	650	8 SE/007
Seminar: Quarterly Tax Updates	15 Apr	9am-1pm	Penang	Various	315 *Subsidised fee	550	650	8 SE/008
Seminar: Quarterly Tax Updates	17 Apr	9a.m. - 5p.m	Melaka	Various	315 *Subsidised fee	550	650	8 SE/009
Seminar: Quarterly Tax Updates	17 Apr	9a.m. - 5p.m	Johor Bahru	Various	315 *Subsidised fee	550	650	8 SE/010
Seminar: Tax Agent Licence & Post-Licensing Issues	18 Apr	9a.m. - 5p.m	Kuala Lumpur	Various	400	500	600	8 SE/014
Seminar: Quarterly Tax Updates	24 Apr	9a.m. - 5p.m	Kuala Lumpur	Various	315 *Subsidised fee	550	650	8 SE/011

CHARTERED TAX INSTITUTE OF MALAYSIA

MEMBER GET MEMBER CAMPAIGN

The Institute is pleased to inform all members that the "**Member Get Member Campaign**" launched by the Institute is extended to 30 June 2019 due to popular demand.

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.

Terms and conditions apply.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: APRIL – JUNE 2019

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
MAY 2019								
Seminar: Quarterly Tax Updates	2 May	9a.m. - 5p.m	Kota Kinabalu	Various	315 *Subsidised fee	550	650	8 SE/012
Workshop: The Art of Taxation and Staying Relevant in Changing Times	2 May	9a.m. - 5p.m	Johor Bahru	Yong Mei Sim	350	450	500	8 WS/021
Workshop: The Art of Taxation and Staying Relevant in Changing Times	7 May	9a.m. - 5p.m	Penang	Yong Mei Sim	350	450	500	8 WS/022
Workshop: Tax Planning for Companies	14 May	9a.m. - 5p.m	MAICSA Training Room, Kuala Lumpur	Vincent Josef	400	500	600	8 JV/002
Workshop: The Art of Taxation and Staying Relevant in Changing Times	13 May	9a.m. - 5p.m	Melaka	Yong Mei Sim	350	450	500	8 WS/023
Workshop: The Art of Taxation and Staying Relevant in Changing Times	14 May	9a.m. - 5p.m	Kuala Lumpur	Yong Mei Sim	400	500	600	8 WS/024
Seminar: Quarterly Tax Updates	17 May	9a.m. - 5p.m	Ipoh	Various	315 *Subsidised fee	550	650	8 SE/013
Seminar: Intensive SST & Customs Seminar 2019: Legal & Operational	22 May	9a.m. - 5p.m	Kota Kinabalu	Various	450	550	650	8 SE/004
Seminar: Intensive SST & Customs Seminar 2019: Legal & Operational	23 May	9a.m. - 5p.m	Kuching	Various	450	550	650	8 SE/005
Workshop: Employment Tax and Payroll Tax Malaysia	23 May	9a.m. - 5p.m	Johor Bahru	Sakaya Johns Rani	350	450	500	8 WS/028
Seminar: Intensive SST & Customs Seminar 2019: Legal & Operational	30 May	9a.m. - 5p.m	Penang	Various	450	550	650	8 SE/006
Public Holiday ***(Labour's Day: 1 May, Wesak Day: 19 May, Nuzul Al-Quran: 22 May)***								
JUNE 2019								
Workshop: The Art of Taxation and Staying Relevant in Changing Times	17 June	9a.m. - 5p.m.	Kota Kinabalu	Yong Mei Sim	350	450	500	8 WS/025
Workshop: The Art of Taxation and Staying Relevant in Changing Times	18 June	9a.m. - 5p.m.	Kuching	Yong Mei Sim	350	450	500	8 WS/026
Workshop: Employment Tax and Payroll Tax Malaysia	18 June	9am-1pm	Kuala Lumpur	Sakaya Johns Rani	400	500	600	8 WS/029
Workshop: The Art of Taxation and Staying Relevant in Changing Times	24 June	9a.m. - 5p.m.	Ipoh	Yong Mei Sim	350	450	500	8 WS/027
Public Holiday ***(Hari Raya Aidilfitri : 5 – 6 June)***								

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 and Ms Zaimah at 03-2162 8989 ext 121, 108, 131, 107 and 119 respectively or refer to CTIM's website **www.ctim.org.my** for more information on the CPD events.

NATIONAL TAX CONFERENCE 2019

Closing Date : 15 July 2019

Conference Fees

* Registration of participants will be confirmed upon receipt of full payment or an acceptable employer's guarantee and settlement of previous outstanding dues.
* Walk–in participant registration is subject to availability of seats and full payment.
* Certificate of Attendance will be issued upon full attendance and receipt of full payment.
* Normal rate will be applicable for unpaid early bird registrations after 5 June 2019.

Registration Fee	Early Bird Fee *(with payment before or on 30 June 2019)*	Normal Fee *(after 30 June 2019)*
LHDNM officer / CTIM member	RM1,484	RM1,696
Member's Firm Staff Member of Supporting Body Member / Staff of Sponsor	RM1,590	RM1,802
Non-Member	RM1,696	RM2,014

**Fee is inclusive of 6% Service Tax*

PARTICIPANTS' DETAILS

Participant 1 Full name as per I/C (Dato' / Datin / Dr / Mr / Mrs /Ms): ☐ Vegetarian Meal

____

Designation: ______________ I/C No: ______________

Email ______________ Mobile No. ______________

Membership Affiliation

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

☐ CTIM ☐ ACCA ☐ CIMA ☐ CPA Australia ☐ IIAM ☐ MAICSA ☐ MFPC ☐ MIA ☐ MICPA
☐ Member's Firm Staff

Membership number ______________

Participant 2 Full name as per I/C (Dato' / Datin / Dr / Mr / Mrs /Ms): ☐ Vegetarian Meal

____

Designation: ______________ I/C No: ______________

Email ______________ Mobile No. ______________

Membership Affiliation

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

☐ CTIM ☐ ACCA ☐ CIMA ☐ CPA Australia ☐ IIAM ☐ MAICSA ☐ MFPC ☐ MIA ☐ MICPA
☐ Member's Firm Staff

Membership number ______________

ORGANISATION'S DETAILS

Organisation: ______________

Industry: ______________ Contact Person: ______________

Address: ______________

____

Email: ______________ Tel: ______________ Fax: ______________

TAX INVOICE to be issued under:

☐ Company

☐ Individual

Authorised Signature & Company Stamp:

PAYMENT DETAILS

I / We hereby enclose*

☐ **Online Payment** via JomPAY

Biller Code: 78659
Ref-1: NTC2019
Ref-2: Mobile Number

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

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

Card Number ☐☐☐☐ ☐☐☐☐ ☐☐☐☐ ☐☐☐☐

Cardholder's Name ______________ Cardholder's Signature
as per credit card

Expiry Date: ______________ ______________

☐ **Cash** for amount of RM ______________

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

*(non-refundable) and made payable to "**CTIM-NTC**". Please write NTC 2019, your name, contact number at the back of the cheque and mail together with registration form to the Conference Secretariat.*

______________ ______________
Authorised Signature & Name Date

Conference Details & Registration

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

Contact Person
Ms Yus / Ms Zaimah / Mr Jason / Ms Jaslina
Tel : 03-2162 8989 Ext 121 / 119 / 108 / 131
Fax : 03-2161 3207 / 2162 8990
E-mail : ntc@ctim.org.my, cpd@ctim.org.my
Website : www.ctim.org.my

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

Contact Person
Ms Zawiyah / Ms Wan Juliana / Mr Zura Zuwan
Tel : 03-8924 3600 Ext 132402 / 132039 / 132192
Fax : 03-8925 7005
E-mail : ntc@hasil.gov.my
Website : www.hasil.gov.my

Terms & Conditions

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

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

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

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

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

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

Recording
Video / Sound recording is strictly prohibited.

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

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

DAY 1 5 AUGUST 2019

7:30 am **Registration & Arrival of Guests**

9:00 am **Arrival of Guest of Honour**
YB Tuan Lim Guan Eng
Minister of Finance (*invited*)

9:10 am **Welcoming Speech**
Ms Seah Siew Yun
President
Chartered Tax Institute of Malaysia

9:20 am **Opening Address**
YBhg Dato' Sri Sabin Bin Samitah
Chief Executive Officer
Lembaga Hasil Dalam Negeri Malaysia

9:30 am **Keynote Address by Guest of Honour**
YB Tuan Lim Guan Eng
Minister of Finance (*invited*)

10:00 am **Morning Refreshments/ Tour of Exhibition Booths / Press Conference**

11:00 am **TOPIC 1**
Economic Prosperity Towards A Resurgent Malaysia

Moderator:
Dr Sukhdave Singh
Director
Khazanah Nasional Berhad

Panel Members:
Dr Muhammed Abdul Khalid
Economic Advisor to Prime Minister
Prime Minister Office

Dr Anthony Dass
Group Chief Economist
AmBank

12:15 pm **Question & Answer Session**

12:30 pm **Networking Lunch & Tour of Exhibition Booth**

2:00 pm **TOPIC 2**
LHDNM's Strategies & Challenges

Moderator:
Ms Farah Rosley
Deputy President
Chartered Tax Institute of Malaysia

Speaker:
YBhg Dato' Sri Sabin Bin Samitah
Chief Executive Officer
Lembaga Hasil Dalam Negeri Malaysia

3:00 pm **Question & Answer Session**

3:15 pm **TOPIC 3**
Navigating Tax Reforms

Moderator:
Ms Phan Wai Kuan
Council Member
Chartered Tax Institute of Malaysia

Panel Members:
YBhg Datuk Mohd Nizom Sairi
Deputy Chief Executive Officer
(*Tax Operation*)
Lembaga Hasil Dalam Negeri Malaysia

Dr Veerinderjeet Singh
Group Chairman
Axcelasia Inc

Mr Lee Heng Guie
Executive Director
Socio-Economic Research Centre

4:30 pm **Question & Answer Session**

4:45 pm **End of Day 1 & Refreshments**

DAY 2 6 AUGUST 2019

8:50 am **Overview of Day 1**
Mr K Sandra Segaran
Co-organising Chairman of NTC 2019
Chartered Tax Institute of Malaysia

9:00 am **TOPIC 4**
Digital Economy - Online Transactions

Moderator:
YBhg Datuk Noor Azian Abdul Hamid
Deputy Chief Executive Officer (Policy)
Lembaga Hasil Dalam Negeri Malaysia

Speaker:
Mr Eric Robert
Tax Policy Advisor
Organisation for Economic Co-Operation and Development (OECD)

Panel Members:
Mr Shaharrudy Othman
Director, Department of International Taxation
Lembaga Hasil Dalam Negeri Malaysia

Ms Sim Kwang Gek
Country Tax Leader
Deloitte Malaysia

10:30 am **Question & Answer Session**

10:45 am **Morning Refreshments/Tour of Exhibition Booths**

11:15 am **TOPIC 5**
Deductible Expenses Section 33(1) - To Allow or Not to Allow?

Moderator:
Mr Vijey M Krishnan
Partner
Raja, Darryl & Loh

Speaker:
Mr K Sandra Segaran
Co-organising Chairman of NTC 2019
Chartered Tax Institute of Malaysia

Panel Member:
Ms Neng Juliana Ismail
Director, Drafting and Legal Advisory Division
Legal Department
Lembaga Hasil Dalam Negeri Malaysia

12:30 pm **Question & Answer Session**

12:45 pm **Networking Lunch & Tour of Exhibition Booths**

2:15 pm **TOPIC 6**
Forum - Updates of Tax Cases

Moderator:
YBhg Datuk Seri Gopal Sri Ram *(Invited)*
Retired Federal Court Judge

Panel Members:
Mr Abu Tariq Jamaluddin
Director, Legal Department
Lembaga Hasil Dalam Negeri Malaysia

Mr S. Saravana Kumar
Partner
Lee Hishammuddin Allen & Gledhill

3:30 pm **Question & Answer Session**

3:45 pm **TOPIC 7**
Roundtable Discussion on Current Issues & Concerns

Moderator:
Ms Leow Mui Lee
Council Member
Chartered Tax Institute of Malaysia

Panel Members:
YBhg Datuk Dr Sotimin Muhalip
Director, Tax Operation Department
Lembaga Hasil Dalam Negeri Malaysia

Mr Soh Lian Seng
Council Member
Chartered Tax Institute of Malaysia

4:45 pm **Question & Answer Session**

5:00 pm **End of Conference & Refreshments**

ORGANISED BY

LHDN MALAYSIA

ctim
CHARTERED TAX INSTITUTE OF MALAYSIA

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE 2019

5 & 6 AUGUST 2019 | MONDAY & TUESDAY
KUALA LUMPUR CONVENTION CENTRE

ECONOMIC PROSPERITY & TAXATION

The Largest Tax Conference in Malaysia is BACK!

Join us for tax technical updates, networking and interaction with the authorities for exchange of knowledge, sharing of alternative views and discussion on contemporary issues.

Official Opening by
YB Tuan Lim Guan Eng
Minister of Finance *(Invited)*

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

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