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BUDGET 2021: "RESILIENT AS ONE, TOGETHER WE TRIUMPH"

- Key Amendments via the Finance Act 2020
- Transfer Pricing Challenges That Keep Taxpayers Awake at Night
- Key Court Decisions on Transfer Pricing

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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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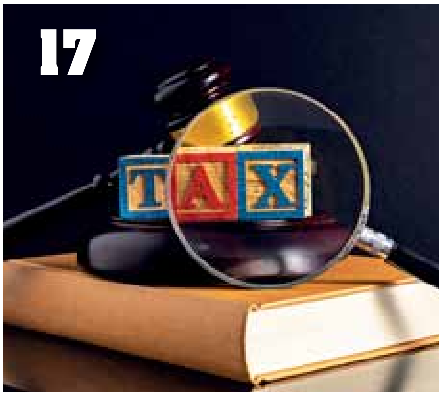

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The Institute welcomes original contributions which are of interest to tax professionals, lawyers, academicians and students. They may cover local or international tax developments. Article contributions should be written in UK English. All articles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

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

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FARAH ROSLEY

HIGHLIGHTS OF BUDGET 2021 AND FINANCE BILL 2020*

"Resilient As One, Together We Triumph" - the much-anticipated National Budget 2021 was unveiled on 6 November 2020. Being an expansionary budget, the allocation for Budget 2021 of RM322.5 million happens to be the largest in Malaysia's history (Budget 2020: RM297 billion). No new taxes were introduced by the government in Budget 2021. However, the government's projected revenue collection for year 2021 is RM236.9 billion (Year 2020: RM227.3 billion).

Budget 2021 was formulated based on three integral goals – Rakyat's Wellbeing, Business Continuity, Economic Resilience. Following the announcement of Budget 2021, the Finance Bill 2020* was tabled for its first reading in Parliament on 16 November 2020 with several critical changes.

Budget 2021 and the Finance Bill 2020*

The measures proposed in the Budget 2021 and Finance Bill 2020* to reduce the burden of the people and spur the economy are most welcomed. The measures include the following amongst others: -

- Tax reliefs for medical expenses (including vaccination expenses) and enhanced tax reliefs for expenses on medical treatment for serious diseases, full medical check-up, special needs and parental care.
- Allow for greater disposable income by reducing employee's minimum EPF contribution rate from 11% to 9% for the year 2021 and allowing those whose income has been affected by the COVID-19 pandemic to apply for withdrawal of up to RM10,000 or RM60,000 from their EPF Account 1.
- Assisting the B40 and M40 groups by reducing the income tax rate for those whose chargeable income is between RM50,001 and RM70,000 by one (1) percentage point (which is expected to benefit 1.4 million taxpayers), extending the period of stamp duty exemption on all life insurance products (not exceeding RM100) for another five years until 2025, extending the additional tax deduction until 2025 for employers who employ senior citizens and assisting Malaysians to own residential property by fully exempting stamp duty (for the first residential property) on instrument of transfer and loan agreement for the first RM500,000 of the value of the property or loan amount which is given for five years ending year 2025.
- Attracting foreign direct investments and helping to map Malaysia in the global supply chain including: -
  - Rolling out incentives to encourage investments by manufacturing companies of pharmaceutical products and vaccines;
  - Expanding the scope of tax incentives for commercialisation of research and development findings;
  - New Global Trading Centre incentive scheme; and
  - Relaxing the conditions and extending the incentives for Principal Hub.

It is noted that the following proposed provisions in the Finance Bill 2020* may have severe implications on businesses and taxpayers: -

- Liability to pay taxes notwithstanding institution of proceedings under any written law;
- Introduction of a statutory definition of "plant" for the purposes of claiming capital allowances; and
- Penalties for failure to furnish contemporaneous transfer pricing (TP) documentation and surcharge on TP adjustments.

The Institute has taken the above matters into account as well as other issues raised by members arising from the Budget 2021 and Finance Bill 2020*. These issues have been jointly submitted by the Institute together with other professional bodies to the Ministry of Finance and the tax authorities for their consideration. Members may refer to the joint submission in the Institute's e-circular to members.

*Note: * The Finance Bill 2020 was subsequently passed in Parliament and is now the Finance Act 2020, gazetted on 31 December 2020. There is no material change between the Finance Bill 2020 and the Finance Act 2020.*

Other submissions to the authorities

The following are the key submissions to various authorities from October 2020 to December 2020 on issues raised by members: -

Ministry of Finance (MoF)

- Proposed amendments to the Service Tax Regulations in relation to the interpretation of maintenance management services.
- Letter to the Minister of Finance, YB Tengku Dato' Sri Zafrul on the proposal of voluntary disclosure for indirect tax on 28 October 2020.
- Inputs on the Public Consultation Document on the OECD's Reports on the Pillar One and Two Blueprints on the Tax Challenges of Digitalisation, submitted jointly with other professional bodies.

Inland Revenue Board of Malaysia (IRBM)

- Letter to the IRBM to request for an extension of time (EOT) up to 15 November 2020 for all tax filing cases which must be submitted to the IRBM by 31 October 2020 (for 31 December 2019 and 31 January 2020 financial year end tax filing cases) or by 28 October 2020 (for submission of tax returns under the LBATA 1990 for the year of assessment 2020) including payment of balance tax.

- Letter to the IRBM to request for consideration to allow for all cases to be approved when reviewing applications for EOT and provide some room in terms of additional time to file the tax returns for taxpayers during this challenging time.
- Feedback / comments on the following IRBM's draft Public Rulings (PR): -
  – Special Allowances for Small Value Assets (3rd Edition).
  – Commercialisation of Public Resource-Based Research and Development Findings, Part I – Tax Incentive for Investor Company.
- Letter to the IRBM to obtain further clarification/confirmation on the words "rights of software ownership" in Rule 2 of the Income Tax (Capital Allowance) (Development Cost for Customised Computer Software) Rules 2019 [P.U. (A) 274/2019].
- Submission of feedback and comments on the IRBM's Tax Audit Framework – Finance and Insurance.
- Submission of issues arising from post Special Voluntary Disclosure Programme.
- Letter to request for an update on the clarification obtained from the IRBM on system update on the revision of estimate tax in the 3rd month instalment.
- Memorandum on issues arising from Practice Note No. 3, PRs, Gazette Orders, Guidelines, FAQs, *Prihatin / Penjana* Tax Measures 2020.

Courtesy visit to the Chief Executive Officer (CEO) of the Malaysian Investment Development Authority (MIDA)

Several Council members paid a courtesy visit to the CEO of MIDA, YBhg Dato' Azman Mahmud who was in attendance together with a few directors. Amongst the topics discussed were on the economy, investment and tax incentives, and on potential collaboration in the near future. We wish to accord our sincere appreciation to the CEO of MIDA for the time given and the exchanges of information and thoughts during the visit.

Participation in the "Seminar Percukaian Kebangsaan 2020" (SPK 2020)

The IRBM had organised a series of SPK 2020 via webinars from 12 November 2020 – 23 November 2020. I am pleased that Chee Yen, Thenesh and I from the Council were invited to be panel members for the event to lend perspective on the recent Budget 2021 announcement and views from the tax practitioners. The Institute cherished the opportunity for the exchange of thoughts and ideas with the tax authorities.

Public Practice Committee (PPC)

A webinar on Tax Agent Licence & MyCukai was held on 22 October 2020 which was chaired by the PPC Chairman, Zen Chow. The speakers who were from the MoF and the IRBM addressed many questions and common issues from participants with regards to tax agent licence and MyCukai. The webinar was well received by the participants.

Budget 2021 Webinars

CTIM successfully held a series of Budget 2021 webinars from 19 November 2020 to 3 December 2020 which were projected live to participants from the Kuala Lumpur Convention Centre. Distinguished representatives from the MoF, IRBM, legal and tax fraternities provided insightful thoughts and lively discussions on the Budget 2021 proposals and the latest tax developments. I wish to thank the speakers, moderators and panellists for making the Budget 2021 webinar a success and the sharing of knowledge and information that is most important and useful to all. For upcoming CPD events, members are encouraged to look up our CPD Event Calendar for Quarter 1 of 2021 (January 2021 to March 2021) in this *Tax Guardian* and the CPD events listed in the Institute's website (www.ctim.org. my).

Examination

The Institute conducted the CTIM December examinations online from 14 December 2020 to 17 December 2020 with 125 students signed up for an array of eight subjects offered. This is the first time the examinations were conducted online and I commend the students for rising to the occasion under the new normal.

The Institute also successfully organised the Intensive Revision Course for the Advanced Taxation 2 and Revenue Law students from 4 November 2020 to 5 November 2020 and from 10 November to 11 November 2020 which were facilitated by Mr. Abdul Salam Chandran. Students had found the Course invaluable in preparing for their December 2020 examinations. Thank you, Abdul Salam.

Congratulations and Thank You

I would like to also take this opportunity to convey my heartiest congratulations to the CEO/Director General of IRBM, YBhg Dato' Sri Dr. Sabin Samitah for the extension of his service by the Minister of Finance, YB Tengku Dato' Sri Zafrul until 31 December 2022. The Institute values the close ties with the IRBM fostered under the astounding leadership of Dato' Sri Dr. Sabin.

Here I would also like to acknowledge and thank all members, the Council, Committees, Working Groups and the Secretariat for their continuous support of the Institute. You have all played a major role in advancing the Institute as the premier body for tax professionals in Malaysia. The year 2020 is indeed a challenging year where we are all faced with circumstances which are unprecedented and having to make path in unchartered territories. A big thank you again to everyone for the continued and relentless support as we went through 2020.

Greetings and Wishes

Wishing all members, *"Happy New Year"* and *"Gong Xi Fa Cai"!* In the spirit of *"kitajagakita"*, my 2021 new year wishes and prayers would include a strong global economic recovery, a stronger and continued growth in CTIM and certainly the end of the COVID-19 pandemic.

Editor'sNote

YEO ENG PING

Happy New Year 2021 to all our readers! The ushering of this year is definitely filled with anticipation of much hope and expectation for a better year than any other in my memory. We spent more than nine months last year under COVID-19 lockdown conditions and this year we hope to beat the virus, with promising vaccines well on the way. So much is being written on what we have learned as a member, worker, business owner in this global economy – personally, one change that I was initially skeptical about but has won me over is the regular use of technology to conduct meetings and events. In CTIM we are also looking at picking up positive innovations to keep improving our service delivery to our members. For example, would you switch to receiving the *Tax Guardian* electronically?

Budget 2021 was generally well-received for its focus on helping the people and businesses mitigate the impact of the COVID-19. There were however some changes in the Finance Act 2020 that raised eyebrows as we see more taxpayers' rights being eroded as in the following areas:

- Transfer Pricing (TP) – the elevation of the importance of TP documentation with an imposition of a penalty for failure to furnish contemporaneous TP documentation; introduction of a surcharge of not more than 5% of increase in any income or reduction in deduction/loss due to a TP adjustment; and the Director General of Inland Revenue (DGIR) being given the power to disregard certain structure or arrangements which "differs from what would have been adopted by independent persons behaving in a commercially rational manner" and where the actual structure impedes the DGIR from determining an appropriate arm's length transfer price.
- Tax appeals - the attempt to limit the inherent jurisdiction of the courts, where tax remains payable notwithstanding the institution of proceedings against the government or the DGIR under any other written law, for example an appeal to the courts via judicial review.
- Capital allowance – the introduction of a new definition of "plant" where taxpayers may be disallowed capital allowance claims on certain buildings or assets moving forward, despite positions that have been taken by the Courts in earlier case laws, for example car parks and intangible assets (e.g. customer databases).

The new year is a time of reflection and as we look towards the future of taxation, we should not forget the importance of maintaining the right balance in the relationship between taxpayer and tax authority. The State's power of taxation and tax authorities' powers to administer tax laws are important to the functioning of civil society but ultimately these powers need to be exercised in a manner that builds mutual respect and trust with taxpayers. India has in August 2020 introduced a Taxpayers Charter, and joins a number of other countries which has introduced a Taxpayers' Charter or Bill of Taxpayers Rights, such as the United Kingdom, United States, Australia and Hong Kong. These commitments set out the basic rights of taxpayers and what taxpayers can expect in their interactions with tax authorities, and also the obligations of taxpayers. There is usually also a mechanism to track and disclose the performance of the tax authority against the commitments. For example in the United Kingdom, the Taxpayers Charter is grounded in the Finance Act 2009, which provides that the charter must "include standards of behaviour and values to which [HMRC] will aspire when dealing with people in the exercise of their functions" and produce an annual report "reviewing the extent to which [HMRC] have demonstrated the standards of behaviour and values included in [the] Charter."

The Malaysian tax system and administration is progressive, fair, robust and reliable for most part, and while we do not have a formal Taxpayers' Charter or Bill of Rights for taxpayers, many of the elements are provided for either under the legislation, courts or administrative practices in the published framework on Audits and Investigations. But the idea of having a Taxpayers Charter or a Bill of Rights is to recognise in clear and no uncertain terms the standards of behaviour and service taxpayers can expect, and to create more transparency on how these standards are met. As the tax laws and regulations become more complex, international, and requests for taxpayer information expand and is shared across borders and among tax authorities more and more, in an environment where we can expect a sharp increase in tax controversy, this is a good time to consider whether we have the right balance between the powers of the state and administration vis a vis rights of taxpayers, and whether we need to enshrine some basic principles of engagement in a charter for taxpayers. I set out India's taxpayer charter below.

I wish everyone a great year ahead, with good health and success!

The Taxpayers' Charter of India states the Income Tax Department is committed to:

1. PROVIDE FAIR, COURTEOUS, AND REASONABLE TREATMENT

The Department must treat all the taxpayers' in a well-mannered way. They must provide courteous and fair treatment and handle all matters in a professional mode.

2. TREAT TAXPAYER AS HONEST

The attitude of the officers against the assessees should be 'innocent until proven guilty' rather than vice versa. The taxpayers should not be subject to unwarranted scrutiny unless the officials believe they have evidence which is antithetical.

3. PROVIDE MECHANISM FOR APPEAL AND REVIEW

When aggrieved by an assessment order, the Taxpayer should have specific remedies such as the ability to appeal to higher authorities or a review mechanism that is fair and impartial.

4. PROVIDE COMPLETE AND ACCURATE INFORMATION

The Department is expected to keep the taxpayers up to date with their compliance obligations. It is already doing this to a certain extent by sending reminders for advance tax instalments, displaying due dates for filing of various types of returns on its website, etc.

5. PROVIDE TIMELY DECISIONS

The passing of the assessment order will have to be done within the time frame prescribed by the law. Further, the Department should also ensure that prompt response is given to all the taxpayers' enquiries and requests.

6. COLLECT THE CORRECT AMOUNT OF TAX

The Department has to be righteous and fair with all their proceedings. They have to collect only the tax amount that is legally due from the Taxpayer and must ensure that all the rightful deductions, credits and exemptions are duly allowed. For example, the introduction of new disclosures in form 26 AS facilitates the proper calculation and collection of tax.

7. RESPECT PRIVACY OF TAXPAYER

The Taxpayer can be saved from undue distress while carrying out the process of inquiry, examination or enforcement action by minimising intrusion as much as possible.

8. MAINTAIN CONFIDENTIALITY

Income tax returns contain complete financials and other disclosures that are sensitive. The Department should maintain the confidentiality of all such information collected from the Taxpayer and ensure such information is shared if required by law only.

9. HOLD ITS AUTHORITIES ACCOUNTABLE

There should be a mechanism to improve accountability for the actions of the various income-tax authorities, especially where they fail to conform to the Charter.

10. ENABLE REPRESENTATIVE OF CHOICE

The assessee has the right to appoint a tax representative recognised under the tax laws to handle his/her proceedings on his/her behalf. The Department may be kept informed of such representations.

11. PROVIDE MECHANISM TO LODGE COMPLAINT

The Department has already provided the facility to lodge grievances easily, either physically or by visiting the official website. Further, E-Nivaran, a unified grievance management system, has been launched that integrates all the complaints received and enables fast-tracking of the same until a solution has been drawn.

12. PROVIDE A FAIR & JUST SYSTEM

Taxpayers should be treated well; the Department is expected to behave with integrity. It should resolve problems promptly and make fair decisions as per the law.

13. PUBLISH SERVICE STANDARDS AND REPORTS PERIODICALLY

Establishing standards for service delivery will definitely help speed up the dispute resolution and ensure that the same quality of service is maintained.

14. REDUCE COST OF COMPLIANCE

The Department has to reduce the compliance costs by making it easier for the taxpayers to understand their tax-related obligations and help them save time and effort by reducing their workload. The pre-filling of some of the information in the tax returns seems to be a step towards achieving this measure.

… and expects taxpayers to

1. BE HONEST AND COMPLIANT
The conduct of the Taxpayer is expected to be free of deceit by acting within the law and disclosing all the relevant information as and when required. He/she has to ensure that all the assessable income has been rightly declared and should not claim for deductions, rebates and credits to which he/she is not entitled.

2. BE INFORMED
While the Department is committed to providing all the information that is required for compliance obligations, it is the Taxpayer's responsibility to ensure that they read such information and keep themselves updated about changes in any of the tax laws. The Department may be approached in case of any queries or assistance in this regard.

3. KEEP ACCURATE RECORDS
Maintaining the books of accounts and other prescribed documents as per various applicable laws will help the Taxpayer and the tax authorities arrive at the correct computation of tax. The Taxpayer must not engage in any manipulation of such records with the intention of misleading the Department.

4. KNOW WHAT THE REPRESENTATIVE DOES ON HIS/HER BEHALF
The Department gives the Taxpayer the right to appoint a representative. However, it is the responsibility of the Taxpayer to keep himself/herself updated with regards to the information and submissions made on his/her behalf. The Taxpayer will be held responsible for all actions done by the authorised representative on his/her behalf.

5. RESPOND IN TIME
The Taxpayer has to ensure that all the tax details are furnished and submitted in the required format to the Department within the prescribed time frame. Replies to notices, answering queries raised during assessments, filing of returns and other documents should be done promptly.

6. PAY IN TIME
The taxpayers are expected to pay the tax amount on time to avoid any penalty or interest which will follow due to late payment. This includes the payment of advance tax instalments, self-assessed tax and any increase in taxes due to additions made by the assessing officer as a result of his assessment.

InstituteNews

International Strategic Institute (ISI) organised the 2nd Malaysia Tax Policy Forum on 29 September 2020 at the Everly Hotel, Putrajaya. CTIM President Ms Farah Rosley moderated the session titled "Should We Bring Back GST to Improve Fiscal Health" together with fellow panel members - Mr David Lai, Mr Thenesh Kannaa, Mr Tan Eng Yew and Ms Ng Sue Lynn.

On 12 October 2020 Ms Farah Rosley accompanied by Mr Soh Lian Seng, Ms Stefanie Low and Ms Margaret Kok paid a courtesy visit to YBhg Dato' Azman Mahmud, MIDA Chief Executive Officer at his office. Together with MIDA directors, discussion was held on various issues on the economy, investment & incentives as well as potential collaboration.

The CTIM Perak Branch Committee led by Mr Lam Weng Keat also paid a courtesy visit to Mr Ammar Johari, the newly appointed Ipoh Director of the IRBM at his office on 20 October 2020. Also in attendance were Ms Zaliha Ghazali (Deputy Director), Mr Rajendran (Head of Stamp Duty) and Mr Saiful Nizam (Customer Care Officer).

CTIM participated in various activities relating to the Budget 2021 as follows:

- **Pre-Budget article by CTIM** on

"Taxation to Support Economic Recovery During Challenging Times" was published on CTIM Facebook on 22 October 2020;

- **Pre-Budget article** "Simplifying Tax Administration and Compliance Can Lead to Higher Collections" by Ms Farah Rosley was published in *The Star* and shared on CTIM Facebook on 29 October 2020;
- **An interview session** with CTIM President Ms Farah Rosley, on Budget 2021 was conducted by RTM on 29 October 2021 and aired on Berita Perdana TV 1 – Slot Ekonomi on 31 October 2020;
- **A Media Release** titled CTIM on Budget 2021 was uploaded on CTIM Facebook on 6 November 2020;
- **A video clip on "Budget 2021 – Views of CTIM Council Members"** presented jointly by Ms Farah Rosley, Mr Soh Lian Seng, Mr Chong Mun Yew, Ms Leow Mui Lee, Ms Stefanie Low, Mr Steve Chia, Mr Thenesh Kannaa and Mr Zen Chow. This clip was uploaded on CTIM Facebook on 7 November 2020; and
- Ms Farah Rosley took part as a **panel member in a live session** in *"Ruang Bicara – Belanjawan 2021: Apa Seterusnya"* by Bernama TV on 7 November 2020. The live session was aired on Bernama TV channel and live Facebook.
- CTIM East Coast Branch in collaboration with the Kuantan Chinese Chamber of Commerce & Industry organised an **Online 2021 Budget Talk** on 20 December 2020 via Zoom. Mr Wong Seng Chong, East Coast Branch Chairman represented CTIM as a speaker together with CTIM Fellow member, Mr George Tan.
- Mr Kenny Chong, Chairman of the CTIM Sarawak Branch was the invited speaker at the **2021 Budget Talk** organised by the Kuching Chinese Chamber of Commerce & Industries on 18 December 2020. This seminar was attended by 70 participants of which 40 participants joined online via Zoom.

The Education Committee of CTIM conducted Career Talks via Webinars (details as below) to inform students of the various great reasons for choosing a career in taxation and the benefits of obtaining a CTIM Professional qualification. Lecturers and students participated in the Q&A session.

No	University	Programme	Speakers	Date	No. of students
1	University Tunku Abdul Rahman (UTAR) - Sg Long	Bachelor of Accounting (Hons) students	Ms Stefanie Low, Mr Chong Mun Yew, Mr Daniel Woo	4 Nov 2020	150
2	University Tunku Abdul Rahman (UTAR) - Kampar	Opened to all students	Ms Stefanie Low, Mr Chong Mun Yew, Mr Lam Weng Keat	27 Nov 2020	29
3	University Malaya (UM)	Opened to all students	Mr Chong Mun Yew	9 Dec 2020	110
4	Tunku Abdul Rahman University College (TARUC) - Kampar	Opened to all students	Ms Stephanie Low, Mr Chong Mun Yew, Mr Lam Weng Keat	11 Dec 2020	105
5	Universiti Malaysia Pahang	Master of Business Administration	Mr Wong Seng Chong	12 Dec 2020	21

CPD EVENTS

The following CPD events were successfully conducted:

Topic	Date	Venue/Platform	Speaker/(s)
Workshop: Latest Tax Updates & Case Laws	2 Oct	Penang	Ms Yong Mei Sim
Workshop: Taxation and Property Developers	8 Oct	Kuala Lumpur	Mr Harvindar Singh
Tax Audits & Investigations	13 Oct	Webinar	Mr Soh Lian Seng & Ms Stefanie Low
e-Commerce/Digital Service Tax	16 Oct	Webinar	Mr Thenesh Kanna, Mr Alan Chung & Mr Steve Chia
Tax Agent License/MyCukai	22 Oct	Webinar	Mr Zen Chow, Puan Siti Juriani (MOF) & Mr Raja Roslan (IRB)
Place of Doing Business – S.12(3) & 12(4)	3 Nov	Webinar	Mr Chong Mun Yew & Mr Steve Chia
Workshop: Malaysia Property Taxes – Practical Issues & Insights	4 Nov	Webinar	Ms Yong Mei Sim
Analysis of Recent Tax Cases & Customs Cases	5 Nov	Webinar	Mr Mohd Noor & Mr Saravana Kumar
Workshop: Taxation Opportunities in the Economic Recovery Plan (PENJANA)	9 Nov	Webinar	Mr Vincent Josef
Workshop: Malaysia Property Taxes – Practical Issues & Insights (re-run)	4 Dec	Webinar	Ms Yong Mei Sim
Workshop: Selected Public Rulings & Revenue Guidelines	15 Dec	Webinar	Mr Vincent Josef

2021 Budget Seminars

CTIM Budget Seminars which were scheduled to be organised physically were changed to virtual platform due to the latest announcement and current development of COVID-19 pandemic. As a result, for the 1st time, the Budget Seminars were conducted via live streaming from the Kuala Lumpur Convention Centre with stupendous effect and fully equipped studio equipment.

Below are the details of the Budget Seminars organised by the Institute:

Date	No of pax	CTIM Speakers	Other Speakers
19 Nov 2020, Thursday	615	Ms Farah Rosley Mr Chow Chee Yen Mr K Sandra Segaran	Ms Mahfuzah Bahrin (MOF) Mr Nakhafi Hassan (MOF) Mr Abu Tariq Jamaluddin (IRBM) Mr Amarjeet Singh (EY) Mr Jagdev Singh (PWC) Ms Sim Kwang Gek (Deloitte) Mr Tai Lai Kok (KPMG)
26 Nov 2020, Thursday	208	Ms Farah Rosley Mr Thenesh Kannaa Mr David Lai Mr Nicholas Crist	Mr Vijey M Krishnan (RDL)
27 Nov 2020, Friday	165	Mr Chow Chee Yen Mr Chong Mun Yew Mr Koong Lin Loong Mr Alan Chung	Ms Irene Yong (SD)
30 Nov 2020, Monday	150	Mr K Sandra Sengaran Ms Stefanie Low Mr Mohd Noor Abu Bakar Mr Zen Chow	Mr Jason Tan (LHAG)
3 Dec 2020, Thursday	272	Mr Alan Chung Ms Leow Mui Lee Mr Steve Chia	Ms Neng Juliana Ismail (IRBM) Ms Norhaslinda Bukhari (IRBM) Mr S Saravana Kumar (RDS)

SEMINAR PERCUKAIAN KEBANGSAAN (SPK) 2020

The following Council Members were involved as Panellist in the Seminar Percukaian Kebangsaan (SPK) organised by the Inland Revenue Board of Malaysia (IRBM):

Name	Date of SPK
Ms Farah Rosley	12 November 2020
Mr Chow Chee Yen	17 November 2020
Mr Thenesh Kannaa	19 November 2020

BUDGET 2021

"Resilient As One, Together We Triumph"

Chong Mun Yew & Shanthini Parama Dorai

On 6 November 2020, the Minister of Finance, YB Senator Tengku Dato' Sri Zafrul Tengku Abdul Aziz delivered the Budget 2021 speech amid an unprecedented virus outbreak which has not only claimed many lives but also crippled the economy locally and globally. With the theme "Resilient As One, Together We Triumph", this largest and expansionary budget in Malaysian history is aimed at helping the country to cope with the economic impact of COVID-19.

As a continuity of the PRIHATIN, PRIHATIN SME PLUS, PENJANA and KITA PRIHATIN stimulus packages, Budget 2021 was formulated based on Three Integral Goals:

- First: Rakyat's Well-Being
- Second: Business Continuity; and
- Third: Economic Resilience.

The three goals are subdivided into various strategies. This article looks at some of the Budget 2021 proposals in the light of these goals.

FIRST GOAL - RAKYAT'S WELL-BEING

Strategy 1: COVID-19 Pandemic and Public Health

This strategy focusses on allocations to the COVID-19 Fund and public health related expenditures. The government allocated additional assistance for the people's well-being, needs of our frontliners and also for the expected procurement of the COVID-19 vaccine. In this respect, a one-off payment of RM500 will be provided to the frontliners from the Ministry of Health. However, the Finance Minister told the Dewan Rakyat in his winding-up speech on the Supply Bill 2021 that the government has agreed to extend this assistance to all frontliners, whereby they will receive a one-off RM300 payment. In addition, the tax relief scope for medical treatment expenses will be expanded to cover vaccination expenses such as pneumococcal, influenza and COVID-19. This tax relief, which is limited to RM1,000 is given on vaccination expenses for the taxpayer, spouse and children. The government will also increase the tax relief limit on medical expenses for self, spouse and child for serious diseases from RM6,000 to RM8,000 and tax relief limit for expenses on full medical check-up from RM500 to RM1,000. In addition, the limit of tax relief on expenses for medical treatment, special needs and parental care is also increased from RM5,000 to RM8,000.

Strategy 2: Safeguarding the Welfare of Vulnerable Groups

Regardless of the current or coming health effects of COVID-19, the pandemic has affected and will likely continue to affect household finances for years to come. The government has introduced several measures to protect the needs of these vulnerable groups namely, the disabled, individuals in the B40 category, fishermen and farmers. More cash assistance in a selective and targeted manner has been introduced to alleviate the cash flow burden of these vulnerable groups. The M40 group who are also affected by pay cuts and jobs lost due to the pandemic, were not left out from Budget 2021. Income tax reduction was given for resident individuals by one percentage point for the chargeable income band of RM50,001 to RM70,000. Although this reduction effectively only translates to a tax saving of RM200, the impact of this tax cut should be looked at together with the other existing tax reliefs. In addition, to assist taxpayers who have lost their jobs due to the current economic condition arising from the COVID-19 pandemic, the income tax exemption limit for compensation for loss of employment is increased from RM10,000 to RM20,000 for each year of completed service. This proposal is effective for years of assessment (YAs) 2020 and 2021.

In addition, the tax relief scope for medical treatment expenses be expanded to cover vaccination expenses such as pneumococcal, influenza and COVID-19. This tax relief, which is limited to RM1,000 is given on vaccination expenses for the taxpayer, spouse and children. The government will also increase the tax relief limit on medical expenses for self, spouse and child for serious diseases from RM6,000 to RM8,000 and tax relief limit for expenses on full medical check-up from RM500 to RM1,000.

Strategy 3: Generating and Retaining Jobs

This strategy is aimed at curtailing the increase in unemployment which had resulted from the slowing of the economy following the COVID-19 pandemic. In order to ensure individuals are able to retain their jobs and also generate new jobs, the government will enhance the existing hiring incentive programme under PERKESO. In order to encourage effective job creation by upgrading basic skilled and low-paying jobs, the scope of tax relief for study fees is expanded to cover expenditures incurred for attending up-skilling and self-enhancement courses. This tax relief which is limited to RM1,000 for each YA is effective for YAs 2021 and

2022. The Wage Subsidy Program which was announced through the stimulus packages is extended for another three (3) months with a more targeted approach specifically for the tourism and retail sector.

Strategy 4: Prioritising the Inclusiveness Agenda

The fourth strategy which prioritises the inclusiveness agenda contained measures in empowering the Bumiputera and extended to upholding Islamic tenets, enhancing the role of women, community-based initiatives, enhancing rural infrastructure as well as youth and sports development. A tax deduction is given for unit holders who endow their units into Amanah Saham Nasional Berhad wakaf funds. With effect from YA 2021, the existing income tax relief for disabled spouse will be increased from RM3,500 to RM5,000. In addition, the lifestyle relief for individual taxpayers is increased from RM2,500 to RM3,000 where the additional RM500 is specifically provided for expenditure related to sports including participating fee for sports competitions. The scope of relief is also expanded to include subscription of electronic newspapers.

Strategy 5: Ensuring the Well-Being of the Rakyat

To emphasise the First Integral Goal of Budget 2021 which is the Rakyat's Well-Being, this strategy focuses on measures to improve the social development and ensure a more prosperous life for the people. The measures are targeted at enhancing digital connectivity, enabling access to quality education, increasing home ownership, improving public transportation and defending the nation's sovereignty and security.

A new tax incentive is introduced for the establishment of Global Trading Centres where such entities will be subjected to income tax at 10% for a period of five (5) years (renewable for a period of another five (5) years). This is effective for applications received by Malaysian Investment Development Authority (MIDA) from 1 January 2021 to 31 December 2022.

SECOND GOAL – BUSINESS CONTINUITY

One aspect of the budget proposals that is certainly welcomed is the initiatives to drive investments to Malaysia. Amid the COVID-19 pandemic, Malaysia remains an attractive investment destination in the ASEAN market due to the well-educated labour force, investor-friendly policies, well-developed Infrastructure as well as the various tax incentives on offer. To ensure business continuity, the government is focused on providing aid to encourage new companies, new investments and new economic opportunities. In this regard, several new tax incentives are introduced, and existing tax incentives are refined further.

i) Tax Incentive for Global Trading Centre

A new tax incentive is introduced for the establishment of Global Trading Centres where such entities will be subjected to income tax at 10% for a period of five (5) years (renewable for a period of another five (5) years). This is effective for applications received by Malaysian Investment Development Authority (MIDA) from 1 January 2021 to 31 December 2022. This measure will attract foreign multinational companies to shift their global trading activities into Malaysia. Further details on this new incentive scheme should be issued early as any delay may not maximise the objective of introducing this incentive.

ii) Review of Tax Incentives for Companies Relocating their Operations to Malaysia and undertaking New Investments

The tax incentives for companies relocating their operations to Malaysia and making new investments which were initially announced under the PENJANA stimulus package will be reviewed. The application period for the tax incentives will be extended for another one year and the scope will be expanded to companies in selected services sectors including companies adapting Industrial Revolution 4.0 and digitalisation technology (for services such as cloud computing, research and development, medical devices testing and etc.). In addition, income tax rate of 0% to 10% for up to ten (10) years is charged for new companies and an income tax rate of 10% for up to ten (10) years is charged for existing companies with new services segment.

iii) Tax Incentives for Companies Manufacturing Pharmaceutical Products Including Vaccines

An income tax rate of 0% up to 10% for the first ten (10) years and income tax rate of 10% for a subsequent period of ten (10) years will be charged on the income to encourage manufacturers of pharmaceutical products including vaccines to invest in Malaysia. This is effective for applications received by MIDA from 7 November 2020 to 31 December 2022.

iv) Enhancement of Existing Tax Incentives

The government will be embarking on a comprehensive study of the existing tax incentive structure to provide a competitive, transparent and more attractive tax incentive framework in Malaysia. In order to provide space for the study to be completed, the existing tax incentives such as tax incentives for maintenance, repair and overhaul activities for the aerospace industry, building and repair of ships, Bionexus status and the economic corridor developments which are due to end this year, will be extended until YA 2022.

THIRD GOAL - ECONOMIC RESILIENCE

The budget is also drafted to guide the nation towards a gradual economic recovery after the impact of the COVID-19 pandemic. In addition, measures were put in place to ensure an inclusive socio-economic development and a more prosperous and dignified society by the year 2030.

A new provision for AIS is included in the Income Tax Act 1967 (ITA). It is defined that the qualifying activities under the AIS include any high technology activity in the manufacturing and services sector and any other activities which would benefit the economy of Malaysia.

FINANCE ACT 2020

The Finance Bill 2020 (the Bill) was released after the first reading in Parliament on 16 November 2020. Subsequently, the Finance Act 2020 was gazetted on 31 December 2020. The amendments made to the Finance Act 2020 but which were not mentioned in the Budget 2020 speech include the following:

1. Approved Incentive Scheme (AIS)

A new provision for AIS is included in the Income Tax Act 1967 (ITA). It is defined that the qualifying activities under the AIS include any high technology activity in the manufacturing and services sector and any other activities which would benefit the economy of Malaysia. In addition, the Inland Revenue Board of Malaysia (IRBM) has indicated in the 2020 National Tax Seminar that the AIS include the following incentives which were announced in the Budget 2021 speech and also under the PENJANA stimulus packages:

i. Global Trading Centre.
ii. Companies relocating to Malaysia.
iii. Companies manufacturing pharmaceutical products.
iv. Principal Hub.

A qualifying person who carries on business in respect of a qualifying activity under the AIS will be granted a concessionary tax rate to be prescribed by the Minister of Finance of not more than 20%. This is effective from YA 2021.

2. Tax Rebate for Small and Medium Enterprises (SMEs) and Limited Liability Partnerships (LLPs)

The PENJANA stimulus package had previously announced an income tax rebate for SMEs. The tax rebate is extended to LLPs as well. The threshold for the amount of tax rebate that can be deducted against the tax liability of the company or LLP is equivalent to the operating or capital expenditure which it has incurred but limited up to RM20,000 for each YA, for a period of three (3) consecutive years from the YA of commencement of operations. The above is effective from YA 2021.

3. Review of Research and Development (R&D) Expenditure

The following incentives would be granted to a person resident in Malaysia only:

a) a tax deduction for R&D expenditure incurred in relation to its business;
b) a double deduction on cash contributions made to an approved research institute or payment for the use of the services of an approved research institute, approved research company, R&D company or a contract R&D company; or
c) a double deduction in respect of expenditure incurred on approved in-house R&D activities.

Additionally, only a single deduction would be given if the R&D expenditure incurred outside Malaysia in the basis period for a YA exceeds 30% of the total R&D expenditure incurred.

The above is effective on the coming into operation of the Finance Act 2020.

4. Group Relief

Amendment has been made to the group relief provision to clarify that a surrendering company and claimant company will only be considered as related companies for the purpose of claiming group relief if the indirect shareholdings of at least 70% are held through the medium of a company resident and incorporated in Malaysia. This is effective from YA 2021.

5. Definition of Plant

The word “plant” is defined for ITA purposes as “an apparatus used by a person for carrying on his business, but does not include a building, an intangible asset or any asset used and that functions as a place within which a business is carried on”. This is effective from YA 2021.

6. Labuan Tax

The main amendment made to the Labuan Business Activity Tax Act 1990 (LBATA) is on the definition of “chargeable profits”. “Chargeable profit” is defined as the net profit reflected in the audited accounts, in line with the charging section for a Labuan trading activity. The amendment is effective from YA 2020. With this change in the law, it is worth considering whether it will be more tax effective for a Labuan entity to be taxed under the LBATA or to elect to be taxed under the ITA.

7. Transfer Pricing

i. Failure to furnish contemporaneous transfer pricing documentation

Currently, there is no specific provision in the ITA that penalises a taxpayer who fails to furnish contemporaneous transfer pricing documentation on time, usually within 30 days from the written request from the IRBM. The following penalties as in the **Table 1** below is imposed for failure to furnish transfer pricing documentation to the IRBM on time:

The above is effective from 1 January 2021.

ii. Power to disregard structures adopted in a controlled transaction

The Director General of Inland Revenue (DGIR) is empowered to disregard any structure adopted by a taxpayer and to make adjustments to the structure of the transaction as he thinks fit to reflect the structure that would have been adopted by an independent party dealing at arm’s length having regard to the economic and commercial reality. This comes into operation on 1 January 2021.

iii. Surcharge on transfer pricing adjustment

A “surcharge” of up to 5% of the total transfer pricing adjustment is imposed whether or not the adjustment results in additional tax payable. This would suggest that transfer pricing adjustments made during a tax audit by the IRBM will not be sheltered by any tax incentives, unutilised allowances or business losses. This is effective from 1 January 2021.

Table 1

	PROPOSED PENALTY
On conviction	• Fine of RM20,000 to RM100,000 or imprisonment up to six months or to both; and • Court may order the taxpayer to furnish the transfer pricing documentation within 30 days or any period decided by the Court.
If no prosecution is instituted	• Penalty of RM20,000 to RM100,000. • Taxpayer may appeal to the Special Commissioners of Income Tax against any order of penalty.

8. Tax Payable Notwithstanding Any Institution of Proceedings Under Any Other Written Law

Currently, a taxpayer may appeal to the SCIT against an assessment made by the Director General. In this case, taxes are due and payable regardless whether the taxpayer appeals against the assessment. However, in cases where the taxpayer applies to the court for a judicial review, the courts may grant a stay order over the payment of taxes. With this amendment in the ITA, any proceedings against the government or the Director General by a taxpayer shall not relieve the taxpayer from the payment of any income tax, petroleum income tax, tax under LBATA or real property gains tax. The above comes into effect on 1 January 2021.

CONCLUSION

In summary, Budget 2021 was drafted to address the immediate needs of the economic environment to weather the unprecedented COVID-19 situation. A number of the amendments in relation to the tax incentives are crucial in boosting the economy and ensuring business continuity. In this respect, it is hoped that the enabling Orders will be issued early as any delay may complicate taxpayers’ investment decisions.

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The views expressed here are the writers’ personal views.

KEY AMENDMENTS VIA THE FINANCE ACT 2020

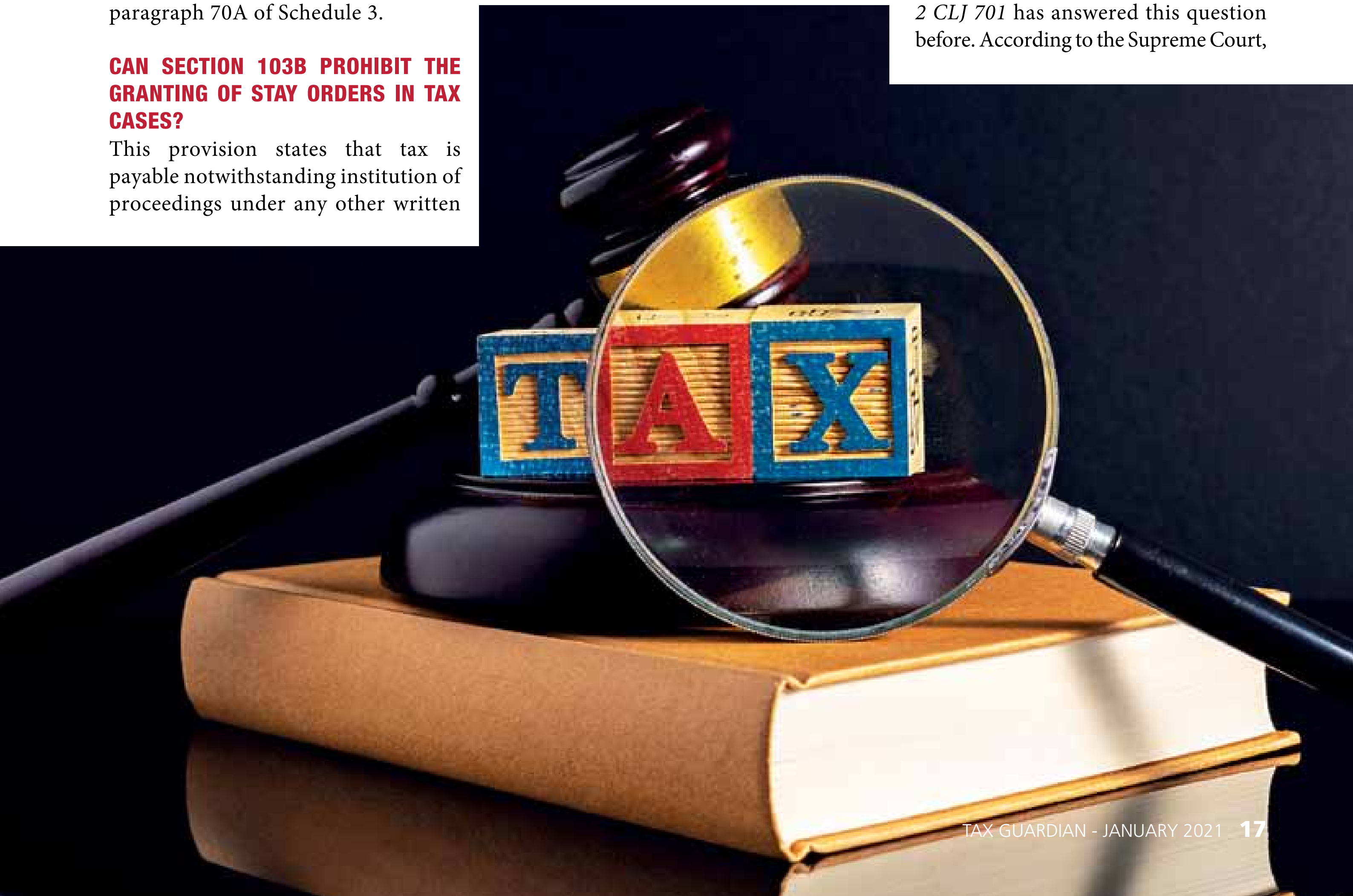
S. Saravana Kumar & Nur Amira Azhar

The Finance Act 2020 ("FA 2020") was gazetted on 31 December 2020 upon obtaining Royal Assent on the same day. The FA 2020 contains some key amendments to the Income Tax Act 1967 ("ITA"), which will be discussed in this article. There are three significant amendments which seem to have been legislated without much debate in Parliament. These are the new amendments: Section 103B, Sections 140A(3A) to 140A(3D) and paragraph 70A of Schedule 3.

CAN SECTION 103B PROHIBIT THE GRANTING OF STAY ORDERS IN TAX CASES?

This provision states that tax is payable notwithstanding institution of proceedings under any other written law. It seems the purpose of Section 103B is to prohibit our courts from granting stay orders in tax cases. In recent years, taxpayers have been successful in obtaining stay orders against the Inland Revenue Board of Malaysia ("IRBM") including in some multi-billion ringgit tax disputes. Section 103B goes to say that the institution of any proceedings under any other written law against the government or the Director General of Inland Revenue ("DGIR") , shall not relieve any person from liability for the payment of any tax, debt or other sum for which he is or may be liable to pay.

At this juncture, the important question is whether Section 103B can prevent our courts from granting stay orders in tax disputes. One need not go very far to search for the answer. The Supreme Court's decision in *Government of Malaysia v Jasanusa Sdn Bhd [1995] 2 CLJ 701* has answered this question before. According to the Supreme Court,



it is not disputed that Section 103(1) of the ITA provides for the assessed tax to be due and payable upon service of the relevant notice, irrespective of whether there is any appeal, but the ITA does not have any provision curtailing or restricting the inherent jurisdiction of the court to a stay order. When a party wishes to exercise a right to resort to the procedures of the court to enforce a judgment, that right is subject to the powers of the court which includes, a power under its inherent jurisdiction to stay an execution subject to established judicial principles.

Section 103(1) reads as follows:

> *"Subject to this section, tax payable under an assessment or a composite assessment shall on the service of the notice of assessment or composite assessment on the person assessed be due and payable at the place specified in that notice whether or not that person appeals against the assessment or composite assessment, as the case may be."*

Meanwhile, Section 106(3) reads as follows:

> *"In any proceedings under this section the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under s. 103 (4), (5) or (5A)."*

The Supreme Court in the *Jasanusa case* firmly held that neither Section 103(1) nor Section 106(3) bars a court in appropriate circumstances, from exercising its inherent powers of granting a stay, even in a tax case. In fact, the Supreme Court fortified its ruling by making reference to another Supreme Court decision in *Chong Woo Yit v Government of Malaysia [1989] 1 CLJ Rep 9.*

Similarly, in the newly introduced Section Section 103B which states that the courts cannot grant a stay order. In fact, Section 103B essentially repeats what Section 103 intended to achieve, that is, taxes must be paid notwithstanding an appeal. Section 103B reads:

> *"The institution of any proceedings under any other written law against the Government or the Director General shall not relieve any person from liability for the payment of any tax, debt or other sum for which he is or may be liable to pay under this Part."*

In mounting legal challenges in courts, taxpayers are not disputing Section 103 and for that matter Section 103B which requires them to pay the disputed taxes notwithstanding an appeal. However, what the taxpayer is applying to the courts is for, a stay order to preserve the status quo or integrity of their legal proceedings before the courts whilst the dispute is being heard by the courts. There is no prejudice to the IRBM if the court makes a ruling in its favour, the IRBM then may recover the disputed taxes from the taxpayer. On the other hand, if the taxpayer succeeds, it would then be unfair to insist that the taxpayer is to pay the disputed taxes when the impugned assessment would have been unfairly or erroneously imposed by the IRBM.

The High Court in *Nasioncom Holdings Bhd v. Suruhanjaya Sekuriti [2008] 7 CLJ 355* held that the granting of a stay order in a judicial review proceedings have a wide application which extended beyond judicial proceedings, but it involves an exercise of proper discretion, and in considering this proper discretion to grant stay, the court would need to consider whether there were special circumstances. This was echoed in *Islamic Financial Services Board v Marlin Fairol Mohd Faroque*

& Anor [2010] 8 CLJ 173 where the following passages from the judgment are instructive:

> *"[4] I indicated in my decision that "stay of proceedings" in the context of judicial review has a special connotation, and, although there could be overlaps in standards applied, judicial review stay is not the same as stay of execution after judgment in judicial proceedings. The wide import of judicial review stay has been recognized as well in YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Jaafar v. Datuk Bandar Kuala Lumpur & Anor [2003] 1 CLJ 210:*
>
> *The phrase "a stay of proceedings" must have a wider application. It does not confine to proceedings in court only. Today, many applications for judicial review are for orders of certiorari to quash decisions of decision-making bodies other than courts, including Government Ministers, local authorities and other bodies whose decisions are susceptible to judicial review. Thus, the phrase "a stay of proceedings" in relation to such bodies must mean "a stay of the process by which the decision challenged has been reached, including the decision itself."*
>
> *[5] See also Sugumar Balakrishnan v. Pengarah Imigresen Negeri Sabah & Anor & Another Appeal [1998] 3 CLJ 85, where the Court of Appeal explained the effect of a stay as "temporarily suspending the effect of a public law decision pending the outcome of certiorari or prohibition proceedings brought to challenge the validity of the particular decision."*

The Court should also bear in mind the possibility of arbitrary or incorrect assessments brought about by fallible officers who have to fulfil the collection of a certain publicly declared targeted amount of taxes and whose assessments, as a result, may be influenced by the target to be achieved rather than the correctness of the assessment.

> *…The purpose of stay in a judicial review is clear. It is to suspend the "proceedings" that are under challenge pending the determination of the challenge. It preserves the status quo. This will aid the judicial review process and make it more effective. It will ensure, so far as possible, that, if a party is ultimately successful in his challenge, he will not be denied the full benefit of his success… In my view it should also be given a wide interpretation so as to enhance the effectiveness of the judicial review jurisdiction.*
>
> *[7] This preservation of the status quo argument is similar to the position taken in, for example, YAM Tunku Dato' Seri Nadzaruddin ibni Tuanku Ja'afar v. Datuk Bandar Kuala Lumpur & Anor (supra) that stay should be granted so as not to render the substantive motion for judicial review nugatory. The precise formula adopted by courts has not been consistent, but the test of "special circumstances" is a pragmatic test which, to my mind, can embrace even preservation of status quo or prevention of nugatory effect or prevention of the full benefits of success tests."*

In granting of a stay order, courts do not act without any consideration. The courts weigh the balance of interest between the taxpayer and the IRBM. The Supreme Court in the *Jasanusa* case gave this salutary reminder, which serves as a good guidance to a taxpayer seeking a stay order and for the IRBM who opposes such applications.
Matters of this nature involve, inter alia, balancing the need of the government to realise the taxes and the need of the taxpayer to be protected against arbitrary or incorrect assessments.

The Court should be ever vigilant against taxpayers who may use the procedure of the Court, like applying for a stay of execution, to defer or postpone payment of his just dues or to abscond by migration or to dissipate the assets to defeat the judgment. The Court should also bear in mind the possibility of arbitrary or incorrect assessments brought about by fallible officers who have to fulfil the collection of a certain publicly declared targeted amount of taxes and whose assessments, as a result, may be influenced by the target to be achieved rather than the correctness of the assessment. It should not be much of a difficulty for the Court to see the genuineness of an appeal or the willingness of the taxpayer to comply with all reasonable requests of the DGIR, if they exist, and thus move the Court to stay the execution.

SECTION 140A(3C) SURCHARGE – IS THERE AN APPEAL PROCESS?

The newly introduced Section 140A(3A) provides that the IRBM may disregard any structure adopted by a person in entering into a transaction if:
(a) the economic substance of that

transaction differs from its form; or

(b) the form and substance of that transaction are the same but the arrangement made in relation to the transaction, viewed in totality, differs from those which would have been adopted by independent persons behaving in a commercially rational manner and the actual structure impedes the Director General from determining an appropriate transfer price.

It goes on at Section 140A(3B) to explain that, where the Director General of the Inland Revenue disregards any structure adopted by a person entering into a transaction, shall make adjustments to the structure of that transaction as it thinks fit to reflect the structure that would have been adopted by an independent person dealing at arm's length having regard to the economic and commercial reality.

It goes on at Section 140A(3B) to explain that, where the Director General of Inland Revenue disregards any structure adopted by a person entering into a transaction, it shall make adjustments to the structure of that transaction as it thinks fit to reflect the structure that would have been adopted by an independent person dealing at arm's length having regard to the economic and commercial reality.

Section 140A(3C) empowers the Director General of Inland Revenue to give notice in writing, requiring that person to pay a surcharge of not more than 5% of the amount of increase of any income generally, or reduction of any deduction or loss, as the case may be, as a consequence of exercising its powers to substitute the price in respect of a transaction entered into by a person to reflect an arm's length price for that transaction or to disregard any structure adopted by a person in entering into a transaction.

The concern lies with Section 140A(3D) which states that any surcharge required to be paid by a person under Section 140A(3C) shall be collected by the IRBM as if it were tax payable by that person, but shall not be treated as tax so payable for the purposes of any provision of the ITA other than Sections 103 to 106. If the surcharge shall not be treated as tax so payable for the purposes of the ITA, then, can a taxpayer appeal to the Special Commissioners of Income Tax ("SCIT")? Section 99(1) of the ITA states that a taxpayer who is aggrieved with an assessment may lodge an appeal within 30 days to the SCIT. Section 2 of the ITA provides that "assessment" means any assessment or additional assessment made under the ITA. However, if the surcharge is not treated as tax, then, logically, the surcharge is unlikely to be treated as an assessment as well.

In the past, case law have clearly established that a requisition under Section 108 of the ITA is different from an assessment and treats a debt requisitioned under Section 108(5) (i.e. Form S) as something completely different from a tax assessed under Section 91 of the ITA. The High Court in *Malayan United Industries v Ketua Pengarah Hasil Dalam Negeri and Anor [2005] MLJU 314* established that a Section 108 requisition is not an assessment, and thus it cannot be appealed to the SCIT. Accordingly, the only avenue to seek judicial resolution of the matter would be to apply for judicial review.

As to the issue of the extent of the jurisdiction of the SCIT under the ITA, it cannot be disputed that their powers are limited, unlike the powers of the High

Court. The SCIT are creatures of statute and as such, their jurisdiction has to be clearly spelt out by statute and in this case the ITA. In the case of the High Court which has unlimited jurisdiction, its powers may be taken away if it is specifically so stated in any statute. In other words, if the statute is silent, the High Court will have the jurisdiction. This principle cannot be applied in the case of the SCIT. There is no mention in the ITA that states that they have jurisdiction to deal with the surcharge imposed under Section 140A(3C) especially when Section 140A(3D) does not treat the surcharge as tax in the first place except for the process of recovering them from taxpayers.

PARAGRAPH 70A OF SCHEDULE 3 - IS A BUILDING STILL A PLANT?

In an unprecedented move, the IRBM decided that the word "plant" for the purposes of capital allowance should be defined. A new paragraph 70A is introduced to Schedule 3 of the ITA. It reads:

> *"In this Schedule, "plant" means an apparatus used by a person for carrying on his business but does not include a building, an intangible asset, or any asset used and that functions as a place within which a business is carried on."*

At the outset, it must be noted that the United Kingdom's tax legislation does not contain a definition of plant, which is indeed a wise move as the concept of plant has been aptly described in *Yarmouth v France [1887] 19 Q.B.D. 647*. In *Yarmouth*, the test for determining if an item qualified as "plant" is as follows:

> *"There is no definition of plant in the Act; but, in its ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business, - not his stock in trade which he buys or makes for sale, but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in his business"*

Our Court of Appeal in *Ketua Pengarah Hasil Dalam Negara v Tropiland Sdn Bhd [2013] MSTC 30-054* gave a timely reminder that a whole host of considerations must be taken into account in determining what was a "plant" in any given set of facts and that a restrictive meaning assigned to the word would have disastrous consequences to business enterprise and economic activity since the tools or apparatus of a businessman for carrying on his business undergo constant changes with passing time and advancing technology. In *Tropiland*, a seven storey purpose built carpark was held to be a plant. Meanwhile, in *Infra Quest Sdn Bhd*

As to the issue of the extent of the jurisdiction of the SCIT under the ITA, it cannot be disputed that their powers are limited, unlike the powers of the High Court. The SCIT are creatures of statute and as such, their jurisdiction has to be clearly spelt out by statute and in this case the ITA. In the case of the High Court which has unlimited jurisdiction, its powers may be taken away if it is specifically so stated in any statute. In other words, if the statute is silent, the High Court will have the jurisdiction.

v Ketua Pengarah Hasil Dalam Negeri [2017] 7 MLJ 35, telecommunication towers were held to be a plant. In both these cases, the IRBM argued that a large structure like a building or tower cannot qualify as a plant.

Although, the IRBM's definition of plant excludes building. Section 2 of the ITA defines building to include any structure erected on land not being plant or machinery. In a way, Section 2 definition of building excludes a plant. However, in paragraph 70A of Schedule 3, the IRBM seems to be suggesting that a building cannot be a plant. There is clearly a contradiction between these two provisions where both makes reference to building. As held by the Supreme Court in *National Land Finance Co-Operative Society Ltd v Director General of Inland Revenue [1993] 4 CLJ 339* , in construing the new amendment via paragraph 70A of Schedule 3, certain principles relating to the interpretation of taxing statutes must be followed. One of these principles is that, where the meaning of a statute is in doubt, the ambiguity must be construed in favour of the subject.

Meanwhile, the new definition of Plant also excludes an intangible asset from being treated as a plant. However, this sudden exclusion of intangible asset stands contrary to some recent tax incentives which provide for accelerated capital allowance for technology related investments, such as the Income Tax (Accelerated Capital Allowance) Information and Communication Technology Equipment) Rules 2018 and Income Tax (Capital Allowance) (Development Cost For Customised Computer Software) Rules 2019. If intangible assets are not plant, then it begs the question of whether these Rules granting accelerated capital allowance for computer and technology related matters including software development, which are all intangible assets, are still valid? It must be noted that expenditure in relation to the Rules referred here include the software acquisition costs, initial software licence costs, software development costs and subsequent upgrading or enhancement costs.

Meanwhile, the new definition of plant also excludes an intangible asset from being treated as a plant. However, this sudden exclusion of intangible asset stands contrary to some recent tax incentives which provide for accelerated capital allowance for technology related investments, such as the Income Tax (Accelerated Capital Allowance) Information and Communication Technology Equipment) Rules 2018 and Income Tax (Capital Allowance) (Development Cost For Customised Computer Software) Rules 2019.

Perhaps, it is time for Malaysian taxpayers to adopt the Indian position when it comes to expenses of this nature. The Indian High Court in *Indian Aluminium Company Limited v Commissioner of Income Tax III Kolkata (ITA No. 278 of 2007)* and *CIT v Asahi Safety Glass Ltd (Delhi) (2012) 346 ITR 329* recognised the need for software related expenses as a deductible expense. The Indian courts recognised the need for a taxpayer to be constantly updated based on the requirements of the taxpayer's business due to rapid advancements in technology and increasing complexity of the features. The Indian courts held that application software is an aid in the business operations rather than the tool itself. Therefore, the payment for such application software, though there is an enduring benefit, does not result in acquisition of any capital asset and it merely enhances the productivity or efficiency and hence, has to be treated as revenue expenditure.

Similarly, the new amendment may also result in the ruling in *Ketua Pengarah Hasil Dalam Negeri v CIMB Bank Berhad (2019)*

MSTC 30-301 being made redundant. The bank claimed capital allowance on the basis that the core deposit and the credit card customers' databases are a plant. The IRBM took the stance that the databases did not play any function by itself and was not a tool in the bank's business. The High Court affirmed the SCIT decision that the databases fell within the definition of plant and were an important component to generate more revenue for the bank. Had this case been determined based on the new definition of plant, the databases may not qualify for capital allowance as the word plant today means an apparatus used by a person for carrying on his business but does not include an intangible asset.

CONCLUSION

Putting aside the powers of the IRBM to introduce these amendments to the ITA and the fact that Parliament has passed the FA 2020, the more fundamental question to be answered is whether these provisions are needed in the first place. There was no consultation with tax practitioners and businesses in introducing these provisions. In other words, there was no buy in from the stakeholders. We are in the self-assessment system and taxpayers are required to determine their tax obligations to the nation. However, it cannot be forced upon them. The right to obtain a stay order from the courts is an inherent right that all litigants including taxpayers may avail himself to if he is able to persuade the court to exercise its discretion in his favour. Arms of the executive such as the IRBM should not attempt to curtail the powers of the judiciary as any such attempt is not only an affront to the sanctity of the judiciary but will also be resisted by taxpayers at large.

Although other jurisdictions have also introduced surcharge as part of their attempt to regulate transfer pricing, the IRB should not have introduced Section 140A(3D) to say that a surcharge is not a tax. If it is not a tax, then what is it? The irony is that the surcharge is imposed and collected under the ITA which itself is a legislation for the imposition of income tax. By not treating the surcharge as a tax, it then gives rise to other issues such as what is the remedy available to taxpayers if they wish to challenge the surcharge. On a more pressing note, should the IRBM introduce an onerous provision such as Section 140A(3C) to impose surcharge when businesses and the nation have been badly hit by the COVID-19 pandemic. Couldn't this provision wait for a few more years to allow the economy to recover?

Finally, the definition of Plant for the purposes of capital allowance is a regressive step. Many jurisdictions do not define the word Plant for the obvious reason given in the *Tropiland* case - a restrictive meaning assigned to the word plant would have disastrous consequences to business enterprise and economic activity since the tools or apparatus of a businessman for carrying on his business undergo constant changes with passing time and advancing technology. Would the restrictive meaning of the word plant be of any help to attract investors to Malaysia? Further, does it help when other tax incentives such as reinvestment allowance, which also dwells into the concept of plant do not have a definition of the word plant or is the IRBM expecting taxpayers to apply the restrictive meaning of plant to other tax incentives covering capital expenditure.

Moving forward, it is hoped that the IRBM will conduct consultations with stakeholders such as tax practitioners, and the general business community through trade associations before proposing any significant changes to the ITA. After all, a consultation will enable the stakeholders to convey their thoughts and concerns, as well as enabling the IRBM to be able to explain its aim in proposing the amendments. The concept of tax administration among others, is a two-way process that covers tax payment and tax collection, and it is only prudent to take a collective stand on matters concerning tax.

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TRANSFER PRICING CHALLENGES

THAT KEEP TAXPAYERS AWAKE AT NIGHT

Foo Meng Huei, Song Sylvia & Kishenjeet Dhillon

According to a recent survey by the Harvard Business School of 600 CEOs on what keeps them awake at night during this global pandemic, the results found that:

> *"....almost every aspect of doing business must be completely rethought for both short-term survival and long-term success."*[1]

Whilst multinational corporations (MNCs) are pre-occupied with enormous business challenges to keep their companies alive, one key agenda is to review and reassess their cross border transactions between companies within the same MNC group. This is when transfer pricing becomes an unavoidable issue as any price movements between members within the MNCs will inevitably be under the close watch by the relevant tax authorities.

Going back in history, in Malaysia, tax collections from transfer pricing audits have increased significantly over the years. From RM155.9 million in 2014, the amount has increased almost four fold to RM582.6 million in 2018, within a span of five years.

The table below depicts the tax revenue

Year	Additional Tax (RM)	Penalty (RM)	Total Amount (RM)
2014	117,487,828	38,455,479	155,943,307
2015	103,462,733	21,407,454	124,870,186
2016	194,405,673	46,034,914	240,440,586
2017	477,775,200	186,481,024	681,939,667
2018	432,867,821	149,694,311	582,562,134

collected from transfer pricing audits by the Inland Revenue Board of Malaysia's ("IRBM") Multinational Tax Department between 2014 and 2018[2]:

The drastic rise in tax collections can be largely attributed to increased global trade and also reflects the intensified level of transfer pricing centric audits carried out by the IRBM. One can be quite certain that the transfer pricing challenges that lie ahead will not be less impactful when compared with historical trends.

There are many reasons for the transfer pricing adjustments and these may vary from minor malpractices by the taxpayers to insufficient documentation or differences in the interpretation of highly complicated technical issues. Whilst no statistics have been released on the nature of the issues uncovered in the transfer pricing audits, the more prominent transfer pricing challenges that are likely to keep taxpayers awake at night in the short and long-term will revolve around the following issues:

1. Provision of intra-group services

Under intra-group services arrangements, transfer pricing issues can be challenged from both the service provider and the service recipient perspectives. Essentially, intra-group services involve the provision of services by a related party to another related party. Such a transaction typically involves items such as shared services functions, management services, consulting services, IT support services, etc.

One of the main areas of focus in the IRBM's transfer pricing audits on intra-group services is whether the services meet the benefits test from the service recipient's standpoint. Where the IRBM is not convinced that the service recipient has economically benefited from the services received in its assessment, the IRBM would have no hesitation in denying tax deductions on the service fees paid to a related company. Some of the indicators that the services fail to meet the benefits test are as follows:

- The services are duplicative in nature as the service recipient already has an in-house team to perform the function.
- The scope of services is not clearly defined due to the absence of a formal agreement between the parties.
- There is no arm's length negotiation on the amount of service fees payable by the service recipient as the service recipient company accepted the charges by virtue of its relationship with the service provider without evaluating the need for such services.
- The payment of service fees resulted in continuous losses suffered by the service recipient and no other explanation is offered for the loss making position.

On the flip side of the coin, service providers who did not appear to adhere to the arm's length principle may often be exposed to additional tax. The following practices are not likely to be viewed favourably by the IRBM:

- Providing free-of-charge services to service recipients.
- Adopting the cost sharing or cost reimbursement approach to recover the costs of services provided to service recipients without adding any profit element to the cost, instead of employing the commonly acceptable cost plus method.
- Non-standardised pricing policies for different service recipients within the Group for similar services provided.

It is not rocket science in setting the arm's length pricing policies for the provision of intra-group services. Rather, the real challenge lies with the proper execution of such pricing policies within the organisation so as not to step on transfer pricing minefields.

2. Intangible properties

Intangibles refer to trade intangibles (e.g. patents, know-how, product design, software, etc.) or marketing intangibles (e.g. trademarks, marketing strategies, customer lists, distribution channels, government contracts, etc.). Given the extensive time and investment required to develop these intangibles, the legal or economic owner

of such intangible properties should be entitled to compensation in exchange for its transfer or usage. From a transfer pricing perspective, the same would be expected if the transaction had occurred between related parties.

A dispute can occur with the IRBM if there is a lack of documentation or analyses on the part of the taxpayer to substantiate payments for these intangibles. For example, a foreign holding company may provide access to "know-how" to a Malaysian subsidiary to enable the manufacturing of a new product. In exchange, the overseas holding company may charge a royalty based on a percentage of sales made by the Malaysian subsidiary. To complicate the matter, the Malaysian subsidiary may have also contributed to the research and development of the manufacturing "know-how". In such a scenario, the areas that are frequently challenged by the IRBM include the economic substance of the royalty payments and the quantum of payments for the use of the intangibles.

Unfortunately, the issues surrounding intangible properties are rather complex and require the parties to conduct extensive analyses to support their transfer pricing positions. This is especially so in light of the introduction of the DEMPE[3] analysis under BEPS Action 8 to 10[4], which has since been incorporated into the OECD's Transfer Pricing Guidelines issued in 2017. Similarly, the Malaysian Transfer Pricing Guidelines require the parties to carefully evaluate the relative value of contributions by entities to the DEMPE to ensure all affected entities in the group are appropriately compensated on an arm's length basis.[5] As a DEMPE analysis is relatively new from a Malaysian standpoint, everyone is still in the dark until the first test case is scrutinised by the IRBM and challenged in Court. It will be interesting to know to what extent the DEMPE analysis is able to play a crucial role in persuading the tax authorities.

3. Intra-group financing

The year 2020 has been a year filled with economic challenges amid the COVID-19 crisis. Stock prices hit rock bottom around the world in March 2020 and interest rates fell to historically low levels since then. The Bank Negara Malaysia cut its Overnight Policy Rate (OPR) four times in January, March, May and July 2020 with the latest revision at 1.75% in July 2020[6] to accelerate economic recovery.

Taxpayers need to be aware that intra-group financing transactions are under the IRBM's transfer pricing radar. Any financial assistance between members of a group will need to observe the arm's length principle. In arriving at the arm's length interest, the IRBM will look into the terms of the arrangement, including but not limited to, credit rating of the borrower, purpose of the financial assistance, quantum and tenure, currency denomination, collateral or security, cost of funds, prevailing market interest rate, etc., to determine the applied arm's length interest rate.

In an intra-group financing arrangement, the IRBM may scrutinise from either the lender or the borrower's standpoints. The focus on the lender company is whether the lender had undercharged interest to the borrower entity. In particular, an interest-free arrangement is considered not at arm's length and has high transfer pricing risks especially from the lender's perspective. On the contrary, the issue related to

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[1] *Harvey Mackay, What keeps 600 CEOs awake at night during this global pandemic, 2020 (https://www.bizjournals.com/bizjournals/how-to/growth-strategies/2020/05/what-keeps-600-ceos-awake-at-night-during- pandemic.html)*

[2] *IRBM, Nuarrual Hilal Md Dahlan, Abu Tariq Jamaluddin and Rohana Abdul Rahman, Taxation Transfer Pricing Law incMalaysia: Salient Legal Issues, 2020 (https://www.researchgate.net/publication/341312717)*

[3] *DEMPE is an abbreviation for Development, Enhancement, Maintenance, Protection, and Exploitation of the intangible*

[4] *OECD/G20 Base Erosion and Profit Shifting Project, Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10: 2015 Final Reports*

[5] *IRBM, Chapter VIII – Intangibles, Transfer Pricing Guidelines (Revised in 2017)*

[6] *Bank Negara Malaysia (https://www.bnm.gov.my/index.php?ch=mone&pg=mone_opr_stmt)*

the borrower company is whether the interest payments are excessive from the arm's length perspective. This is one of the red flags that prompts deeper scrutiny by the IRBM during transfer pricing audits. Any irregular practice not in accordance with the arm's length principle may render the lender or the borrower entities liable to additional taxes.

On this note, the IRBM is empowered to make transfer pricing adjustments according to Rule 13(1) of the *Income Tax (Transfer Pricing) Rules 2012* i.e. the power to make any adjustment to reflect the arm's length price or interest for the transaction by substituting or imputing the price or interest, as the case may be. The additional tax from transfer pricing adjustments on intragroup financing transactions can be staggering for larger sized inter-company balances that had accumulated over many years.

4. Re-characterisation of Transactions

The IRBM has and will continue to exercise its power to disregard and re-characterise business transactions, on the basis that the original transactions had existed without commercial merits. The onus is then passed on to the taxpayers to prove otherwise.

In *Shell People Services Asia Sdn Bhd (SPSA) v Ketua Pengarah Hasil Dalam Negeri, November 2019, High Court, Case No BA 25-68-08/20197*, what was originally a cost contribution arrangement was not acceptable by the IRBM. The IRBM had relabeled the same to be a provision of services arrangement where it imposed tax on the deemed profit margin by prescribing a cost plus model. As a result, SPSA suffered additional tax and penalties of RM15.6 million. Whilst the case is pending further deliberation by the Courts, this case shows that the IRBM can resolve to exercise their power to re-characterise certain inter-company transactions. The power to re-characterise a transaction is wide enough to revert the business model adopted by a taxpayer to some other model the IRBM deems fit.

Other possible scenarios that may be subject to the IRBM's re-characterisation are as follows:

- From a limited risk operator to a full fledge operator (e.g. a limited risk distributor that assumes a functional profile beyond the routine function).
- A transaction with an intermediary entity in a country that lacks economic substance (e.g. the use of a shell company in a tax friendly country as a distributor or use of a company in a tax haven to own an intellectual property, without the corresponding economic and commercial substance).
- Transactions that differ from those which would have been adopted by independent parties behaving in a commercially rational manner (e.g. a software licensing contract for entitlement to intellectual property rights without any consideration).

A re-characterisation made by the IRBM during a transfer pricing audit is poised to be damaging to the taxpayer's financial position as seen from the SPSA case.

Similar cases involving revenue authorities in other parts of the world exercising their powers to re-characterise transactions or reconstruct businesses have gained much attention recently. In two of the more high profile cases, the Federal Courts in Australia and Canada had been decided in favour of the taxpayers as the revenue authorities had not demonstrated sufficient evidence to overturn the commercial substance in *Glencore Investment Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia, September 2019, Federal Court of Australia, Case No FCA 1432 (Glencore)* and *Her Majesty The Queen v Cameco Corporation, June 2020, Federal Court of Appeal, Case No 2020 FCA 112) (Cameco).*

Despite these outcomes that favour

taxpayers, MNCs have no reason to let down their guard as revenue authorities shall continue to find pain points and weaknesses in the transfer pricing systems of the MNCs.

5. Limited risk entity structure

From a technical standpoint, limited risk entities are entities that undertake limited functions and are guaranteed a routine profit. Traditionally, the IRBM will be expecting these entities to be profitable regardless of the economic cycle, be it good times or bad. The more common types are limited risk distributors, contract manufacturers and limited risk service providers.

How would the guaranteed profit stance stand in a situation such as that during the COVID-19 pandemic? In 2020, nearly all short-term macroeconomic indicators were down. According to the Ministry of Finance, Malaysia's economic outlook in 2020 remains weak. Sectors such as services (-3.7%), manufacturing (-3.0%), construction (-18.7%), mining (-7.8%) and agriculture (-1.2%) have all witnessed negative growth, and the country's Gross Domestic Product (GDP) is set to decline by -4.5% in 2020 (2019: 4.3%)[8]. As value chains are being adversely affected globally due to the impact of the pandemic, these limited risk operators in Malaysia may incur losses as they would have to share a portion of the overall financial losses suffered by the group. This presents an enormous challenge to limited risk entities from the documentation perspective.

In its efforts to ease concerns, the IRBM has responded to the situation and commented in public forums that they recognise that the present economic crisis is unprecedented and that they will seek to adopt a more pragmatic approach in such cases. At this juncture, there is lack of formal guidance from the IRBM on how MNCs should prepare themselves to justify their loss making positions. At the minimum, limited risk entities may consider documenting the following qualitative and quantitative analyses, by detailing the impacts for the "pre", "during" and "post" COVID-19 periods, in their transfer pricing documentation:

- Losses suffered by the entire supply chain within the Group.
- Reduction in sales volume vis-à-vis normal sales.
- Effect on disruption in distribution channels affecting the supply and delivery of raw materials and finished goods.
- Extraordinary expenses due to COVID-19, such as retrenchment costs, costs of adhering to the new pandemic related standard operating procedures, etc. Bad debts written off due to non-payment by customers.
- Additional financing costs incurred on new funds raised to ease cash flow constraints.

In the absence of persuasive reasons, loss making limited risk entities may stand a high risk of transfer pricing adjustments being imposed despite the unfavourable external economic environment.

Conclusion

The Malaysian government had proposed new amendments in the Income Tax Act 1967 (ITA) relating to transfer pricing in the Finance Bill 2020, including a new fine of between RM20,000 to RM100,000 on companies that fail to furnish transfer pricing documentation upon request by the IRBM, and a new surcharge of up to 5% on transfer pricing adjustments. These provisions are expected to take effect on 1 January 2021.

Together with other technical and practical challenges taxpayers are already facing, the transfer pricing landscape for year 2021 and onwards will undergo another makeover as MNCs enter into an era of heftier penalties being imposed for non-compliance with transfer pricing provisions under Section 140A of the ITA.

For taxpayers who are kept awake at night due to some of the transfer pricing challenges mentioned in this article, it is timely to revisit this subject matter internally. The transfer pricing challenges can be mitigated through being more vigilant on potential transfer pricing threats and making concerted efforts to comply with the transfer pricing rules. MNCs should act proactively now in finding out the root cause of their transfer pricing issues, and act to calibrate their transfer pricing documentation to meet the expectations of the IRBM as well as withstand their potential scrutiny in the future.

Disclaimer: This article does not seek to address all transfer pricing issues. The views expressed here are the writers' personal views.

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[7] *IRBM List of Recent Tax Cases (http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=3&bt_unit=7000&bt_sequ=10) (https://tpcases.com/malaysia-vs-shell-services-asia-sdn-bhd-november-2019-high-court-case-no-ba-25-68-08-2019)*

[8] *Macroeconomic Outlook, Economic Outlook 2021, Ministry of Finance, Malaysia (https://www.treasury.gov.my/pdf/economy/2021/Chapter3.pdf)*

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THE *DE MINIMIS* PRINCIPLE IN TAX LAWS

D.P. Naban & Chew Ying

The meaning of the maxim *De Minimis Non Curat Lex* is 'Diminutives are not noticed by law' (i.e. the law cares not for small things)[1]. The principle of *De Minimis* is a long-established rule of general application. However, this principle has not been applied by the Malaysian courts in the context of taxation laws.

The Malaysian Court of Appeal has accepted the applicability of the *De Minimis* principle in a tax appeal. The tax appeal concerns the transition period from the sales tax regime to the goods and services tax regime in the year 2015. Under the Sales Tax Act 1962, tax was payable upon the manufacturing or importation of the goods. Therefore, all goods that were still held by businesses as at 1 April 2015 (i.e. the cut-off date of the sales tax regime) would have already been subjected to sales tax. In order to remedy this situation of double taxation faced by taxpayers, the government has introduced a special refund mechanism of the sales tax paid through Sections 190 and 191 of the Goods and Services Tax Act 2014 ("**GST Act 2014**").

In this appeal, the taxpayer challenged the Director General of Customs' ("**DGC**") decision that rejected the taxpayer's application for the sales tax refund ("**Special Refund Application**").

[1] *Words, Phrases & Maxim (Legally & Judicially Defined) Volume 5*

BACKGROUND FACTS

The taxpayer is a company involved in the business of operating a chain of supermarkets and hypermarkets in Malaysia. In its ordinary course of business, the taxpayer had purchased stock that were sourced from its international and local suppliers to sell the same in its outlets in Malaysia. The taxpayer is also a registered person under the GST Act 2014.

In September 2015, the taxpayer submitted a Special Refund Application to the DGC. Together with the application, the taxpayer also submitted an audit certificate that was signed by its approved company auditor, confirming that the special refund information furnished by the taxpayer was prepared in accordance to the requirements under Sections 190 and 191 of the GST Act 2014.

The total amount of refund claimed by the taxpayer was RM 7,349,369.98 for 60,350,342 items. The entire Special Refund Application consisted of 17,113 pages. In January 2017, the DGC rejected the taxpayer's special refund application but no valid reasons were given.

In February 2017, the taxpayer being dissatisfied filed an application to the DGC as acquired under the GST Act for a review of his own decision that rejected the taxpayer's Special Refund Application. Subsequently, in March 2017, this review was rejected on the basis that it contained incorrect information. Unfortunately, , no details were given by the DGC in relation to the alleged incorrect information.

Aggrieved by the DGC's decision in rejecting the review's application, the taxpayer commenced a judicial review proceeding to challenge it. In January 2019, the High Court dismissed this judicial application and held that the DGC's decision was not illegal,

irrational, or unreasonable as the taxpayer's application contained some incorrect information. Although the inaccuracies make up less than 0.4% of the total amount of claim, the High Court held that the DGC was entitled to refuse the Special Refund Application based on the literal words of Section 191(3) of the GST Act 2014.

The taxpayer appealed to the Court of Appeal on the basis that the errors contained in the Special Refund Application comes within the *De Minimis* principle. The Court of Appeal accepted the taxpayer's position and reversed the High Court's decision.

SECTIONS 190 AND 191 OF THE GST ACT 2014

In brief, the requirements stated under Section 190(1) of the GST Act 2014 are as follows:

i. The claimant (i.e. taxpayer claiming for the special refund) has to be a registered person under the GST Act 2014 as at 1 April 2015;
ii. The claimant has to hold the goods on 1 April 2015 for the purposes of making a taxable supply;
iii. The goods are taxable under the Sales Tax Act 1972 and sales tax has been charged to and paid by the claimant; and
iv. The claimant must hold the relevant supplier's invoice providing that it is the recipient for which sales tax has been charged or import documents proving that the claimant is the importer, consignee or owner for which sales tax has been paid.

The relevant part of Section 191(3) of the GST Acts 2014 reads: Where any information on the claim provided by the claimant is found to be false, inaccurate, misleading or misrepresented –

(a) He shall not be entitled to a special refund and the officer of goods and services tax may revise such claim;

MEANING AND APPLICABILITY OF THE *DE MINIMIS* PRINCIPLE

As mentioned above, the *De Minimis* principle is a principle of general application. In essence, the principle means that the Court will not give effect to something of a trivial and negligible nature. The Court will consider the circumstances and examine the mistake or error in question.

The principle of *De Minimis* has been applied by the Malaysian Federal Court, Court of Appeal and High Court in various circumstances[2]. Case laws have also established that it would be wrong to make an exhaustive classification of cases whereby this principle should or should not be applied. The applicability of this principle is well summarised by the High Court in ***Yap Chin Hock v Minister of Home Affairs & Anor and other applications [1989] 3 MLJ 423***:

"Where trifling irregularities or even infractions of the strict letter of the law of little or no consequence are brought to the notice of the court, the ***maxim de minimis non curat lex (the law does not concern itself about trifles) is of frequent practical application.*** *As was well put by Sir W Scott in the Reward 2 Dod 265, 269, 270:* ***'the court is not bound to a strictness at once harsh and pedantic in the application of statutes.*** *The law permits the qualification implied in the ancient maxim, de minimis non curat lex.* ***If the deviation were a mere trifle, which if continued in practice, would weigh little or nothing on the public interest, it might properly be overlooked.'*** *Accordingly this ground of objection fails."*

The main issue to be determined by the Court of Appeal in this appeal is whether the High Court erred in not applying the *De Minimis* principle in regard to the inaccurate information contained in the taxpayer's Special Refund Application.

The High Court rejected the application of the *De Minimis* principle in the taxpayer's judicial review application and held the following:

"Premised on the above cases, it is the submission of the Applicant that this Court has the jurisdiction to dismiss something which is trivial in nature. The incorrect information in relation to the 100% claim is merely 0.79% and the sales tax involves is RM1,146.43, which is only about ***0.015% of the total value.*** *With regards to the 20% claim, the correct information constitutes only* ***0.014% of the total amount of items claimed*** *by the Applicant.*
However, it is not for this court to say that the incorrect information was trivial in nature and therefore this application should be allowed. This court is only to ascertain if the Respondent has complied with the GST Act when he made the Decision. In this case, this court is satisfied that the Respondent has complied with the GST Act when he made the decision."

Before the Court of Appeal, the taxpayer argued that the principle of *De Minimis* is not a new or unfamiliar concept in revenue / taxation laws. This is especially so if this principle is expressly recognised in the GST Regulations 2014 whereby Regulation 37 allows a supplier to treat exempt supplies as taxable supplies if the amount of exempt supply of a mixed supplier is within the limit specified under the *De Minimis* rule provided (i.e. less than RM5,000 per month and does not exceed 5% of the total of all supplies).

In comparison to the whole Special Refund Application, the alleged inaccuracies are insignificant and trivial. The taxpayer is also willing to forgo the claim on the goods where the unintended inaccuracies relate to. This is especially the case when none of the inaccuracies in the taxpayer's Special Refund Application equate to no more than 0.4% of the total amount claimed.
Further, the taxpayer argued that such strictness… or inflexibility would lead to injustice or miscarriage of justice in the application of Section 191(3) of the

[2] *Boon & Cheah Steel Pipes Sdn Bhd v Asia Insurance Co Ltd & Ors [1973] 1 MLJ 101, Citibank N.A. v Ooi Boon Leong & Ors [1981] 1 MLJ 282, Hong Siew Sin & Anor v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1990] 2 MLJ 90, Malaysia International Consultants Sdn Bhd v R.R. Chelliah Brothers [2009] MLJU 107*

GST Act 2014. In other words, the Courts have the inherent jurisdiction to apply the principle of *De Minimis* Non Curat Lex to disregard the inaccuracies in the taxpayer's Special Refund Application as the circumstances justify such exercise of discretion.

Upon hearing both parties, the Court of Appeal unanimously allowed the taxpayer's appeal and directed the DGC to refund the total amount claimed by the taxpayer less than the value in relation to the inaccurate information in the Special Refund Application.

DOCTRINE OF PROPORTIONALITY

The *De Minimis* principle is also related to the established doctrine of proportionality. It is equally important for any response by the governing authority to be proportionate to the errors in question.

Hence, the taxpayer also argued that the DGC's decision to reject the taxpayer's Special Refund Application due to minor inaccuracies is wholly disproportionate to the objective of Parliament in providing a special refund mechanism for the taxpayers. It is trite that the response of the Executive to any state of affairs must be proportionate to the object a legislative sought to be achieved[3].

The Federal Court in ***R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145*** has also established that the proportionality of an authority's decision may be a ground on which that decision could be reviewed by the judiciary. This essentially widens the scope and reach of the review jurisdiction of our courts in Malaysia.

Therefore, by applying the principle of proportionality, the DGC's decision in taking a strict interpretation of Section 191(3) of the GST Act 2014 and to reject the taxpayer's Special Refund Application in its entirety due to trivial inaccuracies, completely defeats the purpose of the introduction of Sections 190 and 191 of the GST Act 2014 which were meant to remedy the double taxation situation faced by taxpayers. Hence, the DGC's decision is amenable to judicial review.

CONCLUSION

The Court of Appeal's decision strengthens the position that the principle of *De Minimis* has to be applied generally in circumstances which warrants its application and that revenue / taxation laws are not excluded from this principle. The Court of Appeal has also indirectly reinforced the position that the courts are not bound by the harsh and strictness rule in the application of Section 191(3) of the GST Act if such interpretation will lead to injustice or miscarriage of justice. It is trite that there is now a statutory recognition for courts to take a purposive approach in the interpretation of statutes (taxing statutes included). Sections 190 and 191 of the GST Act 2014 are transitional provisions specifically enacted to remedy situations of double taxation and to provide relief.

This decision also serves as a reminder that all decisions and measures taken by public authorities must be fair, reasonable and proportionate to the objective a particular provision sought to achieve. The reach and extent of the court's jurisdiction to review an administrative action is not limited to narrow grounds such as procedural impropriety, illegality, irrationality but may also include proportionality. Therefore, decisions made by public authorities (including tax authorities) that are disproportionate can be challenged via judicial review proceedings.

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[3] *Dr Mohd Nasir Hashim v Menteri Dalam Negeri Malaysia [2007] 1 CLJ 19*

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KEY COURT DECISIONS ON TRANSFER PRICING

Adeline Wong, Jason Liang, Kellie Allison Yap and Jeff Sum

INTRODUCTION

In recent years, there has been a sharp rise in the number of transfer pricing audits, partly as a result of the establishment of the Inland Revenue Board of Malaysia's ("IRBM") Multinational Tax Department. The Multinational Tax Department has spearheaded a focus on compliance risks emerging from, among other things, Malaysia's liberalisation of international trade and capital. With the COVID-19 pandemic severely disrupting the global economy, there will be an uptrend in tax audit activity in the foreseeable future. Taxpayers will need to be even more well-prepared to justify any losses, changes to functions, assets, and risks ("FAR") assumed, and their related party loans and intercompany contracts.

The IRBM generally adopts a restrictive approach to transfer pricing issues, and has, on multiple occasions, deviated from legislation and international and local technical standards. Notwithstanding the enactment of transfer pricing legislation, transfer pricing is not regarded as an exact science in Malaysia. This has allowed the IRBM to push the boundaries in interpreting the law in some cases, to the extent that the IRBM has adopted contradictory positions to those provided in the OECD transfer pricing guidelines, at times. In many some cases, the IRBM applied transfer pricing principles inconsistently without undertaking proper transfer pricing analysis, causing much uncertainty to taxpayers.

We successfully represented taxpayers in transfer pricing appeals before the Special Commissioners of Income Tax ("Special Commissioners"), which may serve as useful judicial guidance for taxpayers facing similar challenges. The Special Commissioners' decisions in these cases serve to highlight the IRBM's misinterpretation of established transfer pricing principles arising from its failure to undertake proper transfer pricing analysis before making adjustments and raising assessments against taxpayers. To some extent, the decisions have restored clarity in many long-standing and key areas of dispute between taxpayers and the IRBM. The decisions are also expected to have significant implications on the future conduct of transfer pricing audits and investigations in Malaysia. We will discuss these transfer pricing cases in this article.

Further, we will discuss the proposed transfer pricing amendments to the Income Tax Act 1967 ("ITA") as contained in the Finance Bill 2020. If passed into law, these amendments will likely result in the IRBM moving to tighten scrutiny of taxpayers' related party transactions.

THE FIRST CASE: WPCS V KPHDN (2020)

Background Facts

The taxpayer obtained two loans from a related Labuan company to finance the acquisition of shares in a company incorporated in Malaysia. It was agreed that the taxpayer would pay interest at the rate of London Bank Offered Rate + 3% per annum and the principal sum would be repayable to the lender on demand. The IRBM relied on Section 140A of the ITA to disallow deductions on interest paid on the loans on the ground that the loans were not undertaken in an arm's length manner. By disallowing the deductions, the IRBM effectively sought to zero-rise the interest rate, treating the loan as if it were a capital injection. In coming to its assessment, the IRBM did not prepare any transfer pricing report to substantiate its adjustments. The taxpayer appealed against the IRBM's decision to the Special Commissioners.

Key Issues

The Special Commissioners agreed with the taxpayer's arguments on all points.

1. **No basis for the IRBM to invoke Section 140A of the ITA to make adjustments**
   The IRBM had failed to justify its belief that the interest rate for the loan does not approximate an arm's length rate. In determining whether the interest rate is at arm's length, the IRBM must undertake a transfer pricing analysis, which compares the taxpayer's transactions to similar transactions that are entered into by unrelated or independent parties. The only transfer pricing report prepared here was by the taxpayer, which set out in detail a FAR analysis that substantiated the arm's length price. The IRBM, on the other hand, did not produce any transfer pricing report and relied on references to seemingly similar transactions extracted from the financial website "Investopedia.com" as the sole basis to deny the deductions. "Investopedia", being a website that collects financial news and trends, is not authoritative.

2. **The IRBM failed to substitute the interest rate with an arm's length rate**
   Section 140A of the ITA empowers the IRBM to adjust the existing interest rate to an arm's length rate. In this case, however, the IRBM sought to disregard the loans in totality. The IRBM zero-rised the interest rate without justifying why it could be reasonably concluded that an unrelated or independent lender would have given a loan without any returns in the form of interest. The IRBM failed to substantiate its adjustments with a transfer pricing analysis that showed the arm's length rate which ought to substitute the existing interest rate. By applying a 0% interest rate, the IRBM effectively attempted to dictate and restructure the taxpayer's transactions, treating the loan as if it were a capital injection. The absence of any factual or legal basis for the IRBM's adjustments proved fatal to its case.

Special Commissioners' Decision

The Special Commissioners allowed the taxpayer's appeal, and held that the taxpayer is entitled to claim deductions for the interest it paid on the loans.

THE SECOND CASE: PGM V KPHDN (2019)

Background Facts

The taxpayer was appointed to act as a limited risk distributor for a related entity to oversee the distribution of fast moving consumer goods in Malaysia. Pursuant to the distribution agreement, the taxpayer would be guaranteed a margin, which provided the taxpayer with a return on sales based on the results of comparable third party distributors.

The IRBM conducted an audit on the taxpayer, but disregarded the detailed transfer pricing analysis that had been prepared by the taxpayer. Although it had not prepared a proper transfer pricing report, the IRBM sought to invoke its powers under Section 140(6) of the ITA to make adjustments. The IRBM sought to justify its position by re-characterising the taxpayer as a "normal distributor" and selecting a handful of companies, which it deemed were comparable to the taxpayer. The IRBM found that the margin earned by the taxpayer was not in line with that of the comparable companies, and adjusted the taxpayer's margin upwards to the median of the range of values obtained from them.

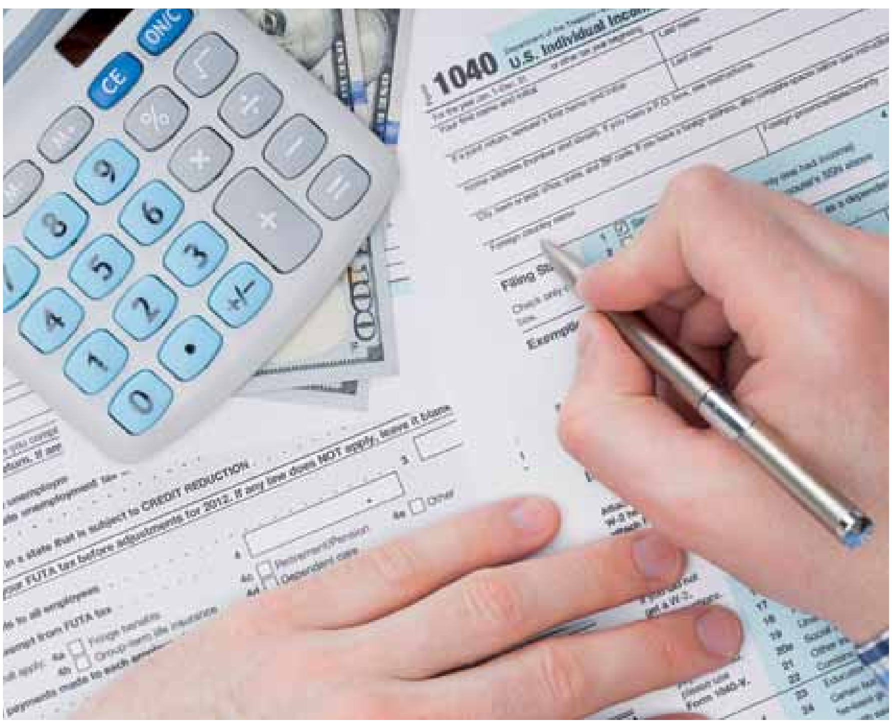
Key Issues

The Special Commissioners agreed with the taxpayer's arguments on all points.

1. **The IRBM's adjustments to the median are incorrect**
   There is no requirement in Section 140(6) of the ITA and the Transfer Pricing Guidelines 2003 (the guidelines applicable at the relevant time), nor the OECD transfer pricing guidelines that a tested party's price or profit be adjusted to the median of the results of the comparable companies. If the taxpayer's price or profit falls within the arm's length range, i.e., the interquartile range, no adjustments ought to be made. Given that the IRBM's own test demonstrates that the taxpayer's price falls within the interquartile range, the adjustments are unjustifiable. It is only when the taxpayer's price falls outside the interquartile range that an adjustment should be considered; the taxpayer ought to be given the opportunity then to present its arguments for the validity of its price, and it is only if the taxpayer is unable to provide a reasonable explanation that the IRBM may adjust the price to the median value. The IRBM had, in this case, acted contrary to the law and transfer pricing standards.

2. **The IRBM's re-characterisation of the taxpayer as a "normal distributor" is erroneous**
   The IRBM failed to produce a transfer pricing report to substantiate its re-characterisation of the taxpayer as a "normal distributor". By contrast, the taxpayer had prepared a comprehensive transfer pricing report, which entailed conducting a detailed FAR analysis. Relying on the case of *MM Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2013] MSTC 10-046*, the taxpayer argued that the Special Commissioners ought to disregard the IRBM's reasons for making adjustments if they are not substantiated by a transfer pricing report.

   The IRBM argued that the taxpayer ought to be re-characterised as a "normal distributor" on the ground that the taxpayer operated independently and bore the cost of marketing activities. Based on its transfer pricing report, the taxpayer argued that: (a) it has limited marketing functions; (b) it does not sell directly from its own stock and bears minimal risks of payment default; (c) it is not a commissionaire, and does not act as an agent on behalf of a principal; and (d) the IRBM had failed to give due weight to the taxpayer's assets and assumption of risks.



3. **The IRBM's selection of comparables**
   The IRBM rejected the 22 suitable comparables applied by the taxpayer in its transfer pricing report without providing a reasonable explanation. The IRBM selected five other comparable companies to justify its adjustments, but did not disclose to the taxpayer any actual data. It was highlighted to the Special Commissioners that the IRBM's comparables have working capital levels, functions, and modes of production and marketing that are incompatible with the taxpayer's.

   The IRBM argued that a comprehensive transfer pricing analysis is unnecessary, and that its "work analysis" based on its field audit is sufficient justification for its adjustments. Further, the IRBM opined that comparability adjustments proposed by the taxpayer would involve "complex algebra", which is "generally not worth the trouble as the resulting adjustments may not be reliable". Ultimately, the IRBM's failure to provide a transfer pricing report with a FAR analysis resulted in its selected comparables being regarded as invalid and unreliable. Its approach was not in line with generally accepted transfer pricing principles and methodology.

Special Commissioners' Decision

The Special Commissioners allowed the taxpayer's appeal and set aside the IRBM's transfer pricing adjustments.

PROPOSED TRANSFER PRICING AMENDMENTS TO THE ITA

On 16 November 2020, the Finance Bill 2020 was tabled for first reading with proposed amendments to the ITA. As of the time of writing, the Finance Bill 2020 has yet to be passed into law. If passed into law, the amendments will undoubtedly result in the IRBM moving to tighten scrutiny of taxpayers' affairs on several fronts, including transfer pricing.

Under the Finance Bill 2020, there are three key changes to the transfer pricing regime that may affect taxpayers with related party transactions.

Changes to Section 140A

The proposed amendments to the relevant transfer pricing provision i.e., Section 140A of the ITA would confer additional powers on the IRBM, to not only substitute the price of transactions between associated persons but to disregard the structure and impose an additional surcharge. With the insertion of Section 140A(3A) of the ITA, the IRBM may disregard a structure if "the economic substance of that transaction differs from its form" or *"the form and substance of that transaction are the same but the arrangement made in relation to the transaction, viewed in totality, differs from those which would have been adopted by independent persons behaving in a commercially rational manner and the actual structure impedes the Director General from determining an appropriate transfer price."*

This amendment arguably expands the scope of Section 140A of the ITA to impose anti-avoidance measures in transfer pricing arrangements, on top of the existing typical arm's length requirement – and perhaps to remedy the perceived gap that the IRBM thinks exist à la the WPCS case. The approach is also reflective of the post-BEPS (i.e., base and erosion profit shifting) era, where transfer pricing laws and guidance around the world are being amended to give weight to substance over form. However, one may argue that there is no such need to increase the ambit of the IRBM's powers in this manner, given that the existing anti-avoidance provision in Section 140 of the ITA already confers powers on the IRBM to disregard structures that lack economic substance.

The meaning of the words "form" and "substance" in the proposed amendments to Section 140A is unclear. One uncertainty that can potentially arise as a result of the enactment of the amendments is the erosion of the taxpayer's right to choose between alternative structures which are prima facie legally permissible. For example, a potential danger posed here is that the provision may be relied upon by the IRBM to wholly disregard a taxpayer's transfer pricing arrangements without providing justifiable price substitutes for the transactions, on the ground that the actual structure impedes the Director General from determining an appropriate transfer price" (as argued by the IRBM in the WPCS case). This is notwithstanding that the IRBM's attempt to avoid arriving at an appropriate price substitute in the WPCS case was heavily criticised and disapproved by the Court.

The proposed amendments to Section 140A would also empower the IRBM to impose a surcharge of up to five per cent of the amount of increase of any income generally, or reduction of any deduction or loss, when the transactions are found to be in breach of Section 140A of the ITA. The imposition of surcharge would further burden taxpayers, given that they would already be subject to penalties under Section 113 of the ITA for making incorrect returns or giving

incorrect information.

New Section 113B

The proposed insertion of Section 113B of the ITA seeks to impose a statutory obligation on taxpayers to prepare contemporaneous transfer pricing documentations in respect of any year of assessment to implement and facilitate the operation of Section 140A of the ITA. A failure to furnish the same carries penal sanctions i.e., a fine of between RM20,000 to RM100,000 or imprisonment for a term not exceeding six months, or both upon conviction. If no prosecution is instituted, the IRBM may impose a penalty between RM20,000 to RM100,000 on the taxpayer. By virtue of this amendment, a taxpayer's duty to prepare contemporaneous transfer pricing documentations is no longer a matter of good practice but a matter of compliance with the law. This amendment signals the increasing likelihood of transfer pricing audits.

New Section 103B

Thirdly, the Finance Bill proposes the introduction of Section 103B, which states

that: *"The institution of any proceedings under any other written law against the Government or the Director General shall not relieve any person from liability for the payment of any tax, debt or other sum for which he is or may be liable to pay under this Part."*

If passed into law, we expect the IRBM to rely on this provision as an additional ground to limit the circumstances in which a taxpayer is entitled to obtain a stay of the payment of additional taxes and penalties during a judicial review application. Taxpayers seeking to obtain a stay of payment during the leave stage are already facing an uphill battle. In the current judicial climate, the enactment of Section 103B will undoubtedly increase the difficulty of obtaining a stay of payment. It is almost certain that the IRBM will apply to be a putative respondent and highlight this provision to the Court at the leave application stage.

Overall, the proposed amendments by the Finance Bill 2020 would inevitably make the transfer pricing landscape in Malaysia more difficult to navigate. Taxpayers would need to understand their transfer pricing compliance obligations, and be aware of the potential pitfalls if they do not adequately document their transfer pricing arrangements or are unable to justify their transfer pricing policies.

KEY TAKEAWAYS

The Special Commissioners' decisions in *WPCS v KPHDN (2020)* and *PGM v KPHDN (2019)* are of utmost importance as they address a long-standing practice by the IRBM that has long troubled taxpayers, namely, the IRBM's persistence in raising transfer pricing adjustments without conducting a proper transfer pricing analysis.

These decisions have shown that the judiciary consistently attributes significant weight to transfer pricing reports and analyses to determine arm's length prices, and their absence may be detrimental to a litigant's case. Conversely, well-prepared and contemporaneous transfer pricing documentations will hold taxpayers in good stead when defending their transfer pricing positions before the courts. These decisions serve as a crucial reminder that taxpayers ought to remain proactive by consistently documenting every decision made and undertaking proper analysis for their transfer pricing policies or intercompany arrangements, if they are to be in a position to withstand scrutiny during an audit or litigation. This is especially pertinent in view of the proposed insertion of Section 113B of the ITA by the Finance Bill 2020, which requires taxpayers to prepare and furnish contemporaneous transfer pricing documentation. In the WPCS and PGM cases, the taxpayers were well-positioned to provide proper justifications and evidence as they had, with the assistance of professional consultants, built defensible transfer pricing positions over the years. The pre-emptive measures adopted by the taxpayers before the audit stage contributed significantly to their wins in court. More often than not, the key difference in winning and losing a transfer pricing case boils down to one factor – your preparedness plan.

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International News

The column only covers selected developments from countries identified by the CTIM and relates to the period 16 August 2020 to 15 November 2020.

CHINA (PEOPLE'S REP.)

China Exempts VAT, Consumption Tax and Import Duty on Exported Goods Returned Due to Force Majeure

The Ministry of Finance (MoF) will provide an exemption from import duty, value added tax (VAT) and consumption tax on import for goods exported between 1 January and 31 December 2020 but returned (reimported) to China in their original state due to the force majeure of COVID-19 within one year from the date of export. Furthermore, the MOF will refund any export duties paid at the time of export.

Correspondingly, the taxpayer must repay refunds of VAT and consumption tax on the export of these goods (or provide a certificate to prove that no taxes for the export of these goods have been refunded) before applying for the exemption for the re-importation of goods.

If the return of these goods has already been subject to VAT, consumption tax on the re-importation and import duties in the period between 1 January 2020 and 2 November 2020, the paid taxes must be refunded to taxpayers. Taxpayers must submit their refund applications to the Customs Service before 30 June 2021.

The above tax regulation is laid down in Public Notice [2020] No. 41 jointly issued by the MoF, the State Taxation Administration and the General Customs Service on 2 November 2020.

HONG KONG

Hong Kong Exempts Sale and Purchase of Hong Kong Stocks by ETF Market Makers from Stamp Duty

The Inland Revenue Department (IRD) will exempt from stamp duty the sale and purchase of Hong Kong stocks involving the activities of Exchange Traded Fund (ETF) market makers in the course of allotting and redeeming ETF shares or units listed in Hong Kong upon meeting the prescribed conditions.

The stamp duty exemption, which is effective from 1 August 2020, was announced in Stamping Circular No. 03/2020 of 17 August 2020.

INDIA

India Clarifies Withholding Tax Requirements for Certain Domestic Payments under Finance Act

The Central Board of Direct Taxes (CBDT) has clarified that certain domestic payments made by electronic commerce (e-commerce) operators to e-commerce participants are exempt from the 1% withholding tax imposed under the Finance Act, 2020. The CBDT also clarified the withholding tax threshold, the effect of adjustments for sales returns, discounts and indirect taxes, and the applicability of the withholding tax requirement to the sale of motor vehicles and fuel supplied to non-resident airlines.

Exemptions for e-commerce payments

- The 1% withholding tax requirement under Section 194-O of the Income Tax Act, 1961 (the Act), as introduced by the Finance Act, 2020, will not apply to the following situations:
- transactions in securities and commodities traded on recognized stock exchanges or cleared and settled by the recognised clearing corporation;
- transactions in electricity, renewable energy certificates and energy savings certificates traded on certain registered power exchanges;
- payment gateway operators will not be required to deduct the tax on a transaction if the e-commerce operators have already deducted the tax on the same transaction; and
- insurance agents or aggregators will not be required to deduct the tax for the years following the first

year if they have no involvement in transactions between insurance companies and buyers for the subsequent years. However, insurance companies will be required to deduct the tax on any commission payment made to insurance agents or aggregators.

Other clarifications

- For the financial year 2020/21, the calculation of the gross amount of sales of goods and services in relation to the withholding threshold of INR500,000 is counted from 1 April 2020 up to 30 September 2020. Thus, the withholding requirement will apply to any sum credited or paid on or after 1 October 2020. The calculation applies both to withholding requirements under section 194-O and section 206C(1H) of the Act.
- In the case of tax collected at source (TCS) imposed under section 206C(1H) of the Act, no adjustment is required to be made on account of sales returns, discounts or indirect taxes since the collection is made with reference to receipts of the sale consideration.
- Sales of motor vehicles to a dealer will be subject to TCS under section 206C(1H) of the Act if it is not taxed under section 206C(1F) of the Act. Sales of motor vehicles to consumers will be subject to TCS under section 206C(1H) of the Act if the consideration exceeds INR 5,000,000 in the previous year.
- The proposed TCS under section 206C(1H) of the Act will not apply to payments received for fuel supplied to non resident airlines in Indian airports.

The clarifications aim to minimise the anticipated difficulties in the application of the new withholding requirements set to begin on 1 October 2020.

India Expands the Restriction of Depreciation Allowance for Certain Taxpayers Opting for Lower Income Tax Rates

The CBDT has expanded the restriction of depreciation allowance under rule 5(1) of the Income Tax Rules, 1962 (the Rules) at a maximum of 40% to include individuals, Hindu undivided families and resident cooperative societies that exercise the option to use lower income tax rates.

Previously, rule 5(1) of the Rules restricts the depreciation allowed under section 32(1)(ii) of the Income Tax Act, 1961 (the Act) for any block of assets entitled to more than a 40% depreciation rate at a maximum of 40% on the written down value of such a block of assets for domestic companies that exercise the option to use the lower income tax rate under Section 115BA of the Act.

The restriction now also applies to the following taxpayers:

- domestic companies under Section 115BAA and Section 115BAB from the assessment year (AY) 2020-21;
- individuals and Hindu undivided families under Section 115BAC from AY 2021-2022; and
- resident cooperative societies under Section 115BAD from AY 2021-2022.

The CBDT has further added the following administrative requirements:

- for companies that exercise the option to use lower tax rates – they must provide information regarding the exercise of such an option in Form No. 3CD and 3CEB; and
- for individuals, Hindu undivided families and domestic cooperative societies that exercise the option to use lower tax rates – they must submit Form No. 10-IE or 10-IF.

India Subsidizes Provident Fund Contributions and Provides Tax Relief to Developers and Home Buyers in New Stimulus Measures

The government will subsidize the provident fund contributions of businesses that hire new employees from 1 October 2020 to 30 June 2021 in new stimulus measures, among others, to incentivise job creation during the COVID-19 pandemic.

The subsidy applies to the following employees who are hired from 1 October 2020 to 30 June 2021 with monthly wages less than INR15,000:

- new employees hired by businesses registered with the Employees' Provident Fund Organisation (EPFO); and
- EPFO members' employees who were terminated from employment from 1 March 2020 to 30 September 2020.

Businesses that register with the EPFO from 1 October 2020 may also avail of the subsidy for all new employees. To qualify for the subsidy, EPFO-registered businesses must hire:

- at least two new employees if the business had 50 employees or less in September 2020; or
- at least five new employees if the business had more than 50 employees in September 2020.

The government will subsidise the contributions of eligible businesses for two years at the following rates:

- both employee's (12%) and employer's (12%) contributions for businesses with

- 1,000 employees or less; or
- employee's contributions (12%) only for businesses with more than 1,000 employees.

In addition, the government also announced income tax reliefs for property developers and home buyers where:

- the differential between the circle rate and agreement value in real estate income tax will be increased from 10% to 20% for primary sale of residential units up to INR20 million commencing from 12 November 2020 (date of announcement of this scheme) to 30 June 2021; and
- consequential relief of up to 20% will be allowed to buyers of these units for the same period as above.

INDONESIA

Indonesia Further Reduces Tax Instalments for Certain Business Sectors and Introduces Final Tax Incentive for Certain Construction Services

The Ministry of Finance (MoF) has expanded the tax incentives previously provided under MoF Regulation No.86/ PMK.03/2020 (PMK-86) by further reducing the monthly corporate income tax instalment by 50% (previously 30%) for eligible taxpayers. A new incentive is also introduced for certain construction services where the final income tax will be borne by the government.

In this regard, the MoF issued Regulation No.110/ PMK.03/2020 (PMK-110). Its salient features are set out below.

Reduction of monthly tax instalments

The monthly corporate income tax instalments under article 25 of the Income Tax Law will be reduced by 50% (previously by 30%) from July 2020 to December 2020 for qualifying taxpayers. They are:

- companies engaged in 1,013 specific industries as listed in the attachments to PMK-110;
- companies granted the Import Facility for Export Purposes; or
- companies licensed as businesses in the Bonded Zone area.

Examples for the calculation of the reduced monthly tax instalments are provided in the Appendix to PMK-110.

Taxpayers are required to submit notifications to the Directorate General of Taxes (DGT) to avail of the above incentive, with the reduced instalment taking effect from the month in which the notification is submitted.

However, taxpayers that submitted the notification under the previous regulations are automatically entitled to the above incentive.

Final income tax for certain construction services will be borne by the government

Construction service businesses are generally subject to a final income tax between 2% and 6% depending on the scope of services and qualifications of the service provider.

Under PMK-110, the final tax on the income received for the provision of construction services under the programme to accelerate the improvement of water irrigation (Program Percepatan Peningkatan Tata Guna Air Irigasi/P3-TGAI) will be borne by the government from 14 August 2020 until 31 December 2020.

Taxpayers claiming the above incentives are required to submit a monthly realisation report in the prescribed format via *www.pajak.go.id* by the 20th day of the following month.

Indonesia Issues Reporting Requirements for Public Companies Eligible for Reduced Tax Rate

The MoF requires public companies that are eligible for a 3% reduction in the corporate income tax rate for fiscal years 2020 until 2022 to submit share ownership reports in the prescribed format together with their annual income tax returns.

In connection with this, the MoF has gazetted Regulation No. 123/

PMK.03/2020 (PMK-123) as the administrative regulation for Government Regulation No. 30 of 2020 on the submission of share ownership reports to the DGT.

Qualifying public companies must attach the following reports to their annual income tax returns:

- monthly reports on share ownership according to the capital market statutory regulations, which have been (i) issued by the Securities Administration Bureau (Biro Administrasi Efek); or (ii)

- prepared by the public company that carries out its own securities administration; and
- reports on share ownership of related parties according to the format prescribed in Annex A of PMK-123.

The monthly reports must include the following information: taxpayer's name, taxpayer identification number, tax year and statement of fulfilment of the requirements to qualify for the reduced tax rate. If the monthly reports from the Securities Administration Bureau do not include the required information, the taxpayer must submit the monthly reports according to the format prescribed in Annex C of PMK-123.

The Chairman of the Board of Commissioner of the Capital Market Authority (Ketua Dewan Komisioner Otoritas Jasa Keuangan) will also submit a list of qualifying public companies to the DGT by the end of the month following each fiscal year.

PMK-123 came into operation on 2 September 2020.

Indonesia's Parliament Passes Omnibus Bill on Job Creation that Includes Revision to Tax Laws

On 2 November 2020, the President enacted the Omnibus Bill on Job Creation into law. The Bill had been passed by the House of Representatives previously on 5 October 2020. The Bill also includes amendments to taxation laws.

Indonesia To Increase Stamp Duty Rate Effective 1 January 2021

The government will impose a higher stamp duty under the new Stamp Duty Law, which will come into effect from 1 January 2021. Under Law No. 10 of 2020 on Stamp Duty (Law No. 10), stamp duty will be levied at a fixed rate of IDR10,000 on commercial documents, including those in electronic form. Currently, certain documents are subject to stamp duty of IDR3,000 or IDR6,000.

Coverage

Under Law No. 10, stamp duty will be imposed on two types of documents:

- documents of a civil nature, such as:
- letters of agreement, certificates, statement letters or other similar documents and copies thereof;
- notarial deeds along with the grosse, copy and quotation thereof;
- deeds of land conveyancers and copies thereof;
- securities in any name or form;
- documents evidencing the transfer of securities, including the transfer of futures contracts;
- auction documents;
- documents with a nominal value exceeding IDR5 million acknowledging the receipt of money or the payment or calculation of debt; and
- other documents defined by Law No. 10; and
- documents used as evidence in court.

Stamp duty will not be levied on instruments relating to the transport of passengers or goods, certificates of studies or diplomas, receipt of salary, pension or any similar payment relating to employment, receipt of all taxes and other documents as provided under Law No. 10.

Transitional provision

The government will allow the use of existing stamps in a combination of IDR3,000 and IDR6,000 stamps (for a total of IDR9,000) to be affixed onto the aforementioned documents from 1 January 2021 to 31 December 2021.

The President enacted Law No. 10 on 26 October 2020. Law No. 10 will come into force on 1 January 2021 and replace Law No. 13 of 1985 on Stamp Duty.

SINGAPORE

Singapore Gazettes Amendments to Income Tax Exemption of Certain Interest and Other Payments

On 2 September 2020, the Ministry of Finance (MoF) gazette the amendments to the income tax exemption of interest and other payments on loans, securities lending or repurchase arrangements or deposits from certain entities outside Singapore.

The main amendments are set out below.

- The conditions for the tax exemption of (i) interest that a company with an approved finance and treasury centre is liable to pay on or after 18 February 2005 on any loan, and (ii) loan rebate fee or price differential that a company with an approved finance and treasury centre is liable to pay on or after 18 February 2005 in respect of any securities lending or repurchase arrangement have been amended and deemed to have come into effect from 18 February 2005.
- The exemption on interest on any bond to be paid on or after 5 September 2000, subject to conditions, has been deleted effective 1 January 2019.
- A new provision has been inserted which exempts interest that a company with an approved finance and treasury centre is liable to pay on or after 25 March 2016 on any deposit placed with the approved finance and treasury centre by any approved office or approved associated company outside Singapore, subject to conditions. This provision is deemed to have come into operation on 25 March 2016.

Full details, including the revised

conditions and definition of terms, are available in Regulation No. S 745 dated 26 August 2020, which amends the Income Tax (Exemption of Interest and Other Payments for Economic and Technological Development) Notification 2003.

Singapore Proposes Tougher Anti-Avoidance Measures in the Goods and Services Tax (Amendment) Bill

The MoF has proposed measures to deter "missing trader fraud" and impose a 50% surcharge on adjustments made for tax avoidance arrangements, among other proposals, in the GST (Amendment) Bill 2020.

Measures to deter missing trader fraud

The Bill proposes to disallow a taxable person from claiming an input tax credit on a supply made to another taxable person if that taxable person knew or should have known that the supply was part of any arrangement that results in loss of public revenue ("missing trader fraud").

The arrangement refers to any arrangement comprising two or more supplies, whether or not the supplies are in the same supply chain, where one or more persons evade or avoid paying GST or are able to obtain any tax credit or refund which the person or persons would not otherwise be able to obtain. Examples of scenarios where the missing trader fraud occurs are provided in the ninth schedule of the Bill.

In addition to the disallowance of the input tax credit, a 10% surcharge on the input tax will be imposed on the taxable person. The surcharge must be paid within 1 month after the date a written notice of the surcharge is served.

Adjustments and surcharges under section 47 of the GST Act

The Bill proposes a time limit of five years after the end of a prescribed accounting period in respect of which

the Comptroller may make an adjustment for tax avoidance arrangements under Section 47(1A) of the GST Act. The Bill also proposes to impose a 50% surcharge on any additional GST levied resulting from adjustments made by the Comptroller under Section 47 of the GST Act for tax avoidance arrangements in respect of an accounting period starting from 1 January 2021. The surcharge must be paid within 1 month after the date a written notice of the surcharge is served.

The MoF has taken into consideration the responses in the public consultation on the draft bill held in July 2020.

Singapore Proposes Tougher Anti-Avoidance Measures in the Income Tax (Amendment) Bill

The MoF has proposed to impose a 50% surcharge on adjustments made for tax avoidance arrangements and clarified the tax treatment of COVID-19 support measures from the government, among other proposals, in the Income Tax (Amendment) Bill 2020.

Surcharge on adjustments under section 33 of the Income Tax Act (ITA)

The Bill proposes to impose a 50% surcharge on any income tax or additional income tax resulting from any tax adjustments made by the Comptroller under Section 33 of the ITA for tax avoidance arrangements from the year of assessment 2023 onwards. The surcharge must be paid within one month after the date a written notice of the surcharge is served, whether or not an objection or appeal has been lodged against the adjustment.

Surcharge on adjustments under section 33A of the Stamp Duties Act (SDA)

The Bill also proposes to impose a 50% surcharge on any stamp duty or additional stamp duty resulting from adjustments made by the Comptroller under Section 33A of the SDA. The surcharge will apply to any instrument, or anything treated as an instrument, executed on or after the effective date of Section 63 of the ITA (Amendment) Act of 2020 for tax avoidance purposes. The surcharge must be paid within one month after the date a written notice of the surcharge is served, whether or not an objection or appeal has been lodged against the adjustment.

In addition, the Bill proposes a penalty of up to four times of the outstanding amount for taxpayers that fail to pay the stamp duty and surcharge on time.

Exemption of certain COVID-19 payments under a public scheme
The Bill proposes to exempt payments received by taxpayers under a public scheme in view of the COVID-19 pandemic and other benefits from income tax, subject to conditions.

The MoF has taken into consideration the responses to the public consultation on the draft Bill held in July 2020.

THAILAND

Thailand Further Extends the Reduction of Social Security Contributions

The Cabinet has approved a further reduction of social security contributions from 5% to 2% for both employees and employers from September 2020 to November 2020 in response to the COVID-19 pandemic.

Social security contributions were previously reduced to 1% and 4% for employees and employers, respectively, from March to May 2020 due to the COVID-19 crisis.

Employers or insured persons who have remitted their contributions at the 5% rate during the covered period may submit a request for refund at the appropriate Social Security Office.

Cabinet Approves New Individual Tax Deductions

On 12 October 2020, the Cabinet approved a new stimulus measure granting individuals an income tax deduction of up to THB30,000 for spending on certain goods and services from 23 October to 31 December 2020 to encourage domestic spending during the COVID-19 pandemic.

The deduction is one of three measures launched by the government to encourage domestic spending. Taxpayers cannot claim the income tax deduction if they have already availed of either of the two other measures (i.e. the "Khon La Krueng" subsidy or subsidy for holders of state welfare cards).

The deduction does not apply to purchases of the following goods or services:

i. tobacco and alcoholic products;
ii. fuel charges and airline tickets;
iii. travelling and accommodation costs; and
iv. printed/electronic versions of newspapers and magazines.

The deduction is applicable, for tax year 2020, to purchases of certain goods and services from businesses registered for value added tax purposes. Taxpayers are required to keep proper records of receipts for tax deduction purposes.

The deduction is applicable, for tax year 2020, to purchases of certain goods and services from businesses registered for value added tax purposes. Taxpayers are required to keep proper records of receipts for tax deduction purposes.

VIETNAM

Vietnam Issues the Implementing Decree for the Reduction of Corporate Income Tax Payable for 2020

The government has issued the implementing decree detailing the application of the 30% reduction in the corporate income tax (CIT) payable for qualified enterprises, cooperatives, agencies and other organisations established under Vietnam laws with the total revenue of not more than VND 200 billion for the year 2020.
In addition to the condition previously approved by the National Assembly, the implementing decree (Decree No. 114/2020/N#-CP) clarifies the determination of an enterprise's total revenue and CIT payable in 2020, as follows:

- total revenue includes all sales proceeds, processing fees, service charges, including surcharges, subsidies and other amounts that the enterprise is entitled to receive;
- enterprises established in 2020, or enterprises that have undergone change in form or ownership, consolidation, merger, division, dissolution or bankruptcy in 2020, where the enterprise did not operate for a full 12 months, shall compute the total revenue by multiplying the average monthly revenue by 12 months;
- for quarterly declarations, qualified enterprises shall pay 70% of the quarterly CIT where its total revenue in 2020 is expected to be not more than VND200 billion; and
- enterprises enjoying incentives are entitled to the reduction.

Decree No. 114/2020/N#-CP dated 25 September 2020 implements Resolution No. 116/2020/QH14, which took effect on 3 August 2020.

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The technical updates published here are summarised from selected government gazette notifications published between 17 August 2020 and 16 November 2020, including Public Rulings (PRs) and guidelines, if any, issued by the Royal Malaysian Customs Department and other regulatory authorities.

INCOME TAX

Income Tax (Special Treatment for Interest on Loan) Regulations 2020

The Income Tax (Special Treatment for Interest on Loan) Regulations 2020 [P.U.(A) 237] were gazetted on 25 August 2020. The Regulations provide that where a moratorium is approved by a bank or financial institution (FI) in respect of any amount of interestNote due and payable from 1 April 2020 until 30 September 2020 (moratorium period) by an individual, Small and Medium Enterprise (SME) or any company other than a SME, such interest shall not constitute the gross income of that bank or FI in the basis period for that year of assessment (YA).

Note:
Where any amount of interest accrued during the moratorium period is received during the moratorium period, or becomes receivable on or after 1 October 2020, the special tax treatment provided under the Regulations will not apply.

The Regulations stipulate that the impairment provision for financing or loans which are included in the moratorium program is not allowed as a tax deduction during the moratorium period. In addition, a separate account and appropriate records must be maintained for the interest accrued (and not received) during the moratorium period, and its subsequent repayments.

The Order is effective from YA 2020.

Income Tax (Deduction for Expenses in relation to Listing on Access, Certainty, Efficiency (ACE) Market or Leading Entrepreneur Accelerator Platform (LEAP) Market of Bursa Malaysia Securities Berhad) Rules 2020

The Income Tax (Deduction for Expenses in relation to Listing on Access, Certainty, Efficiency (ACE) Market or Leading Entrepreneur Accelerator Platform (LEAP) Market of Bursa Malaysia Securities Berhad) Rules 2020 [P.U.(A) 263] were gazetted on 3 September 2020. The Rules will apply to a technology-based company which applies for listing on the ACE Market or LEAP Market of Bursa Malaysia Securities Berhad from YA 2020 until YA 2022, and provide that in ascertaining the adjusted income of the company for its business for a YA, there shall be allowed a deduction equivalent to the amount of the following expenditure incurred by the company in relation to the listing:

(a) Fees to the authorities;
(b) Professional fees:
  - Advisory fee to the sponsor (i.e. main adviser for listing on the ACE Market) or approved adviser (i.e. main adviser for listing on the LEAP Market); and
  - In relation to the listing exercise, fees to a solicitor, company secretary, tax adviser, reporting accountant, auditor, valuer, independent market researcher, issuing house and share registrar; or

(c) Fees for underwriting, placement and brokerage

The Rules stipulate that the tax deduction, capped at RM1.5 million, shall only be claimed by the technology-based company for the basis period in the YA when the company is listed on the ACE Market or LEAP Market. The total amount of deduction shall not exceed the adjusted income of the company for the basis period in that YA, and such adjusted income shall be ascertained before such a deduction. In addition, if there is no or insufficient adjusted income in that YA such that the deduction in respect of the above-mentioned expenditure cannot be claimed or cannot be claimed in full, the excess cannot be carried forward to subsequent YAs.

The Rules are effective from YA 2020.

Update to the Automatic Exchange of Financial Information Rules and Regulations

The following Rules and Regulations were gazetted to stipulate amongst others, the due diligence obligations, reporting obligations, record-keeping requirements, appointment of third parties to carry out the obligations and anti-avoidance provisions that would apply to Reporting Financial Institutions (RFIs) (as defined):

- Income Tax (Automatic Exchange of Financial Account Information) Rules 2016 [P.U.(A) 355], gazetted on 23 December 2016;
- Income Tax (Automatic Exchange of Financial Account Information) (Amendment) Rules 2017 [P.U.(A) 403], gazetted on 22 December 2017; and
- Labuan Business Activity Tax (Automatic Exchange of Financial Account information) Regulations 2018 [P.U.(A) 20], gazetted on 5 February 2018

The above-mentioned Rules and Regulations were recently amended via the following, which were gazetted on 4 September 2020:

- Income Tax (Automatic Exchange

of Financial Account Information) (Amendment) Rules 2020 [P.U.(A) 267]; and
- Labuan Business Activity Tax (Automatic Exchange of Financial Account Information) (Amendment) Regulations 2020 [P.U.(A) 266]

Both the Amendment Orders provide that for the purpose of the Common Reporting Standard (CRS), an "Excluded Account" is to be defined as a depository account which is dormant (other than an Annuity Contract):
(a) With a balance that does not exceed USD1,000;
(b) Where the account holder has not initiated a transaction with regard to the account or any other accounts held by the account holder with the RFI in the previous three (3) years;
(c) Where the account holder has not communicated with the RFI regarding the account or any other accounts held by the account holder with the RFI in the previous six (6) years; and
(d) In relation to a Cash Value Insurance Contract, where the RFI has not communicated with the account holder regarding the account or any other accounts held by the account holder with the RFI in the previous six (6) years

Note:
Previously, the term "Excluded Account" included a securities account which is a dormant account under rule 26.10 of the Rules of Bursa Malaysia Depository Sdn Bhd. This has now been removed.

◆◆ Income tax exemption for export of private healthcare services

Currently, taxpayers providing private healthcare services are eligible for a partial tax exemption on income derived from the export of healthcare services to foreign clients. The income tax exemption is equivalent to 50% of the value of increased exports of services and the exemption can be set off against 70% of the statutory income.

In Budget 2018, it was proposed that the tax exemption on income derived from the export of healthcare services to foreign clients either in Malaysia or from Malaysia be increased from 50% to 100% of the value of increased exports of services, to be set off against 70% of the statutory income, with additional conditions.

To legislate the above-mentioned proposal, the Income Tax (Exemption) (No. 9) 2002 (Amendment) Order 2020 [P.U.(A) 269] was gazetted on 8 September 2020.

The income tax exemption will apply only if the following conditions are met:
(a) At least 10% of the taxpayer's total number of patients consists of foreign clients who have obtained private healthcare services in each YA; and
(b) At least 10% of the company's gross income is derived from foreign clients who have obtained private healthcare services in each YA.

The Amendment Order is effective from YA 2018 to YA 2020.

Industry4WRD

Malaysia's national policy on Industry 4.0 (the Industry4WRD policy), launched on 31 October 2018, was developed to propel Small and Medium Enterprises (SMEs) forward to meet the challenges of the Fourth Industrial Revolution. To achieve these aspirations, various measures and tax incentives were proposed in Budget 2019, including a tax deduction on expenses of up to RM27,000 incurred for I4.0 readiness assessments. The amount must be paid to the Malaysian Productivity Corporation and would apply to companies undertaking assessments of their current readiness capabilities and potential shift to I4.0 technology.

To legislate the above-mentioned proposal, the Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) Rules 2020 [P.U.(A) 272] were gazetted on 21 September 2020.

The Rules provide that in ascertaining the adjusted income of a qualifying company from its business for a YA, there shall be allowed a deduction equivalent to the amount of the fee expenditure incurred by the qualifying company on the Industry4WRD

TABLE 01:

Item	Fee payable
1. The filing of a notice of appeal to the High Court (Paragraph 34)	RM200 in respect of each deciding order against which an appeal is lodged
2. Cost of notes of proceedings (Paragraph 37A) (a) In the form of printed copy (b) In the form of compact disc	• RM2 per page for the first copy; • RM1 per page for the second or subsequent copy • RM10 per unit
3. Copy of any document filed during the proceedings before the Special Commissioner (SC) (Paragraph 37A)	RM2 per page
4.Copy of the grounds of decision from the SC for the purpose of authorized publication (Subparagraph 43(2)	RM5 per page

Readiness Assessment program, subject to the following conditions:
(a) The fee expenditure on the Industry4WRD Readiness Assessment program is incurred between 2 January 2019 and 31 December 2020;
(b) The application for deduction is made to the Minister through the Malaysia Productivity Corporation from 2 January 2019 until 31 December 2021; and
(c) The total amount of deduction allowed is capped at RM27,000.

The Rules are effective from YA 2019 to YA 2021.

Prescribed fees under Schedule 5 of the ITA

The Income Tax (Prescribed Fees under Schedule 5 to the Act) Rules 2020 [P.U.(A) 274] were gazetted on 22 September 2020 to provide that for the purpose of payment of fees under Schedule 5 (Appeals) of the Income Tax Act 1967 (ITA), the prescribed fees shall be as **Table 01**:

With this, the Income Tax (Prescribed Fees under Schedule 5 to the Act) Rules 1998 [P.U.(A) 497] are revoked. The new Rules came into operation on 25 September 2020.

Income tax exemptions for employers and employees under the Employment Retention Programme (ERP)

The Employment Retention Programme (ERP), announced on 16 March 2020, was introduced in the Extra Economic Stimulus Package (PRE2020). The ERP is a form of financial assistance of RM600 per month per employee for a maximum period of six months. The RM600 amount per month is credited into the employer's account, and the employer is then required to credit the payment into the employee's account within seven days from the receipt of the payment from the Social Security Organisation (SOCSO). The Programme applies to private sector employees who fulfill relevant conditions.

Following the above, two (2) Exemption Orders that exempt the employer and the employee from tax in relation to the ERP were gazetted on 22 October 2020 and are effective from the year of assessment (YA) 2020.

- Income Tax (Exemption) (No. 4) Order 2020 [P.U.(A) 306]
- The Order provides that an employer is exempted from the payment of income tax in respect of any financial assistance received by the employer under the ERP.

The ERP has been defined in the Order to mean a financial assistance program managed by SOCSO for an employer to retain his employees that have been given notice of unpaid leave for the period from 1 March 2020 until 30 June 2020.

To qualify for exemption under the Order, the employer's application for financial assistance must be received by SOCSO between 20 March 2020 and 15 June 2020.

- Income Tax (Exemption) (No. 5) Order 2020 [P.U.(A) 307]
- The Order provides that an employee is exempted from the payment of income tax in respect of any financial assistance received from his employer under the ERP.

The ERP has been defined in the Order to mean the program under the Economic Stimulus Package 2020 managed by SOCSO that provides financial assistance of RM600 per month to an employee:
(a) Who has been given notice of unpaid leave by his employer for the period between 1 March 2020 and 30 June 2020;
(b) Whose salary is not more than RM4,000 per month; and
(c) Who is registered and contributes to the Employment Insurance System

Updated guidelines on deductions for secretarial fees and tax filing fees

The Inland Revenue Board (IRB) has published the updated guidelines on tax deductions for secretarial and tax filing fees, titled "Garis Panduan Potongan Bagi Perbelanjaan Berhubung Dengan Yuran Kesetiausahaan Dan Yuran Pemfailan Cukai Mulai Tahun Taksiran 2020" (Guidelines) dated 18 September 2020. The new seven-page 2020 Guidelines replace the earlier Guidelines dated 17 August 2018.

The new Guidelines are broadly similar to the earlier guidelines and reiterate that the deduction for secretarial fees and tax filing fees shall be allowed for each YA only:

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

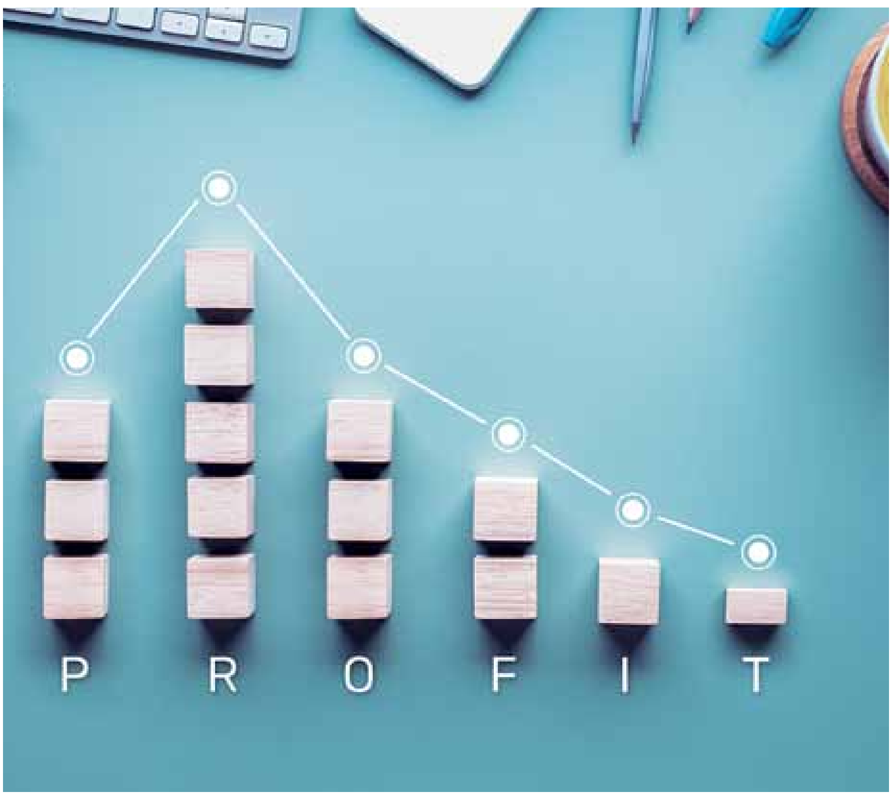
The new Guidelines were issued mainly to take into account the legislative changes in the Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [P.U.(A) 162] (Rules).

Guidelines on application for approval under Section 44(11D) of the ITA in relation to funds established for wakaf or endowment

Section 44(11D) was introduced to expand the scope of approved donations to include any gift of money in the form of cash wakaf made to any appropriate religious authority, body or public university approved by the Director General (DG), or endowment made to any public university.

In line with this, the IRBM has recently published the following technical guidelines to provide guidance on the application for approval under Section 44(11D) in relation to funds established for wakaf or endowment:

- Garis Panduan Permohonan Untuk Kelulusan Ketua Pengarah Hasil Dalam Negeri Di Bawah Subseksyen 44(11D) Akta Cukai Pendapatan 1967 Bagi Endowmen, dated 6 October 2020
- Garis Panduan Permohonan Untuk Kelulusan Ketua Pengarah Hasil Dalam Negeri Di Bawah Subseksyen 44(11D) Akta Cukai Pendapatan 1967 Bagi Wakaf, dated 8 October 2020



Public Ruling No. 7/2020 – Appeal Against an Assessment and Application for Relief

PR No. 7/2020: Appeal Against an Assessment and Application for Relief, dated 7 October 2020, was issued to replace PR No. 12/2017, which was issued on 29 December 2017.

The contents of the new PR are broadly similar to the earlier PR. The PR's contents have, however, been updated to incorporate and explain various legislative changes which were enacted since the previous PR was issued. Some of the key changes are outlined below.

- The new PR explains the legislative change that was enacted via the Income Tax (Amendment) Act 2018 ("the Amendment Act") and provides supporting examples. The Amendment Act introduced Section 99(1A) into the ITA. Section 99(1A) provides that any person who intends to appeal against a best judgment assessment which has been raised by the DG under Section 90(3) of the ITA is required to submit a notice of appeal, as prescribed under the Act (i.e. Form Q), together with the return which is required to be furnished under Section 77A of the ITA. These must be submitted within 30 days after the notice of assessment has been served. Section 99(1A) is effective from the YA 2019.
- The new PR clarifies the procedure for appeals pursuant to Section 102(1A) of the ITA, in cases where a person has made an application to invoke a mutual agreement procedure.
- The new PR explains and provides examples to demonstrate the legislative change that was enacted via Finance Act 2019, where Section 101(1) was amended to provide that an application for extension of time to appeal against an assessment must be made within a period of

seven years after the expiration of the period to make an appeal. This application is to be made via the Form N. Previously, there was no time limit for the application. This is effective from YA 2020.

Public Ruling No. 8/2020 - Taxation of a Resident Individual Part I – Gifts or Contributions and Allowable Deductions

PR No. 8/2020: Taxation of a Resident Individual Part I – Gifts or Contributions and Allowable Deductions, dated 9 October 2020, was issued to provide clarification in relation to gifts or contributions made by a resident individual that are allowable in determining the total income for a YA, as well as the tax deductions that are allowable to a resident individual in computing his or her chargeable income for a YA. This new PR replaces PR No. 4/2018, which was issued on 13 September 2018.

The contents of the new PR are broadly similar to the earlier PR. The PR's contents have, however, been updated to incorporate and explain the legislative changes which were enacted since the previous PR was issued. Some of the key changes are outlined below.

Pursuant to the Finance Act 2018, the new PR has been updated to reflect the following:

- Section 46(1)(k): The increase in tax relief on net savings made in the National Education Savings Scheme (SSPN) from RM6,000 to RM8,000, for YA 2019 and YA 2020
- Sections 49(1) and 49(1A): The increase in income tax relief on contributions to approved provident funds or takaful or payment for life insurance premiums from RM6,000 to RM7,000, effective from YA 2019. However, the relief is separated into a limit of RM4,000 for contributions to approved provident funds; and a limit of RM3,000 for takaful contributions or payment for life insurance premiums. For public servants under the pension scheme, an income tax relief of up to RM7,000 on takaful contributions or payment for life insurance premiums is provided.

The new PR also explains and provides examples to reflect the following, effective from YA 2020:

- Sections 44(6), 44(11B) and 44(11C): The increase in the cap on tax deduction from 7% to 10% of aggregate income, for taxpayers other than companies
- Sections 44(11D) and 44(11E): The expansion of the scope of approved donations to include any gift of money in the form of wakaf made to any appropriate religious authority, body or public university approved by the DG, or endowment made to any public university
- Section 46(1)(g): The expansion of the scope of medical expenses incurred for serious diseases to include the cost of fertility treatment
- Section 46(1)(r): The increase in tax relief for fees paid to registered childcare centres and kindergartens, from RM1,000 to RM2,000 per year

It is noted that the PR does not cover the following proposed tax reliefs under the National Economic Recovery Plan (PENJANA) which was announced by the Government on 5 June 2020:

- Increase in tax relief for fees paid to registered childcare centres, from RM2,000 to RM3,000 for YAs 2020 and 2021; and
- Special relief of up to RM2,500 for mobile phones, tablets and computers purchased between 1 June 2020 and 31 December 2020

Public Ruling No. 9/2020 – Taxation of Trusts

PR No. 9/2020: Taxation of Trusts,

dated 6 November 2020, explains the tax implications of trust arrangements, including the ascertainment of a trust beneficiary's statutory income from the trust.

Public Rulings No. 10/2020 and 11/2020 – Reinvestment Allowance

The following PRs were published to provide guidance to Malaysian resident companies engaged in manufacturing and agricultural activities in determining their eligibility to claim reinvestment allowance (RA):

- PR No. 10/2020 - Reinvestment Allowance Part I – Manufacturing Activity dated 6 November 2020
- PR 11/2020 - Reinvestment Allowance Part II – Agricultural and Integrated Activities dated 10 November 2020

The new PRs No. 10/2020 and No. 11/2020 replace PRs No. 9/2017 and 10/2017 respectively, which were published on 22 December 2017. The IRB has also advised that PR No. 11/2020 should be read together with PR No. 10/2020.

The contents of both the new PRs are broadly similar to the earlier PRs. Both PRs have, however, been updated to explain and provide examples to demonstrate the legislative changes which were enacted via the Finance Act 2018, where the carry-forward of unutilized RAs are restricted to seven YAs, with any unutilised allowances being disregarded thereafter.

FAQs on Advance Pricing Arrangement (APA) treatment due to COVID-19 pandemic

On 16 June 2020, the IRBM issued a Frequently Asked Questions (FAQs) document, titled "FAQs on Advance Pricing Arrangement (APA) treatment due to COVID-19 pandemic", to address the treatment of APAs that may be impacted by the pandemic. Following the above, the IRBM has recently issued an updated version of the FAQs dated 7 October 2020 to provide more clarity to certain questions. Broadly, the FAQs address questions pertaining to the applications of new APAs, the treatment of ongoing APA applications, treatment of concluded or signed APAs, as well as the renewal of APAs.

FAQs on International Tax issues due to the COVID-19 Travel Restrictions

The IRB has recently published an updated version of the "FAQs on International Tax Issues due to the COVID-19 Travel Restrictions" document, dated 9 October 2020, which addresses questions pertaining to the following:

(a) Residency status of individuals and companies;
(b) Creation of permanent establishments (PEs) for companies; and
(c) Cross-border employment income for individuals

The updated FAQs are broadly similar to the earlier FAQs, with some important updates. The key changes are as follows:

- The updated FAQs clarify that references to temporary presence in Malaysia due to COVID-19 travel restrictions refer to the Movement Control Order (MCO) period, which is now from 18 March 2020 until 31 December 2020.
- Item 5 of the FAQs states that where a company is not resident in Malaysia, the temporary presence of its employees or personnel in Malaysia will not lead to the creation of a PE in Malaysia, subject to conditions. The updated FAQs clarify that this principle would also apply to companies that are residents in countries which do not have a double tax agreement (DTA) with Malaysia. In such situations, the company will not be deemed to have a place of business in Malaysia where the relevant conditions are met.
- The updated FAQs stipulate that in cases where a non-resident individual has been offered employment in Malaysia during the MCO period but has to work overseas as he/she is unable to enter Malaysia due to the COVID-19 travel restrictions, the individual will not be considered to be exercising an employment in Malaysia. Therefore, the income is to be taxed under the domestic law of the country where the employment is exercised.
- The updated FAQs stipulate that in cases where a non-resident individual travelled to Malaysia for vacation but was unable to leave due to the COVID-19 travel restrictions, and subsequently ceased his/her employment with his/her foreign employer and accepted an offer of work with a Malaysian company, the individual will be considered as exercising an employment in Malaysia as the individual did not return to his/her home country, and the income earned from the foreign employer will be taxed in Malaysia.

STAMP DUTY

Stamp duty exemption on instruments of agreements relating to the use of research cess under the Malaysia-Thailand Joint Authority (Payments of Royalty and Other Proceeds from Petroleum Production to the Governments) Regulations 2004

The Stamp Duty (Exemption) (No. 5) Order 2020 [P.U.(A) 239] was gazetted on 26 August 2020. The Order provides that any instruments of agreements relating to the use of research cess provided under Regulation 7 of the Malaysia-Thailand Joint Authority (Payments of Royalty and Other Proceeds from Petroleum Production to the Governments) Regulations 2004 [P.U.(A) 422] for the purpose of financing any research and development in the fields of science and technology relating to the exploration or exploitation of petroleum or natural resources in the Joint Development Area executed between the Malaysia-Thailand Joint Authority and an institution of higher education in Malaysia and Thailand, is exempted from stamp duty.

The Order comes into operation on 28 August 2020.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2020

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2020 [P.U.(A) 240] was gazetted on 26 August 2020. The Order provides that any tax payable under the Income Tax Act 1967 (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 by DanaInfra Nasional Berhad pursuant to the Islamic Medium-Term Notes and Islamic Commercial Papers Programme (IMTN and ICP Programme), in nominal values of up to RM10 billion, provided that the combined aggregate of the outstanding nominal value of the IMTN and ICP and the outstanding principal amount under the Syndicated Islamic Revolving Credit Facility (i.e. SFF-i Facility, see (b) below) shall not exceed RM10 billion;

(b) SFF-i Facility in the aggregate outstanding principal amount not exceeding RM4 billion, subject to the combined aggregate referred to in (a) above;

(c) IMTN and ICP Programme which have been upsized in nominal values from RM61 billion to a maximum aggregate value of up to RM71 billion; and

(d) Guarantee provided by the Government of Malaysia in relation to the IMTN and ICP Programme and the SFF-i Facility

The Order comes into operation on 27 August 2020.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 4) Order 2020

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 4) Order 2020 [P.U.(A) 265] was gazetted on 3 September 2020. The Order provides that any tax payable under the Income Tax Act 1967 (ITA) and any stamp duty payable under the Stamp Act 1949 in relation to the following, shall be remitted in full:

(a) Islamic Commercial Papers and Islamic Medium-Term Notes issued by Malaysia Rail Link Sdn Bhd pursuant to the Islamic Commercial Papers and Islamic Medium-Term Notes Programme (ICP and IMTN Programme), in nominal values of up to RM1.7 billion, provided that the combined aggregate of the outstanding nominal value of the ICP and IMTN and the outstanding principal amount under the Syndicated Islamic Short-Term Revolving Credit-i Facility (i.e. STRC-i Facility, see (b) below) shall not exceed RM1.7 billion;

(b) STRC-i Facility obtained by Malaysia Rail Link Sdn Bhd in the aggregate principal amount not exceeding RM1.7 billion, subject to the combined aggregate referred to in (a) above; and

(c) Guarantee provided by the Government of Malaysia in relation to the ICP, the IMTN and the STRC-i Facility referred to in (a) and (b) above

The Order came into operation on 4 September 2020.

Loans Guarantee (Bodies

Corporate) (Remission of Tax and Stamp Duty) (No. 5) Order 2020

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 5) Order 2020 [P.U.(A) 276] was gazetted on 24 September 2020. 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 Commercial Papers and Islamic Medium-Term Notes issued by Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN) pursuant to the Islamic Commercial Papers and Islamic Medium-Term Notes Programme (ICP and IMTN Programme), in nominal values of up to RM12.3 billion, provided that the combined aggregate of the outstanding nominal value of the ICP and IMTN and the outstanding principal amount under the Syndicated or Bilateral Financing, or Loan Facilities obtained or which will be obtained by PTPTN (i.e. Credit Facilities, see (b) below) shall not exceed RM12.3 billion;
(b) Credit Facilities, subject to the combined aggregate referred to in (a) above;
(c) ICP and IMTN Programme in nominal values of up to RM12.3 billion; and
(d) Guarantee provided by the Government of Malaysia in relation to the Credit Facilities, ICP and IMTN Programme referred to in (b) and (c) above

The Order came into operation on 25 September 2020.

◆ Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) (Amendment) Order 2020

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2016 [P.U.(A) 199] (see Tax Alert No. 16/2016), which was gazetted on 15 July 2016, 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 and Conventional Commercial Papers (CP) and Medium-Term Notes (MTN) issued or to be issued by the Public Sector Home Financing Board;
(b) Syndicated Revolving Credit-i (RC-i) Facility and Credit Facilities obtained by the Public Sector Home Financing Board; and
(c) Guarantee provided or to be provided by the Government of Malaysia relating to the Islamic and Conventional CPs and MTN, the RC-i Facility and the Credit Facilities provided that the combined aggregate of the outstanding nominal value of the Islamic and Conventional CP and MTN, and outstanding principal amount under the RC-i Facility and Credit Facilities, shall not exceed RM25 billion.

◆ The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) (Amendment) Order 2020

[P.U.(A) 279] was subsequently gazetted on 28 September 2020, and provides that:

(a) The remission will no longer apply to credit facilities; and
(b) The combined aggregate of the outstanding nominal value of the Islamic and Conventional CP and MTN, and outstanding principal amount under the RC-i Facility, is now capped at RM50 billion (instead of RM25 billion).

The Amendment Order came into operation on 30 September 2020.

◆ Guidelines on stamp duty exemption for SMEs on any instrument executed for mergers and acquisitions

Under PENJANA, the government proposed to waive the stamp duty on any instrument executed by Small and Medium Enterprises (SMEs) for mergers and acquisitions (M&As). The exemption would apply between 1 July 2020 and 30 June 2021. Following the above, SME Corporation Malaysia (SME Corp) has published on its website the "Guidelines & Procedures on Incentive of Stamp Duty Exemptions on M&A by SMEs" (Guidelines) to provide guidance on the above-mentioned exemption.

LABUAN

◆ Update on management and control requirements for pure equity holding Labuan entities

On 10 August 2020, the Labuan Financial Services Authority (LFSA) issued a Directive on Management and Control Requirements for Labuan Entities that Undertake Pure Equity Holding Activities (Directive). The Directive applies to all Labuan entities that are incorporated, registered or established under the relevant Labuan legislations and that undertake pure equity holding activities.

The Directive sets out the management and control requirements, which include complying with Paragraph 5.5 of PR No. 5/2011. However, the PR discusses management and control requirements in Malaysia generally, and is not Labuan-specific. The LFSA has now issued a follow-up circular dated 10 September 2020 to clarify that such Labuan entities would be required to hold their board meetings in Labuan at least once a year, to satisfy the said requirement, i.e. holding a meeting in other parts of Malaysia would not be sufficient. The circular also stipulates that the Directive is effective from YA 2021 (i.e. financial year ending in 2020) onwards.

Notwithstanding the above, the LFSA also clarified that given the current travel restrictions due to the COVID-19 pandemic, the said board meeting requirement would be considered satisfied if the meeting was conducted virtually, and on condition that the hosting of the meeting was arranged by the resident secretary of the pure equity holding entity in Labuan.

INDIRECT TAX

CUSTOMS DUTIES

Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) Order 2019 – Corrigendum

The Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) Order 2019 - Corrigendum [P.U.(A) 245] was gazetted on 28 August 2020. This Order provides for amendments in relation to Subparagraph 1(1) and to headings "08.03" under the Second Schedule of the Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) Order 2019 [P.U.(A) 266].

Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) (Amendment) (No. 2) Order 2020

The Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) (Amendment) Order 2020 [P.U.(A) 246] was gazetted on 28 August 2020 and came into operation on 1 September 2020. This Order provides for amendments in relation to headings "08.03", columns (2) and (5) under the Second Schedule of the Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) Order 2019 [P.U.(A) 266].

Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order (Amendment) (No. 3) 2020

The Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order (Amendment) (No. 3) 2020 [P.U.(A) 271] was gazetted on 18 September 2020 and came into operation on 20 September 2020. This Order provides for amendments in relation to Article 38 and Annex 8 in the First Schedule of the Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2017 [P.U.(A) 100].

Customs Duties (Goods under the Malaysia-New Zealand Free Trade Agreement) Order 2020

The Customs Duties (Goods under the Malaysia-New Zealand Free Trade Agreement) Order 2020 [P.U.(A) 286] was gazetted on 29 September 2020 and came into operation on 1 October 2020. Subject to the provisions of the First Schedule, an import duty shall be levied on, and paid by the importer in respect of, goods specified in the Second Schedule, originating from New Zealand, at the rate of import duty specified in column (5) of the Second Schedule, imported into Malaysia.

In the case of goods subject to import duty rate "N.O." in column (5) of the Second Schedule to this Order, import duty shall be levied on such goods at the full rate as specified in column (5) of the Second Schedule to the Customs Duties Order 2017.

In the case of goods which are subject to tariff rate quota as specified in column (5) of the Second Schedule, import duty shall be levied on such goods at the rate specified in column (5) of Appendix "D" of the Second Schedule, subject to the quota determined by the agency specified in column (6) of Appendix "D" of the Second Schedule.

SALES TAX

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2020

The Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2020 [P.U.(A) 293] was gazetted on 5 October 2020 and came into operation on 6 October 2020. This Order provides for amendments in relation to Item 57 under Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [P.U.(A) 210].

*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

GVSB V DIRECTOR GENERAL OF CUSTOMS AND EXCISE (HIGH COURT)

FACTS

The taxpayer had incurred goods and services tax ("GST") for the purchase of commercial lands in 2017, when it was not yet a GST registered person.

In July 2018, the taxpayer sold the lands and filed an application for Exceptional Input Tax Credit ("Exceptional Claim") under Regulation 46(1) of the GST Regulations 2014 ("Regulation 46"), to claim input tax incurred before the taxpayer was a GST-registered person.

In compliance with Section 8(1) of the GST (Repeal) Act 2018 ("Repeal Act"), the taxpayer filed its first GST return ("First Return") within the time limit of 120 days from the appointed date, ending on 29.12.2018 ("Prescribed Timeline"). It did not include the input tax in its First Return as the Director General of Customs and Excise ("DG") had yet to make a decision to authorise the Exceptional Claim as input tax.

On 18 March 2019, the DG granted authorisation for the Exceptional Claim and instructed the taxpayer to file an amended GST return ("Amended Return"). Relying on the DG's authorisation, the taxpayer filed its Amended Return with the input tax included, but the Amended Return was rejected by the DG. The DG justified its rejection by stating that the Amended Return was filed out of the Prescribed Timeline (despite the fact that its authorisation was given after the Prescribed Timeline). The taxpayer filed a judicial review to challenge the legality of the DG's decision.

DG'S ARGUMENTS

The taxpayer ought to have included the input tax claimed in the First Return submitted, before the Prescribed Timeline. The authorisation subsequently granted was subject to the input tax having been included in the First Return. The taxpayer's failure to include the same disentitled it to the Exceptional Claim.

TAXPAYER'S ARGUMENTS

Section 30(1) of the Interpretations Acts 1948 and 1967 protects the taxpayer's right which had accrued before the repeal of the GST Act.

It is unreasonable for the DG to insist that the taxpayer ought to have filed its Amended Return within time when the authorisation was only granted by the DG after the Prescribed Timeline. It is an impossible condition to be fulfilled and the taxpayer's delay, if any, in including the input tax in the Amended Return, was inflicted by the DG.

It is a breach of the taxpayer's legitimate expectation, who had relied on the DG's express instruction (i.e., to withhold the Exceptional Claim until it received authorisation) to its detriment.

THE HIGH COURT'S DECISION

Pursuant to Section 30(1) of the Interpretation Acts, the taxpayer's right to the Exceptional Claim had accrued when it fulfilled all the criteria under Regulation 46 to claim it and submitted the application, before the Repeal Act was in force, and may not be extinguished by the Repeal Act.

The taxpayer had not breached the requirements of Regulation 46 when it excluded the input tax from its First Return. As stipulated under Regulation 46, an authorisation from the DG is required for the purpose of making an Exceptional Claim as input tax in its GST return.

The DG had only authorised the taxpayer's Exceptional Claim after the Prescribed Timeline had expired. It is unreasonable for the DG to renege on the authorisation granted to the taxpayer on the ground that the Amended Return was filed out of time when the delay was inflicted by the DG.

The High Court ruled in favour of the taxpayer, and the DG's decision was quashed.

COUNSEL FOR THE TAXPAYER

DATO' MOHD ARIEF EMRAN BIN ARIFIN, JASON LIANG, KELLIE ALLISON YAP AND JEFF SUM (WONG & PARTNERS)

COUNSEL FOR THE DG
MOHD FAIRUZ BIN JOHARI

DECISION DATE
17 SEPTEMBER 2020

CASE 2

AIMSB V DIRECTOR GENERAL OF CUSTOMS AND EXCISE (CUSTOMS APPEAL TRIBUNAL)

FACTS

The taxpayer was a GST-registered Malaysian company providing call centre services to its related party in Singapore ("Related Co.").

A service agreement was entered into between the taxpayer and its Related Co. for the taxpayer to provide customer support services to the Related Co. for calls from the Related Co.'s customers ("Service Agreement"). The taxpayer zero-rated the call centre services rendered to Related Co. as they constitute "exported services" under Item 12 of the Second Schedule of the Goods and Services Tax (Zero Rated Supplies) Order 2014 i.e., services provided to a non-Malaysian resident outside Malaysia ("Item 12"). As consideration for the taxpayer's services, the Related Co. would pay a sum calculated on a cost plus basis to the taxpayer.

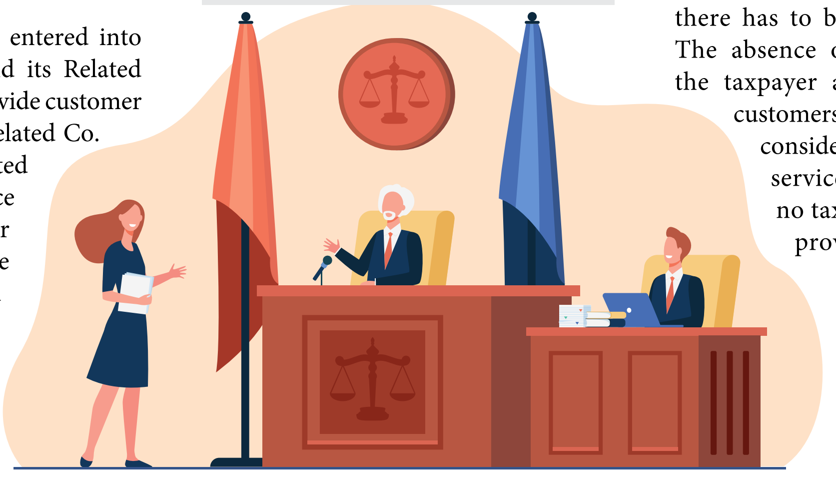
Following a GST audit, the Director General of Excise and Customs ("DG") concluded that calls received from the Related Co.'s Malaysian customers ought to be segregated from the rest of the "foreign" calls as the Malaysian calls do not satisfy the terms of Item 12.

The DG proceeded to impose 6% GST on the taxpayer for calls received from the Related Co.'s Malaysian customers. The taxpayer filed an appeal against the DG's decision to the Customs Appeal Tribunal.

DG'S ARGUMENTS

Item 12 of the Second Schedule provides for the zero-rating of the following services:

> *"12. Services supplied under a contract with a person who belongs in a country other than Malaysia and which directly benefit a person who belongs in a country other than Malaysia who is outside Malaysia at the time the services are performed, but shall not include—"*



The DG argued that Item 12 cannot be applicable to the supply of services from the taxpayer to the Related Co. on the ground that it benefits Malaysian residents (even though it benefits the Related Co., which is a foreign person). In other words, Item 12 of the Second Schedule should only be applicable where the beneficiaries are solely non-Malaysian residents.

TAXPAYER'S ARGUMENTS

The requirements of Item 12 are clear: it applies as long as the direct beneficiary is a non-Malaysian resident. The direct beneficiary of the taxpayer's call centre services is the Related Co., as the taxpayer has a direct contractual relationship with the Related Co., and it is the Related Co. that makes payments to the taxpayer. There is no direct contractual link between the taxpayer and the Malaysian customer, and thus no taxable supply can exist here. Item 12 does not say that "Malaysian residents cannot benefit at all". It is immaterial that the Malaysian customers derived some ancillary benefit from the supply of services.

THE CUSTOM APPEAL TRIBUNAL'S DECISION

The Tribunal agreed with the taxpayer that for Item 12 to apply, there has to be a taxable supply to begin with. For there to be a taxable supply of services, there has to be consideration given. The absence of a contract between the taxpayer and the Related Co.'s customers points to the absence of consideration for the taxpayer's services. As such, there was no taxable supply of services provided by the taxpayer to the Related Co.'s customers.

At all material times, the party that directly benefited from the taxpayer's services is the Related Co., which is a foreign person. Therefore, the taxable supply from the taxpayer to the Related Co. ought to be zero-rated.

The Tribunal allowed the taxpayer's appeal.

COUNSEL FOR THE TAXPAYER
JASON LIANG AND KELLIE ALLISON YAP (WONG & PARTNERS)

COUNSEL FOR THE DG
MOHD AZAWAN SHAH BIN AMDAN

DECISION DATE
22 SEPTEMBER 2020

CASE 3

CPAM V DIRECTOR GENERAL OF INLAND REVENUE (SPECIAL COMMISSIONERS OF INCOME TAX)

FACTS

The taxpayer is involved in the business of fund management and investment banking. In the course of its business, the taxpayer incurred expenditure for the provision of computer software crucial to its business. In the course of customising, installing and improving its computer software, the taxpayer incurred expenditure on consulting fees, licensing fees and other incidental charges ("Incidental Charges").

The Director General of Inland Revenue ("DG") published its Public Ruling No. 12/2014 in December 2014 ("Public Ruling"). Based on a strict reading of Paragraph 8.2(ii) of the Public Ruling, the taxpayer's claim for capital allowance for Incidental Charges incurred for the provision of its computer software would be disallowed from the year of assessment 2015 onwards.

The taxpayer prudently filed its tax returns to exclude the capital allowance claim on a without prejudice basis. The taxpayer then filed an appeal to the Special Commissioners of Income Tax ("SCIT") against the deemed assessment made upon filing of the returns.

DG'S ARGUMENTS

The DG argued that computer software is not a plant which is eligible for capital allowance under Schedule 3 of the Income Tax Act ("ITA"), as the definition of a "plant" is confined to goods and chattels, i.e., tangible assets. As such, the Incidental Charges are not claimable as capital allowance.

TAXPAYER'S ARGUMENTS

The taxpayer contended that capital allowance is allowable as long it is incurred on a "plant" used for the purposes of a business pursuant to Schedule 3 of the ITA. The categories of what constitutes a "plant" are not closed and not limited to tangible assets. A "plant" is any apparatus used for carrying out a business to generate income, but does not include stock in trade. The computer software in the hands of the taxpayer are clearly tools for which it uses to carry out its business to generate income.

The Incidental Charges cannot be considered in isolation and must be considered as a whole together with the computer software. Such expenditure form part and parcel of the computer software, without which it would be devoid of its utility.

In any event, the Public Ruling does not constitute binding law. It merely sets out the DG's interpretation of a particular tax law.

THE SCIT'S DECISION

The Public Ruling is inconsistent with legislation. Contrary to the DG's interpretation in the Public Ruling, a taxpayer is not prevented from claiming capital allowance on the Incidental Charges.

However, the SCIT decided that the taxpayer was not eligible for the said capital allowance on account of failing to prove ownership of the computer software under Schedule 3 of the ITA. The SCIT's decision is currently being appealed to the High Court.

This decision is nevertheless welcomed as it successfully challenges the DG's long-standing practice of stifling a taxpayer's claim for capital allowances by mere virtue of its interpretations contained in its Public Rulings, which have no force of law.

The matter is currently on appeal before the High Court.

COUNSEL FOR THE TAXPAYER

DATO' MOHD ARIEF EMRAN BIN ARIFIN, JASON LIANG, KELLIE ALLISON YAP AND JEFF SUM (WONG & PARTNERS)

COUNSEL FOR THE DG

MUHD FARID JAAFAR AND NORHIDAYAH YASIN

DECISION DATE

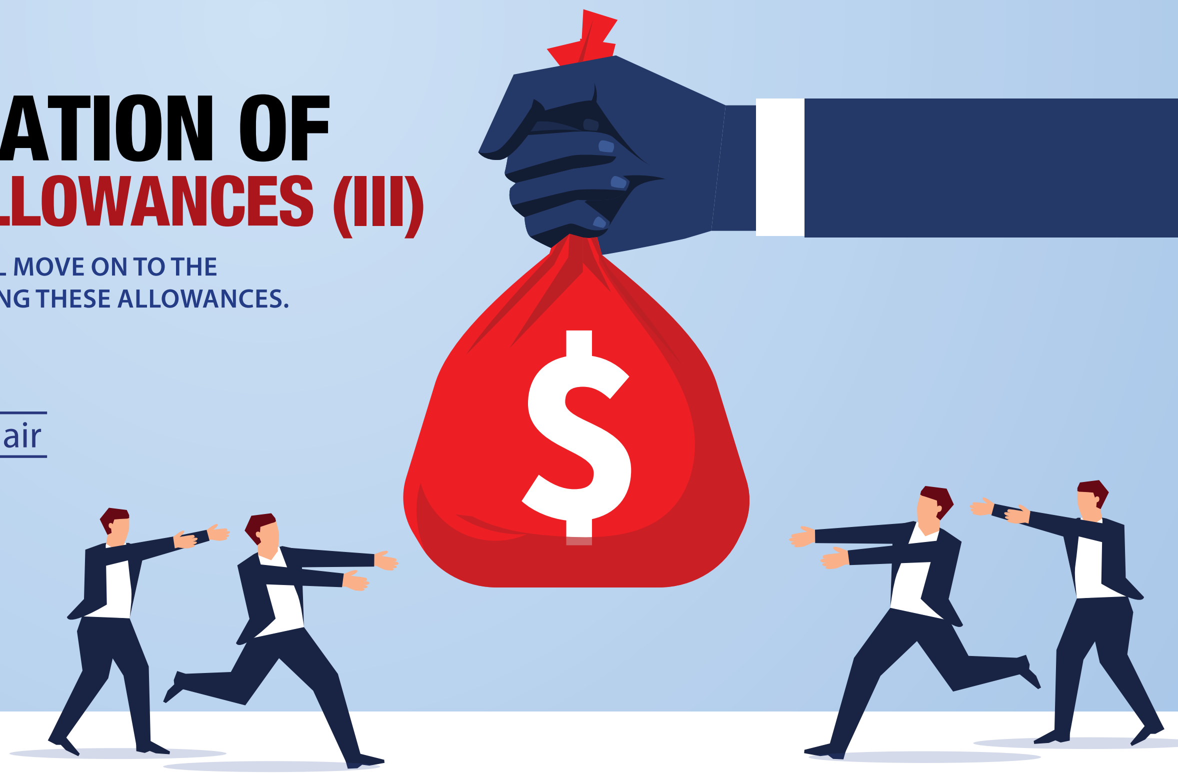
21 MAY 2020

Adeline Wong, Jason Liang, Kelly Allison Yap *and* ***Jeff Sum*** *from Wong & Partners*

COMPUTATION OF CAPITAL ALLOWANCES (III)

IN THIS ARTICLE WE SHALL MOVE ON TO THE MECHANICS OF COMPUTING THESE ALLOWANCES.

Siva Subramanian Nair



Unlike accounting, where the impairment of all assets is claimed as depreciation, in tax we have segregated such claim into various classes based firstly on the type of asset and then based on industry as indicated in the article in *Tax Guardian Vol. 12/ No. 3/2019/ Q3*. We shall commence with the allowances for plant and machinery generally referred to as capital allowances.

COMPONENTS OF THE ALLOWANCES

There are three types of allowances namely initial [IA], annual allowances [AA] and notional allowances [NAA]. As the name suggests initial allowances are given only in the first year of assessment whereas annual allowances are given for each year of assessment until the qualifying expenditure is fully exhausted (assuming eligible to claim the allowances). Note that the annual allowances are computed on a straight line basis and not on a reducing balance basis. This is a common error in examinations!

The general rate for initial and annual allowances (usually it is provided in the examination paper itself) is as **Table 01**.

Candidates can view details of the above classifications in **Public Ruling No. 12/2014 [QUALIFYING PLANT AND MACHINERY FOR CLAIMING CAPITAL ALLOWANCES]**. The explanations are summarised below:

- Heavy duty machinery include cranes, bulldozers, excavating equipment and other similar machinery are considered as heavy machinery & EXCLUDES imported heavy machinery
- Motor vehicles include all types of vehicles that are powered by motors or engines such as cars, vans, motorcycles, aircrafts and boats. They may be categorized into (1) commercial vehicles (licensed vehicles used for business purposes) and (2) non-commercial vehicles which are not for commercial use.
- General P&M include compressors, elevators and laboratory equipment.
- Office equipment and furniture and fittings fall under the category of "Others".

However some assets enjoy special rates for allowances on certain assets. Although candidates are rarely tested on these rates and even if they are, the special rate is given in the question, there may arise an odd situation where an examiner MAY test on these assets without giving the rates. In any event I have summarised these rates below and given the relevant gazette orders [the PU(A) # is in italics] so that candidates can refer to them for more detailed information i.e. so to what is the qualifying expenditure and whether any mutually exclusive rules apply. Candidates can also view details of these assets in **Public Ruling No. 7/2018 on Accelerated Capital Allowance.**

CATEGORY A [IA 20% AND AA 80%] I.E. CAN WRITE OFF THE WHOLE QE IN 1 YEAR

- Automation equipment for a qualifying project (subject to conditions) 173/20 amending 252/17

- There is a special allowance of 100% given to small value assets but this will be discussed in a later article.

CATEGORY B [IA 20% AND AA 40%] I.E. CAN WRITE OFF QE IN 2 YEARS

- Machinery in equipment in agricultural sector (excluding forest plantation) 188/05
- Equipment to control the quality of electric power certified by the Ministry of Energy, Water and Communications 87/05
- Prescribed renovation cost on buildings located in the Tun Razak Exchange by a Tun Razak Exchange Marquee status company. 29/13 [only up to 31/12/20]

CATEGORY C [IA 40% AND AA 20%] I.E. CAN WRITE OFF QE IN 3 YEARS

- Public buses using natural gas 265/97
- Natural gas refuelling equipment 265/97
- Equipment & facility for : 295/98
  » collecting wastes limiting environmental pollution
  » checking excessive pollution
  » securing more efficient use of equipment
- P & M used for
  » recycling waste.505/00
  » qualifying project – promoted activity 506/00
- Pre-cast concrete mould for production of building system component 249/06

CATEGORY D [IA 10% AND AA 10%] I.E. CAN WRITE OFF QE IN 9 YEARS

- Imported heavy machinery used in the following industries 474/97
  i. Building and Construction Industry— Earth-moving plant and heavy equipment-bulldozers, ditchers, excavators, graders, loaders, rippers, rollers, rooters, scrapers, shovels, tractors.
  ii. Mining Industry—Earth-moving plant and heavy equipment.
  iii. Plantation Industry—Earth-moving plant and heavy equipment.
  iv. Timber Industry—Heavy equipment-bulldozers, tractor engines, tractors and timber haulage vehicles.

TABLE 01

Capital allowances	Initial allowance	Annual allowance
	Rate %	Rate %
Plant and machinery – general	20	14
Motor vehicles and heavy machinery	20	10
Office equipment, furniture and fittings	20	20

CATEGORY E [SPECIAL IA RATE BUT CAN ELECT TO CHOOSE THE GENERAL 20% RATE]

- Provision of machinery or plant (other than imported heavy machinery) used for
  i. the construction of any works, roads, structures and buildings - 30%
  ii. the extraction of timber from a forest – 60%
  iii. the working of a mine for getting tin-ore or extracting or dressing tin concentrates -60%

ICT equipment and Expenditure on Customised Software (consultation, licensing and incidental fees [IA 20% and AA 20%] i.e. can write off QE in 4 years. *Income Tax (Accelerated Capital Allowance) (Information and Communication Technology Equipment) Rules 2018. P.U.(A)156/2018 and Income Tax (Capital Allowance) (Development Cost for Customised Computer Software) Rules 2019. P.U.(A) 274/2019*

Candidates should note that the IRBM has issued Practice Note 2/2020 to provide guidance for claiming capital allowance on the development cost for customised computer software. The content is summarised as follows:

The "developmental cost" here is defined as the expenditure incurred in the production of new software or in the improvement of existing software to be used for business. The qualifying expenditure for the purpose of claiming capital allowance under these rules consists of:

- Consultation fee incurred on the development of the software specifically for the purpose of developing a new software system, modification or modernisation of the existing software **EXCLUDING** consultation fees related to initial procedure or planning stage such as feasibility study or preliminary study
- Payments for the rights of software ownership i.e. payment for the right to use the software exclusively. and
- Incidental expenses i.e. payment incurred which enable the use of the software in a business and being capitalized such as change of requirement the software.

Payment for expenditure to non-resident recipients is subject to withholding tax under Section 109 or 109B depending on their respective facts.

The claim is effective from year of assessment YA 2018 and capital allowances can be claimed from YA in which the customised computer software is capable of being used in a business. Examples provided indicate that expenditure incurred prior to YA 2018 does not qualify

CLAIM FOR ALLOWANCES

A claim for capital allowances should be made in the return form. This is provided for under Paragraph 77 of Schedule 3 as follows:

> *(1) Any claim by a person for an allowance under this Schedule for a year of assessment shall be made in a written statement containing such particulars as may be requisite to show that the claimant is entitled to the allowance and a certificate signed by the claimant verifying those particulars.*
> *(2) Any claim to be made by a person for a year of assessment in accordance with this paragraph shall be furnished with a return of his income … for that year.*

Generally a box has to be ticked in the return form to indicate the intention of the taxpayer to claim capital allowances.

However, the claim for capital allowances is not mandatory i.e. the taxpayer may elect not to claim the allowances that he is eligible for in his tax computation.

Previously this was common especially when the taxpayer was enjoying an exemption equal to a full or partial amount of his statutory income. Therefore by not claiming capital allowances his statutory income will be increased and he will have a higher exempt account.

However this planning is not very useful now because most exemptions come with a "capital allowances is deemed claimed" clause i.e. the base for exemption [i.e. the statutory income] is after deducting all capital allowances that the taxpayer COULD HAVE CLAIMED!!! An example of this is Section 54A(1A) relating to the exemption for shipping profits:

> *"…a person who is entitled to an allowance under Schedule 3 and who has not made any claim under paragraph 77 of that Schedule in respect of such allowance, the amount of such allowance shall be deemed to have been made to him for the purpose of ascertaining his statutory income…".*

NOTIONAL ALLOWANCES

This term is used to describe [as in Paragraph 68(c) of Income Tax Act 1967]

> *"any annual allowance which, if it had been claimed (or could have been claimed, if the expenditure in respect of the asset had been qualifying expenditure and if the asset had been in use for the purposes of a business of his) by that person in relation to that asset, would have been made to him for a year of assessment before that date."*

In simple terms it is used when

- the asset or part of the asset is is non-qualifying expenditure (due to non-fulfilment of the conditions to be QE for example not used in a business)
- the taxpayer does not want to claim for the capital allowances for that year of assessment.

Where the taxpayer elects to refrain from claiming the capital allowances, the capital allowances for the asset are computed normally except that the term "annual allowances" is replaced with "notional annual allowances". The difference is in the tax computation where the claim for capital allowances is reflected as Nil. This is illustrated in the example below.

EXAMPLE 1 (REFER TABLE 2):

X S/B (year-end 31 December) purchased office equipment for RM10,000 in year of assessment 2020.

However candidates should note that there is no such thing as "notional initial allowances" Therefore if the taxpayer does not want to claim capital allowances in the first year of assessment, then the capital allowances computation will ONLY reflect notional annual allowances for that year of assessment

Candidates should also note that in the case of assets held for sale (AHFS), and the asset is not sold in the year of assessment in which it is classified as asset held for sale, then for that year of assessment, a notional annual allowance is allocated to that asset.

EXAMPLE 2:

Following from Example 1, assume that the office equipment was classified as

TABLE 02

CAPITAL ALLOWANCES COMPUTATION		TAX COMPUTATION	
Year of assessment 2020			
QE	10,000	Adjusted income	xxx
IA	(2,000)	Capital allowances	(3,000)
AA	(1,000)	Statutory income	xxxx
RE	7,000		
Assuming X S/B does not want to claim capital allowances for year of assessment 2021 then the computation will as follows:			
CAPITAL ALLOWANCES COMPUTATION		**TAX COMPUTATION**	
Year of assessment 2021			
RE	7,000	Adjusted income	xxx
NAA	(1,000)	Capital allowances	Nil
RE	6,000	Statutory income	xxxx

AHFS in year of assessment 2022 but it was not sold by 31 December 2022. Therefore for the year of assessment 2022, X S/B will claim a notional annual allowance of RM1,000.

Another crucial point for candidates to remember is that in restricting the amount of balancing charge, notional allowances are ignored. This will be elaborated on further in a later article. That concludes our discussion on the computation of capital allowances.

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

FURTHER READING

Choong, K.F. Malaysian Taxation - Principles and Practice, Infoworld,
Kasipillai, J. A Guide to Malaysian Taxation, McGraw Hill.
Malaysian Master Tax Guide, CCH Asia Pte. Ltd
Singh, V. Veerinder on Taxation, CCH Asia Pte. Ltd
Thornton, R. Thornton's Malaysian Tax Commentaries, CCH Asia Pte. Ltd.
Thornton, Richard. 100 Ways to Save Tax in Malaysia for Partners and Sole Proprietors, Thomson Reuters Sweet & Maxwell Asia
Thornton, R. 100 Ways to Save Tax in Malaysia for SMEs, Sweet & Maxwell Asia
Thornton, R.& Kannaa T. Manual of Capital Allowances and Charges
Yeo, M.C., Alan. Malaysian Taxation, YSB Management Sdn Bhd

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: JANUARY – MARCH 2021

Month /Event	Details				Registration Fee (RM) (excluding SST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
JANUARY 2021								
Workshop: Taxation Benefits on Specialised Industries *(rescheduled from 25 Nov 2020)*	5 Jan	9 a.m. - 5 p.m.	Webinar	Vincent Josef	245	315	370	8 WS/051
Workshop: Updates on Transfer Pricing Documentation Requirements and Managing Transfer Pricing Audits	7 Jan	9 a.m. - 5 p.m.	Webinar	Harvindar Singh	300	330	400	8 WS/001
Workshop: Tax Issues and Law Relating to Property Transactions, Estates & Trusts	18 Jan	9 a.m. - 5 p.m.	Webinar	Dr. Tan Thai Soon	300	330	400	8 WS/002
Workshop: Module 1 - Business and Employment (JV with MAICSA)	19 Jan	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 JV/001
Workshop: Can You Survive a Transfer Pricing Audit?	22 Jan	9 a.m. - 5 p.m.	Webinar	Yong Mei Sim	300	330	400	8 WS/003
Workshop: Module 2 – Allowances & Deductions (JV with MAICSA)	26 Jan	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 JV/002
Public Holiday ***(New Year : 1 Jan, Thaipusam: 28 Jan)***								
FEBRUARY 2021								
Workshop: Module 3 – Advanced Subject I (JV with MAICSA)	2 Feb	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 JV/003
Webinar: Private Trusts: Key Legal, Administrative and Tax Consideration	4 Feb	9 a.m-12 p.m.	Webinar	Azhar Iskandar Hew, Chua Wei Min & Wong Chow Yang	135	-	180	3 WE/001
Webinar: Labuan Tax Regime	8 Feb	9 a.m-12 p.m.	Webinar	Nicholas Crist, Abdul Salam Chandran	135	-	180	3 WE/002
Workshop: Cross Border Transaction and Withholding Tax	9 Feb	9 a.m. - 5 p.m.	Webinar	Harvindar Singh	300	330	400	8 WS/004
Workshop: Module 4 – Advanced Subject II (JV with MAICSA)	10 Feb	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 JV/004
Workshop: 2021 Employers and Employees Statutory Obligations	22 Feb	9 a.m. - 5 p.m.	Webinar	Yong Mei Sim	300	330	400	8 WS/005
Workshop: Preparation of Transfer Pricing Documentation	24 Feb	9 a.m. - 5 p.m.	Webinar	Ho Yi Hui	300	330	400	8 WS/006
Workshop: Learn to Develop, Build Upon and/or Appreciate the Importance of the Capital Statement in Tax Audits	25 Feb	9 a.m. - 5 p.m.	Webinar	Karen Koh	300	330	400	8 WS/007
Public Holiday ***(Federal Territory Day: 1 Feb, Chinese New Year: 12 & 13 Feb)***								
MARCH 2021								
Workshop: Capital Allowances Maximation	2 Mar	9 a.m. - 5 p.m.	Webinar	Harvindar Singh	300	330	400	8 WS/008
Workshop: Corporate Tax Planning	8 Mar	9 a.m. - 1 p.m.	Webinar	Harvindar Singh	300	330	400	8 WS/009
Webinar: Current Tax Issues on Interest Expense	10 Mar	9 a.m. - 5 p.m.	Webinar	Chong Mun Yew, Leow Mui Lee, Soh Lian Seng	180	-	240	4 WE/003
LHDNM – CTIM Tax Forum 2021	23 Mar	9 a.m. - 5 p.m.	Webinar	Various Speakers	200	220	250	4 TP/001
Public Holiday ***(Isra' Mikraj: 11 Mar)***								

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

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