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NATIONAL TAX CONFERENCE 2016

The National Tax Conference (NTC) 2016 was held from 9 to 10 August 2016 at the Kuala Lumpur Convention Centre, attended by approximately two thousand participants.

GST Updates for Tour and Travel Industry

The Marigold Industries Case - Shedding Light on the Proviso to Paragraph 1 of Schedule 7A

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Lot A7.01-A7.07
7th Floor Wisma Merdeka
Jalan Tun Razak
P.O.Box 17052
88872, Kota Kinabalu
Sabah

INSTITUTE ADDRESS

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

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

PRINTER

BHS Book Printing Sdn Bhd (95134-K)
Lot 17-22 & 17-23, Jalan Satu, Bersatu Industrial Park
Cheras Jaya, 43200 Cheras, Selangor DE
Tel: +603-9076 0816, 9076 0825, 9074 7558
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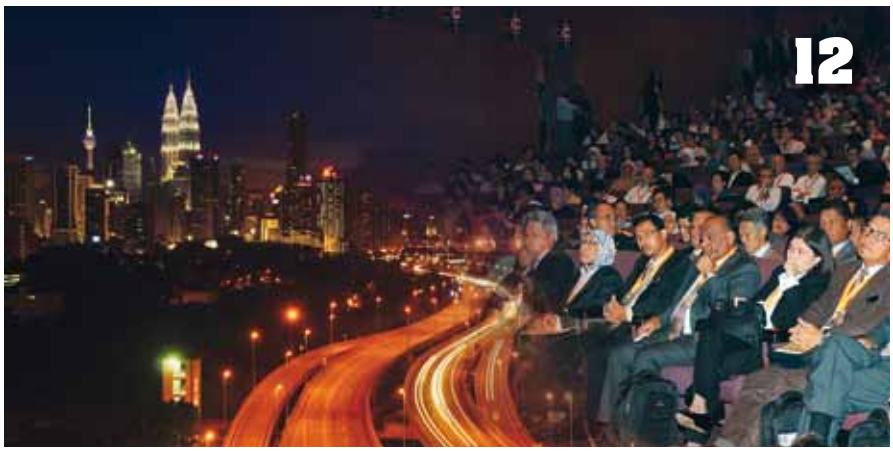

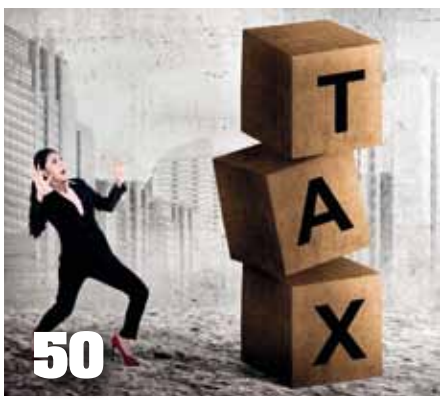

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The Institute welcomes original contributions which are of interest to tax professionals, lawyers, academicians and students. They may cover local or international tax developments. Article contributions should be written in UK English. All articles 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.

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

~A Big Thank You~

PREMIER TAX EVENT OF THE YEAR

NATIONAL TAX CONFERENCE 2016

9 & 10 AUGUST 2016 | KUALA LUMPUR CONVENTION CENTRE

The Chartered Tax Institute of Malaysia (CTIM) would like to express its appreciation to the Malaysian Tax Academy (MTA), our co-organising partner and all those who contributed to the success of the National Tax Conference 2016:

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25 & 26 JULY 2017, KUALA LUMPUR CONVENTION CENTRE

ARULJOTHI KANAGARETNAM

CHALLENGES FACING TAX PROFESSIONALS

According to Bank Negara Malaysia's Quarterly Bulletin for the Second Quarter (Q2) 2016, Malaysia registered a growth of 4% in Q2 2016 (Q1 2016: 4.2%). Growth was supported by domestic demand but weighed down by persistent weakness in export performance. I understand that the lower GDP may translate into lower tax revenue collection.

In view of the challenging economic environment, tax practitioners are facing persistent pressure on cash flow which will affect collections for their businesses. Tax practitioners are also encountering issues in applying for their GST tax agent licence renewal. In certain cases, their licences have lapsed pending approval from the authorities (the Institute's Public Practice Committee has taken these issues up with the authorities as reported in the e-CTIM PP 8/2016).

Furthermore, GST requirements have an impact on businesses as the same credit period as practised prior to GST (e.g. 3 months to 6 months credit period) is not possible. Businesses need to pay GST to the Royal Malaysian Customs Department (RMCD) by the due date even though they have not collected the amount receivable from their clients. As a result, there is stress on working capital. Close monitoring and follow-up on collections is a prerequisite to successful cost management and ultimately, sustainable businesses.

National Tax Conference 2016

The National Tax Conference (NTC) 2016 on the theme of Broadening Perspectives, Enhancing Our Tax Base was jointly organised by the Inland Revenue Board of Malaysia (IRBM) and the Institute and successfully held over two days from 9 August 2016 to 10 August 2016 at the Kuala Lumpur Convention Centre. I would like to thank the IRBM, NTC Committee, Secretariat, participants, moderators, speakers, panel members and all those involved for their support and contribution in making this event a major success.

The internet based pigeonhole system was introduced for the first time to facilitate the question and answer sessions. This enabled participants to be directly involved in raising questions, reviewing other participants' questions and voting on the questions so that it can be prioritised for answering. This allowed participants to contribute and be involved in each session. You can read more in the article on the NTC 2016 in this issues of *Tax Guardian*.

CPD Events

The CTIM Budget Seminar will be held on 3 November 2016 (Thursday) in Kuala Lumpur. This will be followed by CTIM Budget Seminars in various cities around Malaysia. Do refer to our e-CTIM and the CPD schedule in this issue of *Tax Guardian* and our website for more details. Please note that it is compulsory for tax agents licensed under Section 153 of the ITA to attend the Budget Seminar organised by the Institute or certain other parties as per the Ministry of Finance's Guidelines.

The Institute is organising the next 6-day GST Training Course from 7 to 16 October 2016 with the cooperation and support of the RMCD which has been informed to members through e-CTIM. Do also go through the schedule of upcoming CPD events on Direct Tax and GST from October 2016 to December 2016 at the back of this issue of *Tax Guardian* and on the Institute's website to plan your CPD accordingly. My thanks to

The National Tax Conference (NTC) 2016 on the theme of Broadening Perspectives, Enhancing Our Tax Base was jointly organised by the Inland Revenue Board of Malaysia (IRBM) and the Institute and successfully held over two days from 9 August 2016 to 10 August 2016 at the Kuala Lumpur Convention Centre.

the Institute's CPD Committee and Secretariat for working hard to put these events together.

Membership

I am pleased to inform you that the Institute currently has approximately 3,400 members comprising of associate members and fellow members. I would like to thank all members for supporting the Institute's efforts in moving the tax profession forward.

Changes in Council Members and Branch Chairmen

Ms Seah Siew Yun and I were re-elected as Deputy President and President respectively for another 1-year term at the conclusion of the 24th Annual General Meeting (AGM) on 18 June 2016. We would like to thank the Council, Secretariat, Committees, Working Groups and CTIM members for their continual support.

SM Thanneermalai, Prof. Dr. Jeyapalan Kasipillai and Ong Chong Chee have retired from the Council following the AGM having served out their terms. I would like to express my heartfelt thanks to them for their contributions to the Institute during their tenure. Special mention goes to SM Thanneermalai, my predecessor who has been the driving force behind several of the Institute's initiatives during his presidency as well as his legacy to the Institute in the form of the NTC and the National GST Conference. Prof. Dr. Jeyapalan Kasipillai also rates special mention. As Chairman of the Examination Committee, he has brought about changes in keeping with current needs such as the restructuring of the examination subjects and changes to the examination syllabus.

I would like to take this opportunity to welcome Mohd Noor Abu Bakar, Chow Chee Yen and Zen Chow as Council Members following their successful election at the AGM. I would also like to congratulate Phan Wai Kuan for her successful re-election to serve on the Council for a second successive term.

We also bid farewell to Chak Kong Keong and Angeline Wong, who as Perak Branch Chairman and Sabah Branch Chairman respectively, have worked tirelessly to address the needs of the members at their branches. They will be succeeded by Lam Weng Keat and Viviana Lim respectively. Welcome on board!

Finally, I would like to thank everyone involved for their efforts in maintaining the Institute's status as the premier body for tax professionals.

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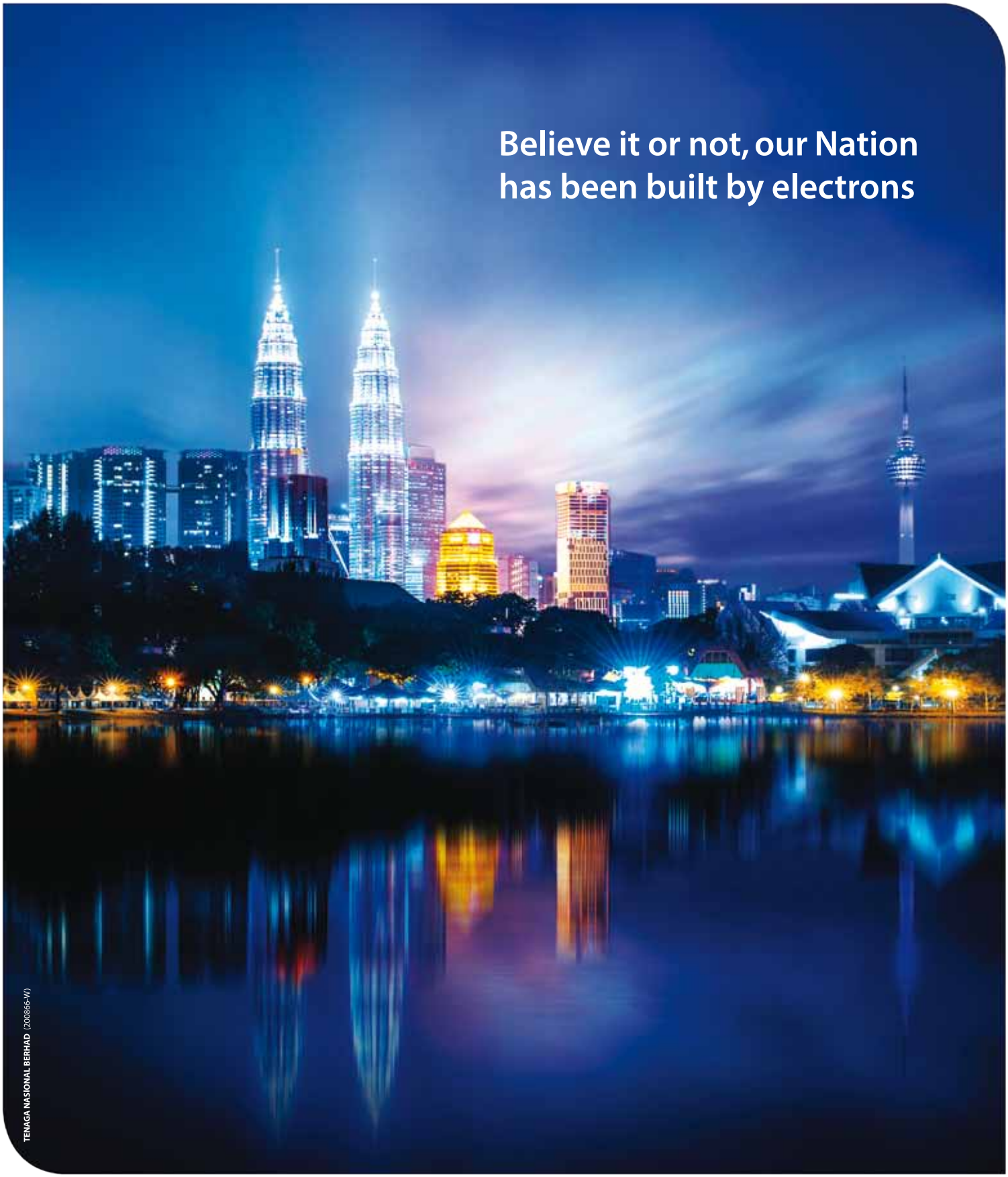

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Editor'sNote

YEO ENG PING

It is a great honour to be entrusted with this role of Editor and I welcome you to our last edition of *Tax Guardian* for 2016. How quickly the year has passed and in no time we will be singing Auld Lang Syne before ushering in the new year. Amidst the current economic challenges, we heard a sobering Budget 2017 plan, accompanied by the Finance Bill 2016 which seeks to expand the tax base. I am sure the Budget proposals will inspire great intellectual debates and trigger yet more areas of tax controversy; but I hope it will equally generate some great pieces of writing for our future editions!

Turning to the current edition, you will see our devoted coverage of the National Tax Conference held from the 9 to 10 August 2016, our sixteenth. Do spend some time reflecting on the notes we captured for each of the sessions, including the seven topics presented. Technology and digital were prominent themes, and we heard about the increasing use of data analytics for tax enforcement, better use of technology to improve "outcomes" from a tax administration perspective (keep in mind also the announcement for the Customs to install a "device" to capture systems data for ensuring better GST compliance), and the need for tax rules to keep up with changing business models in a digital economy. Tax case analyses are always well received and apart from those highlighted during the NTC (see notes under Topic 7) and our regular Tax Cases column, we have an article which covers the Marigold case in some detail. Marigold is one of a long line of cases where the taxpayer has been successful in their reinvestment allowance claims, this time on the cost of a new SAP system. We also have an article on GST, which provides the latest updates for the Tour and Travel industry. One important take-away is the fact that the relevant GST Guide has been revised several times to suit commercial practices, and is testament to the importance of a close and frequent dialogue between business and lawmakers. The international issues column bring updates on China, Hong Kong, India, Singapore and Indonesia, where the focus appears to be on improving tax compliance and enforcement. The Technical Updates provide the usual summary on key local regulatory changes, in an easy to read format. I do hope you find this useful, and I invite your suggestions and ideas to make this publication even better.

As I flicked through old editions tracking back to some more than a decade ago, I realised how much we have gained from past contributors and members of the Editorial Committee who have added their spice and flavour in the quest for continuous improvement of this publication. I acknowledge and thank them all, but I would like to convey my special thanks to Mr. Sandra Segaran, our outgoing Editor. Luckily, and it is such a delight that the Editorial Committee has however been able to retain Mr. Segaran as a member. Finally, I wish everyone happy holidays and a strong finish for 2016.

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F: +6087-428845 T: +6087-427745
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KUALA LUMPUR MARKETING OFFICE
2A-16-2, Suite C,
Block 2A, Plaza Sentral,
Jalan Stesen Sentral 5, 50470 K.L
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SUBANG JAYA OFFICE
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KUALA LUMPUR OFFICE
Level 36, Menara Citibank,
165 Jalan Ampang, 50450 K.L
F: +603-2169 6293 T: +603-2169 6329

24TH ANNUAL GENERAL MEETING

The Chartered Tax Institute of Malaysia (CTIM) held its 24th Annual General Meeting (AGM) on 18 June 2016 at the Seri Pacific Hotel Kuala Lumpur. A total of 68 members attended the AGM.

Pursuant to Article 59, Phan Wai Kuan was re-elected to the Council.

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

1. Mohd Noor Bin Abu Bakar
2. Chow Chee Yen
3. Chow Tuck Him

The first Council meeting for the 2016/2017 term was held on the same day. Pursuant to Article 63, the Council has elected from amongst the Council Members as listed on the right for the term 2016/2017, the President and the Deputy President.

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Aruljothi A/L Kanagaretnam
Deputy President
Seah Siew Yun
Council Members
Poon Yew Hoe
Renuka Thuraisingham
Nicholas Anthony Crist
Yeo Eng Ping
Farah Binti Rosley
Goh Lee Hwa
Datuk Harjit Singh Sidhu A/L Bhagwan Singh
Koong Lin Loong
K. Sandra Segaran A/L Karuppiah
Lai Shin Fah @ David Lai
Phan Wai Kuan
Mohd Noor Bin Abu Bakar
Chow Chee Yen
Chow Tuck Him

The Council Members are all committed to the Institute by pledging their own time and resources to the objectives of the Institute and in achieving its mission.

CPD EVENTS

A series of workshops were conducted by CTIM in the 3rd quarter of 2016:

- Transfer Pricing Documentation
- Cross Border Taxation on Withholding Tax
- Managing Tax Audits
- Capital Allowances for Plant & Machinery
- GST: Practical Issues & Recent Developments

The workshop on "Transfer Pricing Documentation" was conducted by Mr. Harvindar Singh at several venues i.e. Kuala Lumpur, Melaka, Johor Bahru, Kota Kinabalu, Kuching & Penang. The speaker discussed on the risk faced by taxpayers especially MNEs, due to multiple approaches in applying arm's length standards.

In practice it can lead to compliance burden and risk of unrelieved double taxation even when there are no issues of tax avoidance and evasion. This is due to different views on arm's length pricing. This workshop focused on the practical issues and detailed

discussion on the Transfer Pricing Documentation. Mr. Harvindar Singh also conducted a workshop on "Cross Border Taxation on Withholding Tax: Key Consideration" in Kuala Lumpur on 1 September 2016. The speaker shared his vast experience and knowledge on cross border transactions and its tax implications.

Mr. Renganathan conducted a workshop on "Managing Tax Audits" at two major venues i.e. on 20 July 2016 in Kuala Lumpur and 24 August 2016 in Penang. Some of the issues highlighted in the workshop were the skills required to handle the various stages of a tax audit and understanding the rights and responsibilities of various parties involved in a tax audit process. Further, the speaker guided the participants on how to capitalise on the voluntary disclosure concessions

effective March to 15 December 2016.

The workshop on "Capital Allowances for Plant & Machinery" was conducted by Mr. Thenesh Kannaa at Kuala Lumpur and Ipoh on 24 August 2016 and 21 September 2016 respectively. This course explained in detail the rules on capital allowances in respect of plant and machinery and treatment of Goods and Services Tax (GST). This course incorporated updates from Budget announcements, public rulings and recent tax cases.

Due to the overwhelming responses, the workshop on "GST: Practical Issues & Recent Developments" by Mr. Thenesh Kannaa were conducted three times in Kuala Lumpur i.e. on 14 July 2016, 19 August 2016 and 29 September 2016.

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NATIONAL TAX CONFERENCE 2016

THE NATIONAL TAX CONFERENCE (NTC) 2016 was held from the 9 to 10 August 2016 at the Kuala Lumpur Convention Centre, attended by approximately 2,000 participants. It was co-organised for the sixteenth consecutive year by the Chartered Tax Institute of Malaysia (CTIM) and the Inland Revenue Board of Malaysia (IRBM), on the theme **Broadening Perspectives, Enhancing Our Tax Base**. For the first time, an internet based application was utilised to enable participants to submit their questions to the panel of speakers for the question and answer (Q&A) sessions and vote on questions of interest to them.

WELCOMING SPEECH BY ARULJOTHI KANAGARETNAM, CTIM PRESIDENT

CTIM President, Aruljothi Kanagaretnam thanked the IRBM CEO, YBhg Kolonel (K) Tan Sri Datuk Wira Dr. Hj. Mohd Shukor Hj. Mahfar and the IRBM for their partnership in organising this event and expressed the Institute's support for the efforts of the Ministry of Finance (MoF) and the IRBM in implementing the 2016 Budget Recalibration. He added that the IRBM has taken steps to enhance revenue collection and reduce tax leakage via a tax amnesty programme which assists taxpayers which include the clients of our members.

ADAPTING TO CHANGES AND BROADENING PERSPECTIVES

Opening address by YBhg Kolonel (K) Tan Sri Datuk Wira Dr. Hj. Mohd Shukor Hj. Mahfar, CEO of IRBM

YBhg Kolonel (K) Tan Sri Datuk Wira Dr. Hj. Mohd Shukor Hj. Mahfar congratulated YB Datuk Johari Abdul Ghani on being appointed as the Finance Minister II. He said that new business models affected business transaction reporting and consequently taxes paid. The IRBM is adapting to changes, broadening perspectives and looking beyond traditional areas of focus to bring these new businesses under the appropriate tax net. The Malaysian Tax Academy will be upgraded to university status in a few years time subject to approvals and accreditations. The IRBM aims to build better relationships with taxpayers.

SUSTAINABLE TAX BASE KEEPING PACE WITH ECONOMIC AND TECHNOLOGICAL PROGRESS

Keynote address by guest of honour YB Datuk Johari Abdul Ghani, Finance Minister II

Guest of Honour YB Datuk Johari Abdul Ghani congratulated CTIM and the IRBM on its sixteenth edition of

the NTC, saying that the conference was timely and relevant amidst global tax reforms to address issues on base erosion and profit shifting (BEPS).

Datuk Johari highlighted that "a robust tax base that is sustainable in keeping pace with economic and technological progress is becoming urgent and important". Businesses have evolved from being industry based and selling tangible products to being digital based and borderless. Taxation of business activities has become a mechanism shared between countries.

The changing nature of global businesses and business models across borders need to be addressed. With this in mind, Malaysia is represented in the OECD discussions on BEPS and is in the process of drafting legislation for implementation. He concluded that "tax policy requires holistic and collaborative consideration as taxes can influence economic decisions or affect behaviour by altering investment or lifestyle choices" while acting as an income redistribution mechanism to bridge income disparity gaps.

TOPIC 1 FORUM: ECONOMIC RECALIBRATION – WHAT TO EXPECT NEXT

Dr. Sukhdave Singh (Deputy Governor, Bank Negara Malaysia) said that Malaysia as an open economy is susceptible to challenges in the global environment. The slow growth of the global economy (3.1% for July 2016 yoy) is due to several factors including long-term financial repression in the developed world, more limited policy space, higher geopolitical risks and rise of protectionism and anti-trade sentiments. The world is caught in a series of bad cycles from the persistent monetary easing cycle to the low commodity cycle. It is paying the price for earlier economic prosperity (prior to the financial crisis) because of loose fiscal policies.

With the weaker global demand, the Malaysian economy has been largely driven by private domestic demand which has increased over the past decade. As external demand is likely to remain weak due to the global slowdown, it is therefore critical to sustain private demand particularly consumption (employment and income growth) and investment (creating a favourable business environment).

However, sustaining domestic demand over the longer term will become more and more challenging due to elevated indebtedness and Malaysia's ageing population. The percentage of household debt to GDP increased from 36.5% in 1998

to 89.1% in 2015. Malaysia will reach the ageing nation threshold of 15% of the population by 2030. The growth drivers for the Malaysian economy are waning - China's growth rebalancing provides lower support to Malaysia's external trade; lower commodity prices affect commodity related sectors; heavy reliance on low-cost, low-skilled labour inhibits movement up the value chain; and strong credit growth which has led to high household debt.

Malaysia's low-cost growth model is negatively affecting our ability to thrive in a more integrated world. Malaysia's financial attractiveness has been overtaken by other countries in terms of cost and quality competitiveness. Eighty seven per cent of job creation is in the low to mid-skilled jobs between 2010-2014 which face higher risks of obsolescence and disruption from competition from neighbouring low-cost economies, technological displacement and migration of low-skilled foreign labour.

The preconditions for a resilient and competitive economy are a low level of vulnerabilities; adequate economic resources; solid economic foundations and conducive policy environment. The key priorities if Malaysia is to thrive and prosper would be managing domestic vulnerabilities, an open and competitive economy and high quality education and talent retention. Dr. Sukhdave left the audience with a caution that "what got us here will not sustain us to go further".

Mr. Nor Zahidi Alias (Chief Economist, Malaysian Rating Corporation Berhad) spoke on the economic recalibration from a sovereign and country risk perspective. He explained that recalibration was needed as the global economy was changing tremendously and was entering a new normal. Malaysia is expected to experience low economic growth for the next three to five years due to the deleveraging process because of GST, lacklustre economic trade and low commodity prices.

The government is concerned about keeping fiscal deficit low (3.1% instead of higher) as it is tied to Malaysia's sovereign rating. Government operating expenditure is still growing but at a slower pace than before the global financial crisis. Operating expenditure growth has been on a downward trend while development expenditure has increased.

Mr. Megat Mizan Nicholas Denney (Executive Director, Head of Group Business Development, K&N Kenanga Holdings Berhad) observed that the advanced economies which had high government revenue also had high VAT rates.

Dr. Yeah Kim Leng (Professor of Economics, Sunway University Business School) said that recalibrating the economy was necessary to align Malaysia's vision, mission, policies, goals, objectives, programmes, projects and measures at the sectoral level and the national level.

The economy needs stronger growth; more robust investment and support for domestic industries. The slowing growth has been caused by cyclical factors (weak global demand, China's growth uncertainties, weak commodity demand, falling prices and a weak ringgit) and structural factors (high household indebtedness, fiscal constraints, low indigenous technological capabilities and skilled labour shortages). Further recalibrations would depend on on-going economic challenges faced by the country as a result of cyclical factors and structural factors. Fine tuning of economic imbalances and distortions affecting businesses and consumers/ households would be necessary.

On whether the 11MP should be rebooted or reset, some considerations may be placing focus on external threats and opportunities under trade/

economic partnerships; new business models to widen opportunities for low and middle income groups; spending efficiency, outcome-based budgeting and reduce contingent liabilities; sustain subsidy rationalisation to raise allocative efficiency; quicken services sector liberalisation to leverage on regional growth opportunities; reduce government intervention (including GLCs) in the economy; and incentives for private sector-led growth.

The sentiment at the conference was that the government needs to rethink its policy and shift from participating in businesses to primarily providing public services to the people. Also, Malaysia should move away from low-cost industries and concentrate on quality competitiveness with the focus on value adding and not reducing costs e.g. bringing in low-skilled migrant workers.

TOPIC 2 LHDNM'S STRATEGIES: SYNERGY BEYOND BOUNDARIES

YBhg Kolonel (K) Tan Sri Datuk Wira Dr. Hj. Mohd Shukor Hj. Mahfar (CEO, IRBM) spoke on the IRBM's strategies which have developed over the years, particularly during his tenure as the CEO of IRBM from 2011 to 2016. Using the IRBM's roadmap towards Vision 2020, he pointed to the "vehicle" of strategic planning "driven" by KPI with "pit-stops" from "Charting Transformation" in 2011 to "Synergy Beyond Boundaries" in 2016. "Synergy" is both internal and external (co-operating with stakeholders). "Beyond Boundaries" signifies the IRBM's ability to overcome obstacles and achieve success beyond expectations.

Trust and confidence in the tax system is important in instilling a mindset of paying taxes voluntarily and consciously. The challenges faced by the IRBM are both internal (expertise and usage of ICT) and external (shadow economy, hard to tax activities and the economic environment). Challenges are comparable to crisis, which is composed of two Chinese characters representing

danger and opportunity.

The IRBM is involved in several international tax groupings and initiatives such as the Forum on Tax Administration, Commonwealth Association of Tax Administrators, Foreign Account Tax Compliance Act (FATCA), Inclusive Framework on BEPS etc. FATCA reporting has been deferred to 30 June 2017. The Common Reporting Standard and Country-by-Country Reporting would be implemented in the near future.

The IRBM collaborates with other local agencies on the sharing of information for the purposes of profiling, audit and investigation. Besides that, the IRBM is co-operating with other local enforcement agencies to deal with tax evasion/money laundering.

Priority is given to developing data analytics to facilitate accurate data mining to analyse trends, facilitate fast and timely decision-making and identify under declared income and unregistered taxpayers. Taxonomy and XBRL system would be implemented in the near future to receive and analyse financial statements from taxpayers and other agencies (CCM, BNM, SC). Compliance cost is expected to reduce by using a standard platform for submission of financial statements.

Investment in human capital is evident in developing the Malaysian Tax Academy to become a centre of excellence for tax education and plans for its upgrade to university status. The IRBM has entered into memorandum of understanding with other tax administrators to train tax officers and participate in attachment programmes. The IRBM and Kolonel (K) Tan Sri Datuk Wira Dr. Hj. Mohd Shukor Hj .Mahfar have received several international awards and recognitions.

Mr. Poon Yew Hoe (Co-Organising Chairman of NTC 2016) commended the IRBM CEO for his comprehensive presentation. He encouraged tax professionals to rise up to ensure that they are as good and efficient as the IRBM.

Mr. Michael Hewetson (Senior Advisor – Tax Administration CTP, OECD) proclaimed that "Malaysia is doing very well". He was impressed with the progress made by Malaysia in the taxation field so "the challenge is to go further".

The OECD has analysed performance trends in tax administration and found that service performance was improving slowly, being driven by increased digital investment and domestic compliance was lifting with changes in compliance risk management and stronger focus on large taxpayers and the hidden economy.

Synergies beyond boundaries are needed as tax has become global with more administrative challenges extending beyond boundaries e.g. BEPS is a global problem requiring a global

solution. Tax administrators are making international commitments which involve domestic action in areas such as transfer pricing, mutual agreement procedure, BEPS Action Plans. This is supplemented by the automatic exchange of information between tax administrators which is expected to improve transparency.

The emergence of new options such as international co-operation, new technologies, digital delivery and the use of advanced analytics are driving the re-development of organisational business models in tax administrations with the focus shifting to ensuring outcomes rather than merely providing services. IT capital investment is increasing and changing with the need to enhance the ability to manage data with analytics capability for effective tax administration. Changes around tax work and tax administrator's roles, talent management and leadership, and managing complexity are accelerating in tax administrations.

Mr. Hewetson left the audience with some final thoughts that "while the goal remains the same, the rules, technology and environment have all changed and continue to change".

On the IRBM's strategies to meet its revenue target in an economic downturn where taxpayers are making less profit and consequently paying less tax, the IRBM CEO said that taxpayers should do their part by paying the correct taxes voluntarily and on time and pointed to the IRBM's tax amnesty programme. On whether the IRBM collected more revenue in 2015 (economic slowdown) compared to 2014 (GST implementation), Mr. Poon Yew Hoe commented that the taxpayer's capacity to pay taxes is most important.

TOPIC 3 TAX ISSUES SURROUNDING THE DIGITAL ECONOMY – THE MALAYSIAN PERSPECTIVE

YBhg Dato' Yasmin Mahmood (CEO, Malaysia Digital Economy Corporation) briefed on the Multimedia Super Corridor's (MSC) key statistics and performance indicators since its inception 20 years ago which included bringing in RM283 billion of investments. The challenge is not only to bring in investments but also to retain technology businesses that are already in Malaysia. She also talked about up and coming digital technology and the 4th industrial revolution which will see the convergence of digital innovation with physical innovation particularly in the area of material science.

Mr. Anil Kumar Puri (Partner, Ernst & Young Tax Consultants Sdn Bhd) said that the digital economy results in the creation of new and innovative business models which current tax frameworks may not address appropriately and it is difficult to ring-fence from the rest of the economy for tax purposes. E-commerce in Malaysia contributes only about 5.4% to the GDP which is well below other countries.

The tax challenges raised by the digital economy are nexus, characterisation and VAT/GST collection. Current rules to determine nexus within a jurisdiction for tax purposes may no longer be appropriate/sufficient for the digital economy which has resulted in delivery of digital products/services online and business models which do not require local/physical presence. Double non-taxation may arise if an absence of nexus in the source country is combined with no taxation in the country of residence. There is uncertainty in characterisation of digital products/content/solutions/services i.e. whether they are goods, services or royalty. No or low amount of VAT/GST is levied on cross-border trade of digital services and intangibles due to the complexity of enforcing payment of tax on such supplies.

The OECD has issued the BEPS Action 1 Report on recommendations to tackle digital economy challenges, mainly on permanent establishment (PE), right to apply VAT/GST and greater tax transparency. Certain countries contend that the mere presence of a server may constitute a taxable nexus for equipment, while other countries look to server functions. Some countries may take a formalistic approach to how a payment is characterised while others may look at substance. Many countries have not defined or have only partially defined the VAT/GST treatment of the digital economy.

The Malaysian Treasury Secretary-General has said it would be a revenue loss for the government if nothing is done because more and more businesses

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are going into the digital economy and it is difficult to collect taxes from these new sources. To date, the Malaysian tax authorities have issued guidelines on taxation of e-commerce and GST guides on e-commerce and web-hosting services.

The key takeaways from the guidelines on taxation of e-commerce are that the server in itself carries no weight except where the server constitutes a PE under a tax treaty and distinctions are made between physical business activities/operations and server activities and between payments for copyright and payments for purchase of products/ services. There are no separate tax laws for the digital economy and e-commerce, rather it is how existing tax laws are interpreted and applied. There are open issues such as when are payment considered to be in respect of a purchase of a product (goods vs. services vs. royalty) and whether servers are a PE.

Dato' Yasmin added that e-commerce is just a subset of the digital economy which is currently 17% of Malaysia's total GDP. E-commerce has been growing at 10-11% per annum which is way too low.

Mr. Mahmood Daud (Director, Operations Department, IRBM) said that there is a need to devise ways to bring internet businesses under the tax net otherwise there will be revenue loss to the nation. There will be traces left behind by internet businesses which the IRBM must be able to accumulate and add value to enable profiling. The challenge is how to manage all the information that is available to put internet entrepreneurs into the tax net. The complex nature of e-commerce makes it very difficult for the IRBM to validate and tax effectively as profits/ income can be shifted from one place to another. With the exchange of information between agencies, the IRBM will gradually bring in people who are not in the tax net.

Mr. Aurobindo Ponniah (Executive Director, PricewaterhouseCoopers

Taxation Services Sdn Bhd) raised the question of whether Malaysia's current policies are robust or conducive enough not just for e-commerce but also for the digital economy. E-commerce is becoming a thing of the past. While we are still arguing about taxing e-commerce, the digital economy has actually passed us and is moving ahead e.g. interplanetary file system which eliminates a need for a server and allows you to store a file anywhere in the world by using the internet. There is an investment vehicle called DAO where anyone, anywhere in the world can login and contribute money into this investment vehicle. This investment vehicle is not located in any country, not even a tax haven. There is no physical office; no physical call line. What treaty are you going to apply? What PE or server are you talking about? How do you tax this? The MoF, MDeC, IRBM and tax practitioners need to sit down to decide how we want to move forward.

On how the IRBM would catch internet business operators, it would be difficult and would depend on the availability of information. It is also a question of whether the business was taxable in Malaysia. There also needs to be a prioritising of where exactly the IRBM wants to focus its attention on, balanced with not stifling innovation. On the extent which the MDeC assists the government in ensuring tax compliance, Dato' Yasmin said that the MDeC takes an investment based tax approach and encourages programmes in tax compliance.

Madam Asriah Shaari (Co-Organising Chairman of NTC 2016) recapped day 1 of the conference. She encouraged participants to take up the Finance Minister II's invitation to submit proposals for the upcoming Budget 2017. Topic I gave a clear insight on why Malaysia needs to recalibrate its economic policy. In Topic 2, the CEO of IRBM described internal and external factors that influence synergy in the IRBM and its ability to achieve success. The need for tax administrators to shift from focusing on services to outcomes and move processes into real time in order to tax effectively was welcomed. In Topic 3, taxation of e-commerce activities still remains an unresolved issue. However, the audience was reassured that e-commerce businesses will be subject to the same tax treatment as conventional businesses.

TOPIC 4 SMEs – COMMON TAX ISSUES

YBhg Dato' Dr. Hafsah Hashim (CEO, SME Corporation Malaysia) quoted two eminent scientists who said that tax is certain but the hardest thing in the world to understand. She said that SMEs make up 98.5% of total business establishments out of which 95% are contributing to tax. The tax fraternity can play a role in assisting SMEs to enhance their tax compliance,

clear the various tax issues confronting them and encourage them to contribute more to the economic advancement of the nation.

Mr. Abdul Manap Dim (Director, Tax Compliance Department, IRBM) said that the definition of SME which is based on sales turnover and number of full-time employees was endorsed by the National SME Development Council (NSDC) and is adopted by ministries, agencies, financial institutions and regulators. There is no specific definition of SMEs in the Income Tax Act 1967 (ITA). Ninety per cent of SMEs are concentrated in the services sector. In 2015, SMEs contributed 36.3% of GDP, 65.5% of employment and 17.6% of exports.

The Q1 2016 survey conducted by SME Corporation Malaysia indicated that SMEs were concerned about the high cost of doing business, ringgit depreciation, reduced domestic demand for goods and services and low sales volume with the introduction of GST. They were also concerned about weak business sentiment, weak consumer confidence, subdued external environment and weak demand from overseas market.

It was noted that in 2014, SMEs based on turnover of RM30 million contributed 15% of tax payable while SMEs based on paid-up capital of RM2.5 million contributed 28% of tax payable. It was also noted that under the Self-Assessment System (SAS), 73.42% of tax returns issued in 2004 and 2005 were received while prior to the SAS, 63.09% of tax returns issued in 2002 and 2003 were received.

SMEs have tax compliance issues such as susceptibility to commit offence resulting in compliance gap, not voluntarily registering, failure to keep adequate records, failure to file tax returns and settle tax liabilities promptly, lack of internal control, relying more on outside tax professionals to deal with tax issues, evading tax due to lack of accounting and tax knowledge, poor tax attitude due to perceived unfairness of the tax system, relatively higher tax compliance costs than larger businesses, tax audit issues, failure to adapt to new technology and hiring unapproved tax agents. The IRBM hopes that these challenges can be addressed with various stakeholders such as government bodies and tax practitioners. The way forward includes harmonising the definition of SMEs, reducing common tax issues further and the importance of the tax agents' role in assisting SMEs in tax compliance.

Mr. Koong Lin Loong (Council Member, CTIM) said that SMEs rely on direct funding (hard-cash) and

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indirect funding (tax and financial incentives) to survive. He pointed out the difference in the definition of SME as endorsed by the NSDC compared to its closest definition in the ITA i.e. a company resident and incorporated in Malaysia with paid-up capital not exceeding RM2.5 million in respect of ordinary shares. He suggested that Malaysia's corporate tax rate and preferential tax rate should be reduced to 18% and 15% respectively in line with neighbouring countries. The threshold for the preferential tax rate should be increased to the first RM2 million of chargeable income.

In most SMEs, the director (key-man) is also a shareholder. The key-man insurance is necessary to cover for the loss of business income. There is no element of investment and the insurance proceeds belong to the company. Its non-deductibility increases the SME's cost of doing business and is a disincentive against taking up such insurance which consequently increases human resource risks. Other SME business expenditure with deductibility issues include renovation expenditure (general electrical installation, lighting, gas system etc.) which is a cost of doing business for certain industries e.g. restaurants and saloons; and expenses borne for insurance, upkeep and road tax of personal motor vehicles used for business purposes.

SMEs in high labour intensive industries rely heavily on foreign labour. The automation capital allowance (ACA) incentive helps to reduce reliance on labour and should be extended from 2017 currently to 2020. The application process for the ACA which involves external auditors, MIDA, SIRIM, MoF and the IRBM needs to be simplified e.g. a one stop service through SME Corporation Malaysia.

SMEs have issues with weak supporting documents e.g. invoices issued are generally handwritten. Suggestions for consideration include proof of payment, trend of the SME's business and reasonable gross profit ratio.

The requirement to pay the notice of assessments/additional assessments within 30 days notwithstanding any appeal (within 30 days) is an issue for SMEs as they always face cash flow problems. It is suggested that the payment be deferred until the appeal has been finalised.

On whether it is possible to align the definition of SMEs in the ITA with that provided by SME Corporation Malaysia (SCM), Mr. Abdul Manap highlighted that there would be fewer taxpayers under the definition provided by SCM. The ITA's definition also makes it easier to determine eligible companies for tax purposes. Dato' Dr. Hafsah noted the issues faced by SMEs and requested that the various stakeholders work together with SCM on it.

TOPIC 5 RESOLVING ISSUES IN TRANSFER PRICING AUDITS

Mr. Bob Kee (Executive Director, KPMG Tax Services Sdn Bhd) said that TP is a major focus area especially with the BEPS Action Plan being implemented internationally as well as locally by the IRBM and is going to be relevant for tax practitioners for many years to come.

Ms. Salamatunnajan Besah (Director, Multinational Tax Branch, IRBM) cited Section140A of the ITA, Transfer Pricing (TP) Audit Framework, TP Rules and Guidelines 2012 as references for TP audits. She said that technical issues encountered in TP audits included the definition of control, contemporaneous TP documentation (TPD), comparing controlled transactions on a year by year basis, inter-quartile range and adjustment to median, penalties for incorrect return and contemporaneous TPD and permanent establishments in the digital economy. She added that the preparation of TPD must be done before the transaction is made. It must be robust and comprehensive, provide a detailed understanding of the business and transparent without withholding information. There were instances where the furnished TPD had incomplete or superficial information, there was a lack of information on pricing policy and the taxpayer was unable to explain the pricing policy due to lack of understanding. The taxpayers as industry experts should provide an explanation of their business from A to Z. She revealed that there were a few cases where no penalty was imposed on TPD.

Operational issues were difficulty in understanding documents not in English, lack of local comparables, lack of TP knowledge, high cost to

prepare comprehensive TPD, extensive/ voluminous documents to prepare TPD to justify arm's length pricing (ALP), difficulties in getting relevant documents from parent company/headquarters, unavailability of comparable audited accounts for benchmarking analysis and uncertainties in accepting the taxpayer's TP policy by the IRBM. A TP awareness survey showed that most multinational enterprises (MNE) complied with global TP requirements and determination of ALP although generally there was still a lack of TP knowledge, communication between MNEs and the IRBM was poor and 45% of respondents prepared TPD but 45% did not have TPD.

There were several challenges in TP audit such as enhancing TP knowledge, BEPS awareness and keeping up to date on the BEPS Action Plan, demarcation between TP (double taxation) and fraud, dealing with disputes to settle audit cases and getting the right resources and skills set.

Ms. Theresa Goh (Council Member, CTIM) said that the definition of control would determine whether TPD needs to be prepared. She had come across a case where the equity shareholding is below 50% and there is no Board and management control. But because of related party transaction disclosure in the financial statements based on significant influence, the company prepared TPD, there was a TP audit, adjustments were made and now the case is under appeal. It would be good if the IRBM could clarify what they mean by control over a company's affairs or operations and align the explanatory note to Part N of the Form C on related party transactions with control in the TP Guidelines (TPG) to avoid confusion.

There are issues concerning contemporaneous TPD such as the TPG requirement to update the entire TPD in the event of material changes and more than 99% of TPD failing to qualify for nil penalties because they are not considered as comprehensive. A definition of what material changes are and guidelines on what is meant by comprehensive would assist.

A benchmarking study for the current year can only be done based on prior years' financial statements as the financial statements for that year is only available for comparison after the tax filing due date. It is suggested that the IRBM consider using the prior years' results or what is in the TPD for comparison with the company's results in the relevant year instead of a year on year comparison.

She proposed that the IRBM should not adjust results that are within the inter-quartile benchmarking range or the TP set that is already agreed by both parties. Only results that are outside the range should be adjusted.

Mr. SM Thanneermalai (Managing Director, Crowe Horwath KL Tax Sdn Bhd) said that TP audit is not only on cross border transactions but also on domestic transactions. He observed that the taxpayers' exposure and understanding of TP was still very low. It is not a level playing field for taxpayers as most don't know what is going on. TP needs to be properly enforced otherwise Malaysia will lose revenue. There needs to be more transparency and publicity to encourage compliance. Ninety six to ninety nine per cent of taxpayers are honest and want to pay the right tax. TP Rules and Guidelines need more clarity. Section 139 of the ITA is not the right section to refer on control; common shareholders do not necessarily amount to control.

On contemporaneous documents, he said that there is disconnect between price setting and outcome setting. Also, what is good and comprehensive TP documentation? Clear statements from the IRBM on it would be helpful. The IRBM has said that it is up to the taxpayer. It is suggested that the IRBM come up with it and compliance will increase. The selection of comparables will also need to be addressed.

In response to the panellists' comments, Ms. Salamatunnajan said that the IRBM checks with other countries on how they define control. The IRBM will also look into and fine tune the disclosure on TP and related party transactions in the Form C. As for what constitutes material changes, more examples will be given.

On whether the IRBM is going to impose deemed interest income for interest free loans between related parties, Ms. Salamatunnajan said that interest free loans are not at arm's length but she could not recall the IRBM actually deeming interest income. On whether the IRBM should observe the court ruling in the *MM Sdn Bhd* case that Section 140 of the ITA is not applicable for TP adjustments, Mr. Thanneermalai said that Section 140 is still applicable if it involves tax avoidance. If it is purely a TP adjustment, then Section 140A of the ITA applies from 2009 onwards. On

acceptable and not acceptable TPD, Ms. Goh commented that global supply chain and TP policy documents requested by the IRBM are very difficult to obtain.

TOPIC 6 TAX CASES UPDATE

Ms. Adeline Wong (Managing Partner, Wong & Partners) presented 11 notable tax cases in the past 12 to 18 months as follows:-

- *Mudah.my v Ketua Pengarah Hasil Dalam Negeri (KPHDN) (2015, unreported)* – Whether the online purchase of access codes to online databases and software is a royalty payment subject to withholding tax (WHT), whether JR was the only route of appeal available to the taxpayer etc. This case originated in the High Court (HC) via a judicial review (JR) application. The HC held in favour of the taxpayer. The IRBM's appeal to the Court of Appeal (CoA) is currently pending.
- *KPHDN v Thomson Reuters Global Resources (2016)* – Whether a distribution fee paid to a related entity for sole distribution rights in Malaysia is royalty subject to WHT, whether the definition of royalty in the ITA or Double Taxation Agreement (DTA) should be used etc. The Special Commissioners of Income Tax (SCIT) and HC decided in favour of the taxpayer. The IRBM is currently appealing to the CoA.
- *Ensco Gerudi (M) Sdn Bhd v KPHDN (2016, unreported)* – Whether expenses incurred for repair of a rig platform enroute to the taxpayer's next contract destination should be deductible and whether expenses in relation to a rented yard are not deductible because they are capital in nature. The SCIT decided against the taxpayer which was overturned by the HC. The IRBM has appealed to the CoA.
- *Ensco Gerudi (M) Sdn Bhd v KPHDN (2015, unreported)* – Whether the leasing structure was within the framework of Malaysian law or a tax avoidance scheme. This case originated in the HC via a JR application. The HC and CoA ruled in favour of the taxpayer. The IRBM decided not to appeal further and the case has effectively been concluded.
- *KPHDN v Bandar Nusajaya Development Sdn Bhd (2016)* - Whether leave for JR should be granted when there is an alternative appeal route and whether the interest waived and previously deducted is income. This case originated in the HC via a JR application. The HC and CoA ruled in favour of the taxpayer.
- *Felda Trading Sdn Bhd v KPHDN (2015, unreported)* – Whether waiver of the loan resulted in the amount waived becoming trading income chargeable to tax. The SCIT and HC decided against the taxpayer.
- *Insaf Tegas Sdn Bhd v KPHDN (2015, unreported)* – Whether the IRBM has the power to revise an assessment under the RPGT Act to the ITA, whether the disposal of land is a disposal of stock in trade or disposal of capital investment and whether the IRBM had correctly imposed penalties for incorrect return. The SCIT and HC decided against the taxpayer.
- *KPHDN v Alcatel-Lucent (2015), Piramid Intan Sdn Bhd v KPHDN (2015), KPHDN v Bintulu Lumber Development Sdn Bhd (2016)* and *KPHDN v Latex Manufacturing Sdn Bhd (2016)* – Full tax case judgements are available or have been reported to CTIM members.

Mr Abu Tariq Jamaluddin (Director, Dispute Resolution Department, IRBM) gave his observations on several of the above-mentioned tax cases as follows:-

- *Mudah.my v KPHDN, KPHDN v Alcatel-Lucent and KPHDN v Thomson Reuters Global Resources* – The suitability of JR for these cases was questionable as there had not been an abuse of process or error of law. Moreover, "royalty" has a wide interpretation and the words "for the use" and "right to use" must be given effect as Parliament does not act in vain. The OECD commentary on royalty is not binding.
- *Ensco Gerudi (M) Sdn Bhd v KPHDN (2016)* – There was no reason for the HC to disturb the conclusion of the SCIT which was based on facts. Also, good faith is not a defence against the imposition of penalty as the DGIR has no burden in law to prove bad intention of the taxpayer.

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- *Ensco Gerudi (M) Sdn Bhd v KPHDN (2015)* – The Labuan company was regarded as a "shell" company. The transaction was preordained and the main purpose of establishing the Labuan company was to relieve the taxpayer from paying WHT. The legality of the established entity and transaction is immaterial.
- *KPHDN v Bandar Nusajaya Development Sdn Bhd* – The IRBM has been granted leave to appeal to the Federal Court. On the CoA's view that the IRBM had erroneously interpreted the law, the misinterpretation of law does not amount to error of law or abuse of process.
- *Felda Trading Sdn Bhd v KPHDN* – The loan was used to ensure that the business operation is sustainable by supplementing trading revenue and preserving trading stability.
- *KPHDN v Latex Manufacturing Sdn Bhd* – The pioneer certificate had not been cancelled but the DGIR may refuse to give effect to the certificate upon audit. The condition was for the export to be made by the company and not by any related company.

Mr. Abu Tariq responded to a question on reasonable excuse in order for late filing of returns not to be penalised, saying that accounts not ready would not be reasonable excuse for late filing. On whether taxpayers can rely on unreported cases, YBhg Datuk Junaidah Hj Abd Rahman (Head of Research, Attorney General's Chambers of Malaysia) replied that unreported cases are still binding.

TOPIC 7 ROUND TABLE DISCUSSION ON CURRENT ISSUES AFFECTING TAXPAYERS

Tax incentives

YBhg Dato' Chua Tia Guan (Member, Special Task Force to Facilitate Business (PEMUDAH), Prime Minister's Department) said that the incentives are not evenly distributed between sectors. Madam Khodijah Abdullah (Undersecretary, Tax Division, MoF Malaysia) responded that the incentives were to attract the correct investment into the country. There was no differentiation between foreign direct investment and domestic direct investment. Ms. Seah Siew Yun (Deputy President, CTIM) asked what the authorities' direction on incentives was. Madam Khodijah replied that it involved carefully balancing and was also meant to attract experts to come to Malaysia. Dato' Chua observed that there were no incentives for the wholesale and retail trade sector which contributed to the economy. Madam Khodijah said that there are incentives for increased exports. The authorities are prepared to forego tax revenue for incentives awarded as long as it can create high value, high employment and acquire technology.

Tax amnesty programme

Dato' Chua asked Ms. Seah for her comments on the tax amnesty programme introduced in conjunction with the Budget Recalibration. Ms. Seah shared her concern that the programme impacts good taxpayers who have been complying with their tax obligations. YBhg Datuk Sabin Samitah (Deputy CEO (Tax Operations), IRBM) responded that the reason for the programme in 2015 is mainly to help taxpayers in conjunction with the implementation of GST. The programme was extended to December 2016 to mitigate the effect of drop in oil prices. He added that the IRBM is reviewing the tax penalty structure in 2016.

Changing the law after losing a tax case

Dato' Chua noted that the law was changed after the IRBM had lost a tax case. Datuk Sabin replied that this is also practised in other tax jurisdictions. The change of law involves a lengthy study before it is submitted to the MoF for approval; it is not being done arbitrarily. Madam Khodijah said that changing the law is necessary to make the tax treatment clearer and more transparent. Ms. Seah agreed that the law should be reviewed but was concerned if there is a shortcoming in the amended law. She was especially concerned with the implications of amended law such as Section 24(1A) and Schedule 3, Paragraph 16B of the ITA.

Income tax implications of GST

Asked by Dato' Chua on how the income tax and GST provisions should be harmonised, Ms. Seah said that although the IRBM had clarified on the non-deductibility provision concerning GST input tax, the question arises whether GST input tax credit claim disallowed by the RMCD during an audit is deductible. Datuk Sabin said that if the RMCD had rejected the claim on the GST input tax credit, the IRBM

would look at it on a case to case basis and would want to know the reason for the rejection. According to Madam Khodijah, the objective is that there won't be any double claims and the authorities don't want taxpayers to have a situation of short claims as well. The claim for deduction must be justified and in the generation of income.

Tax treatment of computer software

Dato' Chua wanted to know the tax authorities' view on the tax treatment of customised/developed computer software. Madam Khodijah said that the MoF needs information on tax treatment of ICT in other jurisdictions to move forward as the authorities want Malaysia to be competitive and promote the adoption and utilisation of ICT. For the time being, customised/developed computer software is not allowed for capital allowance claim. Ms. Seah said that customising/developing computer software is normal and a necessity; without it one cannot do business. She questioned the need to study its tax treatment in other jurisdictions to justify that it is allowable for capital allowances. Dato' Chua suggested discussing the matter further at a different platform.

Transparency issues and revising the return of a loss making company

According to Dato' Chua, certain taxpayers claimed that the transparency on various tax treatment can be further enhanced and the existence of certain IRBM internal memos which they are unaware off may facilitate compliance. Datuk Sabin said that the IRBM is transparent on tax treatment through public rulings, meetings and dialogues with professional bodies and discussions with PEMUDAH. The IRBM headquarters circulates internal memos to State and Branch Directors to give clearer explanation on implementing its instructions. On the issue of revising the return of a loss making company, he said that this has been discussed with professional bodies and the IRBM is looking at the law and public ruling to make it clear.

On a request to remove the IRBM's short term disallowance of tax credit to set-off tax instalments, Datuk Sabin responded that taxpayers are not stopped from setting-off the tax credit. Refund depends on available funds. On many taxpayers getting a letter indicating delay in refund instead of compensation for late refund under Section 111D of the ITA, Datuk Sabin reiterated that refund is subject to availability of funds. Madam Khodijah said that hopefully the payment will be forthcoming.

GST UPDATES FOR TOUR AND TRAVEL INDUSTRY

Datuk Tan Kok Liang, Lee Fook Koon and Kenneth Yong Voon Ken

GST guides are sought after for their ability to communicate and clarify accepted GST treatment. By this measure, the GST Guide for Travel Industry has already seen three iterations: version 10.8.2014, 6.4.2015 and 14.4.2016 respectively. Rather than merely being sequential indicators, each revision to GST Guides signifies the acknowledgement of some additional real world problem and a prescribed solution.

For the GST Travel Guide, the jump from the first to second iteration brought important (and mostly welcomed) changes with deep implications for the industry. Following that, the third version is mostly a refinement with modest fine-tuning.

An earlier issue of *Tax Guardian* (2015/Quarter 1) had discussed the GST complications for the tour and travel industry based on the first GST Guide dated 10.8.2014. This article updates the earlier one and also discusses other practical concerns, namely:

1. Complex treatment for "travel products"
2. Rural Air Service and possibility of becoming a "mixed supplier"
3. Hotel rooms and cash flow problems unique to tour operators

Complex treatment for "travel products"

For most industries, the supply is clearly identifiable and thus, can be ascribed to a clear GST treatment (standard-rated or zero-rated). However, a "tour" – although separately identifiable as a "product" - is in truth a combination of various sub-items woven together into a comprehensive package. For this industry, one highly pertinent question, and source of complication, is whether a "tour" is treated as a single product with a single GST treatment (i.e. a "composite supply"), or whether it is in fact multiple products each with different GST treatments (i.e. a "mixed supply").

To aggravate matters, the boundaries of what constitutes a single supply for tour and travel products is not well defined in law, leaving the Royal Malaysian Customs Department (RMCD) with the task of interpreting how the product should be carved up and decomposed. In practice, this can result in arbitrary division of the said travel product into sub-items that may sometimes appear unintuitive. In fairness, this is partly attributable to the complex nature of tour and travel products.

Uncertainty is generally undesirable. But in the GST era, uncertainty can be disastrous for an industry such as the travel industry whose transaction volume (and capacity for error) is extremely sizeable.

Figure 1 shows the GST treatment of selected travel / tour products identified in all three versions of the GST Travel Guide. Specific complications arising from the second and third GST Travel Guides are discussed, and they include:

i. Service fee
ii. Fuel surcharge
iii. Passenger service charges
iv. Cancellation and amendment charges
v. Code sharing
vi. Tour products consumed in Designated Areas
vii. Tours bundled with flights

As will be discussed below, there are different GST treatments for different items, some rather unintuitive. To complicate matters, the GST treatment is often situation dependent (e.g. domestic flights are standard rated, but can be zero-rated if code sharing criteria are met.). In view that the person keying in the data

and generating the tax invoice may sometimes be a junior personnel unfamiliar with GST technicalities, having so many varied GST treatments can be overwhelming. While proper tax code mapping can automate the matching of the 'supply type' to the relevant GST treatment, the correct determination of the 'supply type' is still largely a manual process dependent on the subjective keying-in of the data entry operator. In practice, this weak link can result in errors, especially when dealing with the following items.

Service fee

"Service fees" represent profit markup of travel agents. Previous GST guidelines had the effect of exposing the "service fees" and hence, profit earned, to customers and competitors – a move that was quite understandably, distasteful to travel agents.

The new Travel Guide clarifies that "service fees" which are in the form of profit markup can be zero-rated for international flights. However, this is only applicable where the travel agent is acting as a GST principal and if the said "service fee" is embedded into the price of the ticket without being separately itemised on the tax invoice.

On the contrary, where travel agents separately itemise the "service fee" on the face of the tax invoice, such service fee will be standard rated regardless of whether the flight is a domestic or international one. This simple switch between GST principal and GST agent (based solely on how items are described on the tax invoice) seems to embrace a 'form over substance' approach, so tax invoice generation should be entrusted to personnel who are fully aware of the GST implications.

Nonetheless, this amendment (allowing "service fees" to be zero-rated for international flights) is a welcome one given that under the previous GST Guide, all "service fees" would be standard rated regardless of destination. This revised treatment in the Travel Guide is consistent with the Director General's Decision No. 5/2015 (dated 30.4.2015).

Fuel surcharge

Fuel surcharge was a common item appearing in air ticket bills during a time when oil prices were at their peak. Fuel surcharge may be imposed by an airline for both domestic and international flights, thus, raising the question of its GST treatment. There was no previous GST guidance for this item.

It has been clarified in the revised Travel Guide that the GST treatment of fuel surcharge will follow that of the underlying flight ticket i.e. standard rated for domestic flights and zero rated for international flights.

Unlike "service fees", fuel surcharge does not need to be subsumed within the ticket price, but can be separately itemised on the tax invoice and still follow the GST treatment of the flight ticket. This flexibility allows for bundling of the item into the flight price or tour package.

Passenger service charge

'Passenger service charge' (PSC) or 'Malaysian airport tax' which is levied by the Malaysian airport authorities for use of aerobridges, security screening, baggage transfers etc. is required to be billed by the travel agent or the airline to the passenger on behalf of the airport authorities.

The PSC is itemised on the tax invoice for sale of air ticket, and is to be shown as a separate line item. This forced disclosure is different from the treatment of "service fees" or "fuel surcharge", which brings yet another unique GST variation for travel agents to grapple with, as PSC cannot be bundled into a ticket or tour package.

Cancellation and amendment fees

Following the new Travel Guide, all "cancellation fees" are subject to GST at standard rate. This applies regardless

of whether the flight is a domestic or international one. By contrast, the GST treatment for a similar item – "amendment charges" – is not fixed, but follows the type of ticket or tour: for domestic flights or inbound tour, it is standard rated; and for international flight or outbound tour, it is zero rated. Thus, the data-entry operator must clearly differentiate between "cancellation" and "amendment charges".

Code sharing

Where two airlines jointly provide international flights under code sharing arrangement, a problem exists as to whether the domestic leg (provided by airline X) and overseas leg (provided by airline Y) of the flight are to be treated as a single composite supply or multiple separate supplies, bearing in mind that domestic flights are normally standard-rated. Thus, if treated as separate supplies, the domestic leg would be standard rated and only the international leg would be zero-rated. Conversely, if treated as a composite supply, the entire flight under code sharing would be zero-rated.

The revised Travel Guide prescribes that international flights under code-sharing can be entirely zero-rated, thus implying that the Travel Guide views it as a composite supply. However, this treatment in the Travel Guide should be viewed as a concession since it appears, on surface, to be inconsistent with Para 6 of the Second Schedule of the Goods and Services Tax (Zero Rated Supply) Order 2014 which only provides zero-rating if passenger transportation services are supplied by the "same supplier".

Nonetheless, Para 19 of the GST Travel Guide (version 14.4.2016) did indicate, through an illustration, that in order to zero rate the entire code sharing arrangement, the tickets for both the domestic and international leg of the flight under code sharing should be issued by the same airline (i.e. the same supplier).

Tour products – Designated Areas

Generally, all inbound tours are standard rated with the exception of tours within the Designated Areas (DA) of Labuan, Langkawi and Tioman. This means that any domestic tour packages which happen to also include the DA as a destination must separately itemise the portions attributable to DA and non-DA components so that GST is only imposed on the portion not consumed within the DA.

Failure to separate the DA and non-DA components will render the entire inbound tour as a composite supply subjected to standard rate – causing the tour price to be less competitive.

Tours bundled with flights

Although flights may, in the public's eyes, be viewed as part of a tour package, the official GST position for tours is rather more hazy. The GST Guide on Supply (version 24.5.2016) regards a "tourism package consisting of air-ticket, hotel room, transport…" as a composite supply.

Reading this widely, it can be inferred that for an outbound tour package (which is zero-rated), the domestic portion of the flights (such as from Kuching to KLIA not under code sharing and connecting to another flight en route to the overseas tour) may be regarded as part part of the tour package, and thus, also enjoy zero-rating.

However, the preliminary position of the RMCD is that such domestic flights connecting to the overseas tour are not "integral" to the outbound tour, and thus should be standard rated.

Rural Air Service and the possibility of becoming a "mixed supplier"

Budget 2016 introduced GST Exempt status for economy class travel on rural air services. Subsequently, this received legal authority through Goods and Services Tax (Exempt Supply) (Amendment) (No. 2) Order 2015. However, GST Exempt status applies only to the flight fare, carrier imposed fee and ticketing admin fee. The Passenger Service Charge / Malaysian Airport Tax continues to carry GST at standard rate.

Where a travel agent acts as a GST agent assisting the airline to sell such flight tickets, the commission earned by the travel agent is standard rated. Similarly, any resulting "service fee" charged by a GST agent will be standard rated. This would be similar to the pre-existing treatment.

Conversely, where a travel agent acts as a GST principal (e.g. buys a ticket

qualifying for GST exempt status from MASWing and resells the same ticket in the travel agent's own name at a profit), then such flight ticket resold by the travel agent can also enjoy GST exempt status. This is consistent with the spirit of Budget 2016 in aiming to exempt air transport in rural interiors of Sabah and Sarawak from GST.

Problems with GST exempt status

However, a travel agent acting as a GST principal that sells 'GST exempt' flight tickets will become a "mixed supplier" – meaning such travel agent will face a restriction on claiming some of its input taxes. Complying with the GST rules relating to "mixed supplier" would require the travel agent to carry out "partial exemption" and "capital goods adjustment". The former involves allocating all its inputs between standard rated and exempt supplies, and apply an apportionment formula to its residual inputs pursuant to Regulation 39(4) of the Goods and Services Tax Regulations 2014.

In practice, this process involves tremendous effort and technical prowess on the part of the supplier. Given that a large number of GST-registered travel agents are small medium companies whose resources are likely to be constrained, falling into the "mixed supplier" category presents a daunting compliance nightmare.

To compound matters, few off-the-shelf software possess the capability to handle "partial exemption" and "capital goods adjustment", implying that travel agents relying on off-the-shelf software would lack the necessary tools to pull off the complex apportionments expected of "mixed suppliers".

And even if more advanced (i.e. more expensive) software can be procured, travel agents are unlikely to relish the prospect of another software upgrade given that the first implementation of GST-compliant software would be less than two years old. Aside from the cost factor, system migration and its

accompanying disruptions to operations is an unwelcome element given the tough business environment.

Alternatively, a quick-fix solution would be for travel agents to reorganise themselves as GST agents acting on behalf of the airlines for the affected routes under rural air service. This would sidestep the "mixed supplier" issue, but in turn cause the "service fee" if any to be standard rated.

Hotel rooms and cash flow problems unique to tour operators

In monetary terms, hotel rooms form a sizeable portion of a tour package cost. Therefore, any GST incurred by tour operators on hotel rooms are likewise, likely to be sizeable.

In constructing a tour package, tour operators often pre-book hotel rooms in advance. Depending on the terms negotiated with each hotel, tour operators are often required to pay an upfront amount of money which some hotels regard as room purchase while other hotels regard as security deposit. Such payments are usually inclusive of GST and may be paid many months ahead of the tour check-in date.

The problem that arises is that many (but not all) hotels choose to issue a tax invoice only upon guest check-out date, and not at the time of collecting the advance payment from the tour operator. Without a tax invoice, tour operators are not able to claim their input tax credits at the time they make payment to hotels, but instead, must wait it out until the tour check-out date which can be months later. Because hotel rooms predominate tour package costs, the magnitude of the input tax claims represents a sizeable cash flow strain on tour operators. This complication arises because of the way some hotels have chosen to define the money received in advance.

Section 2 of the Goods and Services Tax Act 2014 states: "…a deposit, whether refundable or not … shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply". In practice, this phrase is surprisingly difficult to pin down.

By viewing the money received in advance as a deposit and not as a consideration for letting of rooms, hotels can theoretically defer the 'Time of Supply' till the time of rendering the service (i.e. check-out date as per Section 11(3) of GST Act). Such understanding is also reflected in the GST Guide on Accommodation (version 15.1.2016) under Q&A20: "… [refundable] deposit is not treated as consideration for the supply but merely as security, therefore it is not subject to GST."

Figure 1: Selected Travel / Tour products and their GST treatments	
Tour Packages	**GST rate**
Sale of Inbound Tour Package to local or foreign tourist	**SR**
Sale of Outbound Tour Package to local or foreign tourist	**ZRE**
Sale of Haj / Umrah tour	**ZRE**
Commission income	
Commission from local hotels	**SR**
Commission from other Local Tour Agents	**SR**
Commission earned by Local Tour Agent assisting Foreign Agent to sell Outbound Tour Package (*)	**ZRE**
Flights	
Domestic flight base fare	**SR**
International flight base fare	**ZRE**
Non-air Transportation	
Excursion bus for Domestic Tour	**SR**
Taxi	**ES**
Limousine and Airport Taxi (w.e.f. GST Travel Guide 6.4.2015)	**ES**
Cruise (local destination)	**SR**
Others	
Service fees charged to other Local Tour Agent for arranging Outbound Tour	**SR**
Commission for arranging Travel Insurance for Outbound Tour	**SR**
Commission for arranging Travel Insurance for Inbound Tour	**SR**

SR = Standard Rated
ZRE = Zero Rated (Export)
ES = Exempt Supply
OS = Out-of-Scope

(*) Assumption: Such services are "supplied under a contract"

However, partly contradicting the above, Para 27 of the revised Travel Guide proposes that "any deposit paid for booking of an accommodation in Malaysia is considered as part of payment and subject to GST at standard rate…". These diverging guidelines exemplify the capricious interpretation of the matter.

Separate but not unconnected is the new Section 24(1A) of the Income Tax Act 1967 (introduced in Budget 2016) whereby any sum received in respect of any services to be rendered (in future) shall be treated as gross income when received, even though no debt is yet owing for the services. A broad reading may imply advance receipts are taxable under income tax at time of receipt, supporting the position in the revised GST Travel Guide (version 14.4.2016). Nonetheless, the Inland Revenue Board (IRB) has subsequently clarified in the post-Budget minutes dated 6.6.2016 between the IRB and professional bodies that "security deposit", "forfeit deposit" and "return deposit" are not advance payments falling under the new Section 24(1A).

CONCLUSION

A major concern for the RMCD is the potential technical difficulties resulting from applying GST law into real-world situations. Like many other industries, the tour and travel industry has already seen three iterations of GST Guides, and although many matters have been brought to the forefront for resolution, some issues still remain – a reminder that the interaction between theoretical rules and practical situations are often not straight forward.

Lingering issues discussed in this article include the variety of GST treatments which may be unintuitive and which require that the personnel generating the tax invoice be well-trained in order to pick out the correct treatment. The issue of Rural Air Service can cause travel agents selling RAS-qualifying tickets to become "mixed suppliers", thus, having to apply complex rules on "partial exemption" and "capital goods adjustment". Finally, tour operators suffer from strained cash flows due to delays in obtaining tax invoice from hotels, and this negatively impacts the timing of input tax claims.

Capturing all the complexities of an industry and reducing it into a GST Guide is a seductive goal for the RMCD. But with close private-public communication, it's not an impossible task. As Malaysia traverses the second year of post-GST implementation, more revisions to GST Guides are not unexpected.

Datuk Tan Kok Liang, Lee Fook Koon *and* ***Kenneth Yong Voon Ken*** *are members of the Chartered Tax Institute of Malaysia and are practicing accountants. Email: kltan@tan-associates.com.my , fklee8@gmail.com , kennethyong.main@gmail.com*

Information contained in this article is based mainly on the GST Guide on Travel Industry (version 14.4.2016). As GST guides are revised occasionally, it is possible that the eventual GST treatment may be different from that discussed.

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Level 11, Menara JCorp, No. 249, Jalan Tun Razak, 50400 Kuala Lumpur.
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THE MARIGOLD INDUSTRIES CASE

SHEDDING LIGHT ON THE PROVISO TO PARAGRAPH 1 OF SCHEDULE 7A

Datuk D.P. Naban and S. Saravana Kumar

Recently, the interpretation of the proviso to paragraph 1 of Schedule 7A of the Income Tax Act 1967 ("ITA") was a bone of contention before the Court of Appeal. The Marigold Industries case has the distinction of being the first case where this proviso was subjected to judicial scrutiny.

The issue was whether the SAP system used by the taxpayer fell within the ambit of the proviso of paragraph 1 of Schedule 7A. The Court of Appeal unanimously affirmed the decisions of the Special Commissioners of Income Tax ("SCIT") and the High Court, and ruled that the SAP[1] system was eligible for reinvestment allowance. In the absence of written grounds of judgement by the Court of Appeal, this article discusses the reasoning of the High Court's decision.

BRIEF FACTS

The taxpayer is in the business of manufacturing and selling rubber gloves. In the years of assessment 2001 to 2006, the taxpayer claimed reinvestment allowance on a qualifying project that it undertook. In 2009, the Inland Revenue Board ("IRB") conducted a field audit at the taxpayer's factory. The IRB disallowed the taxpayer's reinvestment allowance claim amounting to RM5,388,385 on the capital expenditure incurred amounting to RM8,890,642 for the following items:

(a) ***Factory:***
Upgrading of factory; new schedule waste store; flammable chemical store; road widening; new R&D laboratory; new building for

compounding; electric mainboard for R&D; partition with half glass; batch dip workshop.

(b) ***Plant and Machinery:*** Emergency stop switch; fire sprinkler system; effluent plant; upgrading of chromic acid plant; plant rewiring; fixtures & fittings; air conditioner; environmental air conditioner; former boxes; divert canteen discharge and sludge dryer; computer equipment.

Before the High Court and the Court of Appeal, the IRB confined its appeal to the SAP system only, contending that the system did not qualify for reinvestment allowance as it was used by the taxpayer's directors, management team and administrative staff.

THE LAW

Paragraph 1 of Schedule 7A of the ITA reads:

"Where a company which is resident in Malaysia —

(a) has been in operation for not less than twelve months; and

(b) has incurred in the basis period for a year of assessment capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project, there shall be given to the company for that year of assessment a reinvestment allowance of an amount equal to sixty per cent of that expenditure."

Meanwhile, the proviso to paragraph 1 of Schedule 7A of the ITA, which was the focus of judicial scrutiny, states:

> *"Provided that such expenditure shall not include capital expenditure incurred on plant or machinery which is provided wholly or partly for the use of a director, or an individual who is a member of the management, or administrative or clerical staff." [emphasis added]*

Paragraph 8(a) of Schedule 7A defines "qualifying project" as:

> *"…a project undertaken by a company, in expanding, modernising or automating its existing business in respect of manufacturing or processing of a product of any related product within the same industry or in diversifying its existing business into any related product within the same industry."*

What the proviso aims to achieve is that even if a taxpayer satisfies paragraphs 1 and 8 of Schedule 7, he is not eligible for reinvestment allowance if the plant or machinery is wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff. This restriction is limited to reinvestment allowance on plant or machinery only, and does not include factory. Hence, the section of the factory that is used as an office or meeting rooms by management or administrative staff would still render the taxpayer eligible for reinvestment allowance, as held in the Success Electronics case.

In the Marigold Industries case, the crux of the taxpayer's arguments was that:

(a) The SAP system was necessary and integral to the taxpayer's manufacturing business which fulfills the functionality test. This was supported with sufficient evidence found by the SCIT. The SAP system was not used by a director or an individual who is a member of the management, administrative or clerical staff. Instead, it was used by employees from the production team.

(b) The SAP system was used for the purposes of the taxpayer's manufacturing business by monitoring customers' orders and quantity of production. It is abundantly clear from the facts found by the SCIT that the SAP was never used by any individual for management, administrative or clerical purposes. The unassailable facts found by the SCIT established that the SAP system was solely used during the various stages of manufacturing.

(c) Taxing statutes are to be construed strictly and the liability to tax must be stated in clear and unambiguous language. In a taxing statute, one has to look merely at what is clearly said. There is no room for any intendment. There is no

[1] *Acronym for "Systems, Applications and Products in Data Processing".*

equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

REASONING OF THE HIGH COURT

An examination of the High Court's decision will clearly illustrate that the court had considered the relevant provisions of Schedule 7A in holding that the SAP system had satisfied the necessary requirements to be eligible for reinvestment allowance. The High Court observed that:

(a) In the unreported judgement of *Syarikat Kion Hoong Cooking Oil Mills Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Kuching High Court Tax Appeal No. 14-01-2005-I),* the High Court in that case took care to explain the purpose of paragraph 1 of Schedule 7A, as follows:

> *"The reinvestment allowance under paragraph 1 acts as an incentive to incur capital expenditure on plant machinery and factory for a qualifying project. The relief granted is for expanding money on plant and equipment used to manufacture products… To my mind the allowance/incentive granted under paragraph 1 of Schedule 7A is to increase or promote productivity through the use of new/modern efficient plant and machinery by giving a reinvestment allowance on capital expenditure…"*

(b) Based on Section 17A of the Interpretation (Amendment) Act 1997 and the Federal Court's decision in Palm Oil Research and Development Board Malaysia, Section 133A, paragraphs 1 and 8(a) of Schedule 7A should be given a purposive interpretation. The purpose of Section 133A, read with paragraphs 1 and 8(a)of Schedule 7A, is to provide a "special incentive relief" to companies resident in Malaysia that have been in operation for not less than 12 months, to invest in the expansion, modernisation or automation of their product manufacturing or processing.

(c) In accordance with Section 17A of IA and Palm Oil Research and Development Board Malaysia, the proviso to paragraph 1 should be construed in a manner that promotes the purpose of Section 133A, paragraphs 1 and 8(a) of Schedule 7A.

(d) The purpose of the proviso to paragraph 1 is to disallow reinvestment allowance when the "capital expenditure is incurred on plant and machinery which is provided wholly or partly for the use of a director, or an individual who is a member of the management, or administrative or clerical staff". The proviso does not apply when the purpose of the capital expenditure is for the use of a taxpayer company's "factory" for the purposes of a qualifying project.

The High Court also relied on *Garden City Development Bhd v Collector of Land Revenue, Federal Territory [1982] 2 MLJ 98* and *R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 4 MLJ 145,* in which it was held that a proviso is to relax the full rigour of the main statutory provision and cannot be construed so widely as to render redundant the main statutory provision. Additionally, the High Court added that a literal interpretation of the proviso to paragraph 1 indicates that such a proviso only applies to capital expenditure that has been "incurred on plant and machinery which is provided wholly or partly for the use of a director, or an individual who is a member of the management, or administrative or clerical staff". A literal construction of the proviso to paragraph 1 does not apply in this case when the SAP system plays "a necessary and integral role" in the taxpayer's business.

APPEAL BEFORE THE COURT OF APPEAL

In these circumstances, the issue before the Court of Appeal was essentially whether the High Court's decision was wrong in law.

The taxpayer highlighted that the SCIT had concluded that based on the proven facts found, the taxpayer was entitled to claim reinvestment allowance on all the disputed items, including the SAP system and the relevant computer equipment. The SCIT had referred to the case of Success Electronics. The High Court held that the SCIT were correct to apply Success Electronics by taking into account the functionality of the SAP system and the relevant computer equipment in determining whether these items were involved in the taxpayer's manufacturing business. Among others, the following were considered by the Court of Appeal in arriving at its decision:

Integral part of manufacturing

There were four stages in the manufacturing of gloves. To ensure efficiency and to reduce wastage of raw materials, every manufacturing stage was recorded by entering all information into the taxpayer's SAP system with the help of barcode scanning. The SAP system helped to eliminate human errors which were caused by manual entries of records of all movements of each manufacturing stage. It also enabled the taxpayer to keep track of its manufacturing activity and ensure efficiency of the same. raw materials, every manufacturing stage was recorded by entering all information into the taxpayer's SAP system with the help of barcode scanning. The SAP system helped to eliminate human errors which were caused by manual entries of records of all movements of each manufacturing stage. It also enabled the taxpayer to keep track of its manufacturing activity and ensure efficiency of the same.

Functions of the SAP system

The SAP system and the relevant

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computer equipment were part of the taxpayer's expansion and modernisation of its manufacturing activity. The taxpayer invested in various computer equipment between 2001 and 2006, including a software system known as SAP. This was part of the taxpayer's expansion and modernisation activity for the purposes of recording the various stages of its manufacturing activity in order to improve efficiency by comprehensively monitoring all the functionality needed for the day-to-day manufacturing activity.

The High Court took in account that the various manufacturing stages were linked to one centralised network using the relevant computer equipment, which enabled the SAP system to collate and monitor all the relevant information pertinent to the taxpayer's manufacturing stages, such as the raw material stocks and procurement of the same, management of raw materials, details of work in progress, sales and service delivery management as well as financial management and reporting.

The SAP system helped to enhance the taxpayer's management of manufacturing stages, given the large quantity of gloves manufactured which averages 144 million pieces a year. Without the SAP system, it would be impossible to systematically and effectively keep track of the raw materials and work in progress. If the taxpayer lost track of this and purchased too much raw materials when there was no demand, or manufactured too many gloves, it would cause a major cash flow problem to the taxpayer as it would then be sitting on millions of gloves that could not be sold simply because there was no demand for them.

Further, the taxpayer manufactured nearly 200 types of gloves and it is essential to procure and manage raw materials efficiently as and when the demand arises. On average, the taxpayer purchased 5,000 tonnes of natural latex, 2,000 tonnes of synthetic latex and 1,500 tonnes of other chemicals per year to manufacture the gloves. With the SAP system, the taxpayer can control the quantity of raw materials purchased without unnecessarily purchasing too many raw materials.

Application of proviso to paragraph 1

It is clear that the purpose of the proviso was to prohibit reinvestment allowance claim on "capital expenditure incurred on plant and machinery which is provided wholly or partly for the use of a director, or an individual who is a member of the management, or administrative or clerical staff". In this appeal, the High Court was satisfied that the SAP system is not for the use of a director, or an individual who is a member of the management, or administrative or clerical staff, as contended by the IRB. The High Court also noted that the IRB failed to adduce sufficient evidence before the SCIT to prove its contentions.

Burden of proof

In a taxpayer's appeal to SCIT, the legal burden is on the taxpayer to establish that the disputed assessment is erroneous. On the other hand, where the decision of the SCIT is appealed to the High Court by way of case stated, the burden lies on the appellant to satisfy the court that the SCIT's decision was based on misconception of the law or their conclusion cannot be supported by the primary facts. Based on *Kyros International Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2013] 2 MLJ 650,* in the present matter, it is the IRB as the appellant, and not the taxpayer, that bears the legal onus to satisfy the High Court that the SCIT's decision in respect of the SAP system should be set aside on one or more of the following grounds:

(a) that the SCIT had committed an error of law as follows —
  (i) the respondent was not entitled under paragraphs 1 and 8(a) of Schedule 7A, to claim for reinvestment allowance in respect of the SAP system; or
  (ii) the SCIT failed to apply the proviso to Paragraph 1;
(b) the decision in respect of the SAP system could not be supported by the primary facts found by the SCIT; or
(c) the SCIT's conclusion on the mixed facts and law in respect of the SAP system was one which no reasonable SCIT could have

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reached if they had correctly directed themselves.

Upon examining the case stated and the IRB's submission, the High Court was correct to firmly hold that the IRB had failed to discharge the burden of proof that the SCIT had erred in concluding that the taxpayer is entitled to claim reinvestment allowance on the SAP system.

It is clear that the IRB's argument to disentitle the taxpayer for reinvestment allowance in respect of the SAP system is premised on reliance of the proviso to paragraph 1 of Schedule 7A. The question that arises is on whom lies the burden to prove the facts in order to enable the proviso to be triggered. It is the authors' view that despite the existence of paragraph 13 of Schedule 5, the onus of proving that the proviso is triggered is on the person who intends to rely on the specific matter set out in the proviso. In coming to this conclusion, the authors have relied on *Vines v Djordjevitch [1955] HCA 19,* which highlights that:

> *"But in whatever form the enactment is cast, if it expresses an exculpation, justification, excuse, ground of defeasance or exclusion which assumes the existence of the general or primary grounds from which the liability or right arises but denies the right or liability in a particular case by reason of additional or special facts, then it is evident that such an enactment supplies considerations of substance for placing the burden of proof on the party seeking to rely upon the additional or special matter."*

The capital expenditure incurred for the SAP system which represents the expenditure for the plant, machinery and factory for the qualifying project entitles the appellant to a claim of reinvestment allowance, and only if a new factor arises that the expenditure is used wholly or partly for the management or administrative staff then the allowance is disallowed. This is reinforced by the case of *Darling Island Stevedoring & Lighterage Co Ltd v Jacobsen [1945] HCA 22* as below:

> *"If these words are but part of the legislative attempt to define the conditions upon which the worker's right to compensation arises, then, like all other ingredients or elements in a cause of action or title to claim, proof of the fulfilment of the conditions they describe must lie with the claimant. But if the true nature of the qualification is to introduce new matter, not as part of the primary grounds of liability, but as a special exception or condition defeating or answering liability otherwise existing, then the onus of proof lies with the party setting up default or wilful act by way of answer.*
> *… the new fact and special fact is described negatively. As a general rule the proof of a negative is not imposed upon a party. Although it is by no means uniformly true, yet it is not usual for the law to require disproof of a fact."*

Premised on the above reasons, though the Court of Appeal had not given its grounds of judgement, it could be said to have found that the onus was on the IRB to prove the application of the proviso and dismissed the appeal due to failure to discharge such burden of proof.

CONCLUSION

This decision marks an important milestone as it provides some much-needed clarity in understanding the operation of the proviso to paragraph 1 of Schedule 7A. It is clear that the IRB's narrow reading and application of the proviso is not supported by law. It is imperative for the IRB to appreciate that reinvestment allowance is an incentive accorded to taxpayers by Parliament. Hence, tax incentive provisions such as Schedule 7A must be interpreted and applied in the manner that achieves Parliament's objective as aptly explained by the High Court.

Datuk D.P. Naban *(dpn@lh-ag.com) and* ***S. Saravana Kumar*** *(sks@lh-ag.com) are tax lawyers with Lee Hishammuddin Allen & Gledhill, one of the leading law firms in Malaysia.*

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International Issues

The column only covers selected developments from countries identified by the CTIM and relates to the period 16 May 2016 to 15 August 2016.

CHINA (PEOPLE'S REP.)

Announcement on certificate of residence published

The State Administration of Taxation (SAT) published SAT Gong Gao [2016] No. 40 concerning the issuing of the certificate of residence on 28 June 2016. The announcement applies from 1 October 2016, and on the same date Guo Shui Han [2008] No. 829, Guo Shui Han [2010] No. 218, and article 28 of SAT Gong Gao [2011] No. 45 will be abolished. The main content of the announcement is summarised below.

The competent tax authority

The taxpayer must lodge the application for a certificate of residence with its competent state tax bureau or local tax bureau (in the case of an individual). For a domestic or foreign branch of a Chinese resident enterprise, the tax bureau, where the head office is located is the competent tax bureau for this purpose and the head office has to lodge the application. In the case of a partnership, the Chinese partner has to lodge the application with the tax bureau where the Chinese partner is located.

Documents required for the application

The documents submitted must be in Chinese and are as follows:

- the application form of certificate of residence;
- the documents related to the income being eligible for treaty benefits such as contracts, agreements or resolutions of the board of directors or the meeting of shareholders and evidence of payments;
- in the case of an individual who has a dwelling within China, the evidence of an habitual abode by virtue of registration, family, economic interest, including personal information of the applicant and other information required;
- in the case of an individual who does not have a dwelling within China and has resided in China for less than 1 year, the evidence of the actual duration of residence in China including the entrance and exit data of the passport and other information required;
- the application filed by the head office for its domestic or foreign branch must contain the information on the registration of the head office; and
- the application filed by the Chinese partner of a partnership must contain the information on the registration of the partnership.

Administration

The competent tax bureau must make a decision on the resident status within 10 days after the relevant documents have been submitted. If the competent tax bureau is not able to make a decision, the case can be submitted to its superior who has to make a decision within 20 days. All of the issued certificates will be numbered. If the contracting state has special requirements for the format of the certificate, the applicant must provide an example.

VAT-exempt intra-bank interest defined

On 31 March 2016, the SAT issued Gong Gao [2016] No. 17 on provisional

The Ministry of Finance (MoF) and the SAT jointly issued Cai Shui [2016] No. 70 on 30 June 2016 regarding interest falling within the scope of intra-bank interest as referred to in Cai Shui [2016] No. 36, which is exempt from VAT. The notice retroactively applies from 1 May 2016.

According to Cai Shui [2016] No. 70, intra-bank interest as referred to in the article 1(23) of Cai Shui [2016] No. 36 includes intra-bank deposit, intra-bank borrowing and intra-bank entrusting payment interest derived from outright purchase-and-buy-back financial products, interest derived from financial bonds, and intra-bank depository receipts.

The fund transfer business between financial institutions and the People's Bank of China, as referred to in article

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PNMB

MENERAJUI INDUSTRI PERCETAKAN DIGITAL DAN KESELAMATAN MALAYSIA

PERCETAKAN NASIONAL MALAYSIA BERHAD (PNMB) ADALAH SYARIKAT MILIK PENUH MENTERI KEWANGAN DIPERBADANKAN DAN JUGA SALAH SEBUAH AGENSI DI BAWAH KEMENTERIAN DALAM NEGERI (KDN) YANG BUKAN HANYA MENUMPU KEPADA PERCETAKAN KONVENSIONAL MALAH TELAH MENTRANSFORMASIKAN PERNIAGAANNYA KEPADA PERCETAKAN DIGITAL DAN KESELAMATAN BAGI PIHAK KERAJAAN, SYARIKAT-SYARIKAT BERKAITAN KERAJAAN, SYARIKAT-SYARIKAT KORPORAT DAN LAIN-LAIN. SEBAGAI SEBUAH SYARIKAT PERCETAKAN DIGITAL DAN KESELAMATAN YANG TERULUNG DI MALAYSIA, PNMB MEMPUNYAI RANGKAIAN OPERASI YANG IBU PEJABATNYA TERLETAK DI KUALA LUMPUR DAN MEMPUNYAI 12 CAWANGAN DAN KEDAI DI SELURUH NEGARA.

Percetakan Nasional Malaysia Berhad (PNMB) merupakan pengeluar rasmi bagi khidmat mengeluarkan I-KAD yang berfungsi untuk membezakan pekerja asing yang didaftarkan secara sah oleh Kerajaan Malaysia. I-KAD dilengkapi dengan ciri-ciri keselamatan yang canggih seperti elemen biometrik dan kod bar serta kad cip berkeselamatan tinggi. Bagi memudahkan pihak keselamatan dan penguasaan, kad ini dikategorikan dengan warna yang berbeza mengikut sektor-sektor pekerjaan bagi pekerja-pekerja asing.

PNMB kini berdaya maju dengan perniagaan operasi percetakan data berubah (VDP), pengimejan digital dan juga percetakan keselamatan yang khususnya untuk dokumen-dokumen kerajaan yang bernilai tinggi.

Aktiviti perniagaan percetakan PNMB merangkumi seperti:

1. PERCETAKAN KESELAMATAN

- Percetakan Keselamatan yang dicetak di bawah PNMB bagi pihak kerajaan dan korporat antaranya mencetak laporan-laporan sulit, kertas undi, penyata gaji, saman, tiket dan baucer, sijil-sijil universiti serta transkrip dan laporan, jurnal dan borang-borang yang mempunyai tahap kerahsiaan tinggi dan perlu dilindungi.
- PNMB merupakan salah satu daripada syarikat yang menerima pengiktirafan daripada Kementerian Kewangan dan juga Ketua Pegawai Keselamatan Kerajaan Malaysia bagi Kod Bidang 221009 dan juga percetakan keselamatan.
- PNMB mempunyai kredibiliti untuk mencetak helaian-helaian yang mempunyai ciri-ciri keselamatan yang tinggi mengikut permintaan pelanggan dan membantu mengurangkan risiko pemalsuan dan penipuan dokumen-dokumen pelanggan seperti dokumen perjalanan antarabangsa dan sebagainya.

2. PERCETAKAN DATA BERUBAH *(VARIABLE DATA PRINTING)*

- Teknologi cetakan digital di mana elemen teks, grafik dan imej boleh berubah-ubah tanpa melambatkan proses percetakan secara keseluruhan.
- Percetakan VDP amat sesuai untuk mencetak surat, bil-bil, buku-buku cek, penyata-penyata bank, surat-surat persendirian, flyers atau dokumen dengan sumber data berbeza.

3. PENGIMEJAN DIGITAL *(DIGITAL IMAGING)*

- Pengimejan dokumen merupakan proses menukar dokumen dalam bentuk fizikal kepada format digital seperti PDF, GIF, JPEG atau TIFF.

4. PERCETAKAN AM

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PNMB berhasrat untuk menjadi sebuah syarikat percetakan yang komprehensif dari segi perkhidmatan yang ditawarkan di samping memberikan khidmat dan juga produk yang berkualiti tinggi.

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T: +603-9236 6894
F: +603-9222 4773
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1(23) of Cai Shui [2016] No. 36, includes the purchase of central bank bills by commercial banks, currency swaps and deposits between central bank and commercial banks.

The business of banking transactions as referred to in article 1(23) of Cai Shui [2016] No. 36, include the fund transfer business conducted by domestic banks with their foreign head offices, parent companies, foreign branches and wholly-owned subsidiaries.

The transfer income of financial products, as referred to in article 1(22) of Cai Shui [2016] No. 36, includes income derived from domestic securities trading by RMB-qualified foreign institutional investors (RQFII) and income derived from the intra-bank local currency market invested by qualified foreign institutions.

New rules on transfer pricing documentation published

The SAT issued Gong Gao [2016] No. 42 on 29 June 2016 concerning the reporting on related transactions and contemporaneous documentation of transfer pricing. The Shanghai State Tax Bureau published the announcement on its website on 12 July 2016. The new rules apply to the tax year 2016 and subsequent years.

The announcement contains 27 provisions and defines the related enterprises and related transactions for the purpose of the announcement. Article 5 requires large multinational enterprises (MNEs with total consolidated revenue of more than CNY 5.5 billion) to submit the country-by-country reports and the Chinese tax authority is authorised to exchange such country-by-country reports with other tax jurisdictions according to the tax treaties or other agreements concluded by China. Moreover, the detailed rules on contemporaneous documentation which includes a master file, local file and special items file are provided. These detailed rules are related to the kind of information and analysis that should be conveyed in each file. Enterprises dealing only with associated enterprises located in China or which have concluded an advance pricing agreement covering the relevant related transactions do not need to prepare the three aforementioned files.

As to the administrative issues, the announcement provides:

- the master file must be finalised within 12 months after the accounting year of the ultimate holding company;
- the local file and special items file must be finalised within six months of the following year in which the relevant related transactions take place; and
- the contemporaneous documentation must be finalised within 30 days upon the request of the tax authority.

The documents must be written in Chinese and kept for 10 years.

HONG KONG

Two major concessionary revenue measures of 2016-17 Budget passed

On 19 May 2016, Amendment No. 2 to the Inland Revenue Bill 2016 was passed by the Hong Kong Legislative Council.

The legislative amendment enables Hong Kong to implement the major concessionary revenue measures proposed in the 2016-17 Budget. The measures include:

- a 75% one-off reduction in profits tax, salaries tax and tax under personal assessment for the year of assessment 2015-16, subject to a maximum of HKD20,000 per case; and
- the increase of the following allowances under salaries tax and tax under personal assessment for the year of assessment 2016-17 as in **Table 1.**

Table 1

Allowance	Year of assessment 2015/16 (HKD)	Year of assessment 2016/17 and onward (HKD)
Basic allowance	120,000	132,000
Married person's allowance	240,000	264,000
Single parent allowance	120,000	132,000
allowance for maintaining a dependent parent/grandparent (per dependant):		
parent/grandparent aged 60 or above	40,000	46,000
parent/grandparent aged between 55 and 59:	20,000	23,000
additional dependent parent/grandparent allowance (per dependant who is residing with the taxpayer continuously throughout the year):		
parent/grandparent aged 60 or above	40,000	46,000
parent/grandparent aged between 55 and 59	20,000	23,000
The deduction ceiling for elderly residential care expenses is increased from HKD80,000 to HKD92,000 from the year of assessment 2016-17.		

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Measures on interest deduction rules and profits tax incentives passed

On 3 June 2016, the Inland Revenue (Amendment) (No. 2) Ordinance 2016 (the Amendment Ordinance) was gazetted.

The legislative amendment enables the government to implement the measures proposed in the Inland Revenue (Amendment) (No. 4) Bill 2015, including a new interest deduction rule for the intra-group financing business of corporations and the concessionary profits tax rate for qualifying corporate treasury centres.

According to the Amendment Ordinance, under specified conditions, the interest payable on money borrowed by a corporation carrying on an intra-group financing business in Hong Kong is deductible in determining profits liable for profits tax on or after 1 April 2016. In addition, the concessionary profits tax rate at 8.25% for qualifying corporate treasury centres applies to relevant profits accrued on or after 1 April 2016.

The Amendment Ordinance also clarifies profits tax and stamp duty treatments in respect of regulatory capital securities (RCSs) issued by banks to comply with the Basel III capital adequacy requirements.

The Inland Revenue Department (IRD) is expected to issue the Departmental Interpretation and Practice Notes to explain the operation of the above tax measures within a short time frame.

Hong Kong joins inclusive framework for implementation of package against base erosion and profit shifting

On 20 June 2016, the government announced that it will join the OECD as an Associate in the inclusive framework for the implementation of the package of measures against base erosion and profit shifting (BEPS).

In becoming an Associate to the BEPS Project, Hong Kong has committed to the comprehensive BEPS package, including its four minimum standards:

- Action 5: countering harmful tax practices;
- Action 6: preventing treaty abuse;
- Action 13: transfer pricing documentation in respect of country-by-country reporting requirements; and
- Action 14: making dispute resolution mechanisms more effective.

According to the announcement, Hong Kong, as an Associate, will become a member of the BEPS Project and work with the OECD, G20 and many other countries and jurisdictions on an equal footing to implement the BEPS package and to develop standards.

As Hong Kong's commitment to implement the BEPS package is subject to the timely passage of the legislative amendments, the government will consult the industry on the strategy for implementing the relevant proposals at an appropriate juncture and carrying out the necessary legislative amendments.

Inland Revenue (Amendment) (No. 3) Ordinance 2016 takes effect – implementation of new international standard for automatic exchange of financial account information in tax matters

The Inland Revenue (Amendment) (No. 3) Ordinance 2016 came into effect on 30 June 2016. By providing a legal framework in Hong Kong for implementing automatic exchange of financial account information in tax matters (AEOI), the Amendment Ordinance enables Hong Kong to deliver its pledge of support for the new international standard on AEOI as promulgated by the OECD.

Under the AEOI standard, a financial institution (FI) is required to identify financial accounts held by tax residents of reportable jurisdictions in accordance with the OECD due diligence procedures. FIs are required to collect the reportable information of these accounts and furnish such information to the IRD. The IRD will exchange the information with the tax authorities of the AEOI partner jurisdictions on an annual basis.

Following the passage of the Amendment Ordinance, Hong Kong will start identifying partners from among the 42 economies that have signed agreements with Hong Kong on comprehensive avoidance of double taxation or on tax information exchange. According to the statement, Hong Kong aims to conclude AEOI negotiations and include the relevant partners in a new Schedule to the Inland Revenue Ordinance by the end of 2016. With the Legislative Council's approval, FIs can start conducting the due diligence procedures to identify

and collect information of the relevant financial accounts in 2017 and furnish the information to the IRD in 2018 for transmission to the AEOI partners concerned.

Hong Kong Monetary Authority requests authorised institutions to increase scrutiny and due diligence on business transactions with North Korea and Iran

The Hong Kong Monetary Authority published two statements issued by the Financial Action Task Force on Money Laundering (FATF) on 13 July 2016. The statements identify jurisdictions that may pose a risk to the international financial system and therefore request all authorised institutions to increase scrutiny and due diligence on business transactions with North Korea and Iran.

INDIA

Gains on transfer of unlisted shares to be capital gains

On 2 May 2016, the Central Board of Direct Taxes (CBDT) issued an order to the Revenue Department through Letter F. No. 225/12/2016/ITA. II. The objective of this order is to avoid disputes or litigation and maintain consistency in assessing income arising from the transfer of unlisted shares under the category of capital gains. This order is a continuation to Circular No. 6/2016 of 29 February 2016 on the categorisation of income from listed shares and securities transactions.

However, the order clarifies that the above is not necessarily applied in cases in which: the genuineness of the transactions in unlisted shares itself is questionable; the transfer of unlisted shares is related to an issue pertaining to the lifting of the corporate veil; or the transfer of unlisted shares is made along with the control and management of underlying business.

Finance Bill 2016 – passed

On 14 May 2016, the Finance Act 2016 received the assent of the President and became law.

The Finance Bill 2016 (the Bill) was introduced in Parliament on 29 February 2016 and presented before the Lok Sabha (the lower house of Parliament) on the same day. The Lok Sabha passed the Bill with a few amendments and presented it before the Rajya Sabha (the upper house of Parliament) on 5 May 2016. Subsequently, the Rajya Sabha passed the Bill on 11 May 2016.

CBDT issues Equalization Levy Rules, 2016

The CBDT issued Notifications no. 37 and no. 38 of 27 May 2016 providing for the Equalization Levy Rules, 2016 which are effective from 1 June 2016.

As per Chapter VIII of the Finance Act, 2016, an equalization levy of 6% is imposed on the consideration for specified services payable by an Indian resident carrying on a business, or an Indian permanent establishment, to a non-resident. The equalization levy is applicable only to consideration exceeding INR100,000 per annum. Specified services include online advertisement, any provision for digital advertisement space, etc.

- In this respect, the CBDT issued the Notifications to provide the procedural framework for the implementation of the equalization levy and its related obligations, key features of which are as follows:
- the consideration, equalization levy, interest and penalties are to be rounded off to the nearest multiple of INR10;
- the payer is required to withhold 6% equalization levy and pay the amount to the central government;
- the payer is required to furnish a Statement of Specified Services in Form 1, duly verified in the manner indicated therein, by 30 June immediately following the relevant financial year;
- the tax authority is empowered to issue a notice to furnish such a statement. Should the payer fail to furnish the same and where any equalization levy, interest or penalty is payable, the tax authority will serve a tax demand notice; and
- the payer may appeal against a penalty order before the Commissioner (Appeals) within 30 days, and before the Appellate Tribunal within 60 days of receipt of the penalty order.

CBDT amends rules relating to GAAR effective date

Further to the Budget 2016 speech, the CBDT issued Notification No. 49/2016 (the Notification) dated 22 June 2016 on the effective date of the general anti-avoidance rules (GAAR).

Based on the Notification, the amendments to the Income Tax Rules, 1962 are as follows:

- as per Rule 10U(1)(d), the GAAR provisions do not apply to any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any persons from the transfer of investments made before 1 April

2017 (previously 30 August 2010); and
- as per Rule 10U(2), the GAAR provisions apply to any arrangement, irrespective of the date on which it was made, whereby any tax benefit is obtained from such arrangement on or after 1 April 2017 (previously 1 April 2015).

CBDT relaxes provisions on withholding tax at a higher rate (Section 206AA) on payment to non-residents in absence of PAN

The CBDT issued a new rule 35BC vide Notification No. 53/2016, dated 24 June 2016 that relaxes the statutory requirement of withholding tax at a higher rate on payments to non-residents (other than a company, or a foreign company) in the absence of tax registration (i.e. Permanent Account Number) under Section 206AA of the Income Tax Act, 1961 (ITA).

The current provisions of Section 206AA of the ITA require the payer to withhold taxes at the higher of the following:
- rate prescribed in the relevant tax treaty;
- rate prescribed in the Income Tax Act, 1961; or
- tax rate of 20% on gross amount.

The new rule 35BC is applicable to the non-resident, provided he/she furnishes the prescribed details and documents to the payer, in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital assets.

Upon submission, the payer should mention "PAN not available" in the Form 27Q (Quarterly Withholding Tax Statement in the case of non-residents).

Upper House of Parliament approves GST Bill

On 3 August 2016, the Upper House of Parliament (Rajya Sabha) approved the Constitution (122nd Amendment) Bill concerning the introduction of goods and services tax (GST). The Bill had been passed by the Lower House of Parliament (Lok Sabha) on 6 May 2015.

The Bill will be sent back to the Lok Sabha clarifying the amendments made by the Rajya Sabha. It will then require the approval of a simple majority of the State Legislatures and, subsequently, the Presidential assent to be effective.

The new GST law is expected to be implemented on 1 April 2017.

SINGAPORE

Singapore joins inclusive framework for implementing measures against BEPS

On 16 June 2016, the Ministry of Finance (MoF) announced that Singapore will join the inclusive framework for the global implementation of the base erosion and profit shifting (BEPS) Project. The inclusive framework was proposed by the OECD and endorsed by the G20 in February 2016. Under this framework, all state-and non-state jurisdictions that commit to the BEPS Project will participate as BEPS Associates of the OECD's Committee on Fiscal Affairs. BEPS Associates have the same rights and obligations as OECD and G20 countries involved in BEPS work. Every jurisdiction that participates in the framework as a BEPS Associate will have an equal voice in reviewing and monitoring the implementation of the BEPS measures.

Singapore supports the key principle underlying the BEPS Project, namely that profits should be taxed where the real economic activities generating the profits are performed and where value is created. As a BEPS Associate, Singapore will work with other jurisdictions to help develop the implementation and monitoring phase of the BEPS Project.

Singapore is committed to implementing the four minimum standards under the BEPS Project, namely the standards on countering harmful tax practices, preventing treaty abuse, transfer pricing documentation and enhancing dispute resolution.

IRAS e-Tax Guide on mergers and acquisition scheme revised

The Inland Revenue Authority (IRAS) has issued a revised e-Tax Guide (the Guide) to update the existing mergers and acquisition (M&A) scheme.

Pursuant to the announcement made during Budget 2016, the Guide was updated to reflect that the cap on the value of qualifying acquisitions had been increased from SGD20 million to SGD40 million from 1 April 2016. Other terms and condition of the M&A scheme remain unchanged.

Tax deduction under Business and IPC Partnership Scheme

The Business and Institution of Public Character (IPC) Partnership Scheme (BIPS) was introduced in Budget 2016 to encourage volunteerism through

businesses.

From 1 July 2016 until 31 December 2016, businesses will enjoy a total tax deduction of 250% on wages and related expenses when they send their employees to volunteer and provide services, including secondments, to IPCs under BIPS, subject to receiving the IPCs' agreements. The key qualifying conditions are summarised below.

The following parties may qualify for BIPS:

- companies, sole proprietorships, partnerships (including limited partnerships and limited liability partnerships) and registered business trusts carrying on a business in Singapore; and
- bodies of persons, for example, clubs and trade associations, that are deemed to be carrying on a business.

Qualifying expenditure includes basic wages and related expenses incurred only because of the services provided to IPCs.

The business will receive a 250% tax deduction in total on the qualifying expenditure incurred, subject to the receiving IPC's agreement, as in **Table 2**.

- The qualifying expenditure is subject to a cap of SGD250,000 per business per year of assessment.
- A qualifying expenditure cap of SGD50,000 is also imposed on each IPC per calendar year. For the year 2016, the qualifying expenditure cap imposed on each IPC is SGD25,000 (6/12 x SGD50,000).
- Owners of businesses, i.e. sole proprietors, partners and shareholders who are also directors of the same company, do not constitute qualifying employees.

General anti-avoidance rule and its application – e-Tax Guide issued

On 11 July 2016, the IRAS issued an e-Tax Guide (the Guide) clarifying the general anti-avoidance rule and its application. IRAS issued the Guide with the following objectives:

Table 2

Qualifying expenditure	Tax deduction
currently deductible under Section 14(1) of the Income Tax Act (ITA)	100% tax deduction under Section 14(1) of the ITA additional 150% tax deduction, subject to meeting the relevant conditions under BIPS
currently not deductible under Section 14(1) of the ITA	250% tax deduction, subject to meeting the relevant conditions under BIPS

- to explain IRAS's approach to the construction of the general anti-avoidance rule in Section 33 of the Income Tax Act (ITA); and
- to provide some examples on the arrangements which IRAS views as having the purpose or effect of tax avoidance within the meaning of Section 33(1) of the ITA. The examples are provided with the aim of deterring taxpayers from entering into such arrangements.

The construction of Section 33 of the ITA is based on the "scheme and purpose approach" that was adopted by the Court of Appeal in the case of *CIT v. AQQ {2014} SGCA 15*.

The examples of arrangements, including their key features, which the IRAS regards as having the purpose or tax avoidance effect within the meaning of Section 33 (1) of the ITA may be classified into the following broad groups: circular flow or round-tripping of funds; setting up of more than one entity for the sole purpose of obtaining tax advantage; change in business form for the sole purpose of obtaining tax advantage; and attribution of income that is not aligned with economic reality.

The Guide does not cover arrangements that form the subject of specific anti-avoidance provisions in the ITA and/or that involve tax evasion. Additionally, arrangements that are not described in the Guide should not be taken as falling outside the ambit of Section 33(1) of the ITA and acceptable to the IRAS.

The guidelines and accompanying examples in the Guide are not meant to be exhaustive. The Guide may be updated with new guidelines and new examples of arrangements where necessary.

INDONESIA

2016 Negative Investment List issued

The Indonesian government issued a new Negative Investment List (Daftar Negatif Investasi, DNI) on 18 June 2016 as stipulated in the Presidential Decree No. 44 of 2016 (PD 44/2016) that came into effect on the same date. PD 44/2016 replaces the previous DNI as stipulated in PD No. 39 of 2014.

The 2016 DNI provides the list of business activities under different sectors that are open or closed to investment along with specific conditions, as follows:

- investment reserved for or subject to partnership with micro, small and medium enterprises (SMEs);
- foreign ownership limitations;
- special licensing;
- location requirements;
- 100% domestic ownersh
- higher foreign ownership for the Association of Southeast Asian

Table 3

	Amount (IDR)
taxpayer	54,000,000
spouse	4,500,000
wife's income combined with taxpayer	54,000,000
each dependant (maximum of 3)	4,500,000

Nations (ASEAN) member countries.

Investments that have already received approval from the Investment Coordinating Board prior to the issuance of PD 44/2016 will not be affected if there is any reduction in the permitted level of foreign investment.

Tax amnesty law – regulations issued

On 19 July 2016, the Ministry of Finance (MoF) announced that it had issued MoF Regulation Nos. 118/PMK.03/2016 (PMK-118) and 119/PMK.03/2016 (PMK-119), as well as MoF Decree No. 600 of 2016 (KMK-600) (see the Note below) regulating the implementation of Law No. 11 of 2016 (effective from 1 July 2016) concerning tax amnesty.

The tax amnesty programme will run from 1 July 2016 to 31 March 2017. Under the programme, the government will forgive qualifying taxpayers by waiving taxes due, administrative sanctions and tax criminal sanctions relating to assets declared for prior years' tax obligations up to the year 2015. In exchange for this forgiveness, the taxpayer will pay a pre-defined tax amnesty penalty in respect of tax liabilities, including interest and penalties, relating to a previous tax period or periods.

The different tax amnesty rates applicable to the various time periods are summarised as in **Table 3**.

Taxpayers with annual turnover not exceeding IDR4.8 billion in 2015 will be subject to the following tax amnesty rates:

- 0.5% for assets declared not exceeding IDR10 billion; and
- 2% for assets declared exceeding IDR10 billion.

Note: PMK-118, effective from 15 July 2016, is a regulation implementing the rules and procedures under the tax amnesty bill. It provides details of the tax amnesty programme, including samples of forms for completion, qualifying taxpayers, tax amnesty rates for qualifying taxpayers, as well as procedures for filing declaration letters and payment procedures.

PMK-119 details the procedures for funds repatriated into the country and their placement in the financial market.

KMK-600 is the regulation providing guidance to banks responsible for collecting tax amnesty payments under the tax amnesty programme.

Increase in non-taxable income for individuals

The MoF issued Regulation No. 101/PMK.010/2016, which came into effect on 27 June 2016, to revise the personal allowances (Penghasilan Tidak Kena Pajak, PTKP) for individual taxpayers. This regulation replaces MoF Regulation No. 122/PMK.010/2015 and will be applied retrospectively from 1 January 2016.

Details of the revised PKTP (**Table 4**).

Consequently, the MoF issued Regulation No. 102/PMK.010/2016, which also became effective on 27 June 2016, to replace MoF Regulation No. 152/PMK.010/2015 of 6 August 2015. This regulation specifies that the daily and weekly employees, including other non-permanent employees, who receive gross income of not more than IDR450,000 per day are exempt from income tax. This exemption is not applicable if the employees' monthly gross income exceeds IDR4,500,000 or the income is paid on a monthly basis. Additionally, this exemption is not applicable to honorariums or commissions paid to hawkers and insurance agents.

Table 4

	Amnesty period and applicable rates (%)		
	July – Sept '16	Oct – Dec '16	Jan – Mar '17
assets located offshore but not repatriated to Indonesia	4	6	10
assets located offshore, repatriated to Indonesia and invested in Indonesia for a minimum of three years	2	3	5
onshore assets retained in Indonesia for a minimum of three years	2	3	5

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

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TechnicalUpdates

The technical updates published here are summarised from selected government gazette notifications published between 16 May 2016 and 15 August 2016 including Public Rulings and guidelines issued by the Inland Revenue Board (IRB), the Royal Malaysian Customs Department and other regulatory authorities.

INCOME TAX

Income Tax (Exemption) (No. 4) Order 2016

Income Tax (Exemption) (No. 4) Order 2016 [P.U.(A) 157], gazetted on 13 June 2016 and deemed to have come into operation on 13 June 2008, provides an income tax exemption on the statutory income derived from qualifying activities (as specified in the Schedule of the statutory order) carried on in the East Coast Economic Region (ECER). The amount of tax exempted shall be equal to the amount of qualifying capital expenditure incurred by the qualifying person. The exemption shall be for a period of five consecutive years, which will commence from the date of the first qualifying capital expenditure incurred by the qualifying person, as determined by the ECER Development Council (ECERDC). The commencement date shall not be earlier than three years before the date that the application for exemption is made and shall not be earlier than 13 June 2008. To qualify for this incentive, an application must be made to the ECERDC on or after 13 June 2008 but not later than 31 December 2020.

Income Tax (Exemption) (No. 5) Order 2016

Income Tax (Exemption) (No. 5) Order 2016 [P.U.(A) 158], gazetted on 13 June 2016 and deemed to have come into operation on 13 June 2008, provides an income tax exemption on the statutory income derived from special qualifying activities (as specified in the Schedule of the statutory order) carried on in the ECER. The amount of tax exempted shall be equal to 60% to 100% of the qualifying capital expenditure incurred by the qualifying person. The exemption shall be for a period of consecutive years of assessment as determined by the Minister, which will commence from the date of the first qualifying capital expenditure incurred by the qualifying person, as determined by the ECERDC. The commencement date shall not be earlier than three years before the date that the application for exemption is made and shall not be earlier than 13 June 2008. To qualify for this incentive, an application must be made to the ECERDC on or after 13 June 2008 but not later than 31 December 2020.

Income Tax (Exemption) (No. 6) Order 2016

Income Tax (Exemption) (No. 6) Order 2016 [P.U.(A) 159], gazetted on 13 June 2016 and deemed to have come into operation on 13 June 2008, provides a 100% income tax exemption on the statutory income derived from qualifying activities (as specified in the Schedule of the statutory order) carried on in the ECER. The exemption shall be for a period of 10 consecutive years of assessment, which will commence from the first year of assessment in which the qualifying person derives its statutory income from the qualifying activity. To qualify for this incentive, an application must be made to the ECERDC on or after 13 June 2008 but not later than 31 December 2020.

Income Tax (Exemption) (No. 7) Order 2016

Income Tax (Exemption) (No. 7) Order 2016 [P.U.(A) 160], gazetted on 13 June 2016 and deemed to have come into operation on 13 June 2008, provides a 70% to 100% income tax exemption on the statutory income derived from special qualifying activities (as specified in the Schedule of the statutory order) carried on in the ECER. The exemption shall be for a period of consecutive years of assessment as determined by the Minister, which will commence from the first year of assessment in which the qualifying person derives its statutory income from the special qualifying activity. To qualify for this incentive, an application must be made to the ECERDC on or after 13 June 2008 but not later than 31 December 2020.

Income Tax (Exemption) (No. 8) Order 2016

Income Tax (Exemption) (No. 8) Order 2016 [P.U.(A) 161], gazetted on 13 June 2016 and deemed to have come into operation on 13 June 2008, provides a 100% income tax exemption on the statutory

income derived from the following qualifying activities by an approved developer:

The disposal of any right over any land or the disposal of a building or rights over a building or part of a building located in an industrial park or a free zone

The rental of a building or part of a building located in an industrial park or a free zone

The exemption shall be for a period of 10 consecutive years of assessment, which will commence from the first year of assessment in which the approved developer derives its statutory income from the disposal or rental activity. To qualify for this incentive, an application must be made to the ECERDC on or after 13 June 2008 but not later than 31 December 2020.

Income Tax (Exemption) (No. 9) Order 2016

Income Tax (Exemption) (No. 9) Order 2016 [P.U.(A) 162], gazetted on 13 June 2016 and deemed to have come into operation on 13 June 2008, provides a 100% income tax exemption on the statutory income derived from the following qualifying activities by a qualifying development or park manager:

For a development manager - provision of management, supervisory or marketing services relating to the development of an industrial park or a free zone

For a park manager – provision of park management services including maintenance, marketing and rental of common facilities and utilities services in the industrial park or free zone

The exemption shall be for a period of 10 consecutive years of assessment, which will commence from the first year of assessment in which the qualifying development or park manager derives its statutory income from the qualifying activities. To qualify for this incentive, an application must be made to the ECERDC on or after 13 June 2008 but not later than 31 December 2020.

Income Tax (Exemption) (No. 10) Order 2016

Income Tax (Exemption) (No. 10) Order 2016 [P.U.(A) 163], gazetted on 13 June 2016 and deemed to have come into operation on 13 June 2008, exempts a non-resident person from the payment of income tax in respect of fees for technical advice, assistance or services (under Section 4A(ii)) or on royalty income, which are received from a qualifying person for the purposes of a qualifying activity. The withholding tax under Sections 109 or 109B of the Income Tax Act 1967 will therefore not be applicable in respect of these payments.. For the purposes of the Order, "qualifying activity" refers to qualifying activities in the following exemption orders:

- Income Tax (Exemption) (No. 4) Order 2016
- Income Tax (Exemption) (No. 5)
- Order 2016
- Income Tax (Exemption) (No. 6)
- Order 2016
- Income Tax (Exemption) (No. 7)
- Order 2016

To qualify for this incentive, an application must be made to the ECERDC on or after 13 June 2008 but not later than 31 December 2020.

Income Tax (Deduction for the Sponsorship of Hallmark Event) Rules 2016

Income Tax (Deduction for the Sponsorship of Hallmark Event) Rules 2016 [P.U.(A) 165], gazetted on 13 June 2016 and deemed to have come into operation on 13 June 2008, provide a deduction equal to any cash contribution or contribution-in-kind made by the qualifying person in relation to a hallmark event, with a cap of RM1 million for each year of assessment. A hallmark event is an event of national, regional or international significance which is approved by the Minister and carried on in the ECER between 13 June 2008 and 31 December 2020.

Income Tax (Deduction for Investment in Qualifying Activity) Rules 2016

Income Tax (Deduction for Investment in Qualifying Activity) Rules 2016 [P.U.(A) 166], gazetted on 13 June 2016 and deemed to have come into operation on 13 June 2008, provide a tax deduction on the value of the investment made in the related company by a qualifying person. The amount that is allowable as a tax deduction is equivalent to the amount incurred by the related

company in the qualifying activity (as specified under Rule 2 and the Schedule of the statutory order). The deduction shall cease in the basis period where the related company has its first statutory income from the qualifying activity in respect of which investment is made. To qualify for this incentive, an application must be made to the ECERDC on or after 13 June 2008 but not later than 31 December 2020.

Income Tax (Deduction for Expenditure to Obtain the 1-InnoCERT Certification) Rules 2016

Income Tax (Deduction for Expenditure to Obtain the 1-InnoCERT Certification) Rules 2016 [P.U.(A) 168], gazetted on 14 June 2016, are deemed to have come into operation from the year of assessment 2015. The Rules provide a deduction on expenditure directly incurred by the qualified person in obtaining his first 1-InnoCERT Certification, such as a certification fee of RM5,000 and expenditure incurred by SIRIM Berhad's auditors which consists of travelling cost, accommodation cost and meal allowance. This tax deduction incentive is only applicable to applications to obtain a 1-InnoCERT Certification, which are made by 31 December 2017. Note that the 2016 Rules effectively extend the Income Tax (Deduction for Expenditure to Obtain the 1-InnoCERT Certification) Rules 2012 [P.U.(A) 109], which applied to 1-InnoCERT Certification applications made by 31 December 2014.

Amendment to Public Ruling No. 10/2014 – Special Allowances For Small Value Assets

On 11 May 2016, Paragraph 5.2 of Public Ruling (PR) No. 10/2014, captioned "Special Allowances For Small And Medium Companies", was amended to take into account the new definition of Small And Medium Companies (SME). Effective from the year of assessment 2016, in addition to being a company resident in Malaysia with a paid-up capital in respect of ordinary shares not exceeding RM2.5 million at the beginning of the basis period for a year of assessment, a company must also be incorporated in Malaysia in order to be considered a SME.

Amendment to Public Ruling No. 1/2009 – Property Development

On 16 May 2016, Paragraph 13 of PR No. 1/2009, captioned "Other issues related to property development", was amended to take into account Section 4B of the ITA. Effective from the year of assessment 2013, Section 4B of the ITA provides that only interest income that falls under Section 24(5) of the ITA would be assessed as a business source. As such, the PR was amended to state that interest income derived from the Housing Development Account should now be assessed under Section 4(c) of the ITA.

Public Ruling No. 4/2016 – Tax incentives for child care centre and kindergarten operators

PR No. 4/2016 - Tax Incentives for Child Care Centre and Kindergarten Operators, published on 9 August 2016, explains the incentives given to child care centres and kindergarten operators. The incentives are summarised as in **Table 1**.

Update on Guidelines on Advance Rulings

The IRB's Guidelines on Advance Rulings (Paragraph 6.1) are being updated to

Table 1

Tax incentives for child care centre operators	Tax incentives for kindergarten operators
Employers a) Additional deduction on expenses in respect of the provision and maintenance of a child care centre; and b) Additional deduction in respect of child care allowances paid to employees	**New and existing operators** a) Tax exemption in respect of statutory income from the business for a period of five consecutive years of assessment; and b) Industrial building allowance at the rate of 10% on a building used as a kindergarten
New and existing operators a) Tax exemption in respect of statutory income from the business for a period of five consecutive years of assessment; and b) Industrial building allowance at the rate of 10% on buildings used as a child care centre	*Condition* New and existing kindergartens that wish to apply for the tax incentives must be registered with the State Education Department.
Condition New and existing child care centres that wish to apply for the tax incentives must be registered with the Department of Social Welfare.	

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clarify that the scope of the advance ruling provided in the Income Tax (Advance Ruling) Rules 2008 [P.U.(A) 41] does not include an arrangement that involves the interpretation of a Double Taxation Avoidance Agreement.

Update on Malaysia's DTA with the Slovak Republic

The Malaysia-Slovak Republic double tax agreement (DTA), which was signed on 25 May 2015, entered into force on 11 April 2016. The DTA took effect in Malaysia on 1 January 2016 and will become effective in the Slovak Republic on 1 January 2017. Some of the withholding tax rates under the DTA, in respect of payments from Malaysia to a resident of the Slovak Republic, are summarised as in **Table 2**.

Table 2

Payments	Withholding tax rate	
	Normal rate	Reduced rate
Interest	15%	0% / 10% (Note 1)
Royalties	10%	10%
Fees for technical services (Note 2)	10%	5%

Note 1: The 0% rate applies if the recipient is the government of the Slovak Republic or certain qualifying institutions of the Slovak Republic. For other cases, the 10% rate applies.

Note 2: The term "fees for technical services" means payments in consideration for any services of a technical, managerial or consultancy nature (excluding payments to an employee of the person making the payments).

Guidelines on application for a tax clearance letter for a company, LLP and Labuan entities

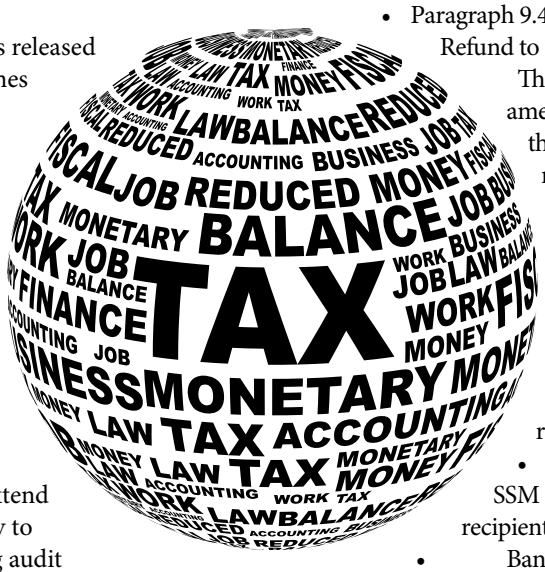
Table 3

Transfer pricing documentation	Rates of penalty
With documentation	15%
Without documentation	25%

The IRB has issued guidelines dated 31 July 2016 captioned "Tax clearance letter application for companies, limited liability partnership (LLP) and Labuan entities (Labuan companies and Labuan LLP)". These guidelines provide an explanation on the procedures for the application for tax clearance letters and provide guidance on the documents that need to be submitted together with the application.

Tax amnesty programme extended to transfer pricing audit cases

The IRB has released revised guidelines dated 1 August 2016 in Bahasa Malaysia and captioned "Tawaran Pengurangan Penalti dan Penghapusan Kenaikan Cukai (GPHDN 1/2016 – Pindaan)" to extend the tax amnesty to transfer pricing audit cases. The offer for the reduction of penalties is applicable to cases that are already being audited or have been finalised between 1 March 2016 and 15 December 2016. The reduction in penalty for transfer pricing audit cases is as in **Table 3** above.



Revision of tax collection framework

The IRB has issued a revised tax collection framework in Bahasa Malaysia, dated April 2016 and titled "Rangka Kerja Pungutan Cukai". The framework is broadly the same as the previous version and the key changes to the framework are as follows:

- Paragraph 2.3.2(e) under the "Instalment Payment Scheme pursuant to Section 107C of the Income Tax Act 1967 (ITA) (CP204)"

This paragraph has been amended to provide that only a company, trust, cooperative or LLP is required to submit its estimate of tax payable not more than three months after the commencement of its operation. However, the previous framework did not exclude companies that are governed under Section 107C(4) of the ITA that have commenced business for the first time and whose basis period for that year of assessment is less than six months.

- Paragraph 9.4.1 under the "Tax Refund to Third Party"

The framework is amended to include the information required to process a tax refund due to an individual to be paid to a company. The following information is required:

- Name and SSM number of the recipient company
- Bank account number of the recipient company
- Letter of authority

STAMP DUTY

Stamp Duty (Exemption) (No. 2) Order 2016

The Stamp Duty (Exemption) (No. 2) Order 2016 [P.U.(A) 164], gazetted on 13 June 2016 and deemed

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TAMAN METRO PUCHONG (LAKESIDE RESIDENCES): Developer's License No.: 9903-6/01-2017/76(L) • Validity Period: 22.01.2015-21.01.2017 • Advertising & Sales Permit No. : 9903-6/01-2017/76(P) • Validity Period: 22.01.2015-22.01.2017 • Land Tenure: 99 Years (Expiring: 15.06.2088) • Expected Date of Completion : January 2017 • Encumbrance: Charged to Malayan Banking Berhad • Approving Authority: Majlis Perbandaran Subang Jaya • Building Plan Approval No: MPSJ/BGN/600-1/10/4 (BP5-2)(25) • Selling Price: RM1,077,600 (Min) - RM1,560,460 (Max) • No of Units: 82 Units • Type of Property: 2-Storey Terrace House (22' x 75') • Restriction-in-interest: Land cannot be sold, leased, pledged or transferred with even manner whatsoever except with the consent of the State Authority.Bumiputera discount: 7%. **MAGICAL STERLING SDN. BHD. (CAMELLIA)** • Developer License: 13863-7/04-2018/0227(L) • Validity from: 06/04/2016 - 05/04/2018 • Advertising & Sales Permit No: 13863-7/04-2018/0227(P) • Validity from: 06/04/2016 - 05/04/2018 • Approving Local Authority: Majlis Perbandaran Sepang • Building Approval No.: MPSepang 600-34/4/58(11) • Land encumbrance: Charged to AM Islamic Bank Berhad • 99-year Leasehold expires on: 04/01/2114 • Total units: 165 (2-storey Terrace House) • Estimated completion: April 2018 • Selling Price: (Min) RM 567,200 (Max) RM 781,300 • Discount for Bumiputera: 7% • This property is non-transferable without the permission from local authority. • **GLOMAC RAWANG SDN. BHD. (ALCEDO)** • Developer's License No.:10020-14/11-2016/02690(L) • Validity from: 26/11/2015 – 25/11/2016 • Advertising & Sales Permit No: 10020-14/11-2016/02690(L) • Validity from: 26/11/2015 – 25/11/2016 • Approving Local Authority: Majlis Perbandaran Selayang • Building Approval No.: MPS 11/3/8/1133(RB) • 99-year Leasehold expires on 27/7/2106 • Land Encumbrance: Charged to AMbank • 7% Discount for Bumiputera • Estimated completion: July 2015 • Total Units: 59 units • Selling Price: RM1,841,269 (min) – RM2,244,011 (max) • This property is non-transferable without the permission from local authority. • **GLOMAC MAJU SDN BHD (SURIA RESIDEN):** Developer's License: 10027-1/06-2016/02134 (L) • Validity Period : 29/6/2015 - 28/6/2016 • Advertising & Sales Permit No: 10027-1/06-2016/02134(P) • Validity Period: 29/6/2015 - 28/6/2016 • Land Tenure : Freehold • Land Encumbrance: Nil • Expected Completion Date : August 2017 • Selling Price : RM 998,000 (min) - RM 1,199,800 (max) • No. of Units : 25 Units (3 Storey Superlink 24' x 70') • Approving Authority : Majlis Perbandaran Kajang • Building Plan Ref. No. : MPKJ 6/P/50/2014 • Restriction of Interest : Nil.

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to have come into operation on 13 June 2008, provides a stamp duty exemption on any instrument which is chargeable with *ad valorem* duty for transfer of real property or lease of land or building used for the purpose of carrying on a qualifying activity (as specified in the Schedule of the statutory order) in the ECER. The exemption is applicable to instruments which are executed between 13 June 2008 and 31 December 2020.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2016

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2016 [P.U. (A) 197] was gazetted on 14 July 2016 and came into operation on 15 July 2016. The Order provides that any tax payable under the ITA in respect of any money payable under any agreement, note, instrument or document in relation to the following product, facility, programme and guarantee shall be remitted in full:

Sukuk Murabahah issued by Perbadanan Tabung Pendidikan Tinggi Nasional pursuant to the GG Sukuk Programme in nominal values of up to RM8 billion;

Syndicated Revolving Credit-i (SRC-i) Facility in the aggregate principal amount of up to RM2 billion;

GG Sukuk Programme in nominal value of up to RM8 billion; and

Guarantee provided or to be provided by the government of Malaysia relating to the *Sukuk Murabahah* and the SRC-i Facility

Also remitted is any stamp duty payable under the Stamp Act 1949 in relation to the said instruments.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2016

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 3) Order 2016 [P.U. (A) 199] was gazetted on 15 July 2016 and came into operation on 18 July 2016. The Order provides that any tax payable under the ITA in respect of any money payable under any agreement, note, instrument or document in relation to the following product, facility, programme and guarantee shall be remitted in full:

Islamic and Conventional Commercial Papers (CP) and Medium Term Notes (MTN) issued or to be issued by the Public Sector Home Financing Board;

Syndicated Revolving Credit-i (RC-i) Facility and Credit Facilities obtained by the Public Sector Home Financing Board; and

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

Also remitted is any stamp duty payable under the Stamp Act 1949 in relation to the said instruments.

LABUAN

Effective date for new tax return forms for Labuan business activity

With effect from 25 April 2016, the Labuan Business Activity Tax (Forms) Regulations 2013 [P.U.(A) 224] have been revoked via new regulations and the IRB has accordingly uploaded the new forms on its website. Although the new forms must be used with effect from 25 April 2016, as a concession, the IRB, via a letter dated 21 July 2016 addressed to the Labuan trust companies, Labuan entities, tax agents, advisors, auditors and liquidators, has granted a concession to allow the use of the previous (old) tax return forms up until 31 July 2016. As such, the use of the new tax return forms will be effective from 1 August 2016. The IRB has also stated in the same letter that a Labuan entity which is dormant/has not commenced business for that particular YA is also required to file Form LE1 (which replaces the Form 1 – Return of profits by a Labuan entity) and a formal notification letter with effect from 1 August 2016.

CUSTOMS DUTIES

Customs (Amendment) Regulations 2016 Customs Act 1967 [P.U. (A) 128/2016]

The Customs Regulations 1977 [P.U. (A) 162/1977], referred to as the "principal Regulations" in this Regulation have been amended in Regulation 3, and in the First Schedule, Part I. The principal Regulations are deemed to have come into operation on 18 May 2016.

Please refer to P.U. (A) 162/1977; and P.U. (A) 128/2016.

Customs (Anti-Dumping Duties) (No.2) Order 2016 Countervailing and Anti-Dumping Duties Act 1993 and Customs Act 1967 [P.U. (A) 144/2016]

The Order has effect for a period of five years from 24 May 2016 to 23 May 2021. The Order also provides an addition to the Anti-Dumping duties in the Schedule of the Order.

Please refer to P.U. (A) 144/2016.

Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) (Amendment) (No.3) Order 2016 Customs Act 1967 [P.U. (A) 189/2016]

The Order provides for amendments in the Second Schedule of the Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2012 [P.U. (A) 277/2012], which is deemed to have come into operation on 1 July 2016.

Please refer to P.U. (A) 277/2012; and P.U. (A) 189/2016.

Customs Duties (Amendment) (No.2) Order 2016 Customs Act 1967 [P.U. (A) 190/2016]

The Order provides for amendments in the First Schedule of the Customs Duties Order 2012 [P.U. (A) 275/2012], which is deemed to have come into operation on 1 July 2016.

Please refer to P.U. (A) 275/2012; and P.U. (A) 190/2016.

Customs (Import Licence Fee for Motor Vehicle) (Amendment) Regulations 2016 Customs Act 1967 [P.U. (A) 200/2016]

The Regulations provide for an amendment in the Schedule of the Customs (Import Licence Fee for Motor Vehicle) Regulations 2009 [P.U. (A) 491/2009], which are deemed to have come into operation on 18 July 2016.

Please refer to P.U. (A) 491/2009; and P.U. (A) 200/2016.

Customs (Amendment) (No.2) Regulations 2016 Customs Act 1967 [P.U. (A) 213/2016]

The Regulations provide for amendments in Regulation 3 and in the First Schedule, Part I of the Customs Regulations 1977 [P.U. (A) 162/1977] which are referred to as the "principal Regulations" in this Regulation. The principal Regulations are deemed to have come into operation on 1 August 2016.

Please refer to P.U. (A) 162/1977; and P.U. (A) 213/2016.

Customs (Amendment) (No.3) Regulations 2016 Customs Act 1967 [P.U. (A) 214/2016]

The Regulations provide for amendments in Regulation 3 and in the First Schedule, Part I of the Customs Regulations 1977 [P.U. (A) 162/1977] which are referred to as the "principal Regulations" in this Regulation. The principal Regulations are deemed to have come into operation on 1 August 2016.

Please refer to P.U. (A) 162/1977; and P.U. (A) 214/2016.

Customs (Amendment) (No.4) Regulations 2016 Customs Act 1967 [P.U. (A) 215/2016]

The Regulations provide for amendments in Regulation 3 and in the First Schedule, Part I of the Customs Regulations 1977 [P.U. (A) 162/1977] which are referred to as the "principal Regulations" in this Regulation. The principal Regulations are deemed to have come into operation on 1 August 2016.

Please refer to P.U. (A) 162/1977; and P.U. (A) 215/2016.

Customs (Prohibition of Exports) (Amendment) (No.2) Order 2016 Customs Act 1967 [P.U. (A) 218/2016]

The Order provides for amendments in the Second Schedule of the Customs (Prohibition of Exports) Order 2012 [P.U. (A) 491/2012] which is deemed to have come into operation on 1 September 2016.

Please refer to P.U. (A) 491/2012; and P.U. (A) 218/2016.

Customs (Prohibition of Imports) (Amendment) (No.2) Order 2016 Customs Act 1967 [P.U. (A) 219/2016]

The Order provides for amendments in the Second Schedule, Third Schedule and Fourth Schedule of the Customs (Prohibition of Imports) Order 2012 [P.U. (A) 490/2012] which is referred to as the "principal Order" in this Order. The principal Order is deemed to have come into operation on 1 September 2016.

Please refer to P.U. (A) 490/2012; and P.U. (A) 219/2016

GOODS AND SERVICES TAX

GST Guide on Goods and Services (Relief) Order 2014, Item 7, First Schedule

The Royal Malaysian Customs Department (RMCD) issued the Guide on Item 7, First Schedule of the GST (Relief) Order 2014 on 12 July 2016, which provides that a private charitable entity for persons with disabilities is relieved from the payment of GST on the acquisition of certain goods, subject to the conditions as specified under the said GST Order.

Please refer to the Guide on GST (Relief) Order 2014.

GST Guide on Item 26, First Schedule, GST (Relief) Order 2014 and GST (Relief) (Amendment) Order 2015

The RMCD has issued a GST Relief Guide on Item 26, First Schedule, GST (Relief) Order 2014 and GST (Relief) (Amendment) Order 2015 on relief granted to diplomatic missions, consular offices and international organisations dated 13 July 2016. It is to be noted that the previous guide dated 22 June 2015 has been withdrawn.

Please refer to the Guide on the GST (Relief) Order 2014 and GST (Relief) (Amendment) Order 2015.

National Essential Medicines List (Suffix X & Suffix N), Item 2, First Schedule, GST (Zero-Rated Supply) Order 2014

The National Essential Medicines List (Suffix X & Suffix N) has been revised as of 1 June 2016 and is available on the RMCD website.

Please refer to the revised National Essential Medicines List.

Control Drug List (Suffix A),Item 2, First Schedule, GST (Zero-Rated Supply) Order

The Control Drug List (Suffix A) has been revised as of 1 June 2016 and is available on the RMCD website.

Please refer to the revised Control Drug List.

GST General Guide

The RMCD issued a GST General Guide on 12 July 2016 to replace the GST General Guides issued on 27 April 2016 and 1 July 2016. The two significant amendments pertain to goods written off and the calculation of late payment of tax.

Please refer to the GST General Guide dated 12 July 2016..

GST Guide on Supply

The RMCD issued a GST Guide on Supply on 24 May 2016. This Guide provides a detailed explanation on various forms of supply and the relevant GST treatments.

Please refer to the GST Guide on Supply dated 24 May 2016.

GST Guide on Import

The RMCD revised the GST Guide on Import on 24 June 2016. The Guide replaces the previous GST Guide on Import issued on 12 May 2016.

Please refer to the GST Guide on Import dated 24 June 2016.

GST Guide on Transitional Rules

The RMCD revised the GST Guide on Transitional Rules on 3 August 2016. The Guide replaces the GST Guide on Transitional Rules issued on 19 March 2016.

Please refer to the GST Guide on Transitional Rules dated 3 August 2016.

GST Guide on Transfer of Business as a Going Concern

The RMCD has made certain amendments to the GST Guide on Transfer of Business as a Going Concern. The Guide provides a detailed explanation on the conditions, procedural requirements and GST implications.

Please refer to the GST Guide on Transfer of Business as a Going Concern.

GST Guide on Investment Precious Metals

The RMCD issued a GST Guide on Investment Precious Metals (IPM) on 19 May 2016. The Guide provides the GST treatments with respect to supply and importation of IPM and also discusses the requirements to qualify as IPM.

Please refer to the GST Guide on Investment Precious Metals dated 19 May 2016.

Amendment to the Director General's Decision (5/2015)

The RMCD has amended the Director General's (DG's) Decision 5/2015. The amendment pertains to Item 6 of the DG's Decision which deals with the criteria required to be satisfied for treating a recovery of expense either as a disbursement or reimbursement.

Please refer to the DG's Decision 5/2015 dated 6 June 2016.

RMCD Announcement: Notifying deferment of bad debt relief claim through Taxpayer Access Portal

The RMCD has announced on its official website that with effect from 20 June 2016, where any bad debt relief is not intended to be claimed by a taxable person immediately after the expiry of the sixth month of the date of supply, it is required to notify the deferment of claim to the Director General of Customs through the Taxpayer Access Portal (TAP).

Please refer to the RMCD's official website.

Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) (Amendment) Regulations 2016 [P.U.(A) 180]

The Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) (Amendment) Regulations 2016 [P.U.(A) 180] were released, by way of a Gazette, by the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) on 24 June 2016. The amendment essentially extends the time period for a business not to increase their net profit margins of goods and services from 30 June 2016 till 31 December 2016. Therefore, businesses would be required to ensure that their net profit margin till 31 December 2016 does not exceed that recorded as on 1 January 2015.

Please refer to P.U.(A) 180.

*Contributed by **Ernst & Young Tax Consultants Sdn. Bhd.** The information contained in this article is intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgement. On any specific matter, reference should be made to the appropriate advisor.*

CASE 1

KETUA PENGARAH HASIL DALAM NEGERI V THOMSON REUTERS GLOBAL RESOURCES CIVIL APPEAL NO: W-01(A)-70-03/2016

Recently, the Court of Appeal dismissed the appeal by the IRB and upheld the High Court's decision that the definition of royalty in the Malaysia-Swiss Federal Council Double Taxation Agreement 1974 ("DTA") should be used rather than the definition in the Income Tax Act 1967 ("ITA"). Consequently, the Court of Appeal also found that the Special Commissioners' finding that the distribution fee is the business profit of the Taxpayer could not be challenged. In this regard, such business profits are only taxable in Switzerland.

BRIEF FACTS

(a) The Taxpayer is a non-resident taxpayer of Switzerland with operations exclusively in Switzerland.

(b) The Taxpayer is in the business of providing information services and dealing services which was made of news, financial and economic information and related matters. The information is compiled by the taxpayer directly or indirectly through its contractors, as is the associated technology or platform. The services are provided from Switzerland by the taxpayer. The taxpayer has no permanent establishment in Malaysia.

(c) The Taxpayer appointed Thomson Reuters Malaysia Sdn Bhd ("TRM") as its distributor in Malaysia and entered into a Local Vendor Agreement: Information and Dealing Services ("the Agreement").

(d) Pursuant to the Agreement, TRM was appointed by the taxpayer to market and sell the taxpayer's products in the form of 'information services' and 'dealing services' in Malaysia.

(e) Pursuant to the agreement, the taxpayer received distribution fee from TRM. The said distribution fee is recorded and treated as business profit of the taxpayer in Switzerland and the taxpayer is taxed by the Swiss Tax Authority on this basis.

(f) The IRB subjected the distribution fee to withholding tax as it stated that it fell under the definition of royalty under the ITA.

(g) The Special Commissioners of Income Tax ('SCIT") allowed the appeal of the Taxpayer for the refund of the excess amount of withholding tax imposed by the IRB.

ISSUES

The two issues at hand are:

(i) Whether the distribution fee paid by TRM to the Taxpayer is royalty under Article 12(4) of the Malaysia-Swiss Federal Council Double Taxation Agreement 1974 ("DTA")?

(ii) Whether the distribution fee which is the business profit of the taxpayer, is only taxable in Switzerland?

IRB's APPEAL TO THE HIGH COURT

IRB's Arguments

(a) The IRB submits that the distribution fee is subjected to withholding tax in Malaysia by virtue of the provision in Section 4(d) of the ITA which considers such fee as royalties.

(b) IRB also contends that the definition of royalty is as per Section 2 of the ITA whereby; royalty includes:

(c) Any sums paid as consideration for the use of, or the right to use:

(i) copyrights, artistic or scientific works, patents, designs or models, plans secret processes of formulae, trademarks, or tapes for radio or television broadcasting, motion picture films, films or video tapes or other means of reproduction where such films or tapes have been or are to be used or

reproduced in Malaysia or other like property or rights;

(ii) know-how or information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(c) The IRB further states that as the taxpayer's products are specialised knowledge, it comes within the definition of royalty under Section 2 of the ITA.

(d) The IRB also claims that because the taxpayer retains the intellectual property rights of the products, the distribution fee received by the taxpayer from TRM is royalty. Therefore, withholding tax could be imposed on the distribution fee.

THE TAXPAYER'S CONTENTION

(a) The Taxpayer argued that the distribution fee is not royalty but a business profit to the taxpayer that is paid by TRM and should not be subjected to withholding tax.

(b) The Taxpayer further submits that the provisions of the agreement indicated that the products of the taxpayer could not in any manner be considered to be royalty and it is clearly stated in the agreement itself that the distribution fee is a business profit of the taxpayer in Switzerland.

(c) Accordingly, as the distribution fee is a business profit of the Taxpayer, it is subjected to tax only in Switzerland as per the DTA. The Taxpayer further submits that the definition of royalty under Article 12(4) of the DTA should be applicable, as in the event of a conflict, the definition of royalty under the ITA should not be used.

HIGH COURT'S DECISION

(a) The Court held that based on the authorities of *DGIR v Euromedical Industries* and *Damco Logistics,* the definition of the word 'royalty' as in the DTA should be preferred over the same definition in the ITA.

(b) The Court concurred with the findings of the SCIT as the services rendered could not have been considered to involve any special commercial knowledge. There were also no transfer, grant, know-how or proprietary rights in consideration for the distribution fee.

(c) The court interpreted the provision of the DTA and held that it was clear that the income of the taxpayer in this case, derived from the distribution fee should only be subjected to tax in Switzerland where the taxpayer operates. This was evident when the SCIT had found that the taxpayer operate no permanent establishment in Malaysia. And hence, it is wrong for the IRB to impose withholding tax on the distribution fee here in Malaysia

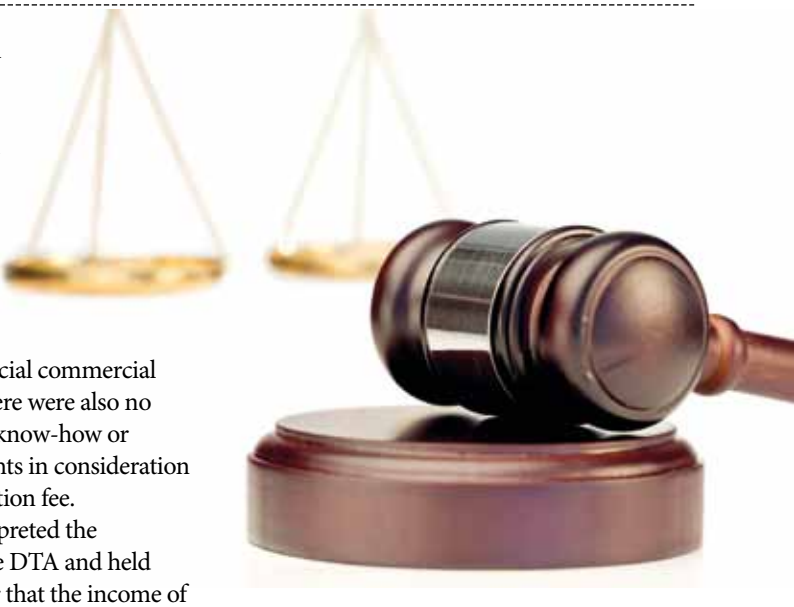
APPEAL BEFORE THE COURT OF APPEAL

(a) The IRB being dissatisfied with the decision of the High Court subsequently appealed to the Court of Appeal on the two grounds.

(b) It was argued that the distribution fee cannot be categorised as royalty as the services rendered were merely information services and there has been no transfer, grant or the use of know-how or proprietary rights.

(c) The Taxpayer also further argued that pursuant to the Agreement, TRM is not granted any right to copy, duplicate, adapt or modify the content of the information pursuant to the Agreement.

(d) The Taxpayer submits that the distribution fee is the business profit of the Taxpayer in Switzerland and



the Taxpayer is taxed by the Swiss Authority on that basis. Moreover, as per the Agreement, the Taxpayer can only be taxed in Malaysia if it carried on business in Malaysia through a permanent establishment.

(e) The case of *Damco Logistics* was brought to the Court's attention as the ratio decidendi in that case is the same with the present appeal.

CONCLUSION

It is clear from the explanation above that the IRB has erroneously subjected the distribution fee to withholding tax. The Court of Appeal in dismissing the appeal and deciding in favour of the Taxpayer has provided some much needed relief in this area.

CASE 2

PP V BILLION NOVA SDN BHD & ORS [2016] 2 CLJ 763

The Court of Appeal in *PP v Billion Nova Sdn Bhd & Ors* held that mere allegation that Billion Nova Sdn Bhd ("Billion Nova") had allegedly sold duty free cigarettes outside of Labuan does not give rise to powers to invoke Section 56(1) of the Anti-Money Laundering, Anti-Terrorism Financing

and Proceeds of Unlawful Activities Act 2001 ("AMLA") in order to forfeit monies belonging to Billion Nova.

BRIEF FACTS

(a) Billion Nova is in the business of importing and exporting beers, liquor and cigarettes in Labuan. In its ordinary course of business, it will purchase such goods from companies known as Lihan Trading Sdn Bhd and Syarikat Jayapuri located in Miri. Such goods are intended for sale in Labuan or to another duty free zone, being Langkawi.

(b) Labuan is a duty free zone and outside of the principal customs area pursuant to Sections 154, 155 and 158 of the Customs Act 1967. Consequently, the said goods transacted and sold by Billion Nova in Labuan are all free of import duty. However, where such goods are subsequently transported to a principal customs area, Section 155(1)(c) of the Customs Act compels import duty to be paid.

(c) The government suspected and subsequently concluded that Billion Nova had sold duty free cigarettes to its customers in Miri and Kota Kinabalu without accounting for import duty. Its allegation was supported by the fact that there were 82 payments made to Billion Nova's bank account through Public Bank in both Miri and Kota Kinabalu amounting to RM1,044,480.00. It was also alleged that Billion Nova failed to explain why the monies does not tally with its internal purchaser's account and statements.

(d) However, the government did not show any proof that such payments were made in consideration of the sale of duty free cigarettes.

(e) In the wake of the discovery, the government concluded that the sale of the cigarettes was in violation of Section 155(1)(c) of the Customs Act

and consequently, it is tantamount to a smuggling offence under Section 135(1)(g) of the Customs Act. As such a smuggling offence is prescribed as an unlawful activity and serious offence under Section 4(1) and 2nd Schedule of the AMLA, the government proceeded to seize the monies in Billion Nova's bank accounts under Section 50(1) of the AMLA.

(f) However, the government did not institute any prosecution against Billion Nova under the AMLA, neither were any of the directors or officers of Billion Nova were charged under the Customs Act. But in turn, the government applied to the High Court and sought for the monies to be forfeited pursuant to Sections 56(1) and 61(2) of the AMLA.

TAXPAYER'S ARGUMENTS

(a) Billion Nova had only sold the cigarettes in Labuan or to purchasers located in Langkawi. In some of the transactions, the purchasers of such cigarettes will make the payment from Miri or Kota Kinabalu, which explains the discovery of the 82 payments made from such locations.

(b) The government failed to establish that the duty free cigarettes from Labuan was sold in or smuggled to the principle customs area.

(c) The Customs Act or Free Zones Act do not prescribe that duty free cigarettes sold in Labuan must be paid in Labuan or could not be paid in the principal customs area i.e. Miri and Kota Kinabalu.

(d) Consequently, as a smuggling offence pursuant to Section 135(1)(g) of the Customs Act has not been established, it does not constitute an AMLA offence under Section 4(1). In then follows that Sections 50 and 56 of the AMLA in respect of both seizure and forefeiture of monies cannot be invoked.

(e) Mere proof of payments from the principal customs area i.e. Miri and Kota Kinabalu without any other evidence is not sufficient to prove that a smuggling offence has been committed.

(f) Further, no presumption could be inferred from the deposits or payments made into the bank accounts of Billion Nova in Labuan, which were made from outside Labuan, meant that the sales were therefore made outside Labuan and subject to import duty. In addition, no such presumption could be inferred from the cash sales that the sales were therefore made outside Labuan.

(g) In fact, accounting documents belonging to Billion Nova show that the cigarette sales were attributable to sales in Labuan and Langkawi. Further, such documents also show that monies were then paid to its shareholders as dividends and this would contradict the contention of the government that these payments

were for the purposes of money laundering or were the proceeds of unlawful activities.

GOVERNMENT'S ARGUMENTS

(a) Based on the transactions concerning Billion Nova's bank accounts, it could not explain why the accounts did not tally with the buyers' account and statements. Burden of proof is on Billion Nova to display that the cash deposits made from Miri and Kota Kinabalu were not for the sale of cigarettes outside of Labuan and in principal customs areas.

(b) Billion Nova had exported or sold duty free cigarettes from Labuan via cash sales or fictitious sales to unknown buyers in Malaysia. These sales were outside Labuan because the proceeds from the sales were paid in Miri and Kota Kinabalu. Consequently, such an act of failing to account for import duty had contravened Section 135(1)(g) of the Customs Act and consequently Section 4(1) of the AMLA.

(c) Mere proof of payments made through Public Bank in Miri and Kota Kinabalu to Billion Nova's account in Labuan would be sufficient for the Court to draw a conclusion or inference that the sale transactions had taken place outside Labuan and that in consequence, evidence of sales outside Labuan is not necessary.

(d) In order to invoke Section 56(1) of AMLA, the government only need to show that there was a link between the properties seized with the predicate and AMLATFA case in order to establish this application and that it has done so on a balance of probabilities,.

COURT's RULING

The following are key aspects of the decision:

(a) The most important aspect of the sales and purchases in the present case is whether the sale of the cigarettes were carried out in Labuan i.e. whether the cigarettes were sold and delivered to the purchasers in Labuan. If the cigarettes were delivered by Billion Nova to the purchasers in Labuan, the sales were made in Labuan and consequently, no import duty shall be payable on such cigarettes. Similarly, it was also important to establish whether the cigarettes were indeed sold and delivered to purchasers in Miri or Kota Kinabalu.

(b) Applying the civil burden of proof which is on the balance of probabilities, the winner would be the party that has successfully tipped the scale in its favour. It is incumbent on the government to show a preponderance of evidence that all facts necessary to prove their case are presented and are probably true. The government needs only to prove their case which is more probable than Billion Nova. The evidence to which the Court of Appeal have alluded to, standing on its own, is insufficient to support a conclusion that the monies in question are the proceeds of an unlawful activity which constitutes a money laundering offence under Section 4(1) of the Customs Act.

(c) The government has failed to prove the case on the balance of probabilities to the level that the Court of Appeal is satisfied that all the essential requirements of Section 56 of AMLA have been established i.e. that a AMLA offence has been committed, being the predicated offence of smuggling pursuant to Section 135(1)(g) of the Customs Act. In fact, Section 56(1) of AMLA clearly prescribes for the "COMMISSION of AN OFFENCE" before the same can be invoked.

(d) This is on the premise that the cash deposits were not sufficient to prove the offence, and in turn, the government would have to prove that the duty free cigarettes were in fact sold in Miri and Kota Kinabalu before an order of forfeiture in respect of the monies could be made. In fact, Billion Nova successfully showed through evidence that the cigarettes were indeed sold in Labuan or to any duty free zone being Langkawi. Such records corresponded with the amount of sales indicated in Billion Nova's accounting statements.

(e) In the modern business world, payments could be made or banked in from any bank account or any part of the world for sales, transactions or purchases made elsewhere, at the convenience or choice of the payer and payee. It will not be a far-fetched conclusion to put in a nutshell that there could not be proceeds of an unlawful activity where such unlawful activity has not been proven. There is not the slightest room for doubt that the appellant failed to prove that these cash deposits were proceeds of the offence of money laundering under Section 4(1) of AMLA.

(f) Since the offence was not proved, the Court of Appeal could not countenance the forfeiture of the money seized by the appellant and therefore the government's application was dismissed

Heng Jia, Ngo Su Ning *and* ***Cindy Bong Xin Yi*** *are tax lawyers with Lee Hishammuddin Allen & Gledhill, where they specialise in income tax matters. They have assisted the firm's tax partners, Datuk D.P. Naban and S. Saravana Kumar in major tax appeals ranging from income recognition, business deduction, capital allowance, reinvestment allowance and tax avoidance.*

CASE 3

AIRTOURS HOLIDAYS TRANSPORT LTD V REVENUE AND CUSTOMS COMMISSIONERS [2016] UKSC 21.

ABSTRACT

This case concerns the recovery of input tax under a tripartite arrangement in respect of a report by PricewaterhouseCoopers LLP ("PwC") prepared for Airtours Holidays Transport Ltd("Airtours")'s lenders, and paid for by Airtours. The UK Supreme Court by a slender majority of 3-2 observed that where the person who pays the supplier is not entitled under the contracts to receive the service, the determination of the recipient of the supply requires a careful and sensitive analysis, having regard to the economic reality of the transaction as a whole.

The Supreme Court's decision sheds light on the difficulties faced by courts in ascertaining the recipient of supplies made under tripartite contracts. It confirms that (1) the economic reality of a contract should be considered; (2) the service provider should be instructed and engaged by the company wishing to recover the input tax; and (3) the contract should expressly convey to whom the services are to be provided to or on behalf of.

BACKGROUND

Airtours had borrowed money from approximately 80 financial institutions ("the Institutions") and was in serious financial difficulties. Airtours made restructuring proposals. To satisfy the Institutions that the restructuring proposals were viable, Airtours appointed PwC to produce a report to satisfy the Institutions that Airtours' restructuring proposals were financially viable.

A tripartite agreement, in the form of a letter of engagement ("the agreement") was entered into between PwC, Airtours and the Institutions. The agreement (1) outlined the services to be provided by PwC; (2) provided that the fees for the services were to be paid for by Airtours; and (3) stated that PwC had a duty of care only to the Institutions. PwC prepared the report ("the report") as per the agreement. Airtours paid PwC's fees together with VAT subsequently sought to recover this VAT as input tax.

HMRC challenged Airtours' capacity to do this, on the basis that PwC's services were not a supply to Airtours within the meaning of Section 24(1)(a) of the VAT Act 1994 ("the VAT Act"), but to the Institutions. Accordingly, Airtours was not entitled to recover the VAT on PwC's fees as input tax credits.

The First-Tier Tribunal found for Airtours' but that decision was reversed by the Upper Tribunal. The Court of Appeal subsequently dismissed Airtours' appeal, finding that on proper construction of the agreement, the supply was to the Institutions for which Airtours had agreed to pay. The decision turned on the interpretation of the contract as a whole.

Airtours subsequently appealed to the Supreme Court. The two main issues before the Supreme Court were, firstly, whether there was a contractual obligation to supply and if this was answered in the negative, whether there was none the less a supply. The Supreme Court on a majority of 3 to 2, dismissed Airtours' appeal, answering the first and second question in the negative.

1) Was there a contractual obligation to supply

Lord Neuberger, delivering the majority judgement, alluded to the fact that the terms of the agreement were in a standard form which had been poorly adapted, thus making the resolution of this issue "not entirely easy".

His Lordship proceeded to conclude that PwC's provision of services was to the Institutions rather than Airtours because:-

(i) the agreement was addressed to the Institutions, and not to Airtours;

(ii) the agreement provided that the Institutions had retained PwC's services;

(iii) the agreement provided that any reports were for the "sole use" of the Institutions, with no mention of Airtours;

(iv) the agreement referred to Airtours "likely requests for facility extensions";
(v) the agreement provided that the report was to be provided to the Institutions - Airtours was only to be provided with a copy which could be redacted;
(vi) the agreement recognised a duty of care on the part of PwC to the Institutions, but none to Airtours;
(vii) the agreement excluded on the part of PwC, any duty of care or liability to "any other party"; and
(viii) the agreement provided that PwC's work was required by the Institutions, with no suggestion that it was required by Airtours;

Accordingly, Lord Neuberger held that on true construction of the agreement, there was a contractual commitment to supply the report to the Institutions and not to Airtours. Airtours was only a party for the purpose of paying PwC's fees, to provide PwC with an indemnity and to acknowledge the cap on any damages for which PwC might be liable.

2) Was there none the less a supply?

Airtours contested that consideration should be given to the fact that they (1) received a service; (2) had a substantial commercial interest in the service provided; and (3) made subsequent payment for the service (including a £200,000 retainer). Airtours sought to rely on *Commissioners of Customs and Excise v Redrow Group PLC [1999] 1 WLR 408* ("Redrow's case"), that the question to be asked is if the taxpayer received "anything – anything at all – used or to be used for the purpose of his business".

Lord Neuberger held that Redrow's case must be construed in light of the recent case of *Revenue and Customs Comrs v Loyalty Management UK Ltd (2013) STC 784,* which focuses on economic realities as the fundamental criterion in the levy of VAT. It was held to be trite law that where the person who pays the supplier is not entitled under the contractual documentation to receive any services from the supplier, then, unless the documentation does not reflect the economic reality, the payer has no right to reclaim by way of input tax the VAT in respect of the payment to the supplier.

In this case, since Airtours' benefit from the contract for which it had paid PwC was the enhanced possibility of funding from the Institutions for its' restructuring, the agreement did indeed reflect the economic reality. The agreement was not in any way an artificial arrangement.

THE DISSENTING JUDGEMENT

It should be noted that the dissenting Justices concluded that PwC had indeed provided a distinct service to Airtours and another to the Institutions. The dissenting Justices further held that resting on a narrow legalistic approach to the construction of the agreement was inappropriate in a case where, in reality, there was unlikely to be any distinction between services to Airtours and services to the Institutions. Such a distinction was unlikely to have been seen as of any practical significance, and probably for that reason was not addressed in detail in the agreement. Nor was it ever put to the test because once PwC had been engaged, there was never any question of its not completing its task.

LESSON

The Supreme Court's decision sheds light on the difficulties faced by courts in ascertaining the recipient of supplies made under tripartite contracts. It confirms that (1) the economic reality of a contract is fundamental to the application of VAT; (2) the service provider should be instructed and engaged by the company wishing to recover the input tax; and (3) the contract should expressly convey to whom the services are to be provided to or on behalf of.

In light of this case, careful consideration should be applied in drafting tripartite contracts to ensure that the contracts clearly state the rights and obligation of the parties, including to whom the services are being supplied to. It would be sufficient for the payer to be regarded as the recipient of the supply where the supplier is obliged to the payer to supply the services to another party (except, perhaps, where the contract does not reflect economic reality).

Sudharsanan R. Thillainathan *and* ***Tania K. Edward*** *are tax lawyers with Messrs Shook Lin & Bok, one of the leading law firms in Malaysia.*

BUSINESS DEDUCTIONS
GAZETTE RULES IV

Siva Subramanian Nair

In this article we shall look at the following Gazette Rules.

- Income Tax (Deduction for Expenditure on Issuance of Sukuk) Rules 2015 PU (A) 318
- Income Tax (Deduction for the Sponsorship of Hallmark Event) Rules 2016 PU (A) 165
- Income Tax (Deduction for Investment in Qualifying Activity) Rules 2016 PU (A) 166

Before I commence this quarter's article, candidates should note that the I-InnoCERT Certification Rules 2012 discussed in *Tax Guardian* [Vol 9/No.2/2016/Q2] has now been updated as INCOME TAX (DEDUCTION FOR EXPENDITURE TO OBTAIN THE 1-INNOCERT CERTIFICATION) RULES 2016 [PU (A) 168] on 6 June 2016 with the following amendments

- The application must be made not later than 31 December 2017
- The definition of a qualified person has been amended as a person who is resident in Malaysia and who at the end of the basis period for a year of assessment has achieved the following:

Industry	No. of Employees	Achieved annual sales
Manufacturing Industry,	NOT < than 5 and NOT > than 200 full-time employees	NOT <than RM300,000 and NOT > than RM 50,000,000
Services, Primary Agriculture, Construction or Mining and Quarrying industry.	NOT < than 5 and NOT > than 75 full-time employees	NOT <than RM300,000 and NOT > than RM 20,000,000

Generally professional examinations only test new law six months after it is gazetted. Therefore, this amendment is examinable for the December exams. In any event candidates should note that for applications after 31 December 2014, the new rules stated above should be used.

INCOME TAX (DEDUCTION FOR EXPENDITURE ON ISSUANCE OF SUKUK) RULES 2015 PU (A) 318

This is in line with the government's efforts to expand the *sukuk* market at the international level and to further strengthen Malaysia as an Islamic financial hub

Who gets the deduction?

A company resident in Malaysia

and incorporated under either the Companies Act 1965 or the Labuan Companies Act 1990.

What conditions must be fulfilled?

- The *sukuk* should be structured pursuant to the principle of *Ijarah* (i.e. leasing) or *Wakalah* (agency) comprising a mixed component of asset and debt.
- It should be
  (a) approved or authorised by, or lodged with, the Securities Commission under the Capital Markets and Services Act 2007 or
  (b) approved by the Labuan Financial Services Authority established under the Labuan Financial Services Authority Act 1996

At what stage is the deduction given?
in arriving at the adjusted income of the company

Time Frame

From year of assessment 2016 until the year of assessment 2018.

INCOME TAX (DEDUCTION FOR THE SPONSORSHIP OF HALLMARK EVENT) RULES 2016 PU (A) 165

A Hallmark is an event of national, regional or international significance which is carried on in the East Coast Economic Region on or after 13 June 2008 and not later than 31 December 2020 and is approved by the Minister.

The East Coast Economic Region (ECER) covers the states of Kelantan, Terengganu and Pahang, as well as the district of Mersing in Johor under the East Coast Economic Region Development Council Act 2008

Who gets the deduction?

The sponsor of the hallmark event which can be either

- a company incorporated under the Companies Act 1965 [Act 125] and resident in Malaysia; or
- an individual who has business source in Malaysia and resident in Malaysia
- At what stage is the deduction given?
- in arriving at the adjusted income from the business

What is deductible?
an amount equal to any cash contribution or contribution in kind made by the qualifying person in relation to a hallmark event

Conditions for claiming the deduction

An application for deduction shall be made by the sponsor to the Minister through the East Coast Economic Region Development Council on or after 13 June 2008 but not later than 31 December 2020 and submit a letter from the East Coast Economic Region Development Council confirming the following:

(a) that the event is a hallmark event;
(b) the date of the hallmark event;
(c) the organiser of the hallmark event; and
(d) the amount of cash contribution or contribution in kind made in relation to the hallmark event.

- For contribution in kind, the value shall be determined by the East Coast Economic Region Development Council
- Where a deduction in respect of cash contribution or contribution in kind has been allowed under these Rules, no other deduction shall be allowed in respect of that contribution under any provisions of the Income Tax Act 1967 (as amended).
- The total amount of the deduction allowed for sponsoring one or more hallmark event shall be an amount not exceeding one million ringgit for each year of assessment.

INCOME TAX (DEDUCTION FOR INVESTMENT IN QUALIFYING ACTIVITY) 2016 PU (A) 166

This is basically a deduction given in respect of the cost of investment by a qualifying company in a related company which is undertaking a qualifying activity.

Who qualifies for the deduction?

A company which is

- incorporated under the Companies Act 1965
- resident in Malaysia and
- directly owns at least 70% of the paid-up capital in respect of its ordinary shares in a related company.

The related company referred to in these Rules is a company

- incorporated under the Companies Act 1965
- resident in Malaysia; and
- carries on the qualifying activity

Qualifying activity means:

- Cultivation of kenaf, vegetable, fruit, herbs, spice or cocoa
- Plantation of crops for energy generation
- Planting of *hevea brasiliensis*
- Floriculture including ornamental flowers
- Aquaculture
- Inland fishing or deep-sea fishing
- Rearing of cattle, buffalo, goat, sheep, turkey, ostrich or quail

What is deductible?
the value of the investment made by the qualifying person in that basis period which is equivalent to an amount incurred by the related company in that basis period in relation to the qualifying activity in respect of which the investment is made.

At what stage is the deduction given?
in arriving at the adjusted income from the business

Value of Investment?

An investment which is made

(a) in the form of
(i) cash contribution where the related company has no obligation to repay; or
(ii) paid-up capital in respect of ordinary shares in a related company;
(b) for the sole purpose of financing a qualifying activity;
(c) for a period and up to an amount as approved by the Minister; and
(d) in the basis period for the same year of assessment with the year of assessment where the related company has incurred expenditure in carrying on the qualifying activity.

Withdrawal of Deduction

- Where the qualifying person disposes the paid-up capital in respect of the ordinary shares within five years from the date of the last investment made and receives any consideration for such disposal.
- the value of the consideration so received is added back in ascertaining the adjusted income of the qualifying person for the basis period in which the consideration is received but it shall not exceed the total deduction allowed in relation to the investment.

Mutually Exclusive

These Rules shall not apply to a qualifying person if:

- the qualifying activity, in respect of which investment is made by the qualifying person, is commenced by the related company after one year from the date of the approval by the Minister or after such extended period as may be approved by the Minister; or
- in the basis period for a year of assessment, the qualifying person
  (i) has made a claim for reinvestment allowance under Schedule 7A to the Act or investment allowance under Schedule 7B to the Act;
  (ii) has been granted an exemption under Section 127 of the Act in respect of the same qualifying activity; or
  (iii) has been granted any incentive under the Promotion of Investments Act 1986 [Act 327] in respect of the same qualifying activity.

The qualifying activity carried on by a related company is the same kind with the activity for which it has been granted exemption under—

(i) the Income Tax (Exemption) (No. 4) Order 2016
(ii) the Income Tax (Exemption) (No. 5) Order 2016
(iii) the Income Tax (Exemption) (No. 6) Order 2016
(iv) the Income Tax (Exemption) (No. 7) Order 2016

This concludes our discussion on business deductions granted through the use of gazette rules. However we will see some more orders when we discuss double deductions in some of the future articles.

For all the candidates attempting the December examinations, best of luck and God bless and for the other readers Merry Christmas and a Happy New Year.

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

FURTHER READING

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

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CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: OCTOBER - DECEMBER 2016

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
OCTOBER 2016								
Workshop: Tax Planning and Issues for Property Developers & Property Investors	10 Oct	9a.m. - 5p.m.	Melaka	Dr. Tan Thai Soon	350	400	450	8 WS/059
Workshop: Malaysian Taxation Principles & Procedures – Module 1: Business & Employment *(in collaboration with MAICSA)*	17 Oct	9a.m. - 5p.m.	MAICSA Training Room, KL	Vincent Josef	400	450	500	8 JV/006
Workshop: Tax Planning and Issues for Property Developers & Property Investors	17 Oct	9a.m. - 5p.m	Ipoh	Dr. Tan Thai Soon	350	400	450	8 WS/060
Workshop: GST on Cross-Border Transaction: Practical Implications	17 Oct	9a.m. - 5p.m	Kuala Lumpur	Thenesh Kannaa	400	450	500	8 WS/046
GST Training Course Examination Day *(subject to RMCD's confirmation)*	7, 8, 9, 14, 15 & 16 Oct 22 Oct	9a.m. - 5p.m	Kuala Lumpur	Royal Malaysian Customs Dept.	2,200 *(fee for 6 days course)*	2,700 *(fee for 6 days course)*	3,000 *(fee for 6 days course)*	JV/005
Public Holiday *(Awal Muharram: 2 Oct, Deepavali: 29 Oct)*								
NOVEMBER 2016								
Workshop: Malaysian Taxation Principles & Procedures – Module 2: Allowances & Deductions *(in collaboration with MAICSA)*	1 Nov	9a.m. - 5p.m	MAICSA Training Room, KL	Vincent Josef	400	450	500	8 JV/007
Half-day Talk on GST Updates	8 Nov	9a.m. - 1p.m	Kuala Lumpur	Annie Thomas	300	350	400	4 SE/001
Half-day Talk on GST Updates	10 Nov	9a.m. - 1p.m	Penang	Annie Thomas	300	350	400	4 SE/002
Half-day Talk on GST Updates	14 Nov	9a.m. - 1p.m	Johor Bahru	Annie Thomas	300	350	400	4 SE/003
Workshop: Malaysian Taxation Principles & Procedures – Module 3: Advanced Subjects I *(in collaboration with MAICSA)*	21 Nov	9a.m. - 5p.m	MAICSA Training Room, KL	Vincent Josef	400	450	500	8 JV/008
Workshop: Property Developers: GST Latest Developments & Practical Issues	23 Nov	9a.m. - 5p.m	Kuala Lumpur	Thenesh Kannaa	400	450	500	8 WS/057
Workshop: Malaysian Taxation Principles & Procedures – Module 4: Advanced Subjects II (in collaboration with MAICSA)	30 Nov	9a.m. - 5p.m	MAICSA Training Room, KL	Vincent Josef	400	450	500	8 JV/009
2017 BUDGET SEMINAR								
2017 Budget Seminar	3 Nov	9a.m. - 5p.m	Kuala Lumpur	MoF, LHDNM, RMCD, CTIM	350	500	600	10 BS/001
2017 Budget Seminar	22 Nov	9a.m. - 5p.m	Subang	LHDNM, RMCD, CTIM	350	500	600	10 BS/002

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: OCTOBER - DECEMBER 2016

Month /Event	Details				Registration Fee (RM) (excluding GST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
2017 BUDGET SEMINAR								
2017 Budget Seminar	23 Nov	9a.m. - 5p.m	Melaka	LHDNM, CTIM	350	500	600	10 BS/003
2017 Budget Seminar	23 Nov	9a.m. - 5p.m	Ipoh	LHDNM, CTIM	350	500	600	10 BS/004
2017 Budget Seminar	24 Nov	9a.m. - 5p.m	Penang	LHDNM, CTIM	350	500	600	10 BS/005
2017 Budget Seminar	24 Nov	9a.m. - 5p.m	Johor Bahru	LHDNM, CTIM	350	500	600	10 BS/006
2017 Budget Seminar	28 Nov	9a.m. - 5p.m	Kota Kinabalu	LHDNM, CTIM	350	500	600	10 BS/007
2017 Budget Seminar	29 Nov	9a.m. - 5p.m	Kuching	LHDNM, CTIM	350	500	600	10 BS/008
2017 Budget Seminar	29 Nov	9a.m. - 5p.m	Petaling Jaya	LHDNM, RMCD, CTIM	350	500	600	10 BS/009
2017 Budget Seminar	8 Dec	9a.m. - 5p.m	Kuala Lumpur	LHDNM, RMCD, CTIM	350	500	600	10 BS/010
DECEMBER 2016								
Workshop: Tax Planning and Issues for Property Developers & Property Investors - Recent Developments	1 Dec	9a.m. - 5p.m	Penang	Dr. Tan Thai Soon	300	350	400	8 WS/061
Workshop: Tax Planning and Issues for Property Developers & Property Investors	5 Dec	9a.m. - 5p.m	Kuala Lumpur	Dr. Tan Thai Soon	400	450	500	8 WS/062
Half-day Talk on GST Updates	5 Dec	9a.m. - 1p.m	Kota Kinabalu	Annie Thomas	300	350	400	4 SE/004
Half-day Talk on GST Updates	6 Dec	9a.m. - 1p.m	Kuching	Mohd Sabri	300	350	400	4 SE/005
Half-day Talk on GST Updates	14 Dec	9a.m. - 1p.m	Ipoh	Mohd Sabri	300	350	400	4 SE/006
Half-day Talk on GST Updates	15 Dec	9a.m. - 1p.m	Melaka	Mohd Sabri	300	350	400	4 SE/007
Workshop: Tax Planning and Issues for Property Developers & Property Investors	19 Dec	9a.m. - 5p.m	Johor Bahru	Dr. Tan Thai Soon	300	350	400	8 WS/063
Workshop: Tax Incentives for Exporters	19 Dec	9a.m. - 5p.m	Kuala Lumpur	Thenesh Kannaa	400	450	500	8 WS/058
Public Holiday ***(Maulidur Rasul: 12 Dec, Christmas: 25 Dec)***								

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

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

2017 BUDGET SEMINAR

The 2017 Malaysian Budget Proposals will be announced and tabled in Parliament on the 21st October 2016 by the Prime Minister/Minister of Finance, YAB Dato' Sri Najib bin Tun Abdul Razak. The theme for this year's Budget Proposals "Accelerating Growth, Ensuring Fiscal Prudence, Enhancing Well-being of the People" is in line with the Government's focus on invigorating the economy and improving the well-being of the people. Join us at this year's CTIM Budget Seminars which will provide participants with a practical understanding of the key tax changes presented in the 2017 Budget Proposals.

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PROGRAMME:

8:00 am	**Registration & Welcome Coffee/Tea**
9:00 am	**SESSION 1: Summary of 2017 Budget Proposals**
10:15 am	**Q & A Session**
10:30 am	**Morning Refreshments**
11:00 am	**SESSION 2: Forum Discussion on 2017 Budget Proposals – Its Changes & Impact to Taxpayers**
12:15 pm	**Q & A Session**
12:45 pm	**Networking Lunch**
2:00 pm	**SESSION 3: Tax Updates & Latest Developments**
4:00 pm	**Q & A Session**
4:30 pm	**End of Seminar & Refreshments**

BENEFITS TO PARTICIPANTS:

- Obtain information and clarification from the Ministry of Finance (MOF), Inland Revenue Board of Malaysia (IRBM), and Royal Malaysian Customs Department (RMCD) on the latest changes and impact to taxpayers with regard to the 2017 Budget Proposals.
- Get to know the key issues arising from the major Budget changes in 2017 and their impact on your business
- Gain knowledge on IRBM's significant current practices and processes.
- Receive 10 CPD points recognised by MOF as one of the mandatory Budget Seminars for the purposes of Section 153, Income Tax Act 1967 and Section 170, GST Act 2014.
- Receive a complimentary copy of the 2017 Budget Commentary & Tax Information booklet *(subject to stock availability)*

DATE / Event Code	VENUE	Session 1: 9:00 am – 10:15 am Summary of 2017 Budget Proposals	Session 2: 11:00 am – 12:15 pm Forum Discussion on 2017 Budget Proposals – Its Changes & Impact to Taxpayers	Session 3: 2:00 pm – 4:00 pm Tax Updates & Latest Developments
3 Nov 2016 (Thursday) **BS/001**	Renaissance Hotel Kuala Lumpur	Chairman : Mr Aruljothi Kanagaretnam Speaker : YBhg Dato' Khodijah Abdullah (MOF)	Chairman : Mr Aruljothi Kanagaretnam Panelists : YBhg Dato' Khodijah Abdullah (MOF) Ms Annie Thomas (RMCD) IRBM Ms Renuka Bhupalan	Chairman : Ms Yeo Eng Ping Speakers : Ms Theresa Goh Mr S Saravana Kumar
22 Nov 2016 (Tuesday) **BS/002**	The Saujana Hotel, Subang Jaya	Chairman : Ms Seah Siew Yun Speaker : IRBM	Chairman : Ms Seah Siew Yun Panelists : IRBM Ms Annie Thomas (RMCD) Mr K Sandra Segaran	Chairman : Mr Koong Lin Loong Speakers : Mr David Lai Mr Vijey M Krishnan
23 Nov 2016 (Wednesday) **BS/003**	Ramada Plaza, Malacca	Chairman : Mr Choo Ah Kow Speaker : IRBM	Chairman : Mr Choo Ah Kow Panelists : IRBM Datuk Harjit Singh	Chairman : Mr A.V Varan Speaker : Mr Zen Chow
23 Nov 2016 (Wednesday) **BS/004**	Symphony Suites, Ipoh	Chairman : Mr Lam Weng Keat Speaker : IRBM	Chairman : Mr Lam Weng Keat Panelists : IRBM Ms Seah Siew Yun	Chairman : Mr Chak Kong Keong Speakers : Mr Soh Lian Seng Ms Emily Wong
24 Nov 2016 (Thursday) **BS/005**	Jen Hotel, Penang	Chairman : Ms Kellee Khoo Speaker : IRBM	Chairman : Ms Kellee Khoo Panelists : IRBM Ms Phan Wai Kuan	Chairman : Ms Kao Pei Ting Speaker : Mr Lim Kah Fan
24 Nov 2016 (Thursday) **BS/006**	Mutiara Hotel, Johor Bahru	Chairman : Mr Bernard Wong Speaker : IRBM	Chairman : Mr Bernard Wong Panelists : IRBM Mr Mohamad Salleh bin Mohamad Yusof	Chairman : Ms Soon Li Sian Speaker : Mr Nicholas Crist
28 Nov 2016 (Monday) **BS/007**	Hyatt Regency Hotel, Kota Kinabalu	Chairman : Ms Viviana Lim Speaker : IRBM	Chairman : Ms Viviana Lim Panelists : IRBM Ms Farah Rosley	Chairman : Ms Angeline Wong Yu Ching Speaker : Mr K Sandra Segaan
29 Nov 2016 (Tuesday) **BS/008**	Waterfront Hotel, Kuching	Chairman : Mr Kenny Chong Speaker : IRBM	Chairman : Mr Kenny Chong Panelists : IRBM Ms Farah Rosley	Chairman : Ms Farehan Hussin Speaker : Mr Zen Chow
29 Nov 2016 (Tuesday) **BS/009**	One World Hotel, Petaling Jaya	Chairman : Ms Yeo Eng Ping Speaker : IRBM	Chairman : Mr Poon Yew Hoe Panelists : IRBM Ms Annie Thomas (RMCD) Mr Nicholas Crist	Chairman : Datuk Harjit Singh Speakers : Mr K Sandra Segaran Mr S Saravana Kumar
8 Dec 2016 (Thursday) **BS/010**	Seri Pacific Hotel, Kuala Lumpur	Chairman : Ms Renuka Bhupalan Speaker : IRBM	Chairman : Mr David Lai Panelists : IRBM Ms Annie Thomas (RMCD) Mr Poon Yew Hoe	Chairman : Ms Seah Siew Yun Speakers : Mr Chow Chee Yen Mr Vijey M Krishnan

Please contact CTIM Secretariat at 03-2162 8989
Unit B-13-1, Block B, 13th Floor, Megan Avenue II
No.12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur, Malaysia
or visit website at www.ctim.org.my

Please present your identification card upon registration for verification purposes. Collection of the certificate of attendance is by registered participant only.

10 CPD points

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Based on the merit of each applicant.