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A Man with a Vision

– AN EXCLUSIVE WITH DATO SHUKOR

Inside:

- Cover Story: Innovation Grants and Tax Incentives
- Regulating Tax Professionals: Evaluating the Malaysian Framework
- Tax Incentives for Health Tourism
- Tax Incentives for Petroleum Exploration

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Continuing Professional Development (CPD)

CPD EVENTS:
APRIL – JUNE 2011

Month/Event	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non-member	CDP points
	Details				REGISTRATION Fee (RM)			
APR 2011								
Workshop: Tax Planning on Individual's Income from Employment and Investments	5 Apr	9am-5pm	Kuching	Sivaram Nagappan	315	365	415	8
Workshop: Tax Planning on Individual's Income from Employment and Investments	6 Apr	9am-5pm	Kota Kinabalu	Sivaram Nagappan	315	365	415	8
Workshop: New Public Rulings in 2010/2011	6 Apr	9am-5pm	Johor Bahru	Chow Chee Yen	335	385	435	8
Workshop: Recent Tax Cases 2010/2011	7 Apr	9am-5pm	Penang	Saravana Kumar	335	385	435	8
Workshop: Transfer Pricing and International Tax Planning	12 Apr	9am-5pm	Kuala Lumpur	Harvinder Singh	350	400	460	8
Workshop: New Public Rulings in 2010/2011	13 Apr	9am-5pm	Malacca	Chow Chee Yen	335	385	435	8
Workshop: Recent Tax Cases 2010/2011	18 Apr	9am-5pm	Kota Kinabalu	Saravana Kumar	335	385	435	8
Seminar: Interest Restriction, Deductibility of Financing Costs & Withholding Tax	20 Apr	9am-5pm	Kuala Lumpur	Various Speakers	Early bird 375 Normal 425	Early bird 425 Normal 475	Early bird 475 Normal 545	8
Workshop: Recent Tax Cases 2010/2011	20 Apr	9am-5pm	Kuching	Saravana Kumar	335	385	435	8
Workshop: Recent Tax Cases 2010/2011	25 Apr	9am-5pm	Ipoh	Saravana Kumar	335	385	435	8
Workshop: New Public Rulings in 2010/2011	26 Apr	9am-5pm	Kuala Lumpur	Chow Chee Yen	350	400	460	8
Workshop: Recent Tax Cases 2010/2011	29 Apr	9am-5pm	Malacca	Saravana Kumar	335	385	435	8
MAY 2011								
Workshop: Implementation of Single Tier Tax System	4 May	9am-5pm	Kuala Lumpur	Vincent Josef	350	400	460	8
Workshop: New Public Rulings in 2010/2011 (re-run)	9 May	9am-5pm	Kuala Lumpur	Chow Chee Yen	350	400	460	8
Workshop: New Public Rulings in 2010/2011	13 May	9am-5pm	Penang	Chow Chee Yen	335	385	435	8
Workshop: Recent Tax Cases 2010/2011	16 May	9am-5pm	Johor Bahru	Saravana Kumar	335	385	435	8
Workshop: Entertainment & Promotional Activities, Deductibility of Bad Debts	18 May	9am-5pm	Kuala Lumpur	Chris Low	350	400	460	8
Workshop: Implementation of Single Tier Tax System	19 May	9am-5pm	Malacca	Vincent Josef	335	385	435	8
Workshop: Recent Tax Cases 2010/2011	20 May	9am-5pm	Kuala Lumpur	Saravana Kumar	350	400	460	8
Workshop: Implementation of Single Tier Tax System	24 May	9am-5pm	Ipoh	Vincent Josef	335	385	435	8
Workshop: Prevent Taxes From Eating Into Your Investments	26 May	9am-5pm	Kuala Lumpur	Harvinder Singh	350	400	460	8
Seminar: Managing & Understanding Financial Reporting Standards (FRS) - Unravelling the Tax Issues	31 May	9am-5pm	Kuala Lumpur	Various Speakers	Early bird 375 Normal 425	Early bird 425 Normal 475	Early bird 475 Normal 545	8
JUN 2011								
Workshop: Top International Tax and Treaty Issues in 2010/2011	2 Jun	9am-5pm	Malacca	Tan Hooi Beng	335	385	435	8
Workshop: Top International Tax and Treaty Issues in 2010/2011	7 Jun	9am-5pm	Ipoh	Tan Hooi Beng	335	385	435	8
Workshop: Implementation of Single Tier Tax System	9 Jun	9am-5pm	Johor Bahru	Vincent Josef	335	385	435	8
Workshop: Tax Audits & Investigations	13 Jun	9am-5pm	Kuala Lumpur	Farah Rosley	335	385	435	8
Workshop: Implementation of Single Tier Tax System	15 Jun	9am-5pm	Kota Kinabalu	Vincent Josef	335	385	435	8
Workshop: Implementation of Single Tier Tax System	16 Jun	9am-5pm	Kuching	Vincent Josef	335	385	435	8
Workshop: Implementation of Single Tier Tax System	23 Jun	9am-5pm	Penang	Vincent Josef	335	385	435	8

DISCLAIMER: CTIM reserves the right to change the speaker(s)/date(s), venue and/or cancel the events without notice at their discretion.
ENQUIRIES: Please call Ms Ally or Ms Nur at 03-2162 8989 ext 113 and 106 respectively or refer to CTIM's website www.ctim.org.my for more information on the CPD programmes.

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

Institute Address :

The Secretariat
Unit 1-5, B-13-2, Block B, 13th Floor
Megan Avenue II, No. 12 Jalan Yap Kwan Seng, 50450 Kuala Lumpur, Malaysia.
Telephone: 603.2162.8989
Facsimile: 603.2162.8990
E-mail: secretariat@ctim.org.my
website: www.ctim.org.my

CTIM Branch Offices/Chairman 2010-2011

East Coast Branch
Mr Wong Seng Chong
Messrs Lau, Wong & Yeo
1, 2nd Floor, Lorong Pasar Baru 1
25000 Kuantan, Pahang

Malacca Branch
Mr Viknesvaran s/o Arumugam
A. V. Varan & Co
40-A, Taman Kota Laksamana
75200 Melaka

Southern Branch
Ms Tan Lay Beng
Tee & Partners
Room 335, 3rd Floor
Johor Tower, Jalan Gereja
80100 Johor Bahru, Johor

Northern Branch
Mr Andrew Ewe Keang Teong
Mathew & Partners Consulting Sdn Bhd
Unit 41-5-1, 5th Floor, Wisma Prudential
41 Jalan Cantonment
10250 Pulau Tikus, Pulau Pinang

Perak Branch
Mr Loo Thin Tuck
No. 5-2A, Jalan Medan Ipoh 10
Bandar Baru Medan Ipoh,
31400 Ipoh, Perak.

Sarawak Branch
Ms Regina Lau
KPMG Tax Services Sdn Bhd
Level 6, Westmoore House, Twin Tower Centre,
Rock Road, 93200 Kuching
93100 Kuching
Sarawak

Sabah Branch
Ms Teo Chew Hiong
Deloitte Malaysia
Lot B3.3-B3.4, 3rd Floor
Block B, Kompleks Kuwasa
88000 Kota Kinabalu, Sabah

Editorial Note

2011 kicks off with our bidding farewell to Tan Sri Hasmah and welcoming Dato Shukor as the Chief Executive Officer of Inland Revenue. CTIM successfully held an exclusive interview with Dato Shukor, where he enthusiastically voiced out his visions, goals and strategies in spearheading the Inland Revenue Board to greater heights. His passion and drive to turn Malaysia into a high income and developed nation are apparent. Together, we hope the nation will flourish in leaps and bounds!

In the New Economic Model and 10th Malaysia Plan, it is affirmed that innovation is a key mechanism in achieving the nation's objective of attaining Vision 2020. Our cover story, "Innovative Grants and Tax Incentives" seeks to address ways for the Government to boost its level of domestic innovation in order to stay competitive among the Asian nations.

The article, "Tax Incentives for Health Tourism", provides readers with an insight into the rapid growth of health tourism in today's world of medicine and how it can bring benefits to the local healthcare environment. Some of the challenges faced in Malaysia and the possible measures to be taken by the Government to place Malaysia as a leading player in the medical tourism industry are discussed.

A feature article, "Regulating Tax Professionals: Evaluating the Malaysian Framework" looks into the legal framework of tax professionals within Malaysia and Australia. It also discusses the roles and responsibilities of tax professionals as well as the areas of significant improvement. Will these strengthen and build a tax system of full integrity?

The recent discoveries of oil and gas off the coast of Sarawak saw an increase in Malaysia's oil reserves which create headlines across major newspapers in the nation. In this issue of Tax Guardian, an article entitled "Tax Incentives for Petroleum Exploration" is featured to provide a brief outline on upstream and downstream sectors, tax legislations and tax incentives offered in Malaysia. A comparison has also been done to determine how the incentives in Malaysia fare as opposed to those in other worldwide petroleum-producing countries.

In other regular sections like Tax Cases, International News, Learning Curve and Technical Updates, the features presented are just as informative. Hope you find them equally interesting.

Happy reading!

Dato Raymond Liew Lee Leong
Chairman
Editorial Committee

Table of Contents

Note : The views expressed in the articles contained in this journal are the personal views of the authors. Nothing herein contained should be construed as legal advice on the applicability of any provision of law to a given set of facts.

INVITATION TO WRITE

The Institute welcomes original contributions which are of interest to tax professionals, lawyers and academicians. They may cover local or international tax developments. Article contributions should be written in UK English. All articles should be between 2,500 to 5,000 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-13-2 Block B, 13th Floor
No.12 Jalan Yap Kwan Seng
50450 Kuala Lumpur
Malaysia.
E–mail: publications@ctim.org.my

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CCH Office : Commerce Clearing House (M) Sdn Bhd
Suite 9.3, 9th Floor, Menara Weld,
76, Jalan Raja Chulan, 50200 Kuala Lumpur,
Malaysia.
☎ : 603.2052.4688
Fax : 603.2026.7003
✉ : support@cch.com.my
Web : www.cch.com.my
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Courtesy Visit by the Association of International Accountants

On 10 January 2011, Ms Sharon Gorman (Recruitment & University Liaison Manager) of the Association of International Accountants, United Kingdom paid a courtesy visit to CTIM. She was briefed on the background, roles and responsibilities of the Institute. Following that, a brief exchange of information on tax practices in both countries was conducted.

Courtesy Visit by Universiti Malaysia Sabah

On 28 February 2011, Ms Noorhayati bt Mansor (Director of Accounting Centre) of Universiti Malaysia Sabah (UMS) paid a courtesy visit to CTIM. Ms Noorhayati was briefed on CTIM Professional Examinations. Both parties look forward to working together to create tax awareness among UMS students via career talks on taxation.

Career Talk for Students from Taylor's University

On 21 January 2011, a career talk for 35 students from Taylor's University was held jointly by CTIM and KPMG. The objective of the talk was to create awareness among students on a career in taxation as well as to provide a brief outline on the background, roles and responsibilities of the Institute.

CPD News

Seminar on Early Planning for the Year

The first seminar of the year was held on 18 January 2011 at Berjaya Times Square Hotel, Kuala Lumpur. The seminar entitled "Early Planning for the Year" was chaired by two distinguished Council Members of CTIM, Dr Veerinderjeet Singh and Mr Thanneermalai. The speakers were Mr K Sandra Segaran (Executive Director, Deloitte KassimChan Tax Services Sdn Bhd), Mr Lavindran Sandragasu (Executive Director, PricewaterhouseCoopers Taxation Services Sdn Bhd), Mr Bob Kee (Executive Director, KPMG Tax Services Sdn Bhd) and Mr Koh Siok Kiat (Director, Ernst & Young Tax Consultants Sdn Bhd). Four interesting topics were presented, namely Corporate and Operational Structures for Tax Efficient Market Penetration in 2011, Tax Opportunities Arising from the Recent Economic Transformation Programme (ETP), Transfer Pricing Planning to Minimise Tax Risks and Indirect Tax – Sales Tax & Service Tax.

A Series of Workshops on the "Submission of Return Forms B or BE 2010"

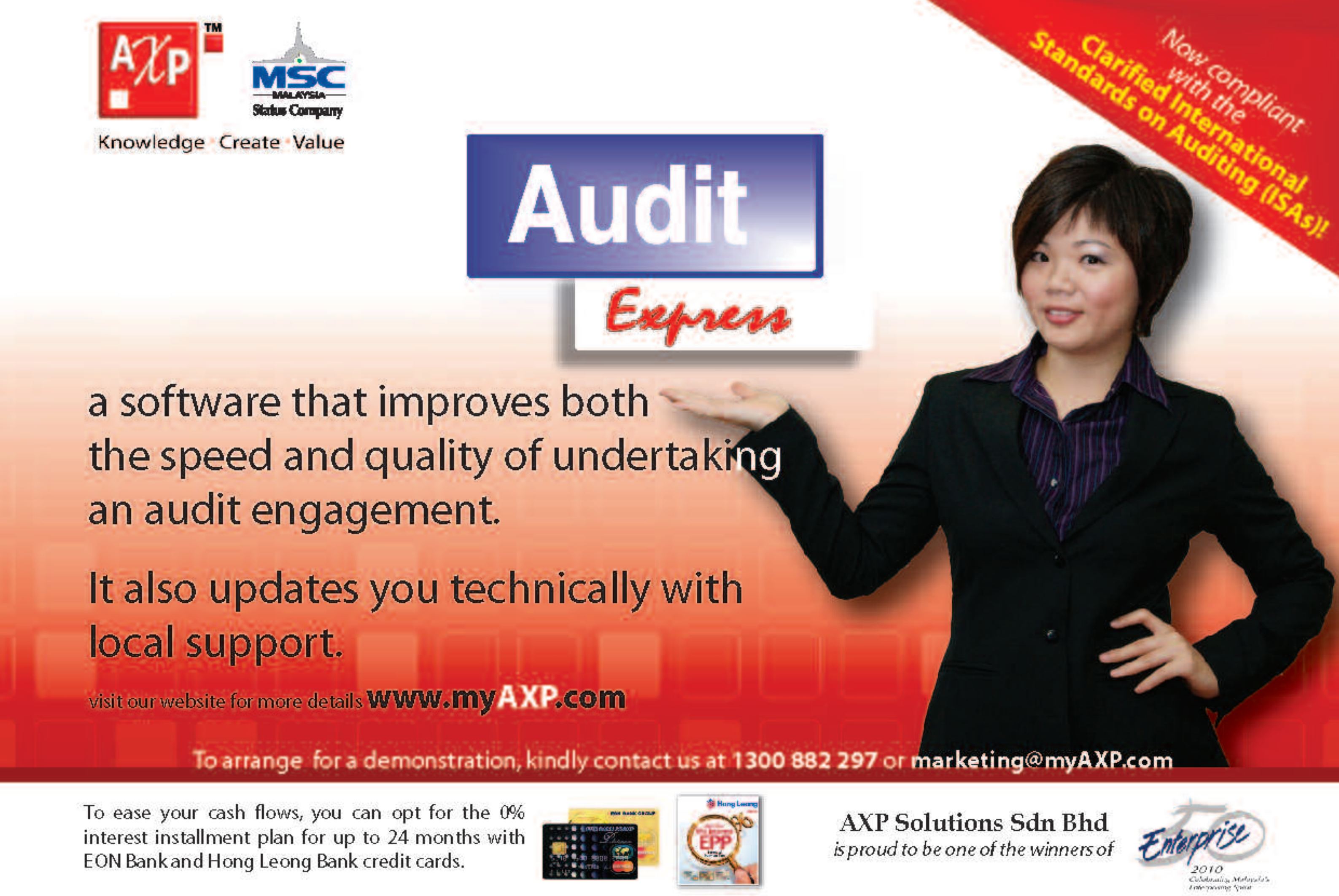
A series of workshops on the submission of return forms B or BE for year of assessment 2010 was conducted in Kuala Lumpur, Petaling Jaya, Johor Bahru, Penang, Ipoh, Malacca, Kota Kinabalu and Kuching from January to March 2011. Tax issues on the chargeability of employment income and ways to minimise tax exposures were presented by the speaker, Mr Vincent Josef.

Seminar on Maximising Tax Incentives

On 25 January 2011, CTIM conducted a seminar on "Maximising Tax Incentives – A Practical Perspective" at Seri Pacific Hotel, Kuala Lumpur, which was attended by more than 80 participants.

Mr N Rajendran, a representative from the Malaysian Industrial Development Authority (MIDA) and also the Director of Foreign Investment Promotion Division (Asia Oceania Zone), spoke on "Investment Opportunities in the Manufacturing and Services Sector in Malaysia". The second speaker, Dr Nakha Ratnam Somasundaram (Head of Taxation Unit, Multimedia University) presented a topic on "Malaysia Investment Incentives – Pioneer Status and Investment Tax Allowance".

After lunch, the seminar continued with two more topics, ie "Reinvestment Allowance, Special Building Allowances and Other Incentives" and "Double Deductions and Special Deductions". The topics were presented by Mr Sivaram Nagappan (Head of Tax & Subsidiary Support, Malaysia Airlines) and Mr Chris Low (Executive Director, BDO) respectively. Dato Raymond Liew (Council Member of CTIM) chaired the entire seminar.



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Suite 9.3, 9th Floor, Menara Weld, No. 76, Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia

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Innovation Grants and Tax Incentives

By Pik Seang Ang

This article provides a high-level commentary of the domestic innovation environment, and the current and recent Malaysian grants and tax incentives aimed at encouraging innovation.

Note that the term research and development (R&D) in this article refers to the scientific and systematic process of increasing knowledge to create new products and applications.

Why is R&D important?
R&D investment is widely recognised by businesses as critical in ensuring they remain relevant, adaptable and competitive. R&D is necessary to create new products, overcome technology gaps to make processes more efficient, safer and more environmentally–friendly, and to establish a foundation for further R&D.

R&D is also acknowledged by governments as a driver of increased productivity, industry development and sustainable economic growth. This has led many countries (including Malaysia) to offer fiscal incentives to encourage R&D activities and investment within their economies.

How does Malaysia compare?
An Ernst & Young survey conducted this year captured the different mechanisms countries apply to incentivise R&D activities. A summary of the survey is tabled below. However, Malaysia was not included in the survey.

Table 1

	Tax incentives			Other incentives		
	Tax credits*	Super–deduction	Other incentives	Direct Government grants	Other incentives	Number of mechanisms
Australia	✓	✓		✓		3
China		✓				1
Hong Kong			✓			1
India		✓	✓	✓	✓	4
Japan	✓					1
Korea	✓					1
New Zealand				✓		1
Singapore		✓	✓	✓		3

Source: Ernst & Young 2010 publication, Innovation incentives in the new tax landscape

**Tax credits are a dollar–for–dollar reduction in tax liability – may be refundable or non–refundable.*

The Malaysian Government uses both direct government grants and tax incentives programmes to attract and retain innovation. In reference to the above table, Malaysia has three mechanisms: super–deduction, direct government grants and other tax incentives.

Malaysia's commitment to investment in innovation is reflected in the high number of mechanisms as compared to its neighbouring countries. However, this investment has yet to be reflected in its R&D expenditure as a percentage of GDP.

Table 2

Country	2006
Australia	2.17
China	1.42
Hong Kong SAR, China	0.81
India	0.79
Japan	3.40
Korea	3.22
Malaysia	**0.64**
New Zealand	1.17*
Singapore	2.31

Indicator: Research and development expenditure (% of GDP)
Catalog Source: World Development Indicators
**2005 statistic – information is gathered bi–annually, 2007 figure is 1.26%*

The Malaysian Government recognises the importance of increasing R&D expenditure and is committed to enhancing the country's level of innovation. Both the New Economic Model and 10th Malaysia Plan feature innovation as a key mechanism to achieving its objectives and ultimately the Vision 2020 goal of attaining developed nation status. In the 2011 Budget, RM411 million was allocated to R&D activities (including commercialisation). Another RM71 million was allocated to the Special Innovation Unit established earlier this year to develop policies and strategies to create a conducive ecosystem for innovation.

Government grants

Grants directly reduce the financial cost of activities making it more attractive to undertake those activities or to undertake more of those activities. Malaysian innovation grants can be classified into two groups:

- One aimed at generally boosting local R&D and commercialisation activities; and
- One aimed at specifically subsidising technology and knowledge/intellectual property (IP) acquisitions or obtaining IP protection.

One of the features of Malaysian innovation grants is that most are only open to one or a small number of industries. Some grants require applicants to hold certain industry status such as the Biotechnology Commercialisation Grants which are only available to BioNexus companies, or the MSC R&D Grants requiring applicants to attain MSC Malaysia status. There is a lack of grants that are available to all industry sectors. However, this is likely to be purposeful, in order to focus and funnel R&D spending into identified critical areas for national growth and development. As the country develops into a high–income nation, opening up the grants to more industries would help ensure R&D opportunity is equally available to all innovative concepts and not just those in the target industries.

Despite innovation grants only being available to a small number of industries, they are administered by a number of different entities (e.g. MOSTI, Malaysian Biotechnology Corporation Sdn Bhd, MSC Malaysia and Cradle Fund Sdn Bhd), and information about the grants is scattered amongst the different websites. A central grant depository or governing authority would help businesses to efficiently locate information and find an appropriate grant.

Another feature of the Malaysian innovation grant system is that the majority are aimed at small–to–medium enterprises (SMEs), researchers and institutes of higher learning. These groups will benefit more from direct grants than from tax incentives as many may be paying minimal (or no) tax and financing is a greater obstacle to undertaking R&D activities.

Tax incentives

Tax incentives reduce the tax burden to businesses, commonly through super–deductions where more than 100% of the expenditure is deductible, or through tax holidays where no or reduced income taxes are imposed.

Malaysia's innovation tax incentives lie within two Acts – the *Income Tax Act 1967* (ITA) and *Promotion of Investments Act 1986* (PIA 1986).

ITA

Section 34A entitles the taxpayer to a double deduction (i.e. 200%) on non–capital expenditure incurred during a period of research approved by the Minister of Finance.

Section 34B allows a double deduction on cash contributions/donations to approved research institutes. It also allows a deduction where payment has been incurred for the use of services of an approved research institution or contract R&D company (as defined in the PIA 1986). This excludes any capital expenditure.

These incentives require the company to incur the expenditure first and claim a deduction later in its income tax return. Hence, the super–deduction tax incentive will incentivise innovation amongst organisations paying significant amounts of tax and currently engaging in minimal or no R&D activities. Smaller companies with cash flow concerns are likely to be more interested in a tax rebate scheme where R&D deductions/tax losses are

refunded to the taxpayer upon application (captured under 'Tax Credits' in Table 1). For example, Australia allows SMEs to cash out their R&D deductions via a refundable tax scheme. However, Malaysia currently does not have a tax rebate programme.

PIA 1986

The tax incentives under the PIA 1986 are governed by the Malaysian Investment DevelopmentInvestment Development Authority (MIDA). It essentially provides two types of income tax incentives: pioneer status (PS) and investment tax allowance (ITA). Looking purely at the R&D sector:

- PS is available to contract R&D companies and companies commercialising R&D findings. It exempts 100% of their statutory income for a period of 5 (contract R&D companies) or 10 (companies commercialising R&D findings) years.

- ITA is available to contract R&D companies, R&D companies and companies undertaking in–house R&D activities for their own purposes. Contract R&D companies and R&D companies are eligible for 100% allowance on qualifying capital expenditure, whilst companies undertaking in–house R&D activities are eligible for only 50% allowance on qualifying capital expenditure, for a period of 10 years. The allowances can be offset against 70% of its statutory income.

These tax holiday incentives may seem to be extremely attractive. However, they require tedious paperwork and more time and effort in presenting a business case to MIDA to gain approval than claiming the super–deductions. In addition, many R&D companies may not be profitable for a long period of time and if they are not tax payers, the incentives are ineffective at promoting R&D activities and innovation. In these cases, the R&D tax rebate previously mentioned would be more appropriate in encouraging innovation.

Conclusion

Malaysia recognises innovation as an important platform to transform itself into a high–income nation. A number of mechanisms have been established involving direct and indirect government funding to promote and support innovative activities.

However, Malaysia is behind other Asian nations in R&D spending which is seen as a key driver in economic growth and development. Malaysia may be able to increase the level of domestic innovation by opening up the grants to all industry sectors; introducing a tax rebate incentive programme; and establishing a single innovation authority to disseminate information and regulate incentives. TG

__Pik Seang Ang__ is a Senior Manager with 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 judgment. On any specific matter, reference should be made to the appropriate advisor.

A Man with a Vision

– An Exclusive with Dato Shukor

CTIM would like to congratulate Dato Dr Mohd Shukor on his appointment as the Chief Executive Officer (CEO)/Director General of Inland Revenue (DGIR) of Malaysia with effect from 8 January 2011.

On 10 February, ***Tax Guardian***, headed by Dato Raymond Liew (Chairman of the Editorial Committee); together with representatives from CTIM, namely Ms Ann Vong (Executive Director, CTIM) and Ms Nancy Kaaur (Manager – Examinations & Education, CTIM), had the exclusive privilege to interview Dato Shukor, who took time off his busy schedule to share his thoughts, plans and visions for the Inland Revenue Board (IRB). Representing the IRB together with Dato Dr Mohd Shukor were Mr Mazlan bin Wan Chik (Director, Corporate Communications Division) and Mr Masrun bin Maslim (Public Relations Officer – Media) who were on hand to give a very warm welcome to the team from CTIM.

THE FORMATIVE YEARS

Upon graduating with a Bachelor of Economics (Hons) degree from the University of Malaya in 1978, Dato Shukor joined Kwong Yik Bank (now RHB Bank) as a bank officer. A year later, being a JPA (Jabatan Perkhidmatan Awam) scholarship holder, he was offered a job as a tax officer at the Inland Revenue in Malacca. Five years later, foreseeing the advent of the computer age, he felt the need to equip himself with knowledge in that area and successfully pursued a post graduate diploma in Computer

Science. Thereafter, he was transferred to the Information Technology Department of the Inland Revenue in Kuala Lumpur. A year later, he furthered his studies and obtained a Master in Science (Taxation) from the Golden Gate University, USA. Upon his return to Malaysia, he was attached to the Companies Unit of the Inland Revenue for over a year before he was earmarked by the JPA for secondment to the British Malaysian Industry and Trade Association (BMITA) where he underwent six months of development training. In his thirst to improve himself and to serve more effectively in the executive arm of the Government, Dato Shukor then went on to earn a doctorate degree (Doctor of Public Administration) at the Golden Gate University.

Dato Shukor is thankful for the myriad of experiences and knowledge gained since he started his career, which have helped mould him into the person and leader that he is today. "I have been posted to all parts of the country during my service with the Inland Revenue and have had the privilege to work in the various departments of the IRB. That experience, along with the many inspirational individuals that I have worked with, is something that I will always cherish. I am deeply honoured and would thank the Government for having the trust and confidence in me to lead this beloved organisation," he said.

VISION AND LEADERSHIP STYLE

During the interview, it was evident that Dato Shukor has a great desire and drive to bring the IRB to greater heights: "My appointment as Chief Executive Officer coincides with the 15th Anniversary of the establishment of the Inland Revenue Board[1]. I feel that this is a good time to pause and reflect on our "growing up" experiences. It is also the perfect starting point for a gigantic leap into a new era.

"For a start, I aim to elevate the IRB brand. This serves two important purposes. Firstly, to instill a sense of pride and togetherness amongst all the IRB employees nationwide; secondly, to position the IRB brand as a name that inspires respect, admiration and confidence. It is my ardent wish that when anyone sees 'Lembaga Hasil Dalam Negeri Malaysia', they will subconsciously know that this a place where everyone will receive quality service delivered by professionals."

Asked on what he hoped to achieve in his tenure as CEO of the IRB, Dato Shukor said: "Income tax is a fairly complicated affair. The least we can do is to facilitate the whole process of dealing with the IRB. I plan to realign all of our major services, including registration of taxpayers, submission of tax returns, payment of taxes and processing of refunds. Without going into the specifics, we need to harness the potential of ICT (Information and Communications Technology). Life as we know it has changed, and still continues to change rapidly. Against this background, I have stressed to IRB employees the importance of innovation. As Albert Einstein once said, 'The definition of insanity is doing the same thing over and over again and expecting different results'.

"I have full confidence in IRB's ability to improve its services, as we have a good track record in terms of innovation. We were the first organisation to win the Prime Minister's Innovation Award in 2009. Of course, innovation can't be turned on and off like a tap, but my role as CEO is to promote a working environment where innovation and creativity flourish."

At the interview, Dato Shukor shared his thoughts on what leadership meant to him. "I'm not exaggerating when I say that I personally know most of our 10,000 employees. I am intimate with both the people and the working culture of the IRB. My leadership style is to rely on my personality and charisma rather than on the authority inherent in the post of CEO," he said.

"I admire the leadership style of Japanese companies, where bosses freely mingle with their subordinates and I believe that this is important for a conducive working environment. I would like to be known as a leader – and not a 'boss' – I want to create a culture and vision for the future."

Dato Shukor went on to explain how his experience in the compliance and operations management of the IRB had contributed to him gaining a good perspective in his role as CEO. In his new capacity, he reiterated his belief in empowering his officers and stressing that his role is to be a thinker; to *facilitate*, not *frustrate*. A leader must be a man of action.

"BE WITH US"

In his first 100 days as CEO/DGIR, Dato Shukor has travelled all over Malaysia to meet and share his vision with IRB staff. "I am now in the middle of my 'walkabout' programme, where I visit IRB employees to spread my new message: 'Be With Us'. In this context, the message exhorts IRB employees to pull together in the same direction while the IRB top management steers the course. In a much broader context, this message can also be used to appeal to the general public. "***Be With Us***" emphasises the cooperation required from taxpayers for the good of the nation.

To his IRB staff force, this tagline is modified to a more personalised, "Be With Me – trust me as your leader." "Be With Us" is pertinent to professional bodies such as CTIM which have a part to play by explaining the tax laws and procedures of taxation and tax compliance. For taxpayers, "Be With Us" underlines the IRB's desire to serve the public for the common good and development of the nation. All citizens of a country are morally and legally bound to pay their fair share of tax. They should not make the mistake of hiding or avoiding taxes. The money collected from taxes help make the country become stronger and help the Government provide a variety of services to the *rakyat*. Taxpayers have a responsibility to pay taxes on time and in the correct amount.

"We need to convey the message to the people out there that they are truly the Heroes in developing our Nation. That is why I introduced the new tagline "Be With Us" for the IRB.

1 Prior to 1996, the IRB was known as the "Inland Revenue Department".

Together we develop our nation. Your money, your future, our job! It's as simple as that."

The "Stick and Carrot" Approach

A believer in the two–pronged the "stick and carrot" approach, Dato Shukor equated the "carrot" to IRB's assistance, service and taxpayer education, and the "stick" to IRB enforcement. "Enforcement by the IRB must be without fear and favour", he said.

INCREASING REVENUE COLLECTION

In 2008, the IRB collected taxes amounting to RM90.7 billion, which is the highest collection recorded in the nation's history. Asked on how he could improve on this figure, Dato Shukor replied that he felt that the goal is achievable, stating IRB's intention to strive to increase the tax base and to adopt a friendly approach. "My main strategy is to keep promoting the importance of paying taxes to the people. Thus, tax education and publicity is crucial."

In line with taxpayers' education, Dato Shukor expressed the need for IRB to strengthen its delivery system as well. Currently, the three modes of delivery system are as follows:

- Face–to–face, where taxpayers go to the IRB offices in person
- By telephone, where taxpayers call up the IRB for enquiries
- By letters, faxes or emails.

Regardless of the delivery system used by taxpayers, there are areas of improvement that IRB could look into to make the taxpayer's experience pleasant, and this can be done through the implementation of an effective Customer Relationship Management (CRM) programme to manage and nurture the IRB's interactions with taxpayers. "I'd like my officers at the service counters to be Customer Care Officers and not Public Relations Officers. Telephone calls made to the Customer Service Centres could be charged at a flat local charge rate, while for taxpayers who send letters, faxes or emails, the IRB will continually improve its document management system."

Recognising that people would prefer not to pay taxes if possible, Dato Shukor said, "My greatest challenge is to – hopefully – eradicate this 'us vs them' attitude when it comes to taxes. Many people don't realise that tax system is the people's asset, something that is created by the people for the people. Our ultimate stakeholder is actually the *rakyat* of Malaysia. The best way to alter the public's perception of taxes is through continuous education. This is a challenge that I really look forward to, as taxpayers' education was the subject of my doctorate in the USA."

Strategies to Increase Revenue Collection

The IRB will continually strive to convey the message that the Inland Revenue is there to work together with the people to build the nation. Amongst the strategies employed are:

Taxpayers' education

- Taxpayers' education is an area that is close to Dato Shukor's heart. His view is that it is not sufficient to just teach taxpayers to comply with tax laws and pay taxes on time and in the correct amount; education must also be employed to inculcate a sense of honesty – to be honest when making claims for reliefs and rebates, and the amounts attributed to such claims. In addition, the IRB will continue to keep educating taxpayers by visiting their premises.

- *Improved collection mechanisms*
  Tax collection mechanisms via call–out centres, installment payments, monthly tax deductions, withholding tax, visits to premises, bans on leaving the country and civil suits are continuously implemented or carried out to ensure taxpayers fulfill their tax obligation and duty. For instance, in regard to call–out centres, the IRB's agents will make calls to taxpayers who have outstanding taxes. The purposes of such calls are to:
  – Remind taxpayers on their responsibility to settle their tax debts;
  – Inform taxpayers about the enforcement measures that will be taken if payment is still not made; and
  – Assist taxpayers who have cash flow problems by re–scheduling their installments according to their financial capability.
  "The IRB is also open to discuss with taxpayers on the timing of payments should they face difficulties in settling their taxes," Dato Shukor added.

- *Visits to premises*
  Such visits are a proactive effort on the part of the IRB to:
  – Deliver tax arrears reminders letters or notices of demand to the taxpayer, and hold discussions with the taxpayer on the payment;
  – Advise the taxpayer on how to make payment via the approved payment methods;
  – Explain to taxpayers the impact or action that will be taken against failure to settle tax arrears; and
  – Serve summons to the taxpayer who defaults on payments of arrears after notices of tax arrears demands have been issued.

- *Enforcement actions*
  – Taxpayers whose notices or summonses fail to be served will be traced from the information in the IRB Data Warehouse as well as other appropriate sources. A civil suit will be made if no feedback is received, or if the taxpayer fails to comply with the payment schedule that was agreed upon.
  – If needed, strong and unpleasant enforcement actions such as travel restrictions and civil suits will be used. However, such action will only be taken as a last resort and will only be taken against taxpayers who fail to pay taxes mandated under the *Income Tax Act 1967*.
  – Legal action will only be taken on a case–to–case basis to collect outstanding tax, depending on the amount of taxes involved.

- *Third–party reporting*
  Another new and growing area in tax compliance is the informant sector (i.e. third–party reporting). Dato Shukor assured that all informers' confidentiality will be

protected since Malaysia now has the *Whistleblower Protection Act 2010*. A reward will be given to the informers based on a percentage of the additional taxes collected by the IRB, and it may be of interest to note that such a reward is exempt from tax. He went on to stress that the IRB will go all out to catch taxpayers who illegally practice tax evasion and avoidance.

Increasing the tax base

The IRB has projected a 20% growth in the number of taxpayers in 2011 compared to the average of 10% seen in previous years. Dato Shukor elaborated on how this could be achieved via improvement of the IRB's online services such as the introduction of the e–Ledger and the Electronic Fund Transfer (EFT).

- In today's ICT age, IRB will be more creative in promoting its services. Online service is the trend, so the IRB will strive to provide such facilities to taxpayers.
- The e–Ledger application is to allow individual taxpayers to electronically view their personal details, tax transactions and their latest tax position online. By using this application, a taxpayer can check whether records of tax transactions namely assessments, payments and repayments have been updated in his or her tax ledger, determine whether personal details such as address and bank account numbers have been recorded correctly.

- Through the EFT, taxpayers who had overpaid would receive their refunds not more than three days after tax payment has been made compared with the present practice where cheques are issued after a longer period, and which is also more risky. With the EFT, IRB would also be able to minimise problems arising from tax refunds made through cheques where there are instances of cheques not being received by taxpayers, cheating cases and also expired cheques.

The introduction of these applications would make it easier for taxpayers to carry out their responsibilities without having to come to the tax office. The IRB hopes that the implementation of such hassle–free services will please taxpayers and encourage them to carry out their responsibilities, namely to register themselves as taxpayers, declare their tax payable and then pay their tax.

IRB ENFORCEMENT OF TAX LAWS AND RULES

Dato Shukor clarified the emphasis of IRB in regard to enforcement of tax laws and rules:

- Ensure taxpayers keep proper records.
- Ensure compliance to the tax laws and regulations.
- Inform taxpayers on their rights and responsibilities.
- Ensure taxpayers report the correct amount of income and pay the correct amount of tax.
- Ensure employers comply with the Monthly Tax Deduction Rules.

On the subject of audits and investigation, Dato Shukor had this to say, "The objective of tax audits is to achieve tax compliance. Admittedly, tax audits can also help the IRB in generating more revenue collection. The IRB works in close collaboration with tax agents and auditors to carry out tax audits and investigations to ensure that the general public understands and complies with tax laws". He then explained that it is difficult to state why certain taxpayers are selected because there are many factors involved. He cited an example where certain individual taxpayers claimed all 17 types of reliefs available, e.g. medical expenses, insurance, supporting equipment for disabled, children, fees for acquiring academic qualifications, and purchase of books and computer up to the maximum limit in a year. In such a situation, there is tax compliance since the taxpayer has complied with the law and paid his or her tax. But tax compliance alone is not enough, the taxpayer must be honest – if there is dishonesty, then the IRB may have to step in.

THE MONTHLY TAX DEDUCTION (MTD) SYSTEM

Asked on how the MTD system will help lessen the burden on taxpayers, Dato Shukor explained, "Monthly Tax Deduction is based on the commonly known 'Pay–As–You–Earn' (PAYE) principle practiced in many countries. It is not a final tax. As income tax is collected based on an employee's salary, taking into account their marital status, whether the spouse is working or not and the number of children, it is only an estimate." The MTD amount for the year can almost never exactly be the actual income tax payable, he said, since it does not take into account matters such as:

- Whether or not a taxpayer has life, medical or educational insurance;
- Claims for purchase of personal computer;
- Claims for medical expenses for self, spouse or parents;
- Claims for purchase of books;
- Claims for purchase of sports equipment;
- Whether the taxpayer has other income such as dividends or rental, etc.

As a result, taxpayers either end up paying a lump sum to make up for the shortfall in the monthly tax deductions or have overpaid taxes when the final tax is calculated during the submission of the Return Form on 30 April every year.

"'The MTD will benefit employees as they would be given their tax reliefs or rebate as soon as the transaction is done. In other words, they can enjoy their reliefs immediately before the actual tax amount is calculated. Employees have to inform their employers about the reliefs by filling up the TP1 Form. At the same time, if they have increment in their income at a particular month, they can fill up the TP2 Form and submit it to their employers, so that the tax deduction for that particular month can be increased. This would ensure that the deductions are close to the amount of tax payable assessed for the year. In addition, the IRB can also reduce the refund cases and the Government costs including postage and cheque charges," he said.

Thus, the IRB provides the avenue for employees to claim in advance and, as summed up by Dato Shukor, "The IRB has done its part; the employers now need to act".

NATIONAL HIGHER EDUCATION FUND CORPORATION (PTPTN)

The IRB has been given the responsibility as a collecting agency to overcome the problem of arrears faced by PTPTN (Perbadanan Tabung Pendidikan Tinggi Nasional). At the present time, the IRB is still in the process of drafting the law, system and operation with PTPTN to enable the IRB to recover the loans more effectively. There are many issues to be considered before it is tabled in Parliament. It is hoped that the draft, which is being fine–tuned currently, will be tabled in Parliament by this year.

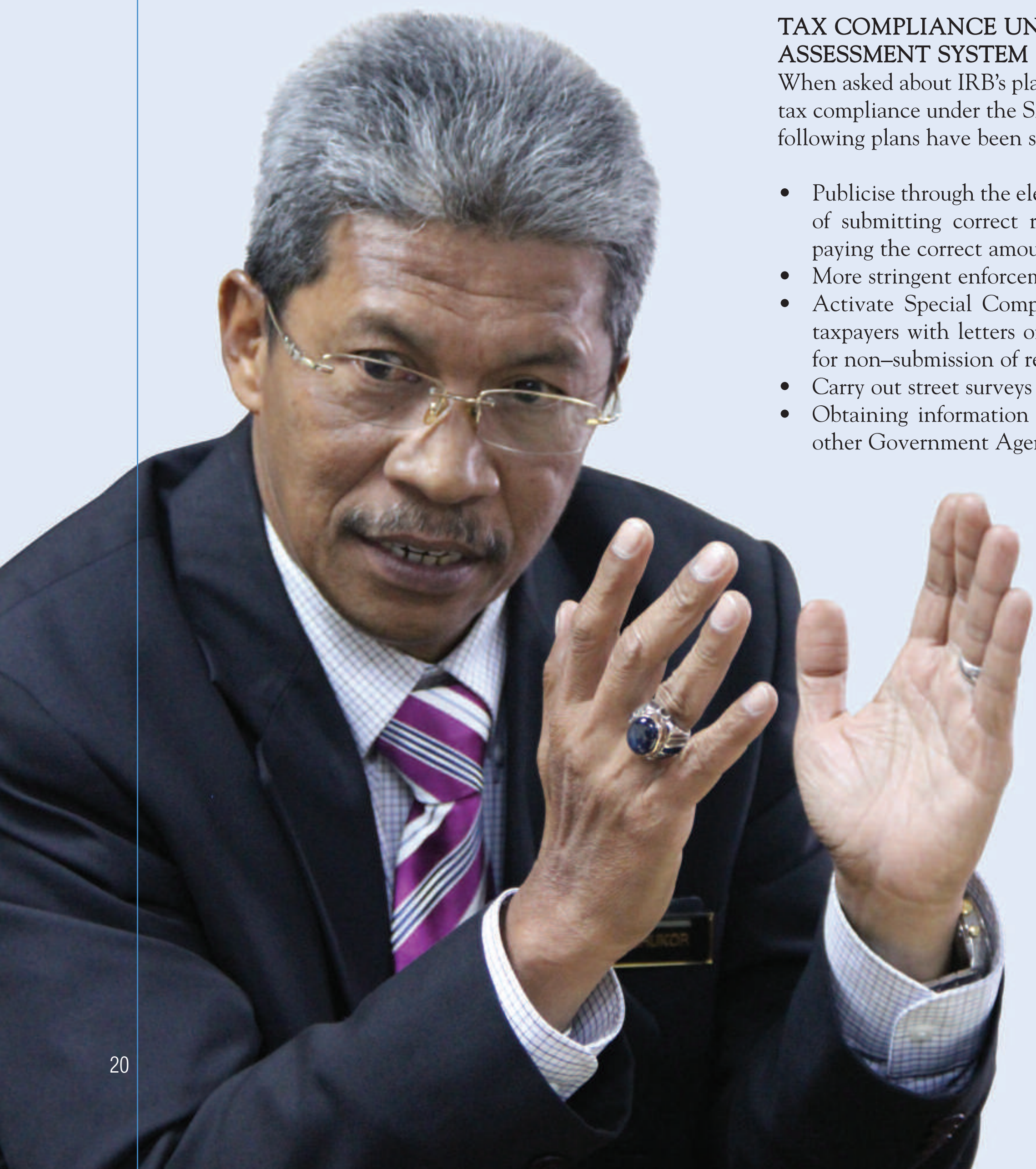
Going further, Dato Shukor explained, "The law is important to enable the IRB to take appropriate action or enforcement if borrowers fail to repay their PTPTN loans. For the time being, borrowers can voluntarily pay their loans in installments at the IRB offices since it is one of the repayment channels. Borrowers can also provide the details of their employers such as name, address and telephone number to the Enforcement and Collection Division in PTPTN. The Corporation will send the information to us and only then can we issue a salary deduction instruction to the employer. Normally, we will take about one to three months to implement repayment by salary deduction."

The IRB will remit the monies to the PTPTN once a month (i.e. in the middle of the month). Therefore, the monies remitted in the current month will only be updated by PTPTN in the middle of the following month. The payment records at PTPTN are updated according to the date the monies are remitted by the IRB to PTPTN.

TAX COMPLIANCE UNDER THE SELF ASSESSMENT SYSTEM (SAS)

When asked about IRB's plans to further improve the level of tax compliance under the SAS, Dato Shukor replied that the following plans have been suggested:

- Publicise through the electronic media on the importance of submitting correct returns before the due date and paying the correct amount of tax on time.
- More stringent enforcement activities.
- Activate Special Compliance Visits to serve defaulting taxpayers with letters on outstanding tax or final notice for non–submission of return forms.
- Carry out street surveys to increase the tax base.
- Obtaining information through system integration with other Government Agencies.



SiREU'S REQUEST TO RAISE REGIONAL ALLOWANCE

It was reported that the Sabah Inland Revenue Employees' Union (SiREU) had requested that the regional allowance, which was introduced in 1970, to be increased to 30% of the basic salary from the current 12% to 25%. Dato Shukor shared that a meeting to discuss the matter had been held with the union representatives in Kota Kinabalu in January. The matter needs to be studied further as the issue of regional allowance is subject to service circular endorsed by the Central Agency, which in this case is the Public Service Department (PSD).

IRB'S ROLE IN THE ECONOMIC TRANSFORMATION PROGRAMME (ETP)

The ETP is a comprehensive effort that will transform Malaysia into a high–income and developed nation by 2020. On the role of IRB in bringing the ETP into fruition, Dato Shukor said, "The IRB, being the largest contributor to the Government's coffer, is entrusted to ensure that tax collections are up to the mark as expected in the Government's budget. For instance, the Government's estimated expenditure for 2011 is RM211.987 billion of which 37.6% (or RM79.71 billion) is expected to come from income taxes. The Government expects IRB's revenue collection to increase over the next few years. Thus, IRB will have to strategise its operations to enhance service delivery to ensure the Government's target is met. Paradoxical as it may seem, it is the role of the tax administration to wave the "stick" to ensure those who evade tax are brought to book so as to be fair to those who diligently pay their fair share of taxes. At the same time, IRB will hang out the "carrot" to those who are willing to pay their dues by facilitating and assisting them so that paying taxes is as simple and easy as possible."

Dato Shukor highlighted that additional skills and knowledge obtained through local and international collaborations such as the International Bureau of Fiscal Documentation (IBFD), Organisation for Economic Co–operation and Development (OECD) and others will assist in achieving the Government's target.

TAXATION AND SECRETARIAL FEES AND DONATIONS TO CHARITIES

Dato Raymond Liew (CTIM) further raised the point, if taxation and secretarial fees could be allowed as deductible expenses in the tax computations. Dato Raymond Liew's rationale was that since IRB seeks the help of tax practitioners to educate taxpayers on the responsibility of paying taxes and complying with tax laws, the IRB should therefore allow taxation and secretarial fees paid by taxpayers to tax practitioners and corporate secretarial as deductible expenses. Currently, tax and corporate secretarial practitioners seemingly lose out because the expenses paid by taxpayers are not liable for deduction, hence taxable, and the income received by tax and corporate secretarial practitioners in relation to services rendered are taxable as well. Though sympathetic, Dato Shukor pointed out that the IRB is technically bound by s 33(1) of the *Income Tax Act 1967* which stipulates that only expenses which are wholly and exclusively incurred in the production of gross income are tax deductible. Dato Raymond Liew then expressed his hope that the IRB would reconsider this pertinent issue to which Dato' Shukor indicated that he will restudy the implications.

On a separate note, Dato Raymond Liew commented that donations given to charitable organisations approved under s 44(6) of the ITA should not be restricted to such a low percentage (i.e. restricted to 10% aggregate income for companies and 7% aggregate income for individuals) and that CTIM hopes that the percentage could be increased to encourage and build a more charitable community within the nation.

MOVING FORWARD

Throughout the entire interview, Dato Shukor's enthusiasm and drive to bring the IRB to even greater heights was apparent. He has a sincere desire to work towards aligning the IRB's strategies to meet Vision 2020's aim of achieving a developed nation status.

Recognising that income tax is a fairly complicated affair, he wants the IRB to facilitate the whole process of making it easy for taxpayers to deal with the IRB. A large part of this endeavour would be achieved by harnessing the potential of Information and Communications Technology by upgrading and continually improving systems and procedures, through an effective taxpayers' education programme and through a "taxpayer friendly" IRB.

"My dream is to leave a lasting legacy where there is a high degree of compliance by taxpayers, not because of the threat of enforcement, but as a result of their consciousness of paying taxes as their civic and moral duty," Dato Shukor ended.

Regulating Tax Professionals: Evaluating the Malaysian Framework

By Lydia Thiagarajah

1. Introduction

Professionals such as accountants, lawyers and tax agents are regulated in Malaysia. This is in line with the general consensus that the public should be protected from incompetent practitioners. In the case of tax professionals, the Government also benefits, especially in a country that adopts a self–assessment system of taxation (SAS). This is as well trained and ethical tax professionals equal better taxpayer compliance which equal greater revenue collection. The relevant issue is therefore not whether professionals should be regulated but rather what form and structure such regulations should take. Unlike the accounting and legal profession, tax agents in Malaysia are not regulated by an autonomous professional body established under a dedicated Act of Parliament. Instead, the profession is regulated by the Ministry of Finance vide one section in the *Income Tax Act 1967* (ITA) – s 153. This article evaluates the legislative framework regulating the tax profession with the aim to see if there is a more effective and efficient way to meet the regulatory objectives.[1] The discussion that follows is divided into six main sections.

The first section examines the role and responsibility of a tax professional.[2] The second section discusses the possible legislative frameworks for regulating professionals. Malaysia's tax regulatory framework is deliberated in section three and in the process reference is made to the legislative framework for accountants and lawyers. The fourth section critically evaluates the tax regulatory framework. Weaknesses observed are comparatively analysed against the recently introduced *Tax Agent Services Act 2009* in Australia to draw on strategies for improvement. The article concludes that the regulatory responsibility should be transferred from the Ministry of Finance to a statutory autonomous board established under law. With this move and the right governance steps implemented, the integrity of the tax system will be invigorated to the benefit of all stakeholders.

2. The tax professional's role and responsibility

A tax professional is typically involved in computing tax liabilities and assisting the client to submit his tax return to the tax authorities. The tax professional also provides advisory services, whether on the taxpayers' tax compliance obligations or on the tax implications of a particular exercise contemplated. The tax professional may also represent the client in his dealings with the tax authorities. The role of a tax

1 Section 153(1)(a) provides that a company, partnership or body of persons may also provide tax services if any one employee of the company, or partner in the partnership or member of the body is an approved tax agent. This article however confines itself to the process of registering an individual as a tax agent.

2 The words "tax professional" are used interchangeably with the words "tax agent" for the purposes of this article.

professional is therefore diverse and to a varying degree relies on both accounting and legal skills. The complexity of issues advised on would of course differ depending on the clients' requirements. This role and its accompanying responsibilities under the ITA and SAS are examined further below.

2.1 Penalties under the ITA

To ensure professionals operate at the highest ethical and professional standards, the ITA imposes penalties for incorrect returns and understatement of taxes. Based on s 113 and s 114(1A) of the ITA, a tax agent could be subject to penalties for incorrect returns and for understating the tax unless he is able to prove he acted in good faith (for offences under s 113) or exercised reasonable care (for an offence under s 114A).

Section 113 headed "Incorrect returns" provides as follows:

> (1) Any person who –
>
> (a) makes an incorrect return by omitting or *understating any income* of which he is required by this Act to make a return *on behalf of* himself or *another person*; or
>
> (b) gives any *incorrect information* in relation to any matter affecting his own chargeability to tax or the chargeability to tax *of any other person*, shall *unless he satisfies the court the incorrect return or incorrect information was made or given in good faith*, be guilty of an offence and shall, on conviction, be liable to a fine of not less than one thousand and not more than ten thousand ringgit and shall pay a special penalty of double the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct (italics inserted by author).

Section 114A(1A) is specifically directed to tax agents and provides as follows below the heading "Wilful evasion":

> Any person who assists in, or advises with respect to, the preparation of any return where the return results in an understatement of the liability for tax of another person shall, *unless he satisfies the court that the assistance or advice was given with reasonable care*, be guilty of an offence and shall, on conviction, be liable to a fine of not less than two thousand ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both (italics inserted by author).

2.2 The SAS system

Prior to 2001, Malaysia adopted the traditional tax assessment system known as the Official Assessment System (OAS).[3] Under an OAS, the taxpayer makes a full and frank disclosure as required by the income tax returns. The tax authorities then compute the taxpayers' tax liabilities based on the information given and issue the respective notices of assessment. The premise under an OAS is that the taxpayer does not possess the necessary knowledge of the tax laws and regulations. The primary disadvantage of the OAS is the manpower and resources needed by the Government to facilitate the system such that many countries have adopted the SAS system.[4]

Under the SAS, taxpayers have to submit the income tax return at the appropriate time and compute their own tax liability (submission of the income tax return is deemed to be the notice of assessment). There are numerous other compliance obligations for the taxpayer (such as providing an estimate of tax liability, complying with tax instalment payments etc.) and failing to comply with any of these requirements timely would incur tax penalties. A SAS, in contrast to an OAS, presumes taxpayers understand all the tax laws and regulations – no easy feat. Thus, the tax professionals' role becomes even more important as taxpayers would have to rely on tax professionals to educate them on the income tax laws and seek *inter alia* their assistance in completing and filing their tax return.

3 The self-assessment system (SAS) was imposed on companies in 2001, business, partnership and co-operatives in 2003 and on salaried individuals in 2004.

4 Sri Lanka (1972), Pakistan (1979), Indonesia (1984), Australia (1986), New Zealand (1988), Ireland (1988) and United Kingdom (1996) – See Kasipillai, J and Mustafa, M.H. (2000), Tax professionals' views on self assessment system, *Analisis* 7 (1 & 2) pp.107-122.

The tax professionals' role in SAS may be likened to the role of the tax authorities in an OAS. It is therefore in the Government's interest to work together with the tax professionals to ensure that tax professionals keep up to–date with the changes in the law and facilitate accurate and voluntary compliance by the public. The success of a SAS system would depend very much on the continuing co–operation, competence and integrity of tax professionals.

2.3 Chartered Tax Institute of Malaysia (CTIM)

The Chartered Tax Institute of Malaysia [formerly known as the Malaysian Institute of Taxation (MIT)], incorporated under the *Companies Act 1965* (CA), is a company limited by guarantee with the following objective: to promote, encourage and advance the status and interest of the tax profession in Malaysia. CTIM is a premier professional tax body that assists tax professionals to become better informed and more effective. CTIM also represents members' interest in its dialogues with the tax authorities and is often consulted for assistance and input by the Ministry of Finance on proposed tax laws. Many tax professionals are members of CTIM. Membership is granted upon satisfying the institute's academic and experience requirements. In recognition of CTIM's high standards, one of the prescribed educational qualifications to be a tax agent includes being a member of the CTIM.[5]

3. Legislative options

Regulating tax professionals (or in fact any profession) may take one of three approaches. The first approach would be to not legislate and let market forces determine the competence. The second approach would be for the Government to legislate and monitor compliance with these laws. The third approach is termed self–regulation. This is the situation of a group of persons, acting together, performing a regulatory function in respect of themselves and others who accept their authority. The specific legal model for self–regulation may vary. In a statutory self–regulatory system, the regulatory body would be established by an Act of Parliament dedicated for that profession. A voluntary self–regulatory system would be self–monitored by a framework provided by for example, professional bodies. Both types of self–regulation typically have the same aims and functions. The main difference is that the latter model would not have the force of law and professional bodies would only be able to exercise control over their members. Malaysia's current model adopts the second approach.

3.1 The ideal framework

The choice of legislative framework adopted, is perhaps not as important as the substance of the framework. An ideal framework must satisfy governance principles and have an appropriate balance of *ex ante* and *ex post* rules. *Ex ante* rules ensure quality of service as it sets out the prescriptive rules for entry and for maintaining entry. *Ex post* rules are equally important to ensure these standards are proactively monitored. *Ex post* rules would include procedures for handling complaints by the public and disciplining professionals that breach the rules. Good governance implies that the rules stand up to *inter alia* the principles of fairness, transparency, and accountability. Any discretionary power must be clearly defined and appropriate appeal procedures must be in place for such decisions to be challenged and reviewed. For tax professionals, ethical standards would be of paramount importance. It would thus be critical for such regulations to include enforceable codes of conduct on standards of behaviour and related ethical practices to maintain the integrity of the tax system.

4. Malaysia's regulatory framework

Section 153 of the ITA titled "Restriction on persons holding themselves out as accountants, tax consultants, etc" regulates the tax profession in Malaysia. This legal framework is deliberated below together with the administrative procedures.

4.1 Section 153 of the ITA

Section 153(1) is set out in broad terms as follows:

No person holding himself out as a tax agent, a tax consultant or a tax adviser (or under any other like description) shall be permitted to act in Malaysia on behalf of any person for any of the purposes of this Act unless he is a tax agent as defined in this section.

Section 153(3) defines a "tax agent" as follows:

For the purposes of this Act, "tax agent" means any professional accountant or person, approved by the Minister.

Minister is defined in s 2 of the ITA as the Minister for the time being charged with the responsibility of finance.

5 See Point 7 of Appendix A titled "Qualifications to be a Tax Agent, s 153(3) of the Income Tax Act, 1967" available at <http://www.treasury.gov.my/pdf/percukaian/lampiranA_lesen.pdf>

Under s 120 of the ITA, any person who without reasonable excuse contravenes s 153 of the ITA shall be guilty of an offence and on conviction, be liable for a fine of between RM200 and RM2,000, or, to imprisonment for a term not exceeding six months, or to both.

The ambit of tax services are not defined in s 153 and the words of s 153(1), are broad and all encompassing. The proviso to s 153(1) however excludes "an advocate in the lawful practice of his profession." The word "advocate" is not defined in the ITA but the meaning can be found in s 3 of the *Interpretation Acts 1948 and 1967* ("the Interpretation Act"). Section 3 states that an "advocate" means "a person entitled to practise as an advocate or as an advocate and solicitor under the law in force in any part of Malaysia". Section 3 of the *Legal Profession Act 1976* (LPA), the relevant law in force, states that "advocate and solicitor" where the context requires means an advocate and solicitor of the High Court admitted and enrolled under the LPA.

In order to be admitted and enrolled, an individual would have had to satisfy the qualifying academic criteria and experience requirements under the LPA. In order to practise, the advocate and solicitor would have to apply and be issued a practising certificate by the Malaysian Bar, the statutory body established under the LPA. The exclusion of an advocate from the requirements to be licensed under s 153 would imply that the Minister of Finance was satisfied with the qualification and experience requirements as well as the monitoring procedures set out under the LPA. The core subjects however required to pass in order to be a member of the Bar does not include taxation law.[6]

4.1.1 Section 22, Accountants Act 1967

The *Accountants Act 1967* (AA) is the legislation dedicated to regulating the accounting profession. Section 22 of the AA titled "Holding out as chartered accountant or auditor or tax consultant" prohibits any person to hold himself out as a tax consultant, tax adviser or any other like description unless he is registered as a chartered accountant under the AA. Section 26 states that contravention of s 22 shall result upon conviction to a fine not exceeding RM10,000 (RM20,000 upon a subsequent conviction) or to imprisonment for a term not exceeding one year (two years upon a subsequent conviction). The proviso to s 22, similarly to the proviso to s 153(1) of the ITA, excludes an advocate.

The primary objective of the AA is to promote and regulate the accountancy profession and not the tax profession. Section 22 should thus exclude requirements for holding out as a tax consultant or adviser. In addition, the mandatory criterion to be registered as a chartered accountant is not consistent with the requirements established by the Minister of Finance in order to be a licensed tax agent.[7] It is therefore important that s 22 be amended to address this anomaly.

4.1.2 Background to s 153

Prior to 1 January 2006, an approved company auditor could automatically act as tax agent. This is as s 153(3) of the ITA previously defined a "tax agent" to mean:

(a) a professional accountant authorised by or under any written law to be an auditor of companies;
(b) any other professional accountant approved by the Minister; or
(c) any other person approved by the Minister on the recommendation of the Director General.

The words "professional accountant" or simply "accountant" is not defined in the ITA or in the Interpretation Act. Section 23 of the AA prohibits any person to hold himself out as an "accountant" (or any other term of like description) unless he is registered with the Malaysian Institute of Accountants (MIA), the national regulatory body of accountants established under the AA.[8] In order to be registered with the MIA, the person must satisfy the qualification requirements specified and have had not less than three years relevant working experience.

In order for a "professional accountant" to be approved as a company auditor, s 8 of the CA requires the person to apply to the Minister charged with responsibility for finance. Section 8(2) provides that if the Minister "is satisfied that the applicant is of good character and competent to perform the duties of an auditor" under the CA, upon payment of the prescribed fee, he shall approve the applicant.

6 See later under s 6.3 for the position adopted in Australia.

7 See later under Section 4.2.

8 The term "Professional accountant" in the By–Laws (On Professional Ethics, Conduct and Practice) of the MIA is defined as a "member of the Institute". "Member" is defined as "a professional accountant who is registered with the Institute in accordance with the Act (defined within as the Accountants Act 1967) as a chartered accountant, licensed accountant or an associate member."

Similar to the position of the advocate, the qualifications and experience required to be an auditor previously satisfied the Minister of Finance. However, in recognition that the role of a tax agent is substantially different from the role of the professional accountant (whether licensed or not as a company auditor), and that the academic qualifications and practical training required for accountants would not be specifically skewed to tax laws, s 153 now requires all persons to be approved by the Minister. This discretion is given solely to the Minister and the words "on the recommendation of the Director General" has been deleted from the current s 153(3).

The Director General referred to in the previous s 153(3)(c) is the Director General of Inland Revenue (DGIR). The DGIR is responsible for the administrative functions such as the care and management of direct tax matters together with the Inland Revenue Board (IRB). The IRB is one of the main revenue collecting agencies under the Ministry of Finance and was established pursuant to the *Inland Revenue Board of Malaysia Act 1995*.

Although the Minister has the power under s 154 to make rules to facilitate the operation of the ITA, the Minister to–date has not made any rules pertaining to s 153.

4.2 License procedures

The Ministry of Finance has a guideline on the process to apply for a tax agent license.[9] The guideline is divided into two sections. Part A pertains to first time applicants and Part B for renewal candidates.

Based on the guideline, first time applicants have to undergo two stages before they may be approved as tax agents. The first stage requires that at least one of the prescriptive academic qualifications and practical training as at set out in the accompanying Appendix A be met.[10] The applicants must also have attended the latest annual Budget seminar organised by the Inland Revenue Board or the Chartered Tax Institute of Malaysia (CTIM). The applicant must have obtained 40 continuing professional development (CPD) or professional education (CPE) points in a year. Appendix B sets out the details on how the CPD/CPE points are calculated. As an example, contributing to an article in the magazine published by either the CTIM or the Malaysian Institute of Accountants (MIA) on individual taxes would be equal to 10 points.[11] The applicant must also list out at least twenty clients (segregated between clients that have been audited or not) during the past year and provide a testimonial letter from his employer on his experience. The application must enclose the prescribed fee of RM50 along with the application.[12]

The guidelines state that only candidates that fulfil these conditions will be called for an interview by the Inland Revenue Board.[13] Thus, it is unclear why s 153(3) specifically removed the words "on the recommendation of the Director General." Individuals who fail the interview may appeal to the Minister of Finance within a period of 6 months from the date of rejection and the second interview will be conducted by both the Ministry of Finance and the Inland Revenue Board (IRB).

For candidates applying for renewal, apart from enclosing the fee of RM50, the candidate must have attended the latest Budget Seminar organised by the IRB or CTIM and must have accumulated 90 CPE points as set out in the same Appendix B within the last 3 years. The form however still requires the academic qualifications to be stated and a list of at least thirty clients segregated between clients that are being audited or not. There is however no interview process required for renewing the license.

Upon approval, the unique number allocated to tax agents must be quoted in all tax returns submitted and in all correspondences with the tax authorities. Applications that have been approved are valid for a period of three years and candidates must renew their applications at least 4 months before the expiry date.[14] With effect from 1 July 2010, it is

9 The guideline is available at the Treasury Malaysia's portal at < http://www.treasury.gov.my/index.php?option=com_content&view=article&id=300%3Apanduan–bagi–permohonan–ejen–cukai&catid=97%3Acatlesen&Itemid=204&lang=my> The guideline is drafted in the national language and there is no English translation available.

10 See Appendix A, supra, note 5.

11 See Appendix B titled "Continuing Professional Development (CPD)/ Continuing Professional Education (CPE)" available at < http://www.treasury.gov.my/pdf/percukaian/lampiranB_lesen.pdf>

12 This is in accordance with s 153(5) "A fee as may be prescribed by the Minister by an order published in the Gazette shall be paid on the application for an approval or renewal of an approval under subsection (4)."

13 See Para 2c of the Guideline, supra note 9.

14 This is stated in the Guideline and is in accordance with s 153(6) that provides that: "An approval or renewal of an approval under this section shall be valid for – (a) a minimum period of twenty–four months beginning from the date of such approval or renewal; or (b) any other period as approved by the Minister which shall not be less than twenty–four months beginning from the date of such approval or renewal."

mandatory that all applications (first time applicants and renewal applicants) be made on–line.[15]

5. Areas for improvement

There is concern that the current processes do not satisfy the principles stated in Section 3.1. The overriding weakness is the lack of independence as there is no representation by members of the profession on the panel that determines the suitability of the applicants and administers the registration requirements. Even if there may not be any evidence of irregularities to–date, to adapt a line from Gower, "good governance must not only be done but must manifestly be seen to be done."[16] Specific areas for improvement are mentioned below.

5.1 Independence

Tax agents are dependent on the license to continue to act lawfully for their livelihood. Entrusting the Inland Revenue Board (IRB) with the responsibility of participating in the licensing decision, would mean that the tax agents are in theory subservient to the IRB. This may detract from the tax professional's responsibility to act in the best interest of their client The obligation to list out the tax agents' client database with tax reference numbers and to distinguish the portfolio based on cases being audited or not by the IRB also reflect a misplaced understanding of the purpose of licensing professionals. To ensure clarity, the Minister of Finance should enact rules that set out the object of the regulatory framework.

5.2 Scope

There is no definition of "tax services" provided within s 153 and the words of s 153(1) are broad enough to cover in–house advisers. As such, there is no legal certainty on who would and would not have to comply with the licensing process. If the purpose of the framework is to ensure competence and high professional ethics, in–house tax advisers should be licensed. The current practise however is that in–house tax advisers do not apply for a tax agent license.

5.3 Competence assessment

The responsibility to determine the parameters for acceptable academic entry levels should be shared by both the profession and the regulatory bodies. This will assist the profession to maintain high standards

5.4 Interview process

The current process does not satisfy the governance principles of equity, objectivity or transparency. To ensure objectivity, the interview should not be conducted by Inland Revenue Board (IRB) officers but should be conducted by a selection Board that reflects all stakeholders. There is also no available public information on the purpose of the interview and the criteria used for evaluation. As the interview occurs after the initial screening of academic qualifications and practical training, the objectives must be made clear. In addition, applicants are not informed the reasons for failing the interview. There is also no prescribed timeline for the applicant to be informed of the decision.

15 See <http://www.treasury.gov.my/index.php?option=com_content&task=view&id=1518&Itemid=251&lang=en>. Guidelines for online procedures for new applicants are available at <http://www.treasury.gov.my/pdf/percukaian/UM_Pemohon_Baru_ver1.5.pdf> while guidelines for renewal applications are available at <http://www.treasury.gov.my/pdf/percukaian/UM_Pembaharuan_ver1.6.pdf>

16 See Gower's *Principles of Modern Company Law* (1979, 4th Ed), Sweet & Maxwell, London at p 583 that state "good faith must not only be done but must manifestly be seen to be done."

The appeal procedure should also be improved. Currently, an appeal will result in a second interview conducted by the officers from the Ministry of Finance and the IRB. Again, this second panel should be representative of all stakeholders and the candidate should also be given the opportunity to appeal to an independent tribunal.

5.5 Code of ethics for tax agents

Compliance with the code will be used as one of the criteria for approving and renewing the licence of the tax agent.[17] The suggestion is that the Code be reviewed to represent the interest of all stakeholders. As an example, the first paragraph emphasises that a tax agent should "….always give full co–operation when dealing with the IRB", but there is no reference to the tax agent's loyalty and duty to his client. Another flaw is that the Code requires the tax agent to prepare his submission in accordance with IRB guidelines. As the IRB guidelines do not have the force of law, it is misplaced for the Code to state that the tax agent must ensure that his submissions are in compliance with the guidelines issued by the IRB.[18]

6. Australia's regulatory framework

It is timely at this juncture to compare the reforms recently introduced in Australia against the weaknesses in Malaysia's current regulatory framework. The objective is not to provide a comprehensive analysis of the Australian position but is intended to provide a comparative position on the specific weaknesses mentioned in s 5 with the aim of suggesting ideas for improvements.

Australia introduced a new regulatory framework in 2009 with the introduction of the *Tax Agent Services Act 2009* (TASA) that took effect from 1 March 2010. The TASA and its accompanying regulations are a culmination of a consultation process that commenced in 1998.[19] The preamble of the Act states that it is "to establish the Tax Practitioners Board and to provide for the registration of tax agents and BAS agents, and for related purposes."[20]

6.1 Independence

The Tax Practitioners Board represents a group of people with mixed skills and experience – tax agents, lawyers, academics and business people.[21] The Board is entrusted under the TASA to do whatever is necessary to achieve the object of the TASA that clearly provides in Para 2–5 the following:

The object of this Act is to ensure that tax agent services are provided to the public in accordance with the appropriate standards of professional and ethical conduct. This is to be achieved by (among other things):

(a) establishing a national Board to register tax agents and BAS agents; and
(b) introducing a Code of Professional Conduct for registered tax agents and BAS agents; and
(c) providing for sanctions to discipline registered tax agents and BAS agents.

6.2 Scope

The scope of the services covered by the Act is clearly defined. Para 90–5 (1) provides as follows:

A tax agent service as any service –

- (a) that relates to:
  - (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
  - (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or
  - (iii) representing an entity in their dealings with the Commissioner; and
- (b) that is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
  - (i) to satisfy liabilities or obligations that arise, or could arise, under a taxation law;
  - (ii) to claim entitlements that arise, or could arise, under a taxation law.

17 The Code of Ethics for Tax Agents may be found at the CTIM's website at <http://www.ctim.org.my/cms/file/news/16/00515_Code%20of%20Ethics%20for%20Tax%20Agents.pdf> Part 4 of the code headed "Code of conduct" was prepared by the Ministry of Finance but is not available on either the Ministry of Finance's website or on the Inland Revenue Board's website. Part 4 of the code is also provided in the website of the Chartered Secretaries Malaysia that also reiterate that compliance with the code will be used as one of the measures for approving and renewing the tax agent license. See <http://www.maicsa.org.my/technical_tax_code.aspx>
18 See Paragraph 4.2.3 of the Code. Ibid.
19 See Page 1 of the Exposure Draft Explanatory Statement available at <http://www.treasury.gov.au/documents/1370/PDF/exposure_draft_es.pdf>
20 BAS stands for Business Activity Statements. A BAS agent is someone who provides BAS services that typically include book keeping activities related to Goods and Services Tax (GST). Requirements to be a BAS agent are not relevant for purposes of this article and will not be discussed.
21 The Tax Practitioners Board replaces the previous Tax Agents Board that operated in the six States in Australia. It is important to note that the previous Tax Agent Board also comprised a balanced mix of members i.e. one member would be an officer of the

Para 90–5(2) further provides that the regulations may specify services that are not "tax agent service". Thus advisers that are not intended to be included within the ambit of the TASA may be carved out. Registration may also be granted on a restricted service basis. As an example, a legal practitioner would be required to be licensed to provide tax services. His license would however restrict his ability to prepare and lodge tax returns unless he is able to satisfy the Board that he is competent to do the latter.

6.3 Competence assessment

The competence requirements are stringent under TASA. A person must satisfy the "fit and proper person" test and satisfy the prescribed qualification and education requirements as well as the relevant working experience. The criteria for determining the fit and proper person test is provided in Para 20–15 of the TASA. Schedule 2 of the Tax Agent Services Regulations (TASR) set out the prescribed academic and experience requirements.

As a comparison with the Malaysian position, advocates are required to be licensed. Apart from the academic qualifications required to be an Australian legal practitioner, the individual must have also have completed a course in basic accountancy principles and have successfully completed a course in Australian taxation law. The course must be approved by the Board and the individual must also satisfy the relevant experience requirements.

6.4 Interview process

There is no interview process involved and timelines on the Board's responsibilities are clearly defined. For first time applicants, Para 20–25 requires the Board to decide on the application within 6 months of receiving it. Para 20–30 also requires the Board to state the reasons for the decision if the application is rejected. Para 70–10 provides that the applicant may appeal to the Administrative Appeals Tribunal in such an instance.

6.5 Code of ethics for tax agents

A Code of Professional Conduct is introduced as part of the TASA. The Code is grouped into five categories to provide guidance to the tax agent on its conduct. The categories are as follows: 1) Honesty and integrity; 2) Independence, 3) Confidentiality; 4) Competence; and 5) Other responsibilities. The Code outlines the duties owed by tax agents to both its client and the Tax Practitioners Board. Under independence, Para 30–10(4) states: "You must act lawfully in the best interest of your client." There is also a new clear focus on discipline with the introduction of this enforceable Code of Professional Conduct. Sanctions are available where a tax agent does not comply with this code and the sanctions are wide ranging and could include an order to complete a course of training or suspension of the license or even termination of the license.

7. Conclusion

The ultimate aim of regulating tax professionals is to ensure that the interest of all stakeholders' are protected in a fair and balanced manner. Under the current legislative framework, members of the profession and the public are unrepresented. The Ministry of Finance sets the entry requirements, standards and determines the suitability of the applicants. A further concern is whether the Ministry has the capacity to monitor the performance of tax agents, offer support when the standards fall or even be in the position to investigate complaints from the public. The recommendation is therefore that a dedicated autonomous regulatory body be established under an Act of Parliament for this important group of professionals. This step will bring about significant improvements to the integrity of the tax system to the benefit of all stakeholders – taxpayers, tax professionals and not least, the tax authorities. TG

Lydia Thiagarajah is a lecturer at Monash University Sunway Campus. She is a Barrister–at–Law (Gray's Inn, London) and an advocate and solicitor of the High Court of Malaya. She received her Bachelor of Laws (LLB) at the University of Hull, her Master of Laws (LLM) at the University of Malaya and her Doctor of Philosophy (Laws) (PhD) at the International Islamic University Malaysia. Lydia is a licensed company secretary, a member of the Malaysian Institute of Chartered Secretaries and Administrators (affiliate scheme) and a fellow member of the Chartered Tax Institute of Malaysia. She can be contacted at lydiashalani@buseco.monash.edu.my

Tax Incentives for Health Tourism

By Amarjeet Singh

Health or medical tourism is broadly defined as people travelling across borders to obtain healthcare services including elective procedures and/or complex surgeries such as joint replacement (knee/hip), cardiac and cosmetic surgeries, dental treatments as well as general therapy or care for wellness.

The concept of medical tourism is not new and it has certainly evolved over time, together with advances in medicine. Based on written historical annals, the Sumerians constructed the earliest known health complexes around hot springs (circa 4000BC). In 18th century England, patients visited spas for health-giving mineral waters to treat diseases from gout to bronchitis. In current times, the world has seen the establishment of technologically advanced yet affordable healthcare or medical hubs like Brazil, India and Thailand.

What makes the health tourism market so attractive? Apart from being a high value–added service industry with immense potential for knowledge and technological gain, it is simply a booming industry in dollar terms. In 2005, the medical tourism industry generated approximately US$20 billion in global revenues. According to industry research, the medical tourism sector is set to become a US$100 billion sector by 2012, growing at the rate of 20% to 30% annually.

In this article, we consider some key statistics on the health tourism sector and incentives the Malaysian Government offers to industry players who wish to invest in this growing sector.

Where is Malaysia today in health tourism?
Recently, Malaysia was once again named as one of the top five medical tourism destinations for 2010 by *Tourism Review* and *Hotel & Resort Insider*. The country received well over 425,500 medical tourists in 2009[1] compared to 375,000 in 2008 and 103,000 in 2003[2]. Essentially, this translates to a growth of more than 300% over the last 6 years! This upward trend is expected to continue. The Health Ministry's deputy secretary–general, Dr Junaida Lee Abdullah, estimates some 625,000 medical tourists will visit Malaysia in 2011.

Malaysia's Economic Transformation Programme (ETP) has laid out the key strategies to generate a RM35.3 billion incremental gross national income (GNI) from the healthcare sector between 2010 and 2020.

1 Frost & Sullivan, 2010
2 Speech by Y.A.B. Dato' Sri Mohd Najib Bin Tun Haji Abdul Razak at the official launch of Malaysia Healthcare Travel Council on 21st December 2009

Towards this end, it aims to attract one million health travellers annually and promote the country as a strategic base for clinical trials, which will result in the creation of at least 181,000 new jobs[3].

Using fiscal and non–fiscal measures to boost health tourism

In support of its long–term ETP objectives, the Government has introduced a string of incentives to help boost the growth of the country's healthcare travel industry and make private hospitals more export–driven. These include:

1. 100% investment tax allowance (ITA) on qualifying capital expenditure incurred for a period of 5 years is eligible for set–off against 100% of the statutory income[4] for private hospitals that invest in expansion, modernisation, renovation, refurbishment of existing hospitals, or in the construction of new private hospitals, or the setting up of an International Patients Unit

2. Double deduction on expenses incurred by private hospitals in obtaining recognised domestic or international accreditation such as from the Malaysian Society for Quality in Health (MSQH) or the Joint Commission International (JCI)

3. 50% tax exemption[5] on the value of increased exports not exceeding 70% of the statutory income for healthcare services offered to foreign clients. "Foreign clients" is defined as:

   - A company, partnership, organisation or cooperative society which is incorporated or registered outside Malaysia;
   - A non–Malaysian citizen who does not hold a Malaysian working permit; or a non–resident Malaysian living abroad

   The tax exemption rate will be increased to 100% (subject to the restriction of 70% of the statutory income) for the years of assessment 2010 until 2014. However, for the purpose of the higher exemption rate, the following foreign clients are excluded:

   - A non–Malaysian citizen participating in the "Malaysia My Second Home" programme and his dependants;
   - A non–Malaysian citizen holding a Malaysian student pass and his dependants;
   - A non–Malaysian citizen holding a Malaysian work permit and his dependants; or
   - Malaysian citizens who are non–residents, ie living abroad, and his dependants

Funding through the Tourism Infrastructure Fund to finance incremental costs of new/existing healthcare infrastructure projects (excluding working costs) undertaken by Malaysian majority–owned companies/co–operatives, ie competitive

interest rates ranging between 4% to 5.5% per annum, computed based on annuity, yearly rest basis. The funding is for a minimum of RM5 million and a maximum of RM50 million or up to a maximum of 80% of the total project cost, whichever is the lower. For acquisition of land, the maximum available is up to 40% of the land cost or project cost, whichever is the lower[6].

Automatic employment/professional pass approvals for medical specialists who intend to serve in Malaysian hospitals. The approvals extend to non–Malaysian spouses who qualify as professionals as stipulated in the Malaysian Classification of Occupation (MASCO), and are subject to registration with the relevant professional bodies.

How relevant are the above fiscal measures to promoting growth in health tourism?

To ensure the effectiveness of fiscal measures introduced by the Government, there is a need to first analyse the key success factors relevant to the particular promoted sector or activity. What would be the critical success factors for a health tourism hub?

A McKinsey&Company 2008 report stated that 40% of medical travellers sought **advanced technology**, while 32% sought **better quality care** for medically necessary procedures. Another 15% sought **quicker access** to medically necessary procedures, while only 9% of medical travellers sought **lower cost care** for medically necessary procedures as their primary consideration. This is contrary to the common view that most health travellers seek treatment outside their home countries for cost reasons.

The above factors somewhat correspond to the strategies suggested in a research paper published by the Journal of Community Health, University Kebangsaan Malaysia Medical Centre. The following were some of the strategies recommended in the paper to improve health tourism in Malaysia:

- **State–of–the–art medical facilities** – there is a need for healthcare providers to consistently upgrade their infrastructure and provide state–of–the–art medical facilities and services.
- **Quality** – a fundamental aspect of health tourism. One way of achieving a high standard of quality, apart from having comprehensive legislation, is to have stringent quality control programmes, such as the accreditation process. Another way could be by affiliation to prestigious

3 Performance Management & Delivery Unit (PEMANDU) Economic Transformation Programme
4 The hospitals must be registered with the Ministry of Health and applications must be received by 31 December 2014.
5 The incentives are mutually exclusive to incentives under the Promotion of Investments Act 1986, Schedule 7B and Section 127(3)(b) of the Income Tax Act 1967.
6 Applications can be made to Under–Secretary, Tourism Services Division, Ministry of Tourism

hospitals in another country. The affiliations facilitate educational and consulting arrangements with experts of the relevant prestigious hospitals and lend the brand name of the prestigious hospitals to local players.

- **Human resource** – there must be sufficient supply of specialists and paramedics.

Looking at the above success factors and comparing the incentives offered, the Government should be commended on its formulation of incentives to influence healthcare players to focus on specific areas that are key to the development of health tourism. The incentives are well–thought and targeted to influence behaviour in line with the proposed strategies to grow the health tourism sector.

Are the measures sufficient?

The healthcare industry is certainly an emerging business that will bring various opportunities, and is a key contributor of foreign exchange. There are new players in the market and Malaysia is expected to face increasingly tough competition from other Asian countries like Thailand, Singapore and South Korea. All these have government–backed medical tourism programmes and are catching up fast.

Singapore is planning to develop into a leading healthcare destination in Asia, with its medical tourism market growing at a steady rate of 11.9% over the past few years (2004 to 2008). South Korea is planning to develop an island into a healthcare hub with all the latest healthcare facilities by 2011. The island will be a two–hour flight from five major Asian cities – Seoul, Beijing, Shanghai, Hong Kong and Tokyo. Thailand is forecasted to have the highest number of medical tourists among Asian countries by 2013[7].

Strategies to grow the health tourism sector	Incentives in support of these strategies
State–of–the–art medical facilities / advanced technology / lower costs	• ITA of 100% on the qualifying capital expenditure incurred for a period of 5 years • Funding incremental cost of new/existing healthcare projects
Quality / better healthcare	• Double deduction on expenses incurred in obtaining recognised accreditation Example: Malaysian Society for Quality in Health (MSQH) – Domestic; or Joint Commission International (JCI) – International
Human resource / quicker access to medical services	• Automatic employment / professional pass approval for medical specialists

Thailand offers full income tax exemption (limited to 100% of total investment value) for up to 8 years, and import duty exemption on all machinery or equipment throughout the project lifecycle. The incentives are available to new and existing healthcare providers.

Based on informal checks, Singapore is said to be considering concessionary tax rates of 5% to 10% on income arising from areas that primarily provide healthcare services to foreigners. Such developments in the region suggest that we cannot be lax or be comfortable with our current position in the health tourism industry. We need to consistently re–evaluate the incentives by regularly engaging with industry players. Some of the suggestions that the Government may consider to enhance the existing incentives are:

1. Extending the ITA for a second or third round, similar to that offered to hotels. This will support the healthcare providers to continuously upgrade their infrastructure, which appears to be a pre–requisite in this industry.
2. Offering withholding tax exemption on royalty / franchise fees that may be incurred by local healthcare providers when seeking affiliation and expertise from leading healthcare providers overseas.

A more focused approach?

The current platform of incentives would serve well to establish the building blocks of a robust healthcare tourism hub in Malaysia. Perhaps once we have reached a certain level of achievement in this area, the Government can consider a further refined approach in identifying sub–sectors to be promoted and correspondingly the targeted measures to expedite the development of such sub–sectors. Under the ambit of medical tourism, there are various specialist fields and offshoots such as dental tourism, cosmetic treatments as well as alternative (eg homeopathy, ayurvedic, etc) treatments.

Conclusion

Malaysia has done well so far in the healthcare sector by consistently coming out amongst the five best destinations for health tourists. This can partly be attributed to the Government's efforts in holistically looking at the industry and introducing appropriate measures, including fiscal measures, to help the sector grow. In this case, the incentives have worked positively and should be further enhanced to face the competition ahead. TG

This article was written by Amarjeet Singh, Director of Ernst & Young Tax Consultants Sdn Bhd with contribution from Sharon Yong and Janice Melissa Thean. 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 judgment. On any specific matter, reference should be made to the appropriate advisor.

7 Renub Research, 2009; Asia Medical Tourism Analysis (2008–2013)

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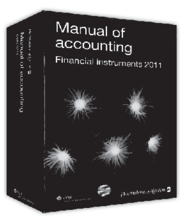

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Tax Incentives for Petroleum Exploration

By Peggy Then

Introduction

Malaysia is one of the largest net exporters of petroleum (ie oil and gas) in the region and the world.[1] It has many petroleum deposits in the sea beds of the oceans surrounding the country. Through the *Petroleum Development Act 1974*, the Government vested the entire ownership in and the exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum in Malaysia, on Petroliam Nasional Berhad ("PETRONAS"). PETRONAS enters into Production Sharing Contracts[2] (and more recently, Risk Service Contracts[3]) with petroleum companies and contractors to explore and develop the resources, and to produce the petroleum. At the downstream front, the activities undertaken include crude oil refining and petroleum products retailing, natural gas processing and retailing, and storage and transportation of crude petroleum and petroleum products.

The petroleum industry is broadly divided into the upstream and the downstream sectors:

Upstream

Exploration & Appraisal

Development

Production

Downstream

Refining/Liquefaction

Storage/Transportation

Retail/Distribution

1. Malaysia Oil and Gas Report – Q1 2011
2. A Production Sharing Contract in relation to petroleum is a type of contract signed between a Government and a resource extraction company (usually a petroleum company) concerning how much of the extracted petroleum from the country each will receive. In general, the country's Government awards the execution of exploration and production activities to a petroleum company. The petroleum company bears the risks of the initiative and explores, develops and ultimately produces the field as required. When successful, the company is permitted to use the money from produced petroleum to recover capital and operational expenditures, known as "cost oil / gas". The remaining money is known as "profit oil / gas", and is split between the Government and the company based on pre-agreed ratio.
3. The Risk Service Contract model (in relation to petroleum exploration and production in Malaysia) strikes a balance in sharing of risks with fair returns for development and production of already discovered fields. Under this arrangement, generally, PETRONAS will remain as the project owner while contractors are the service providers. Upfront capital investment will be contributed by the contractors which will receive payments commencing from first production and throughout the duration of the contract.

Current Tax Legislations

The main tax legislations applicable to the upstream and downstream sectors, and the main tax incentives available, are as follows:

	Upstream	Downstream
Main tax legislation	*Petroleum (Income Tax)Act 1967* (PITA)	*Income Tax Act 1967* *Promotion of Investments Act 1986*
IncomeTax Rate	YA 1993 and prior : 45% YA 1994 to YA 1997 : 40% YA 1998 onwards : 38%	YA 1988 and prior : 40% YA 1989 to YA 1992 : 35% YA 1993 : 34% YA 1994 : 32% YA 1995 to YA 1997 : 30% YA 1998 to YA 2006 : 28% YA 2007 : 27% YA 2008 : 26% YA 2009 onwards : 25%
Main tax incentives	Reduced income tax rates for projects located in the (Malaysia–Thailand) Joint Development Area[4], as follows: – – first 8 years of production : 0% – next 7 years of production : 10% – subsequent years of production : 20% Limited number of double tax deduction of expenses	Tax holiday for a period of up to 10 years under the Pioneer Status or Investment Tax Allowance incentives Reinvestment Allowance incentive on approved projects at the rate of 60% of qualifying expenditure Double tax deduction of expenses

It is clear from the above table that not only the tax rates for the upstream sector have traditionally been higher than that of the downstream sector, the tax incentives applicable for the upstream sector are few and far between as compared to that which are available to the downstream sector.

Proposed Tax Incentives

Under the Economic Transformation Programme (ETP), the Government has targeted intensifying the exploration and production of domestic petroleum resources in order to overcome the projected decline in domestic petroleum production. In this connection, the Government has proposed a new plan of tax incentives to be incorporated into the PITA, in order to promote the development of new petroleum reserves, to facilitate the exploitation of harder to reach oil and gas fields and to stimulate domestic exploration and production.

The five new incentives proposed by the Government are as follows:

1. *Investment Tax Allowance*

   Investment Tax Allowance (ITA) of up to 60% to 100% of qualifying capital expenditure to be deducted against statutory income to encourage the development of capital – intensive projects in the area of, for instance, Enhanced Oil Recovery, high CO_2 gas fields, High Pressure High Temperature fields, deepwater and infrastructure projects for petroleum operations.

Under the current tax structure in Malaysia, a person chargeable to petroleum income tax is given tax deductions on qualifying capital expenditure incurred in carrying on petroleum operations. The tax deductions are given in the form of capital allowances (ie tax depreciation) claimed annually at varying rates until the capital expenditure is fully claimed. The allowances claimed are deductible against income arising from petroleum operations.

The ITA proposed by the Government is an allowance given over and above capital allowances.

Investments in new technologies are crucial to tap into the largely un–worked deepwater and the high pressure high temperature boundaries of Malaysian petroleum fields. Furthermore, investments in Enhanced Oil Recovery activities are pertinent to increase Malaysia's average recovery ratio of approximately 23% to a level closer to the industry leaders' 42% to 45%.[5] (A recovery of 23% means that for every 100 barrels of petroleum in the ground, only 23 barrels are brought to the ground while the remaining 77 barrels remain yet to be recovered). The granting of additional tax deduction over and above the capital expenditure incurred should encourage investments in these areas.

4. Joint Development Area (JDA) is a 7,250 km square area in the Gulf of Thailand which was created as an interim measure to exploit the natural resources in the sea bed or continental shelf claimed by Malaysia and Thailand and to share the proceeds equally.
5. Extracted from a report by Frost & Sullivan (USA) dated 7 February 2011

2. *Reduced income tax rate of 25% (reduced from the current 38%) for marginal oil field development*

A significant portion of Malaysian petroleum reserves are locked in small fields. With increasing oil prices and innovative solutions, these small fields could be exploited economically. Under the ETP, the Government has indicated that the development of marginal fields will be a priority, and the reduction of 13% in income tax rate (from 38% to 25%) should certainly improve the commercial viability of venturing into marginal field development.

3. *Accelerated Capital Allowance*

Accelerated Capital Allowance of up to 5 years (reduced from the current 10–year period) for qualifying expenditure, where full utilization of capital cost could improve project viability.

Currently, capital allowances at the following rates are provided for in PITA:

	Initial allowance[6]	Annual allowance[7]
Plant		
Secondary recovery	40%	10%
Any other case	20%	8%
Fixed offshore platform	–	10%
Environmental protection equipment and facilities	40%	20%
Computer software and hardware	20%	40%
Building		
Secondary recovery	20%	3%
Any other case	10%	3%

In most instances, capital allowances are claimed at 20% for initial allowance and 8% for annual allowance. Hence 100% of the expenditure is claimed over a 10–year period. Accelerating the capital allowance claims up to 5 years would generally mean that more allowances are claimed in the earlier years and hence, more allowances are available to set–off against income in the initial years.

4. *Transfer of Qualifying Exploration Expenditure*

Transfer of Qualifying Exploration Expenditure (QEE) between non–contiguous petroleum agreement areas with the same partnership or sole proprietor to enhance contractors' risk–taking attitude, which could encourage high levels of exploration activities.

Currently under the PITA legislation, the "ring–fencing" provisions would limit the consolidation of income and expense deductions for tax purposes across different petroleum agreements undertaken by the same partnership. This means that the QEE incurred under a particular petroleum agreement could not be set–off against income arising from another petroleum agreement although both petroleum agreements may be undertaken by the same partnership. The exception to this ring–fencing rule is where the petroleum agreement areas are contiguous.

The absence of ring–fencing rules could result in a deferral in the Government tax revenue collections because a partnership that undertakes a series of projects under different petroleum agreements would be able to deduct exploration expenditure from each new project against income of projects that are already generating taxable income. However, more exploration and development activities may occur if taxpayers can obtain a tax deduction against current income, thus possibly generating more Government revenue over time when these new projects are successful.

5. *Waiver of export duty on oil produced and exported from marginal field development*

Export duty at the rate of 10% applies to crude petroleum oil exported from Malaysia. In practice, certain level of exemption from export duty is granted by the Government on a case–to–case basis. The level of exemption varies from one petroleum agreement to another, and there are conditions attached to the approval for exemption. The waiver of export duty in respect of marginal fields development would certainly improve the project viability.

6. Initial allowance is claimed in the year the expenditure is incurred.
7. Annual allowance is claimed annually, starting from the year the expenditure is incurred.

The above tax incentives that have been proposed to boost investments in Malaysian oil and gas industry have not been legislated but it is clear that the proposed tax incentives are to encourage investments in the upstream sector, particularly in the development of marginal fields.

How does Malaysia fare in the category of tax incentives as compared to its petroleum producing neighbours?

Thailand
Companies that are engaged in the exploration and production of petroleum in Thailand are governed by the Petroleum Income Tax Law. These companies are subject to petroleum income tax at the rate of 50% of annual profits. Tax consequences are classified according to the fiscal regimes commonly known as Thailand I, Thailand II and Thailand III. Each regime incorporates different benefit sharing structure. Taxable profits are subject to ring–fencing rules.

Other than tax holiday for the first 8 years of production for a contractor that undertakes petroleum production in the JDA and signs a production sharing contract with the Malaysia Thailand Joint Authority, there are generally no other income tax incentives for the upstream sector.

Equipment brought into Thailand for the use in petroleum operation is exempted from import duties.

Indonesia
The fiscal regime of companies that are engaged in the exploration and production of petroleum in Indonesia consists of production sharing contracts entered into between contractors and the Indonesian executive body for upstream activities, ie BP Migas. The contractors are subject to corporate income tax and the dividend tax or the branch profit tax for branch operations, at rates that vary according to the year the production sharing contract was entered into. Currently, the corporate income tax rate is 25%, whilst the dividend tax or the branch profit tax rate is 20%. Ring–fencing rules apply in Indonesia to restrict the deduction of costs incurred by the contractor in one contract area against income arising from another contract area.

The PSCs are exempted from import duties on the importation of capital goods and equipment. Meanwhile, VAT on importation and import withholding tax are either exempted or borne by the Indonesia Government through the use of a “master list” arrangement, although exemption on certain importation withholding tax is subject to separate approval from the Indonesian tax office. All importations for the purposes of oil and gas activities in Indonesia will be exempted from all forms of taxes under certain new Government regulations.

Vietnam
The fiscal regime of companies and contractors carrying on exploration and production of petroleum in Vietnam consists of production sharing contracts entered into with the Vietnam Oil and Gas Group, ie Petrovietnam. Petroleum companies are taxed at the rate of 32% to 50% of their taxable income, and the specific tax rate applicable to each production sharing contract shall be determined by the Prime Minister.

The "encouraged projects", ie projects where the petroleum operations are carried out in deep water (depth exceeding 200 meters) or remote offshore areas, areas where geographical and geological conditions are difficult, or any other areas as determined by the Prime Minister, are generally taxed at the preferential rate of 32%. Certain projects are even granted tax exemption for 1 to 2 years and 50% tax reduction for another 1 to 2 years is permitted where the petroleum company operates encouraged projects.

Philippines
The Government, through the Department of Energy, as the owner of the petroleum reserve in the Philippines may direct exploration and production of petroleum or may enter into service agreement (ie a form of production sharing contract) with service contractors for the exploration and development of the petroleum reserves.

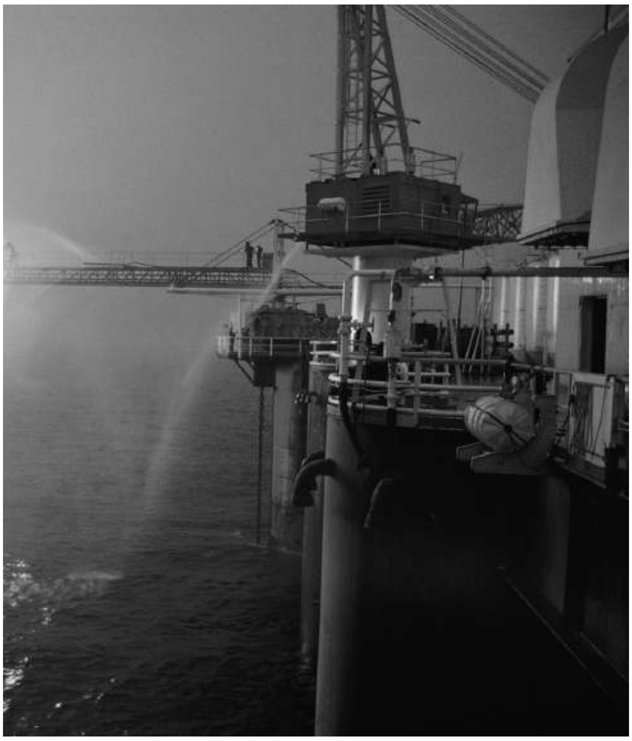
Service contractors are generally exempted from all national taxes except corporate income tax which is charged at a rate of 30% on its net income. Also, the importation of materials and equipment for petroleum operations is exempted from all taxes and duties. Furthermore, a special income tax rate of 8% of gross Philippine income is accorded to subcontractors. For service contracts executed after 1991, a local business tax ranging from 0.5% to 3% of gross receipts may be applicable.

Other parts of the world
It would appear that countries within the ASEAN regions do not grant very generous tax incentives for petroleum operations. What about other producers of oil and gas?

Saudi Arabia, one of the world top oil producers and net exporter of oil, imposes a corporate income tax rate as high as 85% on the tax base of companies engaged in oil or other hydrocarbon production in Saudi Arabia, with no corporate income tax incentives granted by the Government.

On the contrary, the *United States of America* (USA), the world top net oil importer and the world top oil consumer, offers many tax benefits for oil and gas exploration and production. These benefits include large upfront tax deduction for intangible drilling cost, Depletion Allowance that could result in 15% to 20% of the gross income from an oil and gas producing property to be tax–free, tax credits to enhance oil and gas production, and the Alternative Minimum Tax mechanism. Above all, the country does not have ring–fencing rules. However, it is noted that President Barack Obama's administration has in recent years called for the withdrawal of tax benefits granted to the upstream sector in the USA, and it remains to be seen how these proposals will change the oil and gas taxation of the country.

India, one of the two countries in the world with a population exceeding 1 billion, and one of the top ten net oil importer and oil consumer in the world, offers tax incentives to persons engaged in the exploration and production of mineral oil such as 100% tax holiday for 7 years from profits (subject to



the Minimum Alternate Tax (MAT), which is eligible as a credit for a period of 10 years against taxes payable once the tax holiday period lapses) and custom duty exemption for the importation of certain equipments and goods used in the petroleum operations.

By contrast, *China* which is the other country with a population exceeding 1 billion as well as one of the top ten net oil importer and oil consumer in the world, does not offer tax incentives for the upstream sector other than Custom Duty and VAT exemptions on the importation of certain qualified equipment and materials into China, subject to the approval of the relevant Government authority.

Conclusion

Malaysia traditionally does not offer many tax incentives for petroleum exploration. Nonetheless, in recent times, in view of the potential decline in oil and gas production in the country, the Government has announced certain tax incentives to attract more foreign investments and to boost the development of marginal and geographically and geologically challenging fields.

A closer look at the tax incentives offered by neighbouring countries as well as some top producers in the world reveals that tax incentives are not widely made available to the upstream players. Furthermore, the production and use of fossil fuels have raised environmental concerns, and the burning of fossil fuels is believed to contribute to global warming. As such, it would not be surprising that governments of oil producing countries are compelled to design tax policies to encourage the generation of alternative renewable energy and eventually cut back or stop granting tax incentives for future oil and gas projects. TG

Peggy Then is an Executive Director of KPMG Tax Services Sdn Bhd. Comments and opinions in this article are personal viewpoints of the author and are not reflective of KPMG Tax Services Sdn Bhd's perspective on the subject matter. The author can be contacted at pthen@kpmg.com.my.

TECHNICAL UPDATES

These technical updates are summarised from selected Government Gazettes published between 8 Dec 2010 and 16 Feb 2011 as well as Public Rulings and guidelines issued by the Inland Revenue Board (IRB) during the same period.

INCOME TAX

***Income Tax (Deduction for Premium for Export Credit Insurance based on Takaful Concept) Rules 2010* [PU (A) 428/2010]**

The Rules stipulate that effective from year of assessment 2011, premiums incurred for export credit insurance based on the Takaful concept and paid to a company approved by the Minister shall be allowed a double deduction in arriving at the adjusted income of the business.

***Income Tax (Exemption) (No 2) Order 2010* [PU (A) 478/2010]**

The Order exempts a company incorporated under the *Companies Act 1965* [Act 125] and resident in Malaysia in the basis period for a year of assessment from the payment of income tax in respect of income received from the sale of Certified Emission Reduction (ie gross income from the sale of Certified Emission Reduction less an amount equal to the expenditure, not being capital expenditure, incurred by the company for the purposes of obtaining Certified Emission Reduction.) The expenditure shall be deemed to be incurred in the basis period for a year of assessment in which the income from the sale of Certified Emission Reduction is received by the company. The company shall maintain a separate record for the income so exempted.

"Certified Emission Reduction" means a Kyoto Protocol unit equal to one metric tonne of carbon dioxide equivalent, calculated in accordance with Kyoto rules and is issued for gas emission reductions from an activity of Clean Development Mechanism (CDM) project (ie a CDM project approved by the Ministry of Natural Resources and Environment).

This Order is deemed to come into effect from the year of assessment 2011 until the year of assessment 2012.

LABUAN

Labuan International Business and Financial Centre (Labuan IBFC)

The following legislations relating to the Labuan IBFC are effective from 15 December 2010.

(a) Labuan Financial Services Authority (Processing and Approval Fees) (Labuan Financial Institutions) Order 2010 [PU (A) 413/2010]
(b) Labuan Companies Regulations 2010 [PU (A) 414/2010]
(c) Labuan Trusts Regulations 2010 [PU (A) 415/2010]
(d) Labuan Financial Services and Securities Regulations 2010 [PU (A) 416/2010]
(e) Labuan Islamic Financial Services and Securities Regulations 2010 [PU (A) 417/2010]
(f) Labuan Foundations Regulations 2010 [PU (A) 418/2010]
(g) Labuan Limited Partnerships and Limited Liability Partnerships Regulations 2010 [PU (A) 419/2010]

These regulations provide for the general administrative and compliance requirements (eg types of documents filed with the relevant authorities, licensing and registration requirements, filing due dates, etc) as well as fees payable to the Labuan Financial Services Authority for lodgement or filing of relevant documents and forms.

STAMP DUTY

***Stamp Duty (Remission) (No 2) Order 2010* [PU (A) 423/2010]**

Fifty percent of the stamp duty chargeable on <u>any loan agreement</u> executed between a Malaysian citizen purchaser and a financier to finance a purchase of one unit residential property (ie a house, a condominium unit, an apartment or a flat unit built as a dwelling house), costing not more than RM350,000 shall be remitted provided that:

(i) the sale and purchase agreement is executed between 1 January 2011 and 31 December 2012, both days inclusive, and
(ii) the purchaser does not own any other residential property at the date of execution of that sale and purchase agreement.
(iii) the application for remission may only be made once during the period of remission and is also applicable to co–purchasers.

The term, "financier" in the Order means:
(a) a bank;
(b) a financial institution;
(c) an insurance company registered under the Insurance Act 1996 [Act 553];
(d) a co–operative society registered under the Co–operative Societies Act 1993 [Act 502]; or
(e) an employer under an employee housing loan scheme.

***Stamp Duty (Remission) (No 3) Order 2010* [PU (A) 475/2010]**

Fifty percent of the stamp duty chargeable on <u>any instrument of transfer</u> for the purchase of only one unit of residential property costing not more than RM350,000 by an individual who is a Malaysian citizen, shall be remitted provided that:

(i) the sale and purchase agreement for the purchase of the residential property is executed on or after 1 January 2011 but not later than 31 December 2012:
(ii) at the date of execution of that sale and purchase agreement, the individual does not own any other residential property: and
(iii) the application for remission of stamp duty may only be made once during the period of remission and is also applicable to co–purchasers.

***Stamp Duty (Remission) (No 4) Order 2010* [PU (A) 476/2010]**

The Minister of Finance has in accordance with the provisions under s <u>80(2)</u> of the *Stamp Act 1949* decided on the policy for stamp duty on service agreements as follows:

(a) Service agreements executed on or after 1 January 2011 will be subject to stamp duty at the *ad valorem* rate of 0.1% on the value of the service contract.
(b) If the service involves various tiers (multi–tiered), the said service agreement instrument will be subject to stamp duty at the *ad valorem* rate of 0.1% on one level only. The ad valorem rate of 0.1% will be imposed on:
   (i) the first tier for service agreements executed between a private entity and the service provider: or
   (ii) the second tier for service agreements executed between an entity which has been exempted from the payment of stamp duty (eg the Government of Malaysia) and the service provider.

The service agreement instruments executed for other tiers will be subject to stamp duty at the fixed rate of RM50 and the excess duty will be remitted.

CUSTOMS AND EXCISE

***Service Tax (Rate of Tax) (Amendment) Order 2010* [PU (A) 411/2010]**

With effect from 1 January 2011, the service tax rate has been changed from 5% to 6% (except for credit and charge cards) under the above order.

The Royal Malaysian Customs Department has issued implementation guidelines for the imposition of an increase in service tax rate following the 2011 Budget announcement. The Guidelines provide guidance on when the 5% (old rate) and 6% (new rate) applies in the case where the payment date and the service period falls into two different years, ie 2010 and 2011 or the service period overlaps two years, ie 2010 and 2011.

***Service Tax (Amendment) Regulations 2010* [PU (A) 412/2010]**

The above regulations have been issued to include “paid television broadcasting services” as a taxable service with effect from 1 January 2011, as proposed in the 2011 Budget.

Case Commentaries

By Vijey M Krishnan and Kok Fie See

This commentary highlights the recent decision of the High Court with respect to the issues of time bar on additional assessments and deductibility of advertising and promotional expenditure.

Pensonic Sales & Service Sdn Bhd

Facts

The taxpayer deals in electronic products and all types of electrical home appliances. The only sales channel for the taxpayer's products is dealers who are in fact the taxpayer's customers who purchase, promote and re–sell the relevant products to end consumers. In the course of business, the taxpayer incurred "Tour Promotion", "Sales Promotion", and "Sponsorship" expenses and a deduction was claimed in respect of these expenses. "Tour Promotion", namely incentive trips, was given to dealers who meet published sales targets. "Sponsorship" and "Sales Promotion" include expenditure in relation to participating in fairs, providing shelves and signboards, opening of branch advertisements, etc.

A tax audit was conducted and additional assessments were raised in 2006. Certain disputed capital allowances which were carried forward from the year of assessment (YA) 1997 to YA 2000 [Preceding Year Basis (PYB)] were not allowed to be utilised in YA 2000 [Current Year Basis (CYB)]. The deduction of "Tour Promotion", "Sales Promotion" and "Sponsorship" was not allowed.

(a) Statutory time bar under the Income Tax Act 1967 (ITA)

One of the issues in the case was whether s 91(1) applies to the decision of the DGIR to disallow during 2006 the utilisation of capital allowances carried forward from YA 1997 to YA 2000 (PYB) in YA 2000 (CYB). The taxpayer did not choose to dispute whether the relevant capital allowances were correctly claimed in the first place. Previously, for YA 1997 to YA 2000 (PYB), only computation letters were issued by the DGIR as there was no chargeable income for those years.

Section 91(1) of the ITA provides that an assessment or additional assessment for a YA must be made within 6 years after the expiration of that YA save for cases which involve fraud, willful default and negligence. In this case, the taxpayer contended that the DGIR's act of disallowing the utilisation amounts to disallowing the claim for capital allowances in YA 1997 to YA 2000 (PYB). To disallow the capital allowances brought forward to YA 2000 (CYB) required re–computation of the assessment for YA 1997 to YA 2000 (PYB). *Prima facie*, as at 2006, 6 years have passed since the end of YA 2000 (PYB). Hence, the DGIR was time–barred from disallowing the utilisation of capital allowances in 2006.

(b) Entertainment expenditure under the ITA

The general provision of deductibility under the ITA is s 33(1) where it is provided that expenditure wholly and exclusively incurred in the production of gross income is deductible. However, it is subject to s 39(1)(l).

Section 39(1)(l) as it stood for the YAs in question disallows a deduction of:–

"… any expenses incurred in the provision of entertainment including any sums paid to an employee of that person for the purpose of defraying expenses incurred by that employee in the provision of entertainment…"

The DGIR disallowed the deduction of "Tour Promotion", "Sales Promotion" and "Sponsorship" holding the view that such expenses constitute entertainment under s 39(1)(l).

Decision of the Special Commissioners of Income Tax (SCIT)

On the time bar issue, the SCIT ruled in favour of the taxpayer and took the view that the act of disallowing the utilisation of capital allowance carried forward from previous

YAs involved re–computation of assessments for the previous YAs. Such re–computations amount to "assessments" under s 91(1) of the ITA.

Accordingly the SCIT found that the DGIR was time–barred in making the additional assessment in question for YA 2000 (CYB) in the absence of fraud, wilful default and negligence. The SCIT held that there was no evidence of the latter.

With regard to "Tour Promotion", "Sales Promotion" and "Sponsorship" the SCIT found in favour of the DGIR and took the view that they are caught under s 39(1). The SCIT also held that there was insufficient evidence on sponsorship.

Decision of the High Court

Both parties appealed against the decision of the SCIT. The High Court dismissed the DGIR's appeal on the time bar issue. In this regard, the learned judge said as follows:–

"I am of the view that it is not the label attached to an act but the nature of the act carried out by the Respondent that determines whether such act is tantamount to an assessment. In the present case I am of the view that the "re–computation" as the Respondent calls it involves the same act and operation as in making an assessment (The King v The Deputy Federal Commissioner of Taxation for South Australia; Ex Parte Hooper [1926] 37 CLR 368 as applied in A.B.C. v The Comptroller of Income Tax, Singapore, supra). Thus to my mind an assessment though labelled as a "re–computation" by the Respondent is still an assessment. I agree with the SCIT that the re–computation done by the Respondent is tantamount to an assessment."

In connection with "Tour Promotion" and "Sales Promotion", the learned High Court judge pointed out that the SCIT did not provide reasons why the expenses were caught under s 39(1)(l) and the SCIT merely gave a statement without proper reference or evaluation of the admitted or proved facts. The High Court stated that the SCIT had made findings of fact that "Tour Promotion" and "Sales Promotion" were not given gratuitously and were strictly for business purposes. The High Court took the view that the said expenses are deductible and do not amount to entertainment for the purposes of the ITA.

In respect of "Sponsorship", the High Court found that the taxpayer had furnished ample evidence to support its claim on expenditure incurred for "Sponsorship". Therefore the SCIT had erred in holding that the taxpayer had failed to furnish sufficient proof. The decision of the SCIT in respect of "Sponsorship" was set aside and the amount was held to be deductible.

The DGIR has filed an appeal against the High Court decision and it is pending hearing at the Court of Appeal.

Isyoda (M) Sdn Bhd

Facts

The taxpayer was principally involved in performing construction work for the Government, in particular, the construction of roads, bridges and buildings. For YAs 1997, 1998 and 1999, the taxpayer earned interest income of RM610,350, RM1,100,279 and RM1,162,599 (FD interest income) respectively from fixed deposits. The Director General of Inland Revenue (DGIR) assessed the taxpayer on FD interest income for YAs 1997, 1998 and 1999 respectively under s 4(c) of the ITA. Further, the DGIR treated the fixed deposits as investments made by the taxpayer and brought into account the same when calculating interest restriction under s 33(2) of the ITA. Dissatisfied with such decisions, the taxpayer appealed to the SCIT. The taxpayer contended that the FD interest income should be brought to tax under s 4(a) of the ITA and that interest restriction was not applicable.

Decision of the SCIT

The SCIT held that in order to determine whether the FD interest income falls under s 4(a) or s 4(c), one must scrutinise the nature and characteristic of the taxpayer's business. Based on extensive evidence adduced, it was a finding of fact by the SCIT that by virtue of the nature of its business, the taxpayer was heavily dependant on bank facilities to provide bank guarantees and performance bonds to its clients. These bank facilities were accepted and utilised for trade and business purposes and in each and every facility granted to the taxpayer, the relevant banks required monies to be placed in a fixed deposit and such monies had to be charged in favour of the banks as security for the banking facilities. The consequence of the taxpayer failing to provide a bank guarantee and performance bond required by its client is that the taxpayer would not be able to take possession of the construction site and the contract will be awarded to other contractors. The SCIT further found that the fixed deposits placed with the banks were not voluntarily made and the amount placed in the fixed deposit account was not predetermined.

The SCIT concluded that providing bank guarantees and performance bonds, as well placements of the fixed deposits were a necessary and inextricable part of the taxpayer's business.

Further, on the facts and circumstances of the case, the SCIT ruled that the fixed deposits were not investment, but part and parcel of the taxpayer's business. In this regard, the SCIT found that the taxpayer did not intend to place the fixed deposit as an investment of its monies but instead, the fixed deposits were placed purely for the purposes of complying with a requirement imposed by the banks. This is supported by the finding of fact that the taxpayer did not have the cash flow to place fixed deposits acknowledging that the source of monies placed in the fixed deposits was from internally generated funds whereby payment to sub–contractors and trade creditors was deferred. In addition, as the rate of interest receivable from the fixed deposits was generally much lower than the rate of interest charged on the banking facilities obtained by the taxpayer, the SCIT agreed with the taxpayer's contention that no reasonable business would invest monies via fixed deposits for a lower rate of interest and at the same time obtain banking facilities at a higher rate of interest.

Decision of the High Court and Court of Appeal

The High Court affirmed the decision of the SCIT. Recently, the Court of Appeal has affirmed the High Court decision. TG

Vijey M Krishnan and Kok Fie See are tax lawyers with Messrs Raja, Darryl & Loh. They can be contacted at mkvijey@rdl.com.my and kokfiesee@rdl.com.my. This article is for general information and is not meant to constitute legal advice.

International News

By Rachel Saw

The column only covers selected developments from countries identified by CTIM and relates to the period from 28 October 2010 to 26 January 2011.

Brunei

Corporate tax rate reduction reported

It has been reported that the corporate tax rate will be reduced from 23.5% to 22% in the year 2011.

In addition, small and medium sized enterprises will be subject to tax as follows:

– the first BND 100,000 of chargeable income is taxed at 25% of the applicable tax rate;
– the next BND 150,000 is taxed at 50% of the applicable tax rate; and
– the excess is taxed at the prevailing rate.

China (People's Rep.)

Urban maintenance and construction tax and education surcharge on foreign investment enterprises and foreign enterprises clarified

The Ministry of Finance (MoF) and the State Administration of Taxation (SAT) jointly issued a notice on 4 November 2010 (Cai Shui [2010] No 103) clarifying that the value added tax (VAT), consumption tax and business tax arising in the periods before 1 December 2010 – the date on which the urban maintenance and construction tax and education surcharge will be introduced for foreign investment enterprises and foreign enterprises – will not be included in the tax basis of urban maintenance/construction tax and education surcharges which are calculated on the basis of the total amounts of the three taxes mentioned above.

Enterprise income tax treatment of technologically advanced service enterprises

The MoF, SAT, the Ministry of Commerce, the Ministry of Science and the Committee of Development and Reform jointly issued a Notice on 5 November 2010 (Cai Shui [2010] No 65) concerning the enterprise income tax treatment of service enterprises which are technologically advanced. The notice applies to the period from 1 July 2010 up to and including 31 December 2013.

A preferential enterprise income tax rate of 15% will apply to qualifying service enterprises (for the definition see below) located in the 21 trial cities.

Further, the employee's education expenses incurred by the qualified service enterprises are deductible up to 8% of the total amount of salaries and wages used in calculating the taxable income for enterprise income tax purposes. Education

expenses in excess of 8% can be carried forward to the following years for deduction.

A service enterprise is eligible for the tax incentives described above if all the following conditions are satisfied:

(i) the enterprise is engaged in one (or more) services listed in the advanced service catalogue, and employs advanced technology or its R&D capacity to provide such services;
(ii) the enterprise is registered, and operates in, one of the 21 trial cities;
(iii) the enterprise is a legal person, and has no record of violating financial, administrative and other laws and regulations;
(iv) more than 50% of its employees have a college degree or higher;
(v) the revenue derived from the advanced services as described in the catalogue of the advanced services account for more than 50% of the total revenue of the enterprise; and

(vi) 50% or more of the revenue must stem from offshore service outsourcing, being information technology outsourcing (ITO), business process outsourcing (BPO) and knowledge process outsourcing (KPO).

The Science and Technology Department of the provincial government is in charge of the examination and approval of the status of an advanced service enterprise.

The Notice has replaced the Notice on the same subject published in 2009 (Cai Shui [2009] No 63) which ceases to apply as from 1 July 2010.

Income tax on gains from disposal of property by an enterprise clarified
The SAT issued an announcement on 27 October 2010 (Gong Gao [2010] No 19) regarding the enterprise income tax on gains from disposal of property derived by an enterprise. The announcement takes effect on 26 November 2010 (30 days after the announcement).

Pursuant to Art 25 of the Implementation Rules of the Enterprise Income Tax, gains from disposal of various properties (including different types of assets, shares and debts), gains from business restructuring, donations received, unpaid payables etc. must be included in the annual taxable income in the year of the realisation, regardless of whether the gains are in monetary or non–monetary form. The announcement ended the practice of the spreading out of such gains over a period of five years.

All gains realised between 1 January 2008 and 27 October 2010, but which have not been taxed yet because they have been spread out over five years, have to be included in the taxable income of 2010.

Tax deduction of expenditures on labour union clarified
The SAT issued an announcement on 9 November 2010 (Gong Gao [2010] No 24) clarifying the deduction of expenditure on labour unions. The announcement applies retroactively from 1 July 2010.

According to the announcement, an enterprise may deduct its contributions to the labour union up to 2% of the total amount of salaries and wages on the basis of the special receipt issued by the MoF for labour unions. With the publication of this announcement the previous notice (Guo Shui Han [2000] No 678) addressing the same issue ceases to apply.

Gains from transfer of restricted shares of listed companies – Supplementary individual income tax rules on published
The MoF, the SAT and Securities Regulatory Commission jointly issued a Notice on 10 November 2010 (Cai Shui [2010] No 70) supplementing the previously published notice on the taxation of restricted shares for the individual income tax purposes (Cai Shui [2009] No 167).

Definition of restricted shares
In addition to the shares defined as such in Cai Shui [2009] No 167, “restricted shares” also include the restricted shares acquired by individuals from institutions or individuals, inherited or acquired under the family law, shifted from the over–the–counter market to the main board market, acquired due to a merger or acquisition or division of listed companies etc.

Taxable transactions
Gains arising from the following transactions, whether received in cash, in kind, in securities or in other forms of economic benefit, are taxable each time that the restricted shares are disposed of if the shares are transferred more than once:

– The restricted shares are transferred through the centralised or block trading systems of a security company;
– An individual subscribes or purchases shares of an open Exchange–Trading Fund (ETF) by using the restricted shares;
– An individual accepts tender offers for the restricted shares;
– An individual exercising the cash option transfers the restricted shares to a third party offering the cash option;
– An individual transfers the restricted shares on the basis of an agreement;
– The restricted shares of an individual are disposed of due to a judicial decision;
– The restricted shares are transferred due to inheritance or pursuant to the family law;

- The restricted shares are transferred as consideration paid by the substantial shareholders for the ordinary shareholders of the tradable shares resulting from a change in the shareholding of the listed companies; and
- Other cases of the transactions of the restricted shares.

Calculation of taxable amount

The Notice sets out how to calculate the taxable gains, in particular how to ascertain the cost prices of the restricted shares in the different transactions as mentioned above. In cases where the cost prices cannot be ascertained, the cost prices (including the reasonable fees) of the restricted shares are deemed to be 15% of the proceeds from the transactions.

Collection

Depending on the type of the transaction, the tax on the gains will be withheld by the security companies/agencies or self–assessed or paid directly through the security companies/agencies as prescribed in Cai Shui [2009] No 167.

Consumption tax exemption for bio–diesel

The MoF and the SAT jointly issued a Notice (Cai Shui [2010] No 118) on 17 December 2010, which took effect as from 1 January 2011. According to the Notice, the bio–diesel is exempt from consumption tax if:

- 70% of the materials from which it is produced consists of animal waste or vegetable fats; and
- it meets the standard requirements for the bio–diesel prescribed by the state.

APA annual report 2009 published

The SAT published a first annual report on Advance Pricing Arrangement (APA) on 31 December 2010. The report covers the period between 2005 and 2009 and is intended to provide a guideline to enterprises having interest in entering into an APA with the Chinese tax authority and to give a reference for competent authorities of other countries. The highlights of the report are summarised below.

Legal basis

The report lists the relevant laws, regulations and implementation rules governing APA:

- Relevant clauses in the relevant tax treaties or arrangements;
- Article 42 of the Corporate Income Tax Law;
- Article 113 of the Implementation Rules of the Corporate Income Tax;
- Article 53 of the Implementation Regulations on the Administration of Tax Collection and Administration Law; and
- Chapter 6 and other related provisions of the Implementation Measures of Special Tax Adjustments (Guo Shui Fa [2009] No 2).

Prerequisites

- The total annual amount of related transactions exceeds CNY 40 million;
- The prescribed disclosure requirements relating to the related parties are met; and
- The contemporaneous documentation is prepared, maintained and provided as required by the Notice Guo Shui Fa [2009] No 2.

Process

The APA process consists of six steps: (i) pre–filing meeting; (ii) formal application; (iii) examination/evaluation; (iv) negotiation, agreement and signing; (v) execution; and (vi) monitoring.

Rollback, renewal and termination

If the related transactions of the year of application or of other previous years are the same as, or similar to, those agreed in the approved APA, the enterprise may apply for use of the transfer pricing methodology and calculation to the year of the application and any of the last ten years. A concluded APA generally lasts from 3 or 5 years and can be renewed. It can also be terminated if:

- a dispute arises and the dispute cannot be resolved despite mediation at a higher administrative level; and
- the fundamental assumptions and business nature have changed.

Statistics

China has concluded 41 unilateral and 12 bilateral APAs in the period between 2005 and 2009 of which:

- 62% relates to purchase and sales of tangibles;
- 19% to transfer or use of intangibles; and
- 19% to services.

As to the transfer pricing methods used, there are:

- 35 cases for the transactional net margin method (TNMM);
- 15 cases for the cost–plus method;
- 4 cases for the comparable uncontrolled price (CUP) method;
- 2 cases for the profit split method; and
- 2 cases for other methods.

Technology transfer – Criteria for tax exemption clarified

The MoF and the SAT published a Notice on 31 December 2010 (Cai Shui [2010] No 111) clarifying the criteria of enterprise income tax exemption for technology transfers by Chinese resident enterprises, as provided under Art 27 of the Enterprise Income Tax Law and Art 90 of the Implementation Rules. The Notice retroactively applies as from 1 January 2008.

According to the Notice, the exemption only applies if:

- the technology transferred is: (i) a patent, computer software copyright, design of integrated circuits; (ii) new vegetable or animal bio–product; or (iii) any other transfers designated by the MOF and SAT;
- the technologies mentioned above have been owned, and their licences of the global right to use have exclusively been held, by Chinese resident enterprises for at least 5 years; and
- the contracts of transfers have been approved by, and registered with, the technology department of the state at the provincial or higher level.

The Notice also states that the exemption does not apply if the total direct or indirect shareholding of the transferor in the transferee has reached 100%.

Indonesia

Transfer pricing – MAPs: regulation issued

The Tax Office issued Regulation No PER–48/PJ/2010 (PER–48) on 3 November 2010 in relation to Mutual Agreement Procedures (MAP). PER–48 took effect on 3 November 2010, and allows a taxpayer to request that the Directorate General of Taxes (DGT) execute a MAP, in accordance with the provisions of a tax treaty.

According to PER–48, a MAP can be requested by: (i) a domestic taxpayer; (ii) an Indonesian citizen that has become a resident taxpayer of a treaty partner country; (iii) a treaty partner country; or (iv) the DGT.
Requests for a MAP can be made by an Indonesian resident in the following situations:

- where there is an issue of dual residence to be determined;
- where the taxpayer is, or will be, imposed with tax due to transfer pricing practices; and
- where the taxpayer is, or will either be (i) imposed with a tax; or (ii) have tax withheld, as a result of treatment that is not in accordance with the tax treaty.

In addition, within certain requirements, Indonesian citizens may request for a MAP if they are, or will be, imposed with tax in the tax treaty partner country, which is higher than those imposed on the partner country's citizens.

Transfer pricing – APAs: regulation issued

The Tax Office issued Regulation No PER–69/PJ/2010 (PER–69) relating to Advance Pricing Agreements (APA) on 31 December 2010 and took effect on the same date.

PER–69 defines an APA as an agreement between the DGT and taxpayers and/or another country's tax authority, on certain criteria and/or the determination of the appropriate pricing in related party transactions. The objective of PER–69 is to provide facilities to taxpayers to resolve any dispute regarding transfer pricing issues. The scope of the APA covers all or some transactions performed by the related parties.

There are five steps to reach the APA:

- pre–lodgement meeting between the DGT and the taxpayer to determine: (i) the importance level; (ii) the proposed transfer pricing methods; (iii) the possibilities of the involvement of other countries' tax authorities; (iv) the required documentation; (v) schedules; and (vi) any other relevant matters;
- submission of formal application of the APA by the taxpayer to the DGT based on the pre–lodgement meeting;
- discussion of the APA's content between the DGT and the taxpayer;
- issuance of the APA by the DGT; and
- application and evaluation of the APA.

The APA does not limit the DGT's authority to perform a tax audit in accordance with other prevailing regulations. If the APA is applied to a transaction between a taxpayer and domestic related parties, a secondary adjustment to another domestic taxpayer can also be obtained with approval from the DGT. If the APA results in double taxation, the taxpayer can make a written request to the DGT to execute a MAP in accordance with PER–48.

Restructuring of Tax Office

To improve the productivity of the institutions and to develop unbiased and comprehensive fiscal policies and regulations, the Ministry of Finance (MoF) made plans in late 2010 to restructure the DGT and Directorate General of Custom and Excise (DGCE).

Currently, the DGT and DGCE act as fiscal regulation makers as well as executors of the regulations, covering tax collection, taxpayer audits and objections. Under the proposed reorganisation, the existing legislative functions of the DGT and DGCE will be transferred to an independent regulatory institution, known as the Fiscal Policy Board or *Badan Kebijakan Fiskal* (BKF). The DGT and DGCE will act only as executors of the regulations. The DGT would still retain its technical function, but will no longer have the authority to formulate taxation policy as it will be handled by the BKF. Certain regulations relating to the DGT's staffing, tax audit and supervision procedures will remain under the DGT's authority.

According to the MoF, these reorganisation activities are performed under the authority of the MoF and would not need approval from the House of Representatives. It will be done in two stages:

- the short–term processes are to be completed in 2010 and 2011; and
- the longer–term processes will be done in 2012 and 2013.

Singapore

Property tax – details

As announced in Budget 2010, the Progressive Property Tax Regime (PPTR) will apply to owner–occupied residential properties beginning 1 January 2011. Further details of the PPTR are as follows:

- the PPTR replaces the existing owner–occupier's concessionary tax rate of 4%;
- it will be available to individual owners or a married couple who owns and lives in the residential property;
- the PPTR can be granted only to one residential property at any one time;
- a residential property owned by a company, association or a body of persons does not qualify for the concession even if its staff live in the residential property; and
- with the introduction of the PPTR, the 1994 GST rebate will lapse on 31 December 2010.

Hotels

With effect from 1 January 2011, the "Annual Value" of a hotel property (ie the base on which 10% property tax is imposed) will be set at 25% of the preceding year's gross room receipts, as opposed to the existing rate of 20%.

Thailand

Additional tax incentives package for Regional Operating Headquarters

On 27 October 2010, Royal Decree No 508 (RD 508) was issued that added another package of tax incentives for Regional Operating Headquarters (ROH). With the advent of RD 508, a company may opt to apply for the old or new package of tax incentives. A company that wishes to apply for the new package is required to notify the Thai Revenue Department within five years from the date specified by the Director General (to be announced later). RD 508 is effective from 28 October 2010 onwards and contains the following tax incentives and conditions:

Tax incentives

- Reduction of corporate income tax (CIT) from the normal rate of 30% on net profits to 10% on net profits derived by the ROH on the following types of income:
  - ~ services fees charged to Thai affiliates;
  - ~ sub–loan interests received from Thai/foreign affiliates and/or foreign branches; and
  - ~ royalty on R&D performed in Thailand for the Thai/foreign affiliates and/or foreign branches.

  All the above incentives will be applicable for 10 consecutive accounting years. Such period may be extended for five years, provided that certain conditions are fulfilled.
- CIT exemption on net profits derived from the services provided to the foreign affiliates and/or foreign branches.
- Reduction of personal income tax (PIT) from the normal progressive rates ranging between 5%–37% to a flat rate of 15% for:
  - ~ 8 consecutive years for expatriates at the executive level or high–level specialists (the qualification to be announced by the Revenue Department).
  - ~ 4 consecutive years for other expatriates.

  Remuneration paid by the ROH to the above–mentioned expatriates in respect of duties carried out offshore will be exempted from PIT.
- CIT exemption for dividends received by ROHs from Thai/foreign affiliates.
- CIT exemption for dividends received by a foreign entity (with no PE in Thailand) which are paid out from the net profits derived from "Qualified Incomes" (see the conditions below for the definition of the "Qualified Incomes").

Conditions

- No less than 50% of ROH's income must be composed of service fees and/or royalties on R&D received from offshore (Qualified Incomes).
- The ROH must be a Thai company.
- The ROH must have a paid up capital of no less than THB 10 million at the end of each accounting period.
- The ROH must provide services to its affiliates and/or branch offices in at least:
  - ~ 1 foreign country during the 1st and 2nd accounting year;
  - ~ 2 foreign countries during the 3rd and 4th accounting year; and
  - ~ 3 foreign countries from the 5th accounting year onwards.
- The ROH pays a Thai recipient a minimum of:
  - ~ THB 15 million in operating expenditure per accounting year. Assets depreciation, offshore expenses, raw materials costs, royalties, components and packaging costs do not qualify as such expenditure; or
  - ~ THB 30 million in capital expenditure per accounting year. Shares investments do not qualify as such expenditure.
- The offshore affiliates or branches must actually carry out the businesses described in its objectives.
- The ROH's employees must have the required level of education as announced by the Director General of the Revenue Department (to be announced).
- The ROH notifies the Thai Revenue Department of the claim for tax incentives within five years from a date to be specified by the Director General (to be announced).
- From the 3rd accounting year onwards, the following conditions must be fulfilled:
  - ~ 75% of the employees must have the level of education (to be announced) as required by the Director General of the Revenue Department.
  - ~ At least 5 employees of the ROH receive remuneration of no less than THB 2.5 million per person per year.

Cabinet approves tax incentives for green projects

On 9 November 2010, the Thai cabinet approved the issuance of the Royal Decree exempting income derived from the sale of the Certified Emission Reduction Credits (CERs)

and Verified Emission Reductions (VERs) from the corporate income tax. The tax exemption will last for three consecutive years, commencing from the first accounting year in which the project receives a letter of approval (LoA) to trade in CERs from the Thailand Greenhouse Gas Management Organisation (Public Organisation), or on being certified by the Executive Board of Clean Development Mechanism of the United Nations.

To qualify for the above tax incentives, the project must receive the LoA from the Thailand Greenhouse Gas Management Organisation (Public Organisation), or register with the Executive Board of Clean Development Mechanism of the United Nations, by the end of 2012.

15% withholding tax: Thai government bonds – details

Further to the earlier announcement by the Finance Minister on 12 October 2010 that interest and capital gains earned by foreign investors on Thai bonds would be subject to a 15% withholding tax, Royal Decree No 509 was issued on 1 December 2010 to effectively repeal the tax exemptions that were available to foreign entities (without a permanent establishment in Thailand) that invested in bonds and debentures issued by the Thai Government (or its organisations) in Thailand under s 5octo of the Royal Decree No 10.

Originally, s 5octo of the Royal Decree No 10 exempted the following income for foreign entities (without PEs in Thailand):

– Coupons on bonds or debentures issued by Thai government organisations.

– Primary discounts on bonds or debentures issued by the Thai government, Thai government organisations, or a financial institution organised by a specific law of Thailand for the purpose of lending money to promote agriculture, commerce or industry (Special Financial Institution).

– Capital gains from the transfer of the bonds or debentures issued by the Thai government, government organisations, or a Special Financial Institution.

– Further to Royal Decree No 509, bonds or debentures, either issued or held, from 13 October 2010 onwards, will no longer be eligible for the above exemptions. Thus, they would be subject to the normal withholding tax at the rate of 15%, unless the following tax exemptions/mitigations apply:

– Coupons and primary discounts from the bonds or debentures issued by the Thai government or the Special Financial Institution which are specifically exempted from 15% withholding tax under s 70 of the Revenue Code.

– Coupons and primary discounts from the bonds or debentures issued by the Thai government organisations which may be exempted or reduced under the tax treaties. The majority of tax treaties concluded by Thailand reduces the withholding tax rate to 10% for foreign entities which are either a financial institution or insurance company, and exempts foreign government authorities from tax.

– Capital gains from the bonds or debentures issued by the Thai government, Thai government organisations or the Special Financial Institution may be exempted under some tax treaties concluded by Thailand, eg tax treaties with France, Singapore, and UK.

Note that the discounts that a foreign entity (without a PE in Thailand) derives from the purchase of bonds or debentures in the secondary market is not subject to withholding tax.

Malaysia – treaty developments

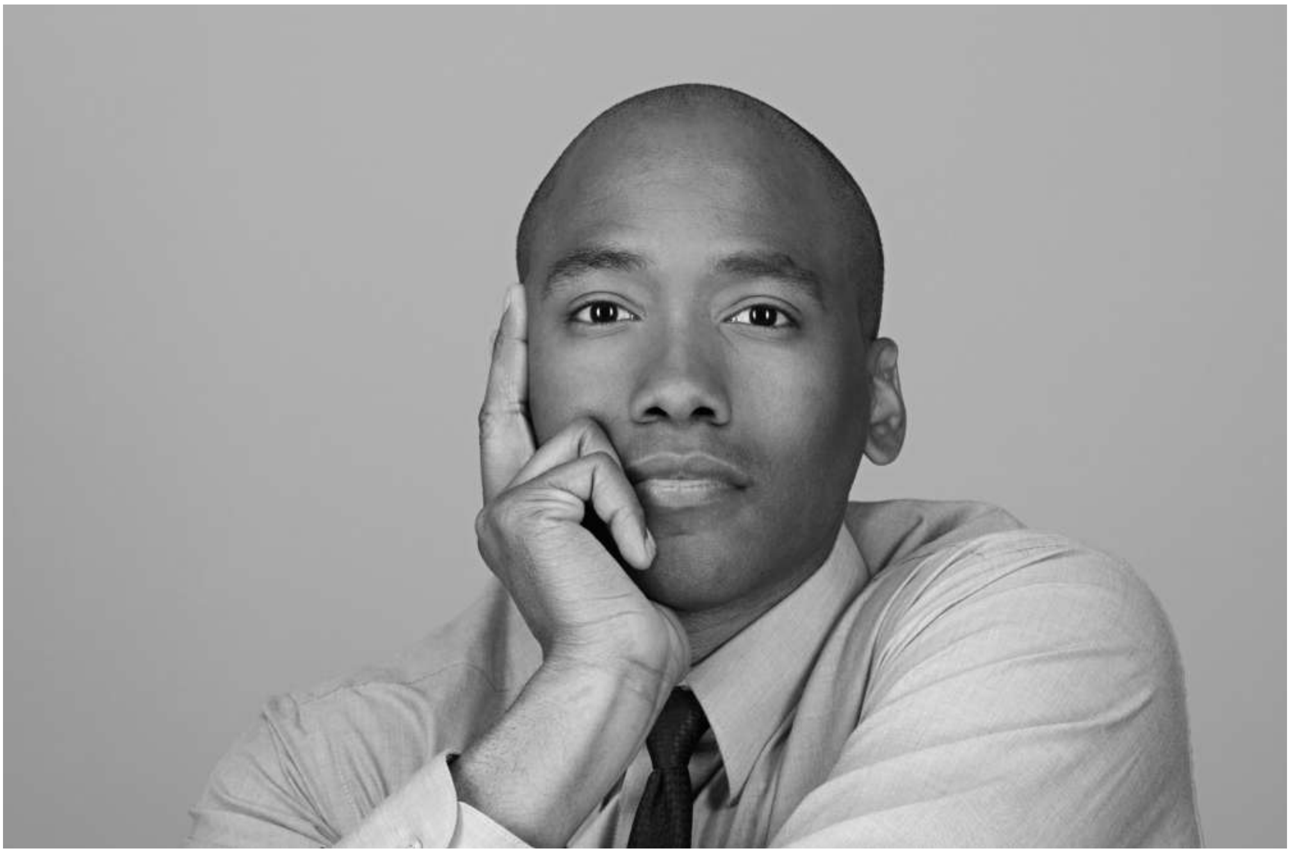
- **The following tax treaties entered into force**
  - Germany and Malaysia (signed on 23 February 2010) entered into force on 21 December 2010. The treaty applies in Germany from 1 January 2011, in Malaysia from 1 January 2010 for income/withholding taxes and from 1 January 2011 for petroleum income tax.

- **The following amending protocols to existing tax treaties entered into force**
  - The Netherlands and Malaysia (signed on 4 December 2009) entered into force on 19 October 2010. The protocol generally applies from 1 January 2010.
  - United Kingdom and Malaysia (signed on 22 September 2009) entered into force on 28 December 2010. The protocol generally applies from 1 January 2011. TG

__Rachel Saw__ is a Senior Research Associate at the International Bureau of Fiscal Documentation (IBFD). The International News reports have been sourced from the IBFD's Tax New Service. For further details, kindly contact the IBFD at ibfdasia@ibfd.org.

Audit or Tax – Which Should I Pursue?

By Ronnie Lim



Introduction

Both audit and tax are noble professions which are essential in the world of commerce and industry. There is a scarcity of both auditors and tax specialists in Malaysia. Given that relatively less is known about taxation, I will address that discipline first with a view to assisting in a career choice.

Personal experiences – Taxation

When I began my career in a small firm of accountants, I was fortunate that my day to day activities revolved around accounting, audit, tax and secretarial services. I noticed that both accounting and audit generally relate to past transactions. I enjoyed the experience gained from auditing companies in various industries and highly regard the exposure obtained. I experienced the operational aspects of industries like farming, manufacturing and trading and had the opportunity of dealing with various levels of management. However, I found that while the polite British clients were pleasant and forbearing, I did not sense that they loved me as an auditor. In the vast majority of projects, secretarial duties centred on routine minutes and forms. However, tax services were as a breath of fresh air to me. I found that I had the opportunity of influencing the amount of tax payable and structuring transactions. I had much greater access to moulding the future and adding value to clients. Clients and others love those who add value and most people would like to save tax, thus making tax consultants popular and sought after people. Having also done well in my tax papers, it is not surprising that upon qualifying, I ventured to specialise in taxation and joined the tax department of a then Big 8 firm in the city of London, United Kingdom.

My colleague, Cheryl Tan, began her working life in audit and found it a useful starting point. She understood the transactions undertaken by clients better through her audit exposure. The day came when Cheryl sought to widen her experience and joined the tax department of a large firm. To her amazement, she found that whereas she had received little gratitude from clients during her audit days, clients now thanked her for her tax services. She also found that clients confided more in her as a tax person than as an auditor and appreciated her to a greater extent. Having also found that tax services were less routine than audit, she too decided to pursue a career in taxation.

Another colleague, Yvonne Chin, found that three years of auditing was enough for her as she continued to audit clients in the same industries and lived in nomadic fashion in the course of her work. She moved to taxation where she enjoyed serving new investors to Malaysia who generally consider tax specialist to be one of the first people to meet in any foreign country. Yvonne enjoyed helping foreigners set up and carry on business in Malaysia with activities ranging from tax advisory, helping them identify office premises or factory sites as well as living accommodation, structure their remuneration packages with tax efficiency, providing exchange control guidance and dealing with Bank Negara, giving advice on legal entities and arranging for companies to be formed or branches registered, seek tax incentives and meet immigration requirements as well as understand local equity requirements. Yvonne also enjoyed tax planning and tax audits where the objective was to identify opportunities for tax efficiency. These factors led Yvonne to make a career switch from audit to taxation.

These three people (pseudonyms used) who had experience in both audit and tax have been cited to identify certain vital differences between a career in audit and tax. If you prefer to design the future rather than verify the past, plan versus review, help and add value in contrast with authenticate, work in a dynamic environment of perpetually changing legislation instead of more routine activity, then the pursuit of a tax career should be considered. Further, if you prefer to be appreciated and loved rather than being tolerated, tax is the obvious choice between the two. While I have raised three examples of tax individuals, who have previously undertaken audit work, I should add that the current trend is for entrants to consider starting with taxation rather than migrate from audit to tax.

I should add that whereas I have seen many migrate from audit to tax, in my experience, few have moved in the opposite direction.

Personal experiences – Audit

The vast majority of accounting graduates moving into working life choose to be in audit. There are several reasons for this trend, the most important of which is that audit experience is treated as a stepping stone for moves into the commercial world to become an accountant and eventually a chief financial officer or finance director or even, chief executive officer. Experience in auditing is also used as a spring board to becoming an entrepreneur. Audit experience is valuable for those who prefer life in business or industry. Thus, few who join an audit department remain there for more than three years with many moving into shared service centres, commercial companies or seeking opportunities overseas. The audit profession in Malaysia suffers from such brain drain despite the fact that the current financial rewards of the profession are on par with those offered by industry. The exit of audit personnel places greater pressure on those who carry on in the audit profession.

An auditor, John Yeo, points out that auditing is a much needed service. It therefore provides job security plus vast potential for career advancement based on personal performance. In contrast, in commerce, an accountant can hit ceilings which are only overcome by job hopping. However, the life of an accountant in industry is generally more predictable than that of an auditor. John views tax and other disciplines like forensic services as specialised which may cause those there to be locked in and immobile. Auditing, on the other hand, is general and allows greater mobility into industry, banking and business. An auditor who has experience with many clients in different businesses and industries is given wide exposure to businesses and these enable auditors to become entrepreneurs.

David Sia chose a career in auditing as he views this profession as one that builds character. Auditing is infamous for its challenges to work–life balance and managing these requirements to mould character. Demanding and stressful conditions are part and parcel of life in audit. David sees this as an excellent platform to prepare one for life's challenges. The risks involved in auditing have also escalated in recent years with the commencement of the Auditing Oversight Board. In addition, in some firms, there are internal standards which require audit personnel who do not meet the high standards set to be barred from undertaking audits. David views these standards as positive requirements for audit quality. He is quick to point out that audit work–life balance has improved in recent years. However, the workload in auditing is seasonal and therefore a mental attitude which accepts cyclical additional time demands is required in this field.

Bob Ho, another auditor, relishes the challenges and exposure to various companies and industries that audit affords him. He appreciates meeting top and middle management of clients and addressing audit committees plus boards of directors. Bob also likes the greater amount of daily travel associated with audit and this detracts from the boredom of routine audits at the early stages of an audit career.

These three episodes gleaned from audit partners and managers highlight the greatest advantages of auditing.

Experience with a wide variety of businesses and management at various levels equip auditors to migrate into commerce and industry or business. However, life in auditing is stressful, demanding and carries a higher level of risk. Work–life balance is a major challenge in auditing.

Auditors are required to exercise skepticism in the course of their work. They must be vigilant watchdogs. These fundamental requirements of auditors may colour their very character and it would be unusual to find a risk–taking, entrepreneurial and particularly outgoing person in the audit world.

The current bias addressed

Many accounting lecturers and colleges have excelled in interesting their students to venture into auditing. This fact coupled with the herd instinct of following the crowd plus audit being gateway to business or a career in industry has led most accounting graduates to embark on auditing. In stark contrast, many students have found taxation boring based on their academic studies and a major reset is necessary if the imbalance at this initial stage is to be removed. Significant efforts by professional bodies, the tax profession and educationists are necessary if students are to be granted a more balanced perspective. Some perceptive graduates may elect for taxation rather than competing with a large number of graduates within the audit discipline but only if they can be convinced that a career in taxation is not a venture into boredom.

In a small effort to correct the imbalance, I will seek to provide more information on a career in taxation. A career in tax is a specialisation. The tax specialist is not a general practitioner – he or she commands the recognition and premium of being a specialist. However, just as three years in audit is good experience should there be an exit from that discipline, because tax pervades all spheres of business, three years in tax will stand anyone moving out of tax excellent exposure which they can leverage on in their subsequent work life. Indeed, due to the scarcity of tax expertise in industry, those with tax experience are a rare commodity and therefore have a niche. Three years in tax does not make anyone immobile.

A major service within tax is business tax, inclusive of corporate tax compliance and advisory. Business tax provides good experience for any new entrant into taxation. Apart from corporate tax compliance, there is scope to advise clients on how they can be more tax efficient especially in the face of ever changing tax legislation.

For those who prefer personal contact with clients, global employer services and private client services provide ample opportunity for daily interaction with many individuals of various nationalities. Services provided in these areas include personal tax compliance and advisory. Clients served may range from the CEOs of MNCs to offshore oil engineers and these people at times express their gratitude to the tax staff serving them through little gifts from their home countries. In such situations, it is not so much the gift which is important but rather the satisfaction of being appreciated. Often too, these clients also express appreciation in their emails or letters of commendation. Personal tax skills are portable and specialists may be seconded overseas.

Apart from these compliance and advisory roles, there are other service lines such as transfer pricing which addresses documentation, planning, advance pricing arrangements and audit defence. Transfer pricing services require an understanding a company's operations in far greater detail than in a statutory audit. In addition, novel measures must be created, applying some economic theory where required, plus exercising skills in negotiation and persuasion to solve disputes with the authorities or pave the way for advance pricing arrangements. Like auditors, transfer pricing

specialists travel a lot and often liaise with their counterparts overseas.

Similarly, for tax audit and investigation services, innovative ideas towards defence and settlement of cases together with the power of negotiation are essential skills required.

International tax is another service line within taxation. Those in this area communicate daily with counterparts in US, Europe and Asia, whether through conference calls across time zones or email and also face to face meetings across the globe. They generally have a working knowledge of taxation in various overseas countries. Cross border mergers and acquisitions involve international tax concepts and tax advice often helps shape the structuring of transactions. Mergers and acquisitions tax teams also accompany financial transaction services personnel on due diligence projects which regularly take place before a company is purchased.

Tax incentives form another area of tax services. In this connection, there is the opportunity to identify suitable incentives which maximise value to clients, negotiate for novel incentives and structure operations to gain best value from incentives.

Whatever the tax service line or industry specialisation involved eg financial institutions or oil and gas, tax optimisation involving innovative ideas, thinking out of the box or laterally are dominant in taxation. Dispute resolution through novel approaches, negotiation skills and power of persuasion are utilised. Communication skills are in the forefront with daily emails, letters, opinions, advice, meetings and presentations.

The power of internships

Notwithstanding, the brief overview of a tax function given above, nothing can replace the real life experience of working in a tax or audit environment. I therefore encourage all undergraduates to seek opportunities in offices which offer excellent internship programmes. These may be part of a university course of study or a personal investment of semester breaks. The experience gained and observations made plus on site communications will certainly help graduates in their career choice before they step into working life. Internships should be for 6 months or a minimum of three if meaningful experience is to be obtained. Further, during such internships, undergraduates should mingle freely and communicate with those in various service lines and also volunteer for additional assignments whenever opportunity permits to maximise the experience that can be gained.

Conclusion

As the saying goes, one man's meat is another man's poison. Thus it is difficult to generalise whether pursuit of audit or tax is best for any accounting graduate. However, the following summary may prove a handy checklist:

Choose audit:

- Decided to work in industry or be a businessman
- Willing to face strong work–life balance challenges and work under stress
- Love being skeptical and acting like a vigilant watchdog
- Prefer to verify past transactions rather than constantly thinking of ways to add value to clients
- Can accept being tolerated instead of appreciated especially in the earlier stages of the career
- Open to travelling and working in various client sites daily
- Not decided on career of choice

Choose taxation:

- Strong at communication both verbally and in writing
- Given to being innovative and thinking out of the box and laterally
- Prefer to design the future rather than deal with the past
- Desire to add value and help
- Interpersonal skills for frequent interaction with clients
- Love to be appreciated
- Open to interpretation of legislation as well as the application thereof

I have thus far not dwelt on financial rewards and before bringing this article to a close, should do so. In professional service firms offering both audit and tax services in Malaysia, it is often found that the tax function yields more earnings or higher earnings margins that the other. Where such a situation prevails, in the longer term, generally the tax boys or girls tend to be better treated, especially if the firm is not audit dominated. At top level, I understand that some tax leaders command a higher remuneration than their audit colleagues based on the value of their contribution to the firm. However, in the world of accountancy, audit has always held a dominant place. TG

***Ronnie Lim** is the Country Tax Leader of Deloitte Malaysia. Talent wishing to contact him to discuss the above can reach him at rolim@deloitte.com.*

Repairs & Renewals – Part II

By Siva Subramaniam Nair

Introduction

In the last article, we discussed what constitutes a repair and renewal, reviewed the principle of entirety and deliberated on the issue of improvements. Let us proceed now to analyse another concept in this topic ie initial repairs.

When we purchase an asset it should be capable of performing the primary role for which it was purchased. Consequently, where an asset purchased has to be repaired before it could be used, that repair is referred to as initial repairs. Initial repairs are regarded as being capital in nature because no rational person would buy an asset that cannot fulfil the very purpose for which it was bought and therefore, the cost of repairing that asset is deemed to be part of the purchase price (which obviously has being suppressed) and thus does not rank for a deduction.

For example if a person purchases a car for RM400 but it cannot be driven until further repairs amounting to RM5,000 are done, obviously the purchase price should have been RM5,400.

Various tax cases have dealt with this issue.

Jackson V Laskers Home Furnishings Ltd 37 TC 69

Facts

The taxpayer leased premises that had been unused for 18 years. It was agreed that the rent for the first seven years was to be lower in consideration of initial repairs to be undertaken by him.

Decision of the Court

The initial repairs were held to be capital and hence not allowed.

An argument here would be that if the repairs had been undertaken by the landlord, it would have been deductible, for him and in consequence when the tenant pays a higher rent, it would also have been deductible. This is explained by the judge in this case, Danckwerts J, who in his judgment states that he had found much assistance in certain remarks of Lord Greene in another case;

It frequently happens in Income Tax cases that the same result in a business sense can be secured by two different legal transactions, one of which may attract tax and the other, not. There is no justification for saying that a taxpayer who has adopted the method which attracts tax is to be treated as though he has chosen the method which does not, or vice versa

The most prominent case in the area of initial repairs is ***Law Shipping Co Ltd V Cir [1923] 12 TC 621***.

Facts

The taxpayers, a shipping company bought a second–hand ship at a date when its periodical Lloyd's survey was overdue but was deferred pending completion of a voyage for which arrangements had been made. [The surveys were necessary for a ship to retain its classification for insurance and other purposes.] At the end of its then current voyage, the taxpayer spent money on repairing the ship and claimed to deduct the cost of so doing as a trading expense.

Decision of the Court

The Court of Session held that the sums spent to remedy defects in the ship as she stood at the time of purchase were capital expenditure, and so could not be deducted. The balance, being attributable to deterioration of the ship during the voyage after she had been bought, was of an income nature and was allowable. The Lord President in his judgment states

> *"..a ship, on which repairs have been allowed to accumulate, is a less valuable capital asset with which to start business than a ship which has been regularly kept in repair...When the purchasers started trade with the ship, the capital they required was not limited to the price paid to acquire her, but included the arrears of repairs which their predecessors had allowed to accumulate... [which was]...incidental to the trading of their predecessors [not the current owner]."*

This case was distinguished in ***Odeon Associated Theatres Ltd V Jones [1971] 48 TC 257***.

Facts

The taxpayer, a company carrying on the trade of proprietors of cinematograph film theatres bought a number of theatres at the end of the Second World War which, because of wartime restrictions, was in a state of disrepair. *[From the beginning of the war until the early 1950s the building of theatres was prohibited as was decorating and repair work except for a small amount of essential maintenance].* Although the cinemas could have been used in this state, the taxpayers carried out repairs to meet their own standards and claimed to deduct the cost.

Decision of the Court

The Court of Appeal allowed the deduction because "it was expenditure on maintenance which had then for the first time become possible and worthwhile for the Appellant Company to carry out."

Four points distinguished this case from Law Shipping case:

- First, the purchase price of the cinema had not been reduced on account of the disrepair, whereas the cost of the ship had been substantially less than it would otherwise have been.
- Secondly, the cinema was a profit–earning asset despite its state at the time of purchase, whereas the ship was not because it could not pass the Lloyd's survey which would allow the ship to be worked.
- Thirdly, there was evidence in this case that on established principles of sound commercial accounting the cost of repairs could properly be charged to revenue; there was no such evidence in the Law Shipping case.
- Fourthly, the repairs and replacements were carried out over a period beginning two years and ending ten years after the acquisition, and there is no evidence to indicate that (apart from inflation, which was taken into account in the percentage calculation or estimate) they cost more than would have been incurred if the theatres had been acquired in good repair and subsequent dilapidations had been made good in the ordinary course of prudent maintenance. Whereas in the Law Shipping case, the repairs and replacements necessary to satisfy the Lloyd's survey were carried out after the first voyage of the ship.

The distinction between capital repairs necessary to begin operation and normal repairs to a part–worn asset acquired was expressed as follows by Buckley L J:

> *"No one, I think, would dispute that the cost of ordinary current repairs in the normal course of maintenance of a fixed capital asset employed in a business is revenue expenditure. Such cost arises out of the wear and tear of the asset in the course of earning the profits of the business, in its profit and loss account. I would myself think that, save in exceptional circumstances; this is true even in the case of the first repairs in the normal course of maintenance of an asset acquired in a part–worn condition."*

Nearer to home, in ***U Limited* [Singapore Review Board IV (1951)]**, the courts allowed a deduction in respect of expenditure to repair damage and neglect accumulated during the Japanese Occupation whereas in ***S Ltd* [Singapore Review Board VII (I) (1953)]**, the taxpayer after beginning to rent new shops, spent additional money to repair and decorate them. The expenses were disallowed based on the Law Shipping principle.

The last area that we shall look at is replacement of assets with short life spans.

Assets with a Life Span Not Exceeding Two Years can be Claimed on a Replacement Basis

Basically these represent expenditure on assets (including implements, utensils and articles) such as bedding and linen, crockery and glassware, cutlery and cooking utensils (other than stainless steel or silver), loose tools and accessories.

Although these are capital assets no capital allowances are claimed on the initial purchase of these assets nor do they rank for a deduction in ascertaining the adjusted income. However, the cost of replacing such assets constitutes a deductible expenditure.

Also any recoveries from the disposal of such assets would be regarded as gross income of the business.

So having understood the various facets of repairs and maintenance, let's look at how examination questions are set on this topic

Exam Focus

Questions on repairs and maintenance are common for all the CTIM tax papers (though rare in Tax V).

In Tax I, they are normally asked as a deduction from gross rental income ie where the candidates are required to determine whether a particular expense would rank for a deduction. The general principle tested here is usually revenue versus capital whereby the former is deductible whereas the latter is not. Some common examples from past year questions are tabulated below:

Capital (Not deductible)	Revenue (deductible)
Renovation of car porch/ kitchen	Repair of drainage / bathroom sink
Installation of air–conditioning unit	Maintenance of garden
New door bell	Replacement of damaged tiles
	Repainting

Tax II and III usually examine this topic as part of their business question. For example, in December 2007, Tax II Question 1 has the following details

Repairs and maintenance: RM19,600

	Amount	Added back/ (Claimed)
	RM	RM
Upgrade of desktop CPU/Monitor	6,100	6,100
Upkeep of motor vehicle	6,700	
Upkeep of office	1,200	
Spare parts & replacement of machines	2,600	
Replacement of factory wooden doors with steel doors	3,000	3,000
	19,600	9,100

It is explained that the desktop CPU/Monitor is eligible for capital allowance and that the steel doors of factory are eligible for industrial building allowance

In December 2005, Tax II Question 1 Note 15 on Repairs and Maintenance, the treatment of replacement is examined as follows:

Replacement Item	Tax Treatment
Replacement of damaged air–conditioners	Added back by virtue of the fact that it is replacement of an entirety
Replacement of damaged motor of a generator set	Deductible since they represent a subsidiary part of the whole asset
Replacement of damaged computer cablings	

Tax IV had a question on initial repairs in December 2006, Question 5(a) which is reproduced below.

Encik Rashid runs a transport company. He has been exploring ways to reduce his operating expenses. An associate informed him that he could purchase imported used prime movers at reduced prices depending on the condition of the prime movers.

Story of Purchase.
En Rashid managed to purchase two imported used prime movers, one costing RM5,000 and the other costing RM30,000 in the year 2004. The prime mover costing RM5,000 needed RM20,000 to make it road worthy. The prime mover costing RM30,000 needed some minor repairs of RM3,000.

Required:
En Rashid seeks your advice on the tax treatment of the expenses

The examiner had explained that the answer should have been set out in the following manner.

- Reference to s 33(1) (c) of the *Income Tax Act 1967* and the general principles applicable to deduction of repairs.
- State that the capital expenditure on the purchase of the prime mover is not an allowable deduction.
- Explain that expenses being part of the cost of acquiring the asset are not allowable as deduction ie initial repairs by
  - displaying an understanding of what are initial repairs i.e. the asset could not be used in the business without being repaired;
  - showing that the asset could only be used in the short term and its long term use was dependent upon the repairs being carried out; and
  - clarifying that the purchase price of the asset was substantially reduced because the asset needed repairing.
- As a contrast, demonstrate an understanding of when repair is allowable as a deduction ie
  - the repairs are just part of the routine normal maintenance cycle;
  - the price paid was not affected by condition of the asset; and
  - the asset could be used in the longer term in the business without being repaired.

He states further that the relevant case law to quote would have been the following:

1. *Law Shipping Co Ltd v CIR [1923] 12 TC 621*
2. *Odeon Associated Theatres Ltd v Jones [1971] 48 TC 257*

December 2003, Tax II Question 1 introduces “Spare parts and replacement parts for machine and small loose tools for production use” and explains that a deduction is claimed on a replacement basis for the spare parts, replacement parts and small loose tools with an expected lifespan of less than two years pursuant to *Public Ruling No 2/2001* (Computation of Initial & Annual Allowances in respect of Plant & Machinery).A similar treatment is seen in December 2005, Tax II Question 1 Note 15 on Repairs and Maintenance.

With this article, we conclude our discussion on repairs and maintenance. In the next article, we will continue our discussion on business deductions. TG

Further Reading
- Choong Kwai Fatt, Malaysian Taxation: Principles and Practice (2010), Infoworld
- Jeyapalan Kasipillai, A Guide to Malaysian Taxation (2010), McGraw Hill
- Malaysia Master Tax Guide (2010), CCH Asia Pte Ltd
- Veerinderjeet Singh, Veerinder on Taxation (2008), Arah Pendidikan Sdn Bhd
- Richard Thornton, Thornton’s Malaysian Tax Commentaries (2010), Sweet & Maxwell
- Alan Yeo Miow Cheng, Malaysian Taxation (2010), YSB Management Sdn Bhd

Siva Subramaniam Nair *is a freelance lecturer preparing students for the professional examinations of the ACCA, ICSA, MICPA and AIA and undergraduates of degree programmes in both local and foreign universities. He is an examiner for one of the professional bodies in Malaysia and a member of the marking team for another professional examination. He can be contacted at sivanair@tm.net.my*

Notice Board

Procedure on Submission of Amended Return Form

The Inland Revenue Board (IRB) has issued the Operational Guidelines on 30 November 2010 with respect to the Procedure on Submission of Amended Return Form (GPHDN 01/2010).

Some of the salient points clarified are as follows:

(i) Where the Amended Return Form or Borang Nyata Terpinda (BNT) is submitted on or before the filing due date of the original Income Tax Return Form or Borang Nyata Cukai Pendapatan (BNCP), it will be treated as normal appeal (Para 3.1).

(ii) Self-amendment is only allowed once for a taxpayer who has filed the BNCP on or before the filing due date (Para 3.2).

(iii) Self-amendment is only available to understatement or underdeclaration of income, expenses/claims overstated and capital allowances/incentives/reliefs overclaimed (Para 3.3).

(iv) Submission of BNT will be regarded as voluntary disclosure for understatement of income and penalty will be imposed in accordance with the rates as stated in the Tax Audit Framework.

(v) Any tax payable, including penalties, must be settled on the date the BNT is submitted, failing which penalties will be imposed.

Issuance of Income Tax Return Forms (ITRFs) for Year of Assessment 2010

The IRB has issued a press release on 11 January 2011 on the above. Taxpayers will receive the 2010 ITRFs latest by the middle of February 2011. However, ITRFs will not be issued to taxpayers who e–filed for the year of assessment 2009 and those with employment income of less than RM26,000 in the year 2009.

The following taxpayers will need to e–file their ITRFs:

(i) Taxpayers with employment income of more than RM26,000 in 2010,

(ii) Taxpayers requesting for a refund of excess payments under s 51 of *Finance Act 2007* (FA) or s 110 of *Income Tax Act 1967* (ITA), and

(iii) Taxpayers who are not taxable but have been paying taxes through the Schedular Tax Deduction.

The IRB has indicated that only the original ITRFs 2010 or PDF forms obtained from the IRB branches will be accepted.

Grace Period for Filing of Income Tax Returns in Calendar Year 2011

Income tax returns which are due for filing on or after 1 January 2011 and received by the IRB within 3 days of such due date will be treated as having been received on the due date of filing. The grace period is applicable to all manual filings, whether by hand or by post, but is not applicable to e–filing. The grace period is also applicable to payment of the balance of income tax under s 103(1) of the ITA. Any application for an extension of time to pay the balance of tax payable will not be considered.

Monthly Tax Deduction (MTD) Online Payment

On 26 December 2010, the IRB has launched the e–PCB and e–Data PCB systems for use by employers. Employers may check the format and upload the CP 39 text file online, and make PCB payments online, using Financial Process Exchange (FPX).

Soft launch of the Malaysian Tax Web Portal on 3 January 2011

The launch of Malaysian Legal and Tax Information Centre ("MLTIC") Malaysian Tax Portal ("The Tax Portal") was on 3 January 2011. The Tax Portal, accessible at *www.malaysiantax.com*, provides free access to the latest Malaysian tax developments – news, legislation, judgments and rulings, regulatory guidelines and circulars, events, books and articles. More information on the Tax Portal is available at http://malaysianlaw.my/tax/aboutus.aspx. The Tax Portal is a micro–site of MLTIC, the main portal of which is accessible at www.malaysianlaw.my.

Utilisation of Income Tax Credit for Set–off

The IRB has issued Operational Guidelines No 2/2010 on 30 December 2010 detailing the order and procedures for set–off. It states that a tax credit for a year of assessment arises from –

(i) excess payment on the date the assessment is deemed issued or the formal assessment is raised,

(ii) tax discharged, and

(iii) tax credit arising under s 110 of the ITA or s 51 of the FA.

Double Taxation Reliefs

Double Taxation Relief (The Government of the Lao People's Democratic Republic) Order 2010 [PU(A) 379/2010]

(The double taxation agreement between the Malaysian Government and the Government of the Lao People's Democratic Republic has been gazetted on 11 November 2010).

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TEL : 03-2162 8989 ext 106, 108, 113, 119, 121 EMAIL: ntc@ctim.org.my