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20th ANNIVERSARY

20 YEARS OF TECHNICAL EXCELLENCE

Cover Story: CTIM Turns 20

Feature Articles

- Permanent Establishment Risk - A Myth or Reality?
- Promotion of Health Tourism
- Taxation and Natural Disasters
- Appeal against Tax Recovery by the IRB

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CHARTERED TAX INSTITUTE OF MALAYSIA

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Official Journal of the Chartered Tax Institute of Malaysia

CPD Continuing Professional Development

CPD EVENTS: JULY 2011 – SEPTEMBER 2011

PUBLIC HOLIDAY
16 Sep: Malaysia Day

Month/Event	Details				Registration Fee (RM)			CPD Points
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non Member	
JULY 2011								
Workshop: Maximising Tax Incentives	6 July	9am – 5pm	Kota Kinabalu	Sivaram Nagappan	335	385	435	8
Workshop: Maximising Tax Incentives	7 July	9am – 5pm	Kuching	Sivaram Nagappan	335	385	435	8
2011 NATIONAL TAX CONFERENCE	19 & 20 JULY	9am – 5pm	KUALA LUMPUR	LOCAL & FOREIGN	Early Bird 1000 Normal 1200	Early Bird 1100 Normal 1300	Early Bird 1200 Normal 1400	25
AUGUST 2011								
Workshop: Maximising Tax Incentives	3 Aug	9am – 5pm	Penang	Sivaram Nagappan	335	385	435	8
Workshop: Principles and Application of Deferred Taxation	9 Aug	9am – 5pm	Kuala Lumpur	Ramesh Ruben Louis	350	400	460	8
Workshop: Maximising Tax Incentives	11 Aug	9am – 5pm	Ipoh	Sivaram Nagappan	335	385	435	8
Workshop: Maximising Tax Incentives	17 Aug	9am – 5pm	Malacca	Sivaram Nagappan	335	385	435	8
Workshop: Maximising Tax Incentives	23 Aug	9am – 5pm	Johor Bahru	Sivaram Nagappan	335	385	435	8
SEPTEMBER 2011								
Workshop: Latest Developments on Tax Treatment for Rental Income and Investment Holding Companies (IHCs)	7 Sep	9am – 5pm	Kota Kinabalu	Chow Chee Yen	335	385	435	8
Workshop: Latest Developments on Tax Treatment for Rental Income and Investment Holding Companies (IHCs)	8 Sep	9am – 5pm	Kuching	Chow Chee Yen	335	385	435	8
Workshop: Latest Developments on Tax Treatment for Rental Income and Investment Holding Companies (IHCs)	12 Sep	9am – 5pm	Johor Bahru	Chow Chee Yen	335	385	435	8
Workshop: Latest Developments on Tax Treatment for Rental Income and Investment Holding Companies (IHCs)	14 Sep	9am – 5pm	Malacca	Chow Chee Yen	335	385	435	8
Workshop: Interest Expense and Interest Restriction Withholding Tax	19 Sep	9am – 5pm	Kuala Lumpur	Farah Rosley	350	400	460	8
Workshop: Latest Developments on Tax Treatment for Rental Income and Investment Holding Companies (IHCs)	22 Sep	9am – 5pm	Kuala Lumpur	Chow Chee Yen	350	400	460	8
Workshop: Latest Developments on Tax Treatment for Rental Income and Investment Holding Companies (IHCs)	29 Sep	9am – 5pm	Penang	Chow Chee Yen	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 Mr Ridzuan, Cik Fadeah, Ms Yus or Cik Nur at 03-2162 8989 ext 108, 113, 121 and 106 respectively or refer to CTIM's website www.ctim.org.my for more information on the CPD events.

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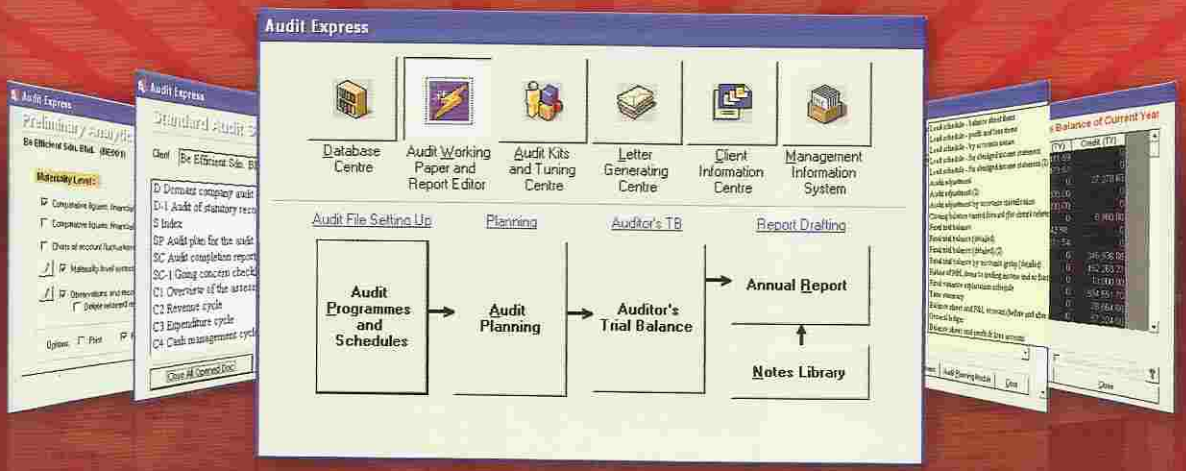

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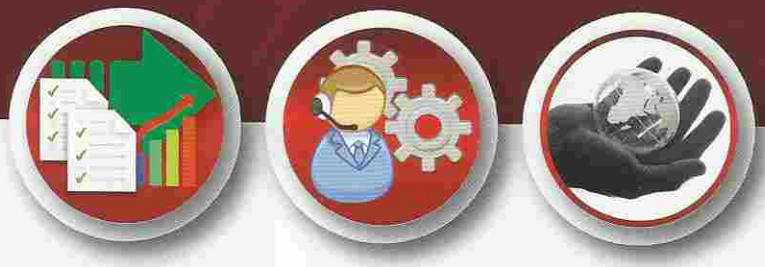

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The Chartered Tax Institute of Malaysia ("CTIM") is a company limited by guarantee incorporated on 1 October 1991 under *Section 16(4) of the Companies Act 1965*. The Institute's mission is to be the premier body providing effective institutional support 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.

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Fax : +603 2162 8990
Email : secretariat@ctim.org.my
Website : www.ctim.org.my

Editorial Note

What a remarkable and certainly a significant year this is for CTIM, as it celebrates its 20th Anniversary! Since its inauguration in 1991, CTIM has performed exceptionally not only in developing professional examinations to produce more tax professionals in meeting the current shortage in the country but also contributed towards building up a global tax community through networking and sharing of knowledge across Malaysia and worldwide. Like any birthday celebration, this 20th anniversary gives us an opportunity to review what CTIM has achieved and set up the direction where it will thrive. Flip the pages to our cover story and take a walk down memory lane.

In today's world, with the fast pace of globalisation and cross border trading, international tax issue concerning the existence of Permanent Establishment (PE) has come into the limelight. The concept of PE within the context of Double Tax Agreements (DTAs), OECD Model and UN Model conventions has become an important subject of scrutinisation where its interpretation and applications have timelessly kept the businesses and tax authorities mulling over the same. Our feature article, "Permanent Establishment Risk - A Myth or Reality?" studies the controversies of this concept. Read on and decide for yourself.

Corresponding to our Government's proactive measures to enhance Malaysia as a preferred health tourism destination, our nation has succeeded in establishing itself as a regional hub for excellent healthcare, capable of providing state-of-the-art medical facilities and services for health tourists. An article in this journal entitled "Promotion of Health Tourism" discusses some of the challenges faced and the fiscal incentives granted by the Government. Possible enhancements are also examined to explore the prospects of bringing health tourism in our country to greater heights.

Over the past year in the Asia Pacific region and beyond, great natural catastrophes - earthquakes, tsunamis and many severe weather-related disasters like storms, hurricanes and floods following extreme monsoon rainfall - have resulted in human tragedies on a staggering scale, ripping lives apart or completely destroying them. It's at times like these that we marvel at the gratifying surge of generous support, financial and in-kind, to those people in need. This leads to the question of whether donations given in cash or kind be allowed as a tax deduction to the donor whether in his/her personal capacity or via a corporation. In the article titled "Taxation and Natural Disasters: Some Thoughts on the Malaysian Perspective", we look at the tax treatment of these donations in Malaysia and its neighbouring countries such as New Zealand, Australia and Japan.

Section 106(3) of the Income Tax Act 1967 governing the recovery of tax as a debt due to the Government by civil proceedings stated that "... the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased... ". This unfavourable provision to the taxpayers stirred the tax and legal practices in Malaysia and our article, "Appeal against Tax Recovery by the Inland Revenue Board (IRB)" seeks to explain the IRB's power on tax recovery procedures and practice with civil cases and also the possible reform to such procedures in order to create certainty and fairness in the existing self-assessment tax regime.

For the Practice Management section of this journal, we have the Star newspaper Business columnist and CEO of Leaderonomics, Mr. Roshan Thiran penned an article entitled "Leadership is an Extreme Thing". Here, he talks about the vast opposite traits needed to succeed. Discover if you have what it takes to be a great leader.

The other featured sections like Tax Cases, International News, Learning Curve and Technical Updates also see our regular authors share their knowledge on the latest happenings and hottest topics in the field of taxation.

It's the time of the year again for the Malaysian premier tax event - National Tax Conference 2011. This earmarks the 10th year of collaboration between CTIM and the IRB in bringing to us an informative and interactive conference that focuses on current local and international tax issues with this year's theme being "Economic Transmission: Role of Taxation". So, have you marked your calendar? Save the date - 19 and 20 July 2011. Register now and see you at the Kuala Lumpur Convention Centre.

Dato Raymond Liew Lee Leong
Chairman
Editorial Committee

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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:

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E-mail: publications@ctim.org.my

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CTIM 20th Anniversary Dinner

The Institute, which was incorporated on 1 October 1991, celebrated its 20th year of existence in 2011.

An anniversary dinner was held to commemorate this special occasion on 10 June 2011 at the Sheraton Imperial Hotel, Kuala Lumpur. This event was officiated by Y Bhg Dato Siti Halimah binti Ismail (Under-Secretary, Tax Analysis Division, Ministry of Finance), who represented the honourable Finance Minister II, YB Dato Haji Ahmad Husni bin Mohamad Hanadzlah.

During the dinner, a total of 350 guests and members, who glorified this joyous celebration, witnessed the official launch of The Malaysian Tax Research Foundation by the Guest of Honour.


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20th Anniversary Dinner


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20th Anniversary Dinner


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CTIM 19th Annual General Meeting

The Chartered Tax Institute of Malaysia (CTIM) held its 19th Annual General Meeting (AGM) on 11 June 2011 at the Sheraton Imperial Hotel, Kuala Lumpur. A total of 75 members attended the AGM.

The 19th AGM witnessed the re-election of Mr Lew Nee Fook. Dato Tan Leh Kiah, Francis, Ms Seah Siew Yun and Mr K Sandra Segaran A/L Karuppiah were also elected to the Council. Mr Khoo Chin Guan completed his term as President and did not seek re-election due to work commitments but will however remain a member of the Council. The new President for the term 2011/2012 is Mr SM Thanneermalai.

Following the AGM, the first Council meeting for the 2011/2012 term was held. The election of the Deputy President for the new term has been deferred to the next Council meeting.

The list of the Council Members for the term 2011/2012 is as follows:

President	: Mr S M Thanneermalai
Immediate Past President	: Mr Khoo Chin Guan
Council Members	: Dr Ahmad Faisal bin Zakaria Mr Aruljothi Kanagaretnam Mr Chow Kee Kan Assoc Prof Faridah binti Ahmad Mr K Sandra Segaran A/L Karuppiah Mr Lai Shin Fah, David Mr Lew Nee Fook Dato Raymond Liew Lee Leong Mr Lim Kah Fan Mr Lim Thiam Kee, Peter Mr Poon Yew Hoe Ms Seah Siew Yun Dato Tan Leh Kiah, Francis Mr Yeo Eng Hui, Adrian

The Council will continue to drive the Institute in achieving its mission, enhancing the professionalism of tax practitioners as well as contributing towards improving the tax system through various dialogue sessions and submissions to the tax authorities.

CTIM Council Members

The Institute's elected council members for the 2011/2012 term are as shown below. 2011 ▶ 2012

President

Mr *S M Thanneermalai*

Immediate Past President

Mr *Khoo Chin Guan*

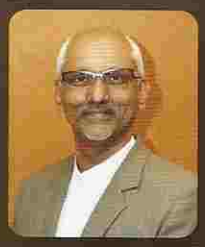
Council Members

Mr Ahmad Faisal bin Zakaria

Mr *Aruljothi Kanagaretnam*

Mr *Chow Kee Kan*

Assoc Prof *Faridah binti Ahmad*



Mr K Sandra Segaran A/L Karuppiah

Mr Lai Shin Fah, David

Mr *Lew Nee Fook*

Dato *Raymond Liew Lee Leong*

Mr *Lim Kah Fan*

Mr *Lim Thiam Kee, Peter*

Mr Poon Yew Hoe

Ms *Seah Siew Yun*

Dato *Tan Leh Kiah, Francis*

Mr *Yeo Eng Hui, Adrian*

CTIM Prize Giving

Ceremony 2010 Examinations

CTIM held its Prize Giving Ceremony for the graduates and prize winners of the 2010 CTIM Professional Examinations at the Sheraton Imperial Hotel, Kuala Lumpur on 11 June 2011. En Sait @ Mohammad Sait bin Ahmad, the Deputy Director General (Tax Operations) of the Inland Revenue Board Malaysia was invited as the guest of honour at the event. Representatives from various educational institutions and professional bodies, CTIM Council members, families and friends of the graduates attended this event too.

The President of CTIM, Mr Khoo Chin Guan congratulated the 19 new graduates. These graduates, who had successfully completed the CTIM Professional Examinations, received their graduation certificates and four prize winners won medal awards for best performance. The 2010 examinations saw the highest number of graduates in history since the introduction of CTIM Professional Examinations. Mr Khoo congratulated the winners for Best Performance in the taxation subjects and Prize winners for Best Performance at the Foundation Level. He reminded them that their knowledge, skills, characters and integrity would be tested in the competitive and challenging work environment. He added that graduates should strive to contribute to the tax profession upon their graduation.

En Sait @ Mohammad Sait bin Ahmad commended the Institute on the well and regularly updated examination syllabus. In developing and conducting professional examinations in the field of taxation, CTIM has played a vital role in producing competent and knowledgeable tax practitioners to meet the current shortage in the country. En Sait @ Mohammad Sait bin Ahmad congratulated the graduates for their achievements. He advised them to discharge their duties efficiently to ensure that taxpayers are fully compliant with the tax law

Courtesy Visit to the Chairman of Special Commissioners of Income Tax

The representatives of CTIM, led by the President, Mr Khoo Chin Guan, made a courtesy visit to the Chairman of the Special Commissioners of Income Tax (SCIT), Dato Haji Zaini bin Hj Abd Rahman on 15 April 2011. The representatives were Mr S M Thanneermalai (Deputy President), Dr Veerinderjeet Singh (Immediate Past President), Mr Lim Kah Fan (Executive Committee Member), Mr Lew Nee Fook (Executive Committee Member), Ms Ann Vong (Executive Director) and Mr Lim Kok Seng (Technical Manager).

The Chairman highlighted that he would like to create public awareness on the role of SCIT in safeguarding the rights of taxpayers. A discussion ensued to brainstorm on the various ways in disseminating the decisions of the Special Commissioners in a more effective manner.

CTIM Sabah Branch News

Courtesy Visit to the Sabah IRB Office

On 15 March 2011, CTIM Sabah Branch Chairman, Mr Teo Chew Hiong and its Committee Members, Mr Michael Tong, Mr Titus Tseu and Mr Chong Fook Hin paid a courtesy visit to the Director of Inland Revenue Board (IRB) Sabah, Mr Kamaruzzaman bin Abdul Salleh, together with the Chairman and Committee Members of the Malaysian Institute of Accountants from the Sabah Regional Office. The rest who were present during the visit were the Director of IRB Kota Kinabalu Branch, Mr Hishamudin bin Mohamed and other senior IRB officers. The visit was aimed at establishing and maintaining a closer working relationship with the IRB Directors and officers.

Special Cheque Presentation Ceremony held at the IRB CEO Office in conjunction with NTC 2010

On 25 April 2011, the representatives from CTIM attended a special cheque presentation ceremony held at the office of the Chief Executive Officer of the Inland Revenue Board (IRB), Y Bhg Dato Dr Mohd Shukor bin Hj Mahfar. The cheque was presented to the IRB in relation to the joint collaboration between CTIM and IRB in co-organising the National Tax Conference 2010. The representatives from both parties also exchanged views on the draft programme for the National Tax Conference 2011, which is scheduled to take place on 19 and 20 July 2011 at the Kuala Lumpur Convention Centre.

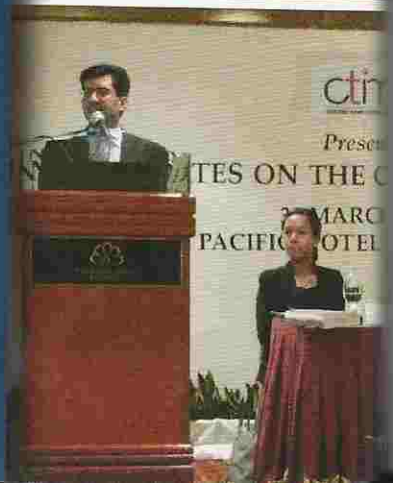
CPD Seminars and Workshops

Seminar on the Treatment of Benefits-in-Kind and the Latest Developments on Schedular Tax Deductions

The seminar was held on 25 February 2011 at the Equatorial Hotel, Kuala Lumpur. It was chaired by Mr Chow Kee Kan, the Council Member of CTIM. The morning session on "Treatment of Benefits-in-Kind" was well presented by Ms Sakaya Johns Rani, the Senior Executive Director of PricewaterhouseCoopers. Apart from the issues on treatment of benefits-in-kind, the speaker also explained the various ways of planning tax efficient remuneration packages. The afternoon session continued with a presentation by Mr Vincent Josef on the topic, "Basic Mistake in Managing the Schedular Tax Deductions System and How to Avoid the Negative Consequences".

Seminar on the Updates of Case Law Developments

The seminar was conducted on 30 March 2011 at the Seri Pacific Hotel, Kuala Lumpur for a crowd of more than 90 participants. Numerous tax cases were discussed and presented by the speakers, Mr Anand Raj and Ms Cynthia Lian, both from Messrs Shearn Delamore & Co and Mr S Saravana Kumar and Ms Siti Fatimah Mohd Shahrom, both from Messrs Lee Hishamuddin Allen & Gledhill. The chairpersons for the seminar were CTIM Council Members, Dr Jeyapalan Kasipillai and Dr Ahmad Faisal Zakaria.



Workshop on the Practical Issues on Stamp Duty

Mr Tan Sin Huat, a former Principal Assistant Director of the Inland Revenue Board (IRB) conducted the 2-day workshop on stamp duty. It was held from 22 March 2011 to 23 March 2011 at the Equatorial Hotel, Kuala Lumpur. All issues in relation to stamp duty and stamp duty relief exemption under *Sections 15 and 15A of the Income Tax Act 1967* were well presented and explained by the speaker as he has more than 17 years of experience serving in the IRB Stamp Duty Division.

Workshops on the New Public Rulings issued in 2010 and 2011

Workshops on the new public rulings issued by the Inland Revenue Board (IRB) in 2010 and 2011 were held across major towns in Malaysia from March 2011 to May 2011. Due to overwhelming response, CTIM organised re-runs of the workshops in Kuala Lumpur and Ipoh to meet its members' requests. The speaker, Mr Chow Chee Yen discussed the major Public Rulings issued by the IRB recently.

Workshops for Individuals held in Kuching, Sarawak

A workshop titled "Submission of Return Forms B or BE 2010" was conducted by Mr Vincent Josef on 31 March 2011. The speaker presented various issues on the chargeability of employment income and ways to minimise tax exposures. CTIM received positive feedback from the participants.

On 5 April 2011, a workshop titled "Tax Planning on Individual's Income from Employment and Investments" was successfully conducted at the Four Points Sheraton Hotel, Kuching. Participants felt that the workshop had achieved its objectives and the speaker, Mr Sivaram Nagappan, provided them with a deeper understanding of the issues discussed.

Career Talks

Career Talk at Deloitte Malaysia

A career talk for 60 students from Monash University, Sunway Campus was held jointly by CTIM and Deloitte Malaysia at Deloitte Tax Academy in Damansara Uptown, Petaling Jaya on 21 April 2011. The objectives of the talk were to create awareness among students on a career in taxation and to introduce them to the background, roles and responsibilities of CTIM.

CTIM would like to thank the representatives of Deloitte, Mr K Sandrasegaran and Ms Ang Weina as well as the representatives of Monash University, Dr Jeyapalan Kasipillai, Dr Shanthy Rachagan and Dr Haemala Thanasegaran for their support in assisting the Institute in creating such awareness among its students.

Career Talk at UNIRAZAK

On 8 April 2011, a career talk was held at the Auditorium of Universiti Tun Abdul Razak (UNIRAZAK) for a group of 45 students to create awareness on a career in taxation. Ms Seah Siew Yun, Chairman of the Education Committee of CTIM shared her experience with the students and spoke about the route to being a tax professional. Mr Manharlal Bhaichand Gathani, the Tax Director of Pannell Kerr Forster (PKF) Malaysia and Dr Arjunan Subramaniam, the Partner of Shanker & Arjunan, Advocates & Solicitors were also present to share their experiences on the field of taxation.

Career Talk at UiTM Puncak Alam

A career talk was held at Universiti Teknologi Mara (UiTM) branch campus in Puncak Alam on 11 March 2011 to encourage its accounting students to consider pursuing a career in taxation and to promote the CTIM professional examinations. Ms Nancy Kaaur, the Examinations & Education Manager of CTIM was present to deliver the talk.

Career Talk in Kota Bharu, Kelantan

On 5 May 2011, Mr Chu Eng Chiau, a member of CTIM together with members of the Chinese Chamber of Commerce & Industry organised a career talk for a group of 600 students from Chung Hwa Independent High School, Sek Men Jenis Keb Chung Cheng and Sek Men Jenis Keb Chung Hwa. As these students are currently pursuing their Sijil Tinggi Pelajaran Malaysia (STPM) examinations, CTIM took the opportunity to urge the students to consider taxation as a profession.

Ms Seah Siew Yun, the Chairman of CTIM Examinations and Education Committee, shared her personal experience on her career in taxation. CTIM Examinations and Education Manager, Ms Nancy Kaaur, was also present to speak about the route to the CTIM professional examinations in taxation. During the career talk, students were advised and encouraged to take up the CTIM professional examinations in order to become tax professionals. The Chairman also briefed the students on the Institute's roles and responsibilities, as well as the benefits of being a member of the Institute.

Career Talk at Universiti Malaysia Sabah

On 1 April 2011, a career talk was conducted by the CTIM Sabah Branch at Universiti Malaysia Sabah (UMS) campus in Kota Kinabalu to a total of 100 first-year and third-year School of Business and Economics students.

CTIM was introduced to the students vide a presentation of CTIM's corporate video to promote greater awareness of the Institute. CTIM committee member and past Chairman, Mr Michael Tong presented the talk and shared his experience with the students on his career as a tax practitioner. The students actively participated in the Q&A session, which was attended by the Sabah Branch Chairman, Mdm Teo Chew Hiong.

CTIM looks forward to future collaborations with UMS to provide insights on career opportunities in taxation among UMS students. CTIM thanked Ms Noraizan Ripain (Head of Accounting Programme, School of Business and Economics) and Mr Jainurin Justine (Lecturer, School of Business and Economics) for the presentation opportunity and hospitality bestowed upon Mdm Teo Chew Hiong and Mr Michael Tong during the visit.

Forum on Accounting Career at UiTM Melaka

Final semester students from the Faculty of Accountancy, Universiti Teknologi Mara (UiTM) Melaka together with Mr Mohd Fazly bin Mohd Zaki, the Organising Chairman, successfully organised a forum on accounting career with the theme, "Opportunities and Challenges". The forum, held at UiTM Melaka City Campus Auditorium on 30 March 2011, was attended by 430 students and members of the academia. Y Bhg Datuk Associate Professor Dr Mizan bin Hitam, the Rector of this University officiated the event and commended the students and their advisor-cum-lecturer, Dr Gan Kin Lim for the initiative and encouraged all the participants to learn from the experience and knowledge shared by the panelists.

Career Talk at UiTM Shah Alam

On 13 April 2011, CTIM held a career talk at Universiti Teknologi Mara (UiTM) main campus in Shah Alam for a group of 645 accounting students, who are currently pursuing their Bachelor of Accounting degree. The objective of the talk was to create awareness on career opportunities in the field of taxation. CTIM Examinations & Education Manager, Ms Nancy Kaaur was present to speak to the students. This student recruitment drive commenced with a briefing on the roles of the Institute followed by a slides presentation on a career in taxation. A Q&A session was also held for the students after the said presentation.

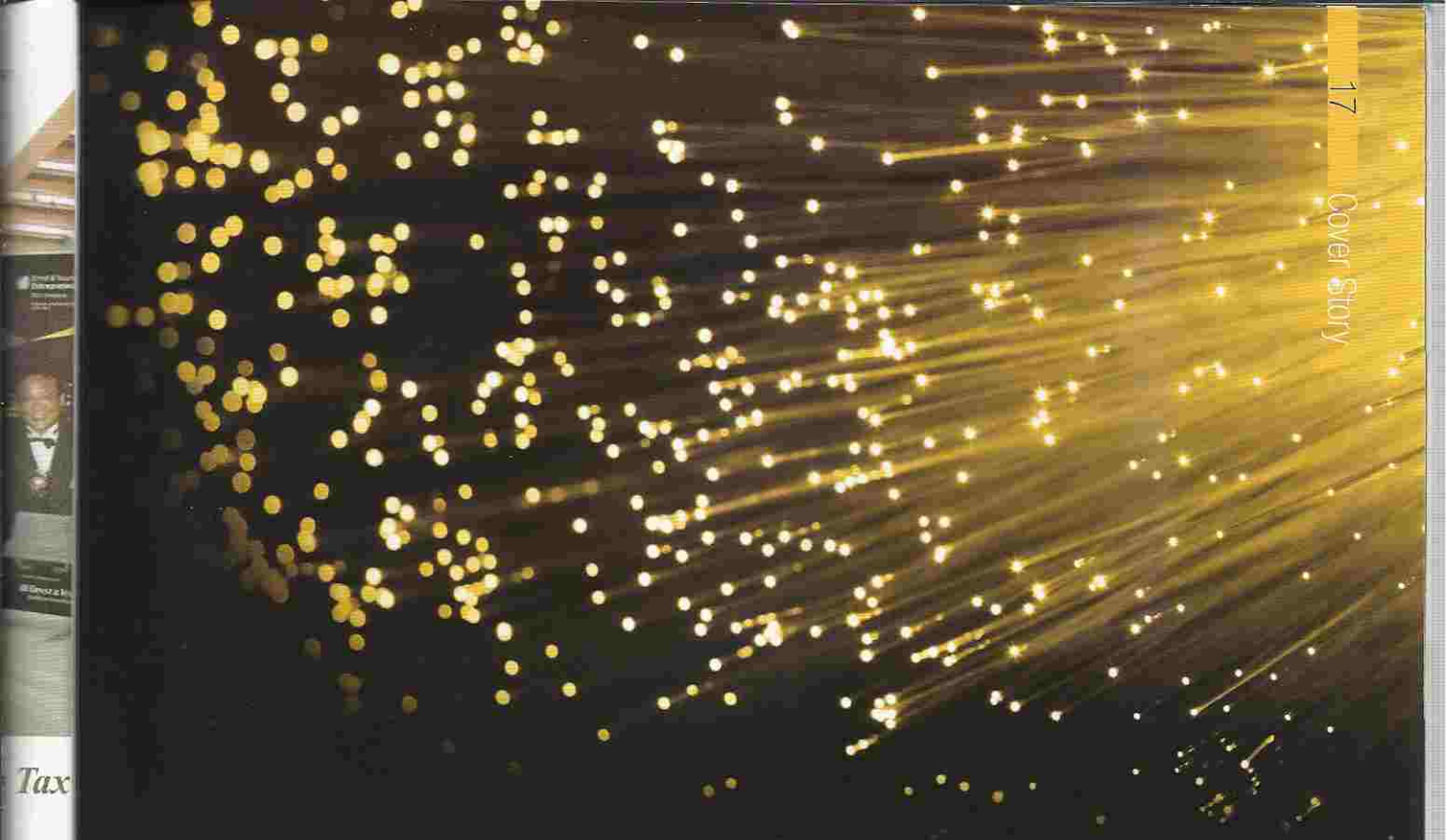
Career Talk at Monash University Sunway Campus

A career talk was held at Monash University Sunway Campus on 11 May 2011 to create awareness among its students on pursuing a career in taxation. CTIM would like to thank Professor Dr Jeyapalan Kasipillai, its council member and Dr Haemala Thanasegaran, the lecturer of the University for their assistance in organising the talk for the benefit of the students in the University. Ms Nancy Kaaur, the Examinations and Education Manager of CTIM spoke at the career talk and explained to the students on the route to becoming a tax professional via CTIM Professional Examinations.

Career Talk at Ernst & Young Tax Consultants Sdn Bhd

On 22 April 2011, a career talk for 80 students from Monash University, Sunway Campus was held a Ernst & Young Tax Consultants Sdn Bhd (Ernst & Young) office. The talk was conducted by CTIM Examinations and Education Manager, Ms Nancy Kaaur. Since this talk was organised as one of the activities of the University, its representative Dr Haemala Thanasegaran was also present accompanied by CTIM Examinations and Education committee members, Dr Jeyapalan Kasipillai and Dr Lydia Thiagarajah.

Ms Yeo Eng Ping, the Partner - Malaysia Tax Leader of Ernst & Young attended the talk and shared her personal experience on her choice of choosing taxation as her profession. The students were encouraged to undertake the CTIM professional examinations in order to achieve their goals of becoming tax professionals.



CTIM Turns 20!

1 October 1991 is a special day – the date the Malaysian Institute of Taxation (MIT) was established.

MIT was officially launched on 17 February 1992 by the then Deputy Minister of Finance, YB Dato Loke Yuen Yow. During the launch, Dato Loke advised, "All tax practitioners should strictly adhere to their profession's ethics in matters relating to tax compliance, especially when handling their clients' tax returns". In that vein, the establishment of MIT was in line with the objective of guiding its members and fellow Malaysian tax practitioners to further enhance their professionalism.

The idea of setting up MIT in the late 1980s as a professional body to represent tax professionals when dealing with the then Inland Revenue Department and the other government authorities was mooted by the founding members, Mr Michael Loh and Mr Yeoh Chong Swee.

The initial stage was certainly tough. Lots of time was spent getting the necessary approvals from the relevant authorities to set up MIT. After going through all the processes and various discussions, MIT was finally formed under the auspices of the Malaysian Institute of Accountants (MIA). In the early years, MIA offered its office premises and secretarial staff to assist MIT and this symbiotic arrangement benefitted both professional bodies.

The Institute was successfully incorporated on 1 October 1991 under *Section 16(4) of the Companies Act 1965* with the mission of becoming the premier body providing effective institutional support to its members and promoting convergence of interests with government, using taxation as a tool for the nation's economic advancement, and attaining the highest standard of technical and professional competency in revenue law and practice supported by an effective secretariat.

At its inception, MIT was –

- A professional body representing Malaysian tax professionals and the tax profession as a whole
- An organisation for all accountants, tax agents and academicians involved in matters pertaining to taxation in Malaysia
- Managed by a group of 16 council members comprising eight appointees of the MIA and eight elected members

Over the next 20 years since its formation, MIT has proven itself to be a viable organisation providing much needed direction and support to tax professionals. The Institute can be rightly pleased by the fruits of its achievements throughout the years.

The Institute officially changed its name to the "Chartered Tax Institute of Malaysia" (CTIM) on 12 March 2009 after its members voted in favour of adopting the new name at an extraordinary general meeting. The objective of the name change is to rebrand the Institute in order to create a better image for itself as the premier body for tax professionals.

In line with this name change, a new logo was also created following a design competition organised by the

Institute's Public Relations Committee and this logo was formalised on 1 April 2009.

With this, CTIM launched its new name and logo on 13 June 2009 at Hotel Istana, Kuala Lumpur where the ceremony was officiated by Dato Shahmin Ta Bin Abdullah, Deputy Director General, Corporate Affairs representing Dato Hasmah Abdullah, CEO / Director General of the IRB, Malaysia.

The Institute's Accomplishments

1. Becoming a professionally recognised taxation body in Malaysia

The Institute has transformed and grown tremendously despite its short history. It is now a premier professional tax body advancing the cause of good tax policy and administration.

The Institute listens to its members attentively and conveys their problems and matters of concern to the relevant parties via active participation in regular dialogues and meetings organised by the government authorities, specifically, the Inland Revenue Board (IRB) and Royal Malaysian Customs Department (RMCD); thus enhancing its members' technical and professional capabilities.

As the Institute matured over the years, it now has th ears of the Ministry of Finance (MoF), IRB, RMCD an other government authorities in relation to ta proposals, tax law provisions, tax reforms an administration. For example, in 2005 and 2006, MI together with other professional bodies, presented the views to the MOF in drawing up the guidelines an application procedures for the Tax Agents License *unde Section 153(3) of the Income Tax Act 1967*. Thes guidelines were issued by MoF in 2006, where all ta agents are required to attend tax seminars, especially th tax budget seminars, and should have 90 CPD point over 3 years for renewal of their tax licenses.

In recent years, the Institute has also visited the Specia Commissioners of Income Tax (SCIT) to explor various options for disseminating the decisions of th SCIT in a more effective manner.

On another note, its membership is still growing. It nov has over 2,800 members. Its members compris accountants, licensed tax agents, lawyers, member from commerce and industry and other tax practitioner such as senior staff of the IRB.

CTIM, First President – En Ahmad Mustapha Ghazali

"Being one of the founder members of the Institute, I am indeed proud to see such remarkable progress over the last 20 years of the Institute's existence. I can still remember that in 1991, the MIT (now CTIM) with hardly 300 members with a small skeleton staff, rented a small space in MIA's premises in Brickfields. Now it has its own headquarters in the prime area in Kuala Lumpur's golden triangle and its membership has grown to around 3,000 members.

As the national taxation body, it has performed its role very well and through its active participation in AOTCA its influences in the region is also being felt. I wish to congratulate the CTIM Council members (the past and present) and staff for this achievement. As a past president, I am honoured to be a part of CTIM development and wish the Institute the very best in all its future undertakings."

CTIM, Second President – Tuan Haji Abdul Hamid bin Hassan

"Since its birth under the name of Malaysian Institute of Taxation 20 years ago, this Institute has always been manned by the best tax brains in the country, consulted on and respected by parallel bodies the world over. MIT never had growing up pains, never experienced adolescence and never floundered while staying well ahead in the world of fiscal challenges.

Its metamorphosis into the Chartered Tax Institute of Malaysia is a fitting tribute to its professionalism and an endorsement by the Government as a consultative body. I am proud to have been associated with this august body since its inception and feel honoured to be remembered."

2. Recognition by international bodies

The Institute achieved another milestone in November 1993 when following its hard work in organising countless conferences and seminars, it was officially admitted as a member of the Asia-Oceania Tax Consultants Association (AOTCA) at the AOTCA inaugural meeting held in Tokyo, Japan. This has led to greater recognition in the international arena including the signing of a number of Memorandums of Understanding with foreign tax associations.

The Institute also successfully hosted the AOTCA meeting held at the Shangri-La Hotel, Kuala Lumpur in November 1996 with the presence of delegates from the 12 member bodies of the association. With its active participation, it again hosted the 2nd AOTCA International Convention at the Kuala Lumpur Convention Centre in 2005, which was officiated by YB Dato Seri Rafidah Aziz, the then Minister of International Trade and Industry, Malaysia. The convention was attended by 254 tax professionals from the Asia-Oceania region, including Australia, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Mongolia, New Zealand, Pakistan, Taiwan, the Philippines and the Republic of China.

The Institute also established ties with the International Bureau of Fiscal Documentation (IBFD), a leading provider of cross border tax expertise and independent tax research centre based in Amsterdam, which also helps promote the Institute's profile and Malaysian taxation profession internationally.

Furthermore, the Institute has also signed Memorandums of Understanding with several foreign tax associations to promote the exchange of information regarding tax practices and legislation in each jurisdiction, and to conduct training and continuing professional development events that mutually benefit both parties. As of to-date, the memorandums have been signed with the Taxation Institute of Australia, the Chinese Certified Tax Agents' Association and The Indonesian Tax Consultants' Association.

CTIM, Third President – Dr Veerinderjeet Singh

"CTIM has grown from strength to strength in the last 20 years. This has been due to the dedication of all the Council members who have put their heads together in charting the path forward for the Institute. CTIM is now a dominant player and it has to continue its role as the pre-eminent body for tax professionals in the country. It must continue to promote the tax profession, engage the tax authorities on relevant matters, work towards pushing for reforms of the tax system and enhance the awareness of the public on tax matters, among other things. The technical excellence that CTIM has propagated is an essential element in bringing together those interested in the field of taxation. CTIM has to continue to speak out for the tax profession where it matters.

It is my hope that the Institute will continue to tap into its diverse membership base and enhance its interaction with members on all fronts, be it for training, technical updates, etc as the members must always be the focal point."

3. Educating tax professionals

The continuous amicable working relationships with the MoF, IRB and RMCD have also resulted in the success of many jointly-organised conferences and seminars benefitting the Institute's members and the general public.

The most prominent of these is the National Tax Conferences (NTCs). 2001 was a landmark year for the Institute as it successfully co-organised the National Tax Conference 2001 with the IRB at the Palace of t Golden Horses, Selangor with 600 participa attending the conference. From then on, the Institu has tirelessly worked with the IRB on the jo organisation of Tax Conferences in the north (Penang) and southern (Johor Bahru) region of We Malaysia and the eastern region (Sabah) of Ea Malaysia, as well as NTCs in the central region (Ku Lumpur and Selangor). These conferences enab participants to keep abreast with latest tax developme and the hottest tax topics and issues concerning t practitioners, corporations and individuals, both local and internationally.

The Institute itself organises lots of seminars a conferences throughout the years to meet its objective educating its members and the public. It al collaborates with accounting bodies and governme authorities to jointly hold such seminars a conferences with the aim of delivering hands- practical updates to the participants and supporting the in resolving any grey areas relating to current taxati matters. For instance, the RMCD gave the Institute t privilege of hosting the Customs-Private Sect Consultative panel meeting back in 2003. This was t very first time a private body was accorded this honou

In addition to the above, the Institute together with t MIA and the Malaysian Institute of Certified Publ Accountants (MICPA) play a vital role in organising a preparing the Budget Commentary and Tax Informati booklets on a yearly basis. Thousands of people rely these booklets for the commentary on the Budg proposals announced by the Minister of Finance as w as the updated information on the Malaysian taxati system and framework.

Development of taxation courses and tax specialists

A few years after its incorporation, the Institute announced a plan to introduce a three-year taxation course for those who are interested in qualifying as tax practitioners. The Institute had wanted to conduct examinations to produce professional tax practitioners that would ease the shortage of such expertise in the country.

That plan finally materialised on 12 December 1994 when the Institute launched its professional examinations after holding special dialogue sessions with 13 private colleges in the Klang Valley to discuss the course syllabus, duration and recognition of the examinations. This historic event was officiated by the then Deputy Finance Minister, YB Senator Dato Mustafa Mohamed with over 100 invited attendees such as senior government personnel, senior partners of accounting firms, tax practitioners and members of the Institute. This initiative was so well-received that the launch itself saw a registration of 40 people for the December 1995 examination.

These examinations were the first of its kind in the country. The first batch of candidates, 73 of them, sat for the MIT 5-day examinations in 1995. The examinations results were encouraging. As years went by, more and more budding tax professionals were created and even more are currently pursuing the examinations.

Over the years, regular dialogue sessions with colleges were held to discuss the possibility of conducting revision programmes tied to the Institute's examination modules.

The Institute also signed numerous Memorandums of Understanding with educational institutions such as ACCA Malaysia, Universiti Tun Abdul Razak (UniRazak), Universiti Teknologi Mara (UiTM), CPA Australia, Universiti Tunku Abdul Rahman (UTAR) and Universiti Malaysia Sabah (UMS) to collectively organise continuous professional development courses on taxation for the welfare of its members and to advance the tax profession within Malaysia.

The Institute has been actively holding career talks nationwide throughout the years in institutions of higher learning and public accountancy firms to create awareness and to offer options to students to qualify as tax professionals.

CTIM, Fourth President – Mr Khoo Chin Guan

I am delighted to be associated with the Chartered Tax Institute of Malaysia since its inception in 1991; having been admitted as one of its early members. I am also honoured to be actively involved with the Institute since coming into the Council during the 2005/2006 term and culminating with the position of President for the 2010/2011 term.

I am proud that the Institute has grown from strength to strength and gained respect and recognition, both locally and internationally over the past 20 years. As a testimony to that, the Institute has always been called upon by the regulatory authorities, in particular, the Inland Revenue Board, the Tax Analysis Division of the Ministry of Finance and the Royal Malaysian Customs Department to lead in the dialogues and meetings with these authorities on tax issues. On the international front, the Institute was given the honour to host the 2nd AOTCA International Convention in Kuala Lumpur in 2007, a reflection of the recognition bestowed on the Institute by the other AOTCA members within the Asia-Oceania region.

As the Institute charts its course for the next decade, I am confident that the Institute will play bigger and significant roles in assisting the Government in the formulation of tax policies and measures, going forward. In tandem with this, I believe the Malaysian Tax Research Foundation, the brainchild of the Institute, will undertake tax research for the benefit of Malaysia and the tax profession. It is my hope that the Institute will also be called upon by the Ministry of Finance to assist in the process of licensing of tax agents in the near future.

I would like to conclude by extending my heartiest congratulations to the Chartered Tax Institute of Malaysia and its members on the occasion of its 20th Anniversary.

5. Publication of tax journal

The Institute published its first official journal, "Tax Nasional" in October 1992. This journal, distributed to its members and students as well as both corporate and individual subscribers, features original contributions covering local and international tax developments which are of interest to tax professionals, lawyers and academicians.

As the Institute's rebranding exercise took place in 2007, the name of the journal was also changed to "Tax Guardian" to reflect the technical contents therein as well as the fact that it was the only tax journal in the country. The first issue of the 'Tax Guardian' was the Q1 2008 issue.

Today, Tax Guardian is a premier Malaysian tax journal, presenting its subscribers and the Institute's members with quality and in-depth articles in the field of taxation.

6. Ownership and expansion of resources

In February 2003, the Institute moved its office to Taman Tun Dr Ismail, Kuala Lumpur.

Two years down the road, on 19 December 2005, the Institute moved to its own premises on the13th Flo Megan Avenue II, 12 Jalan Yap Kwan Seng, Ku Lumpur. This new home has a much bigger sp and a library, with its own training rooms.

As this Institute grows, its office is now active wi numerous activities as is evident in the increas number of staff from 4 to 14 and its many visitors the point where the Council is now contemplat possible acquisition of a larger office to cater for impending growth.

That's a lot! And more is expected to transpire. T next ten years may prove to be challenging as tax la reflect increasing sophistication when dealing wi evolving business and community practices. T Institute's quest to continue providing tax practition with cutting edge information regarding the substa and administration of tax laws is upheld by t competency, integrity and dedication of successi generations of council members and members of t Institute in advocating proactive views and ideas i reforming the tax system.

CTIM, Fifth President – Mr S M Thanneermalai

I am extremely honoured to be elected as the fifth President of CTIM on 11 June 2011.

The Institute is the premier tax body in Malaysia and represents the tax professionals in practice, industry and the tax academia.

Over the past 20 years, CTIM has established itself as an Institute recognised by the Inland Revenue Board and the Government of Malaysia where our views are regularly sought by the authorities in formulating any fiscal plans that affect the country and the taxpayers. Under my tenure as President, I intend to enhance the relationship with the Government authorities including the Inland Revenue Board to a higher level where CTIM can proactively provide ideas to improve the tax administration and in designing future fiscal policies, which will lead Malaysia to achieve its goal of becoming a developed nation by 2020.

My desire is to see an improvement in the level of tax knowledge in Malaysia and in this connection CTIM will provide the platform to do so.

Finally, it is my pleasure to hold the office of the President on the 20th Anniversary of CTIM and I would like to thank everyone who has contributed towards the success of the Institute.

Future of CTIM

CTIM strives to impart value added services to its members as well as be the voice on matters relating to Malaysian tax practice in this rapidly globalised environment. It aspires to go the extra mile in continuing to expand its membership base through aggressive promotion and membership recruitment drive, active promotion of the professional examinations thereby attracting more new students to undertake the courses offered and maintaining the high standards of such examinations.

The far sighted vision of the Institute's founding members and the persistence of its Council members have brought CTIM to where it is today. The Institute now has the ability to affect aspects of tax developments within the country by virtue of its united synergy. It has the organisation, it has the framework it needs to work in, it has the voice of the tax practitioners and it has the Malaysian tax community's support.

As Henry Ford once expressed – Coming together is a beginning. Keeping together is progress. Working together is success.

Permanent Establishment Risk - A Myth or Reality ?

By K. Sandra Segar

Introduction

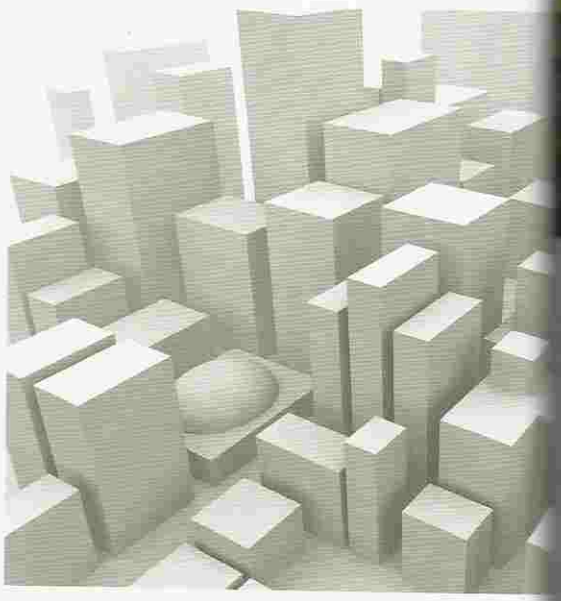
"Is there a permanent establishment?" is probably the most frequent question raised in tax treaty interpretation in international taxation. In Malaysia, the concept of permanent establishment (PE) is a corollary of Malaysia's tax treaty with other countries empowered under *Section 132 of the Income Tax Act 1967* (ITA). While the ITA does not define a 'permanent establishment', it is a standard feature of Malaysia's tax treaty with other countries, which now spans a network in excess of 60 countries. The concept is applied principally for the purpose of determining the right of the host country to tax the business profits of a foreign enterprise which carries on a business in that country. Typically, the business profits of a foreign enterprise can be taxed by the host country only to the extent that the same can be attributed to a PE situated therein.

With the pace of globalisation and cross border trade and transactions, international tax issues such as that of creation of a PE and transfer pricing have gained tremendous focus by businesses as well as the tax authorities. While the Organisation for Economic Co-operation and Development (OECD), consisting of 34 member countries, mostly advanced nations or net capital exporters has taken the lead in providing the international tax fraternity with interpretations and commentary on treaty provisions, the revenue authorities of various tax jurisdictions have examined the facts that correlate with the interpretation of the these so called international principles and at times taken a divergent view. Hence it is no surprise that disputes on the interpretation of the concept of 'PE' has escalated to tax tribunals and the courts the world over. In a way, these have brought out the concerns of tax jurisdictions and how enterprises doing business across borders may be walking on a tight rope.

This article examines the controversies of this concept as seen in reported court decisions globally and the OECD development and the relevance to Malaysia there of.

Model Conventions and Commentary

In July 2010, the OECD issued its eighth edition of the Model Tax Convention on Income and on Capital ("OECD Commentary") and 2010 report on Attribution of Profits to Permanent Establishments. The views of non-member countries have also been included in sections of the commentary. Over the years, the OECD Model Convention and Commentary have served as a guide to most member and non-member countries to adopt the Convention and/or the interpretation elucidated in the Commentary. Practice in some OECD member countries has had a significance influence upon



the PE definition in the OECD commentary[i] . On th other hand, practice in countries with little experience i this field is greatly influenced by the OEC commentary. Malaysia has largely adopted th Convention in most of its treaties and to a less extent the United Nations (UN) Model Convention The Malaysian courts too have considered an accepted the OECD Commentary to determine th construction of the treaty (*see OA Pte Ltd v KPHD (1996) MSTC 2752* and *AIACL v Ketua Pengara Hasil Dalam Negeri (2002) MSTC 3438*). As th main aspect of the PE definition is identical in mo treaties in the world, court decisions elsewhere woul also be a source of guidance, particularly so fo Malaysia from countries with a common la tradition.

The OECD Model Convention generally provides fo three categories for the existence of a PE.

- **Basic rule**: Under this basic rule of first instanc business activity performed through a fixed place business constitutes a PE. Several conditions a prescribed and if any one condition is not satisfie a PE is not established.
- **Construction rule**: The performance of construction or installation (including 'assembly generally in Malaysian treaties) project at building site for 12 months (variations in Malaysia treaties) or more could constitute a constructio PE.
- **Agency rule**: A person authorised to conclud contracts on behalf of a foreign enterprise ca create an agency PE of the foreign enterprise under certain circumstances.

i. Studies on International Fiscal Law by the IFA, Vol 94a, 2009 Vancouver Congress

With regard to services, the services PE paragraph was introduced in the Commentary in 2008 as an alternative for those countries that may want to opt for such a reduced PE threshold. However, it is not in the OECD Model itself.

Even though the UN Model Convention has accepted the PE principles as enumerated above, it deviates from the OECD Convention on several aspects. The OECD Convention focuses more on residence-based taxation and is adopted largely by developed countries; the UN Model Convention focuses more on source-based taxation and is predominately adopted by developing countries.

Unlike the OECD Model Convention, the UN Model Convention provides for a lower threshold for constituting a PE. The significant deviations in the definition of PE in the UN Model Convention compared with the OECD Model Convention are as follows:

- Service PE rule: Under this rule, the mere furnishing of services in the host country by employees of the foreign enterprise in excess of six months would result in a PE, even in the absence of a fixed place of business.
- The threshold for creating a PE under the construction rule is reduced to six months.
- A dependent agent maintaining a stock of goods for delivery on behalf of the foreign enterprise would result in a PE for the foreign enterprise.

Definition of PE

Article 5 of Malaysia's treaties spell out the definition and exceptions relating to a PE. Generally the term **"permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on**. A non-exhaustive list is included too. The term "PE" shall include especially:-

- a place of management;
- a branch;
- an office;
- a factory;
- a workshop;
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
- a farm or plantation;

Exception to the general definition

In most Malaysian treaties, the term "permanent establishment" shall be deemed *not* to include:

a. *the use of facilities solely for the purpose of* ***storage, display or delivery of goods*** *or merchandise belonging to the enterprise;*

b. *the* ***maintenance of a stock of goods*** *or merchandise belonging to the enterprise* ***solely for the purpose of storage, display or delivery;***

c. *the* ***maintenance of a stock of goods*** *or merchandise belonging to the enterprise solely* ***for the purpose of processing*** *by another enterprise;*

d. *the maintenance of a fixed place of business solely for the purpose of* ***purchasing goods or merchandise, or of collecting information****, for the enterprise;*

e. *the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a* ***preparatory or auxiliary character****;*

f. *the maintenance of a fixed place of business solely for* ***any combination of activities*** *mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.*

Each paragraph in Article 5(3) as above, uses the word "solely" but however, Article 5(3)(f) allows for aggregation of activities:

"the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),.."

but on one condition, the overall activity resulting from this combination is of a preparatory or auxiliary character.

An enterprise cannot fragment a cohesive operating business into several small operations in order to argue that each is merely engaged in a preparatory or auxiliary activity.

Physical PE

This relates to the fixed place PE or the commonly accepted understanding of the "place of business", i.e. the physical presence of the non-resident taxpayer in the source state. A "place" of business can be interpreted broadly. Any open-air place, e.g. in a forest where logging equipment is demonstrated, may be such a 'place'. Similarly the wharf of a shipping enterprise and the place where a drilling ship or a rig is located may also be a 'place of business. Also a 'home office' may qualify as a place of business, including a desk and a filing cabinet in a corner of a private residence. Generally speaking, any 'place' in the ordinary sense of the word may be a "place of business".

For the purposes of the OECD Convention, the term PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The following four key elements are identified:

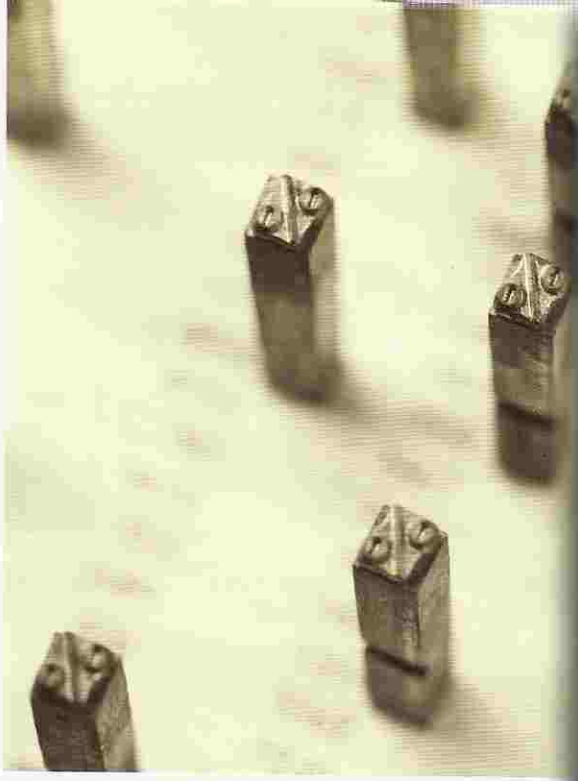
- Specific geographical point
- "At the disposal"
- Time (temporal test)
- The carrying on of business of the enterprise through this fixed place of business

It can be any premises, facilities or simply some space at its disposal (meeting the disposal test), whether with or without formal legal right to use. The 'place' in question may be owned, rented or otherwise at the disposal, i.e. can be at premises of another enterprise. However, mere presence of an enterprise at a location does not necessarily imply that location is at the disposal of that entreprise (more than mere presence is required). The following are some of the examples illustrated in the OECD commentary:

- Eg 1: Salesman regularly visits a major customer to take orders and meets the purchasing director in his office to do so (No PE as premises not at disposal)

- Eg 2: Co X's employee, for a long period of time, is allowed to use an office in Co Y in order to ensure that Co Y complies with its obligations under contracts with Co X. (PE will exist as disposal test met for sufficient period of time)

In identifying the place of business, one has to make a factual enquiry as to whether, "does the person actually have practical (albeit not unlimited) freedom to use, and does use, the premises?" Exclusivity is not required in the determination. Place of business must be "fixed", i.e. it must be established at a distinct place with a certain degree of permanence. As such two tests are often used, i.e. the geographical test and temporal test. Under the geographical test, the activity may be at a distinct place, wherein no fixation to the soil is required. Where the activities move due to nature of business, the different locations are considered single "place of



business" provided there is both commercial and geographical coherence amongst those different locations. Examples of commercial and geographical coherence[ii] are as follows:

- Eg 3: "A mine clearly constitutes a single place of business even though business activities may move from one location to another in what may be a very large mine as it constitutes a single geographical and commercial unit as concerns the mining business."

- Eg 4: "…an 'office hotel' in which a consulting firm regularly rents different offices may be considered to be a single place of business of that firm since, in that case, the building constitutes a whole geographically and the hotel is a single place of business for the consulting firm."

- Eg 5: ...of geographical coherence, but not commercial coherence[iii]: "where a painter works successively under a series of unrelated contracts for a number of unrelated clients in a large office building so that it cannot be said that there is one single project for repainting the building, the building should not be regarded as a single place of business for the purpose of that work." (Malaysia disagrees with this position as expressed in the Non-OECD Economies Positions on the Model Tax Convention).

- Eg 6: ...of commercial coherence, but not geographical coherence[iv]: "where a consultant works at different branches in separate locations pursuant to a single project for training the employees of a bank, each branch should be considered separately. However, if the consultant moves from one office to another within the same branch location, he should be considered to remain in the same place of business."

ii. OECD Commentary, Para 5.2.
iii. OECD Commentary Para 5.3.
iv. OECD Commentary Para 5.4

In early 2010 the Indian Authority for Advance Rulings (AAR) handed down a decision[v] under the India-Singapore treaty that a 3rd party bonded warehouse owned and operated by an independent service provider in India for Seagate Singapore International Headquarters Private Limited constituted a PE. The AAR held that even if the fixed place of business was owned or possessed by the logistic service provider, it does not detract from the position that the taxpayer has a distinct, earmarked and identified place which caters to its business. The AAR felt that the taxpayer did have a "fixed place of business" in India which was the focal point of its business operations in India. The fact that the fixed place of business is owned or possessed by the logistics service provider does not detract from the position that the taxpayer has a distinct, earmarked and identified place which caters to its business. In one sense, it is the business place of warehouse/service provider; in another, it is also the fixed place of business of the taxpayer from where the sales activities are carried on.

In another case in India, involving almost similar facts (the ARL case), the Mumbai tribunal concluded that a PE did not exist because the "disposal test" was not satisfied (that is, ARL did not have a place at its disposal from which to carry out its business) and because the warehouse was not used for ARL's business. It is interesting to note that neither the AAR nor the Mumbai tribunal considered the transfer of ownership of inventory as relevant in determining the existence of a fixed-place PE[vi] .

In meeting the temporal test a certain degree of permanency is expected especially if it is not of a purely temporary nature. As such the nature of the business must be taken into account. If the nature of business is such that its activity is carried on for a short period of time, and therefore the place of business exists only for a short time, a PE may be created. Subject to the circumstances in each case, practice has shown that the duration test is met where the right of use to the place of business was maintained for a period of at least six months. However the OECD Commentary provides for the following exceptions:

- Where there are activities of recurrent nature, each period of time during which the place is used needs to be considered in combination with the number of times during which that place is used (which may extend over a number of years). Where a particular place of business is used for only very short periods of time but such usage takes place regularly over long periods of time, the place of business should not be considered to be of a purely temporary nature.

- Where activities are exclusively carried on in the source country, the business may have a short duration because of its nature but since it is wholly carried on in that country, its connection with that country is stronger, resulting in an argument for the existence of a PE.

Services PE

This "deemed PE" concept is included in many Asia Pacific treaties based on Article 5(3)(b) of UN model:

"The term 'permanent establishment' also encompasses: .....
(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve-month period."

However in Malaysia, there are variations in several of its treaties, for instance, the Malaysia/Indonesia treaty and Malaysia/Australia treaty/protocol arrangement provides for a period or periods aggregating more than 3 months within any twelve month period. "Employees" here would mean the employees of the enterprise. "Other personnel engaged by the enterprise for such purpose" indicates a direct contractual relationship between the enterprise and an individual, and "personnel" is in reference to natural persons (i.e. would not include companies).

The Indian Supreme Court (SC) in *Morgan Stanley*[vii] held that employees of a foreign company (i.e. a related company in that case) working on the premises of an Indian company could not be said to constitute a service PE since they performed stewardship and quality control activities for the foreign company. The SC also held however, that if employees are seconded by the foreign company to work for the Indian company but remain employees of the foreign company, a service PE will be created if the relevant time period is exceeded.

v. AAR No. 831/2009
vi. Tax Notes Int'l, June 21, 2010, p. 943

vii. *DIT v. Morgan Stanley and Co. Inc.* and *Morgan Stanley and Co. Inc. v. DIT* (2006)284 ITR 260

Substantial Equipment PE

A PE is deemed to exist where there are substantial equipment being used or installed by, for or under contract with an enterprise between treaty partners. Again such a provision can be seen in Malaysian treaties signed with Indonesia and Australia. The most relevant guidance available on this rule is seen in the developments in Australian treaties. *In McDermott Industries (Aust) Pty Ltd v FCT (2005 ATC 4398)*, the Australian Full Federal Court expressed the view that floating oil rigs and construction cranes would be examples of substantial equipment. In Taxation Ruling TR 2007/10, the Australian Tax Office (ATO) has expressed general guidance on what "substantial" means, concluding that it would be extremely rare for ships or aircraft not to be substantial equipment due to their size alone. Based on the guidance provided in the decision and ruling, the ATO ruled[viii] that packing machines and their attachments (associated but separate units of equipment forming an integral part of the overall packing machines) did not constitute "substantial equipment".

Agency PE

Paragraph Article 5(5) of the OECD Convention provides for the creation of an agency PE thus:

"Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and ***habitually exercises****, in a Contracting State* ***an authority to conclude contracts in the name of the enterprise****, that enterprise shall be deemed to have a PE in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4....."*

The "contract concluding agent" or "dependent agent" must fulfill the following conditions:

- Conclude contracts in the name of the enterprise;
- Such activity must not be transitory but is habitually exercised;
- Excludes activities in paragraph 4 which relate to having a fixed place of business for:- storage, display or delivery of goods; maintenance of stock; purchasing goods; activity of preparatory or auxiliary character or a combination of these activities.

Participation in negotiations is an indication towards a contract concluding agent, though by itself, mere participation in negotiations is not sufficient to conclude that the person exercised authority "in the name of" the enterprise but nevertheless it is a relevant factor in determining the exact functions performed by that person on behalf of the enterprise. Depending on the substantiality of the negotiations carried out, tax authorities may be prompted to deem the existence of a dependent agency PE.

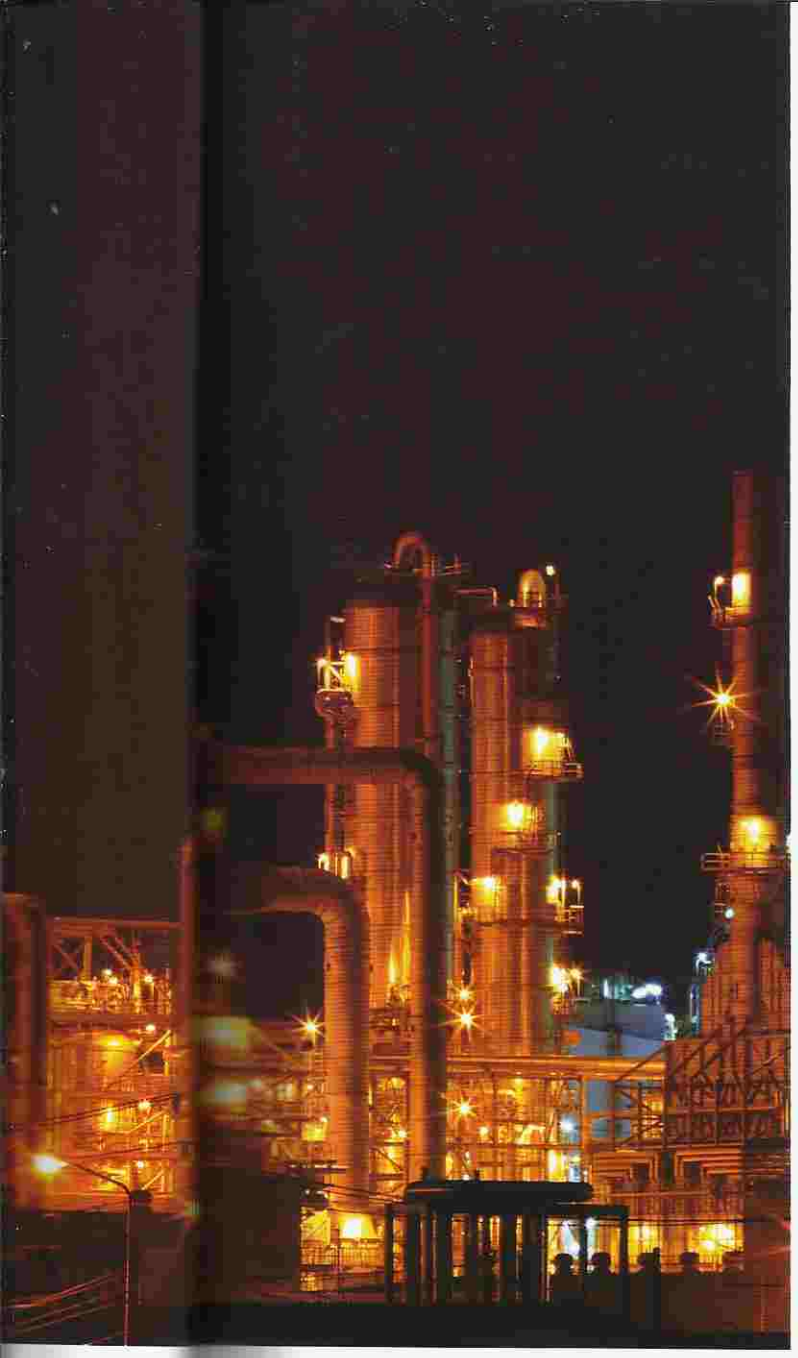
Lack of active involvement by an enterprise in transaction may be indicative of a grant of authority to an agent.

- Eg 7: An agent may be considered to possess actual authority to conclude contracts where he solicits and receives (but does not formally finalise) orders which are sent directly to a warehouse from which goods are delivered and where the foreign enterprise routinely approves the transactions.

It does not matter if the contract is signed by another person in the State in which the enterprise is situated and not by the agent. An authority granted to negotiate contracts binding on an enterprise is considered exercised.

The OECD Commentary[ix] reminds us that if it can be shown that the enterprise has a PE within the meaning of paragraph 1 and 2 (i.e. relating to a physical PE), subject to the exceptions to the general definition, it is not necessary to show that the person in charge is one who would fall under paragraph 5.

viii. ATO ID 2007/20



*(a) has, and **habitually exercises** in the first-mentioned State, an **authority to conclude contracts** in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or*

*(b) maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he **regularly fills orders** on behalf" of the enterprise.*

Sub paragraph (a) above provides for conditions in which an enterprise through any activity of a person acting for it in a State is treated as having a permanent establishment in that State. The underlying basis appears to be that only those having the authority to conclude contracts can create a PE. The distinction between the Malaysian model as seen above with the OECD Model in respect of the activities of the person, is that the OECD model limits the activities of such persons to those mentioned in paragraph 4 (see above under Exception to general definition topic) whereas the Malaysian model is restricted to one such activity.

In sub-paragraph (b) above, Malaysia has substituted "regularly delivers goods or merchandise" for "regularly fills orders" in most treaties. Do they mean the same thing? In the Protocol to the Malaysia/Singapore treaty, there is a further addition:
For the purposes of Article 5 paragraph 5(b), the enterprise of a Contracting State will be deemed to have a permanent establishment in the other Contracting State only if the agent acting on behalf of the enterprise also takes orders from customers in addition to regularly filling of the orders out of the stock of goods or merchandise belonging to the enterprise.

From the above it is noted that there is a distinction between filling and taking orders.

Several of Malaysia's treaties such as that with Indonesia, Australia and India, there is an additional clause as below in Article 5(4), in addition to (a) and (b) above:
(c) in so acting, he manufactures or processes in that first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

Where an enterprise in Indonesia undertakes manufacturing or processing activity for the benefit of a Malaysian enterprise, under a **contract manufacturer model** it should not give rise to a PE for the Malaysian enterprise in Indonesia under Article 5(4)(c) given that the local entity will undertake manufacturing and hold inventories of raw material owned by itself. However, if the same is undertaken under a **toll manufacturer** model, the local entity will be seen as a dependent agent of the Malaysian enterprise if it manufactures or processes in Indonesia the goods belonging to the Malaysian enterprise and thus creating a PE for the Malaysian enterprise in Indonesia under Article 5(4)(c). This is due to the fact that a toll manufacturer will typically not own the raw materials processed and is usually compensated for the provision of manufacturing or processing services.

...rise in transaction... ...y to an agent.

...d to possess actual ...re he solicits and ...ise) orders which ... which goods ...reign enterprise ...ns.

...ned by another ...rprise is situated ...ed to negotiate ...e is considered

...that if it can be ...thin the meaning ...a physical PE) ...l definition, it is ...n charge is one

In the Asia Pacific treaties it is common to find the ... of Article 5(5) covering other types of agents ... as the following:

- Order-securing agents
- Delivering agents
- Order-filling agents

...laysia typically adopts the following (as seen in ...cle 5(5) of the Malaysia/Singapore treaty), which ...opted from the UN Model:

...here a person (other than a broker, general ...mission agent or any other agent of an ...ependent status to whom paragraph 6 applies) ...acting in a Contracting State on behalf of an ...erprise of the other Contracting State that ...erprise shall be deemed to have a permanent ...blishment in the first mentioned State if that ...son:

Attribution of profits to a PE

Once the existence of a PE is established, the issue that arises is attribution of income to the PE. Article 7 of the OECD Model Convention lays down rules for income attribution. Under the approach approved and recognised by the OECD regarding the functionally separate entity approach, the taxing rights of the host country are limited to the profits that are attributable to the PE in the host country. The profits attributable to the PE are those that the PE as a separate and distinct enterprise would have earned by applying the arm's length principle. This approach is based on the notion of the PE as a separate and distinct enterprise. It also provides for attribution based on a formulary apportionment method in limited circumstances – the same should be customary and accepted in the host country and should yield proximate results under the arm's length principle.

The rule on attribution under the UN model Convention advocates treating the PE as a separate and distinct enterprise. However, it also contains a restricted force of attraction rule where the host country's taxing rights cover even profits from the sale of similar goods or business activities in the host country. It provides that no deduction shall be allowed in calculating the profits of a PE for head office allocation of royalty, interest and services fees.

Attribution of profit to a PE has been another contentious issue over the last few years. In India, there has been a host of precedents decided by the tax tribunals and courts. The Delhi tribunal in the case of *eFunds Corporation and eFunds Solutions Inc.*, US (taxpayers) [2010-TII-165-ITAT-DEL-INTL], adjudicated on the issue of attribution of profits to a PE. In this case, the taxpayers had sub-contracted/assigned the provision of software development and call center services to their subsidiary in India. During the audit proceedings, the tax authority asserted that the taxpayers had a PE in India and sought to attribute profits to the PE by allocating the worldwide profits of the taxpayers based on the ratio of Indian assets to global assets.

Before the tribunal, the taxpayers argued that the method of attribution was unscientific and irrational and where the transactions are at arm's length taking into account all risks and functions, no further income is attributable to the PE in India. The tribunal held that the relationship of the taxpayers and its subsidiary created a PE. The entire business of the taxpayers was carried out by the subsidiary in India for which it was not remunerated on an arm's length basis. Thus, attribution of profits to the PE is not extinguished. The tribunal, subject to some adjustments, broadly upheld the approach of the tax authority in attributing profits by splitting the combined profit based on a proportion of assets.

Conclusion

PE risk in cross border activity is no myth, but a reality to contend with. In the context of Malaysia, the concept of PE is not defined in the domestic legislation but is a tax treaty concept largely adopting the OECD model and UN model conventions. In addition to the general rule of creating a PE through physical presence we have seen the variations of the PE definition created through deeming provisions and non-traditional situations. The creation of a PE whether deliberately or accidentally leads to the risk of taxation, i.e. attribution of profits which was discussed briefly above. In cross border transactions enterprises may attempt to eliminate or even quarantine this risk through various tax planning measures, which is not the focus of this brief article. The OECD Commentaries and the position taken by Malaysia as a non-member of the OECD, recorded as Non-OECD Economies' Positions on the OECD Model Tax Convention, should serve as an important guide in the determination of permanent establishments in Malaysia. Foreign court decisions are likely to have a persuasive impact in the event of disputes.

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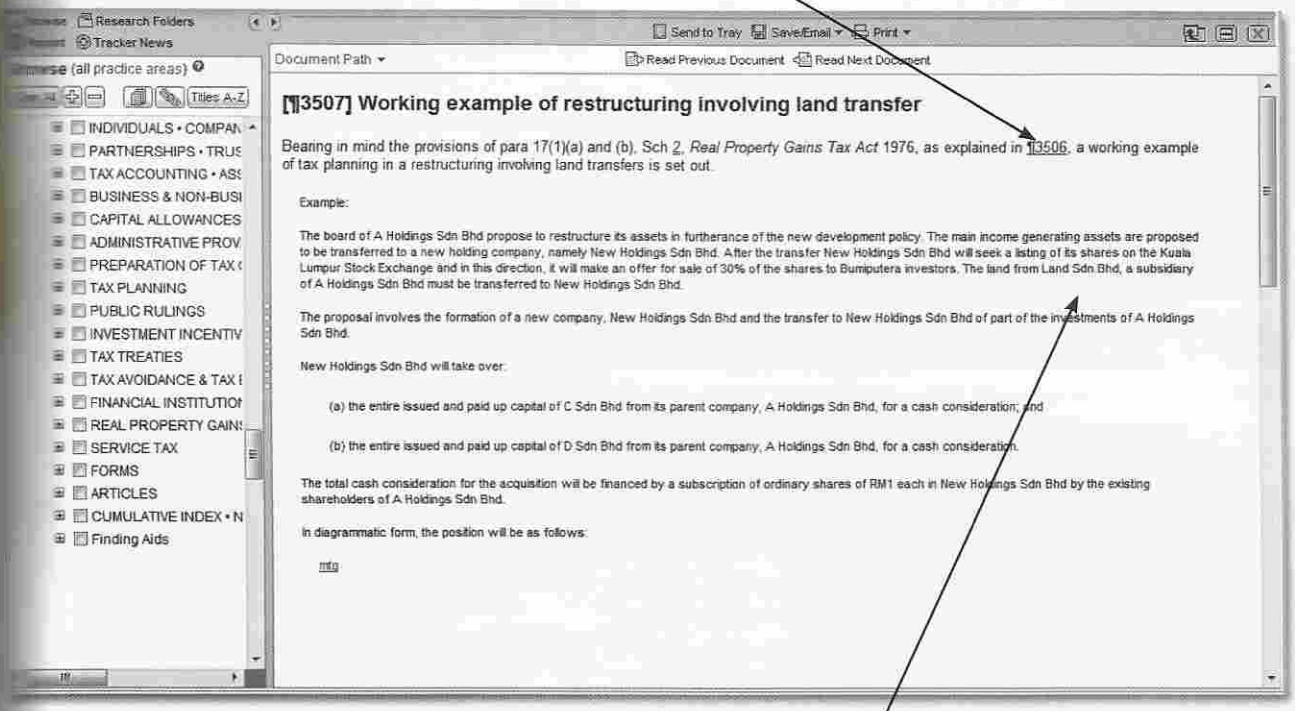

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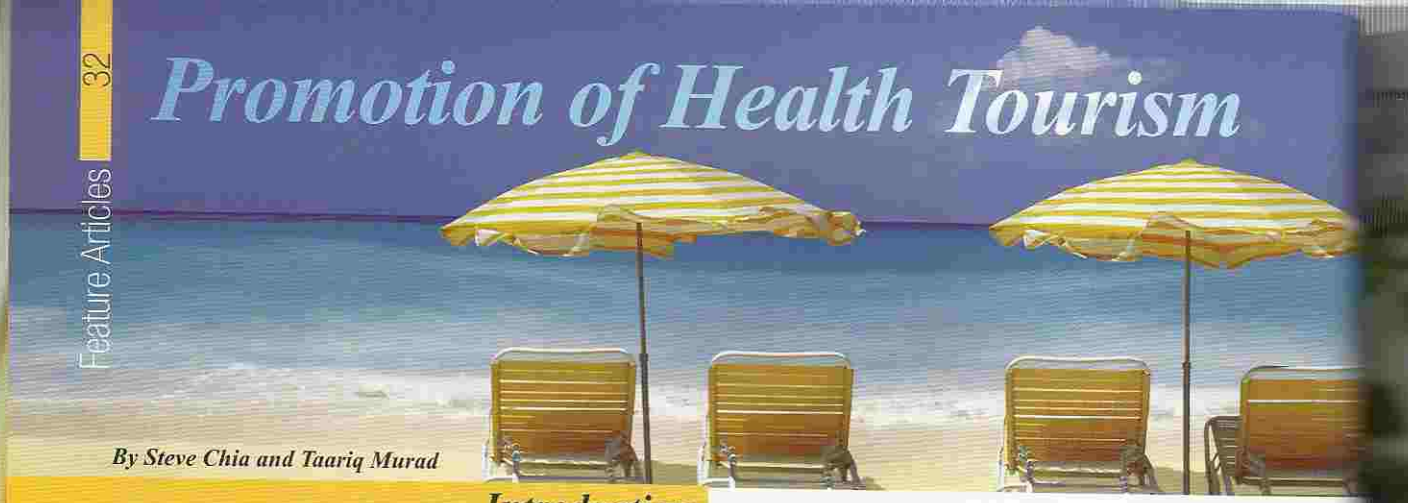
Promotion of Health Tourism



By Steve Chia and Taariq Murad

Introduction

Can you imagine yourself going for surgery while on a vacation? Today, that's very possible. Called health tourism, medical travel, medical tourism or global healthcare, the pursuit for medical care overseas has now become an industry by itself and one which is set to grow in the next decade.

Initially coined by travel agencies and the media to describe the growing practice of seeking medical care across borders, health tourism has grown into a promising industry for many countries with an estimated revenue of USD240 billion in 2010.

A recent survey by PwC's Health Research Institute says 49% of global health industry leaders expect health tourism to increase by 2015, as health systems compete for consumers by offering personalised care, access to medical innovation and technology, and the greatest value for consumers.

Birth of health tourism

The concept of health tourism is not new. Its first recorded instance dates back thousands of years ago when Greek pilgrims travelled from all over the Mediterranean to a small territory in the Saronic Gulf called Epidauria for medical care. Another example of health tourism in ancient times would be where people visited spa towns in England, believed to have mineral waters which treated diseases.

Cross border medical care in the past was common in the search of specialised care which couldn't be obtained locally. Today, this is no longer true - cross border medical care has become a common practice in a global healthcare market which no longer dictated by the superiority and ability of healthcare providers. The market is now driven by cost, accessibility and capability.

My first exposure to health tourism dates back 25 years, when one of my relatives had to undergo heart surgery. She was from a small town in Sarawak and decided to have it done in Singapore. It was possible to have the procedure done locally, but it would have meant a long waiting time in a public hospital (there was no private hospitals in Sarawak at that time). This wasn't a cheap option - the family had to spend their entire life savings in exchange for a new lease of life. If the same happened today, however, her options would be very different. Equipped with the latest technology, there are many private hospitals which can perform the procedure in Malaysia today. The waiting period now is also much shorter. With the rapid growth of private healthcare facilities in the country, Malaysia has now becoming one of the chosen destinations for foreigners seeking medical treatment.

Health tourism – the process

Typically, the process begins with the individual, who is looking for medical treatment abroad, contacting a health tourism provider. The provider will ask for information like medical reports, the nature of the ailment, a local doctor's opinion and diagnosis. A certified medical practitioner will then advise on the appropriate treatment, discuss the costs involved, the choice of hospitals and destinations as well as duration of stay.

After signing consent bonds and agreements, the patient is given recommendation letters for a medical visa, to be procured from the relevant embassy. The patient then travels to the destination country where a medical tourism provider assigns an executive to arrange for the patient's accommodation, treatment and any other form of care.

A less elaborate type of health tourism involves individuals signing up for a wellness package which may involve them coming to Malaysia for a relaxing holiday with alternative traditional preventive treatments incorporated such as health massages and herbal treatments.. Another form of health tourism is a tour package which incorporates a comprehensive medical examination. In addition to sight-seeing, the tour operator allocates a day where the tourist is brought to a medical centre for a medical check-up.

A growing industry

The rapid growth in health tourism is due to a combination of factors including:

- A growing aging global population with chronic diseases
- Global disparity in cost for the provision of healthcare services.
- Increasing waiting time in local hospitals.
- Improved service quality in developing countries.
- Medical labour market fluidity.

Over the years, more than 50 countries including Malaysia have identified health tourism as a national industry of focus.

From this global trend, we see that the Western countries in Europe and USA are a major source of health tourists. Asian and Latin America countries have increasingly become the major beneficiaries of this growing industry.

Top health tourism destinations

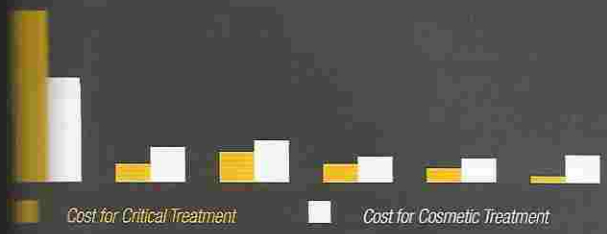
Country	Medical tourism brief	Key reason
Panama	Panama provides relatively low-cost medical facilities. Surgeries in Panama are more affordable than in the US. The costs are 40% to 70% lower than in the US, although they are more expensive than in Southeast Asia. Panama is a modern and safe destination for medical tourists. Medical help in Panama is provided by specialists trained in the US.	• Low cost • High quality • Attractive tourist destination
Brazil	Brazil has become a popular destination for cosmetic surgery. Brazil's medical industry was brought into the limelight by Ivo Pitanguy, a well-known Brazilian plastic surgeon. Brazil is expected to experience a huge wave of financial investments and will soon become the centre of medical tourism in the world.	• High quality
Malaysia	The medical industry in Malaysia has developed significantly in recent years. The number of foreign patients has increased significantly due to its advanced medical service. Medical investors and tourists are attracted to Malaysia because of its rising economy, high literacy level, political stability and a wide network of clinics and hospitals.	• Low cost • High quality • High-end technology • Multi-ethnic, multi-cultural & multi lingual • Ease of entry • Social & political stability
Costa Rica	Costa Rica has become largely recognised as a popular medical destination among patients from North America, mostly for its high-quality yet affordable medical care.	• Low cost • High quality
India	Medical tourism in India is high in quality but low in cost. Most hospitals in India are certified by the Joint Commission International to utilise high-end medical technology with highly skilled physicians.	• Low cost • High quality • High-end technology

...vey by *Tourism* ... Panama, Brazil, ... Costa Rica and ... were identified as ... five medical ... destinations for ... offering different ... and service ...

...ing each of these ... ranked countries ... mon was their ... provide high ... medical care at ... addition, these ... offer an ... vacation ... for any foreign ... The cost savings ... who undergo ... gery to address ... medical conditions ... requirements ... countries can ... from 25% to 80% ... the same treatment ... West.

Source :
www.tourism-review.com
www.myhealthcare.gov.my

Medical Tourism Association 2010 Survey



...cording to a 2010 survey by Medical Tourism Association, ... cost of surgeries for serious medical conditions, such ... heart bypass surgery, in Western countries is ...D144,000. This is compared to USD25,000, ...D5,200 and USD11,430 in Costa Rica, India and ...laysia respectively for the same kind treatment. As ... cosmetic surgery it would cost the patient an average ... USD15,000 in Western countries and only USD6,000, USD4,000 and USD3,440 if compared against the respective countries abovementioned. The cost difference for both critical and cosmetic medical treatment is substantial and puts pressure on the global healthcare market. The savings opportunity coupled with touristic experiences skews the global healthcare market towards Asian or Latin America countries where one can enjoy beautiful beaches while undergoing medical treatment.

In US, some employers have even adopted a strategy for their employees to get medical treatment in low cost healthcare destinations to reduce the company's overall medical cost. A health tourism package including medical cost, air fare, and accommodation for the patient and a companion would still be cheaper than for the individual to seek treatment at home.

Even though we can take comfort in the fact that Malaysia has been identified as one of the top destinations for health tourism, our share of the global health travel market is still very small. Our health tourism revenue generated USD123 million in year 2010 as compared to the estimated global spending of USD240 billion. Although the industry has shown an average growth of 38% per annum between 2003 and 2008, the market experienced a 4% contraction in 2009, thanks to the global financial crisis.

Currently, in Malaysia there are 273 private hospitals with 35 of them participating in the health tourism programme and six healthcare facilities having Joint Commission International accreditation. As part of the initiative to promote the industry, the Malaysia Healthcare Brand with the tagline "Quality Care for Your Peace of Mind" was launched on 9 June 2009 and Malaysia Healthcare Travel Council (MHTC), the primary agency to promote and develop health tourism, was *launched on 21 December 2009.*

The 10th Malaysian Plan aims to increase the revenue for the healthcare tourism industry by 10% per annum and to make Malaysia the preferred healthcare destination in the region. The Malaysian Government announced the following strategies to achieve Malaysia's goal:

1. Fostering strategic alliances among local and foreign healthcare services providers, travel organisations and medical insurance groups to provide a more integrated and comprehensive package of services to healthcare travelers.
2. Encouraging more private hospitals to seek accreditation with international healthcare accreditation bodies.
3. Promoting investment in and utilisation of high-end medical technology to increase efficiency, effectiveness and competitiveness.
4. Intensifying coordinated and integrated promotional activities to strengthen the presence of the Malaysia healthcare brand globally.

Health tourism has also been identified as one of the key areas under the National Key Economic Areas (NKEA) as an engine of growth for the country. At this stage, the healthcare industry contributes only RM5 billion to our Gross National Income (GNI) and by 2020, it is the aspiration that the healthcare sector will generate an incremental RM35 billion of GNI with health tourism contributing a share to this number. To reach this number, Malaysia would need to attract 1.9 million health travelers by 2020.

Challenges for health tourism in Mal

Malaysia's health tourism remains somewhat fragile due to the fact that we do not have a clear positioning relative to our peers and our network of partners in sourcing for patients is insufficient. Our growth rate may look impressive on their own. However, Thailand and Singapore have achieved higher growth in the corresponding period and are less sensitive to the global economic conditions mainly because of the quality of their health care and their niche positioning in certain medical treatments.

A key issue with Malaysia's health tourism is our heavy reliance on the Indonesian market. As of 2009, 70% of the health travelers to Malaysia came from Indonesia. In addition, more than 80% of the health travel procedures in Malaysia were low margin outpatient treatments.

Another challenge would be the ability for Malaysia to groom the necessary specialists in time and with the desired number. From a socio-economic perspective, questions will be raised as to how the promotion of health tourism would impact the man on the street. Will such initiatives accelerate the rising cost of medical care, putting further pressure on the medical resources which are already scarce, lengthening the waiting time for medical treatments and so on?

The *rakyat* should not take a myopic view of this industry. The growth of health tourism can bring benefits to the local healthcare environment. Higher margins from health tourists would attract private investments to healthcare infrastructure and human capital, which would in turn improve the quality of Malaysian healthcare facilities. Health tourists tend to look for more complex treatments which will drive medical excellence in private hospitals, which may not have sufficient domestic demand to excel in certain specialties. In addition, a greater patient load would encourage healthcare providers to invest in state-of-the-art equipment as well as in research and development which would otherwise not make economic sense.

Getting the priorities right

It is critical for the Malaysian Government to manage the risks involved in medical tourism which are not evident with locally-provided medical care. This would include regulating the types of treatment allowed to be performed in Malaysia as different regions have different infectious disease-related epidemiology. Making sure the standards are at par with available international standards would assist in managing health tourism risks. A comprehensive plan, with policies and measures implemented and managed appropriately, these challenges can be overcome and bring added benefits to Malaysia.

The NKEA has identified the following as areas where MHTC would need to work together with private hospitals, placement agents and relevant agencies to address:

- Extensive and well coordinated marketing efforts from both state agencies and individual hospitals to penetrate new markets.
- Proactive alliances with foreign governments and insurers to secure patient loads and ensure medical insurance portability.
- Investments into infrastructure and human capital to ensure sufficient hospital capacity.
- Seamless end-to-end patient service to create positive word of mouth, which plays an increasing role in patient choice of healthcare destinations.

To propel the industry to the next level, it is imperative that the public and private sectors work together to deliver excellence in the promotion of health tourism. The government agencies should facilitate the process by providing the necessary infrastructure and the private sectors must be willing to invest in state-of-the-art technology, research and development and in getting themselves accredited by international bodies.

From the industry players' perspective, as health tourism is a combination of the healthcare and tourism industries, collaborations between players on both sides are required. Travel agents, resort and hotel managers and airline operators and etc will need to be engaged to create a complete supply chain to attract the right number of foreign patients into Malaysia. Existing travel packages offered by travel agents can be expanded to include medical treatment while existing healthcare players should be encouraged to offer competitive medical plans to participate in the entire supply chain. Collaboration between the healthcare and tourism industry players, and the right amount of government participation may well be the ideal formula for boosting Malaysia's medical tourism industry.

Incentivising the industry

In promoting the health tourism industry, fiscal incentives offered by the Government can play a part. Currently, the Government has provided the following tax incentives for the health tourism industry:

Tax exemption for healthcare industry

The Government has enhanced the tax incentive for health tourism in Budget 2010. Prior to this, under the *Income Tax (Exemption) (No 9) Order 2002* (2002 Order) companies which export services are given exemption on their statutory income equivalent to 50% of the value of the increased exports in the provision of private healthcare to foreign clients in and from Malaysia but to a limit of 70% of the statutory income. Here, foreign clients are defined to include:

1. a company, a partnership, an organisation or a cooperative society incorporated or registered outside Malaysia; or
2. non-Malaysian citizens who do not hold Malaysian work permits; or
3. Malaysian citizens who are non-residents living abroad.

From the years of assessment (YAs) 2010 to YA 2014, this incentive has been enhanced - the exemption rate of 50% on the value of the increased export has been increased to 100%. However, the exemption is subject to a limit of 70% of the statutory income for each YA. The definitions of foreign clients for the enhanced incentive are much stricter and it excludes the following categories of patients:

1. a non-Malaysian citizen that participates in Malaysia My Second Home Programme and his dependants;
2. a non-Malaysian citizen holding a Malaysian student pass and his dependants;
3. a non-Malaysian citizen holding a Malaysian work permit and his dependants; or
4. a Malaysian citizen who is a non-resident living abroad and his dependants.

Category	*Criteria*
No tax exemption	• Malaysian citizens residing in Malaysia • Non-Malaysian citizens holding a work permit and their dependents
Previous incentive - 50% tax exemption *[Income Tax (Exemption) (No 9) Order 2002]*	• Non-Malaysian citizens participating in Malaysia's My Second Home Programme and his dependents • Non-Malaysian citizens holding a student pass and his dependents • Non-Malaysian citizens who do not hold Malaysian work permits and his dependents • Malaysia citizens who are non-residents living abroad and his dependents
Enhanced incentive - 100% tax exemption *[Income Tax (Exemption) (No 6) Order 2009]*	• Other non-Malaysian citizens eg. Foreign patients coming for specific treatment

The exemption has been formalised through the issuance of the *Income Tax (Exemption) (No 6) Order 2009* (2009 Order). From the reading of the Exemption Order, there are few issues worth noting.

- In the Budget announcement, it was mentioned that healthcare services offered to foreign clients who were excluded as above can continue to enjoy the existing incentive under the 2002 Order. However, if we refer to the 2009 Order, companies who are enjoying the enhanced incentive would be precluded from claiming the tax exemption under the 2002 Order. This would mean that if the healthcare provider services a mixture of foreign clients (which is often the case) the provider would need to decide whether to claim the tax incentive under the 2002 or 2009 Orders. They would not be in a position to take advantage of the tax incentive under both Orders. It appears that the provision of the 2009 Order is rather restrictive and does not seem to be in line with the 2010 Budget announcement.

- Under the 2009 Order, companies claiming this incentive would have to keep separate accounts in respect of the income derived from the provision of healthcare services to foreign clients who are eligible for the tax incentive. The healthcare providers would need to segregate their income streams into two categories ie income from foreign clients eligible for the tax incentive and other clients. The utilisation of the tax exemption, which is limited to 70% of the statutory income, would be limited to the statutory income derived from foreign clients eligible for the tax incentive. Under the 2002 Order, the utilisation of the tax incentive can be made against the entire healthcare business income.

- With the restrictive definition of foreign clients for purposes of the enhanced incentive, accounting systems would need to capture sufficient records and tagging, to ensure that foreign clients can be categorised into the different silos for the claim of the enhanced incentive. To make matters worse, for YA 2010, as the value of increased exports is compared against the previous year's income (ie YA 2009), if the current accounting system does not have sufficient information to categorise the foreign clients, it may mean that it is impossible for the provider to compute the value of increased exports in YA 2010. In cases like these, the provider can only commence claiming this incentive from YA 2011.

Double deduction for promotion of export of services

Where companies are incurring expenditure for the promotion of exports for healthcare services, the company would be eligible to enjoy a double deduction benefit.

Expenses for the purpose of export of services which are eligible for the double deduction would include:

- market research
- cost of preparing technical information
- travel fares to a country outside Malaysia undertaken for the promotion of export of services, subject to a maximum of RM300 per day for accommodation and a maximum of RM150 per day for sustenance
- expenses for the cost of maintaining sales offices overseas
- publicity and advertisement in any media outside Malaysia
- participation in a trade or industrial exhibitions in Malaysia or overseas which are approved by MATRADE, and
- participation in exhibitions held in a Malays… Permanent Trade and Exhibition Centre overs… which is approved by MATRADE.

Recent developments

In the bid to improve health tourism industry in Malays… the Ministry of Health has recently announced on 6 M… 2011 that they are in the process of finalising the follow… incentives:

- Provision for private hospitals involved in … healthcare tourism industry to enjoy 100% … exemption for the construction of new hospitals … well as the expansion, modernisation a… refurbishment of existing hospital. The propos… incentive is envisaged to be given to hospi… registered with the relevant authorities for … promotion of healthcare travel; and

- Expenses incurred by private hospitals to obt… domestic or internationally recognised accreditat… to be eligible for double deduction under the *Incom… Tax Act 1967*. The accreditation includes tho… conferred by the Malaysian Society for Quality … Health or Joint Commission International.

Possible enhancements

It should be applauded that the Government … continuously looking at the incentives for the indust… and in this respect, the following further enhancemen… could be considered:

- The mutually exclusivity of the tax exemption un… 2009 and 2002 Orders should be addressed. Ev… though it is noted that a company should not quali… for tax exemption on the same item twice, incom… from foreign clients who do not fall within the 20… Order should continue to be eligible for tax incenti… under the 2002 Order.

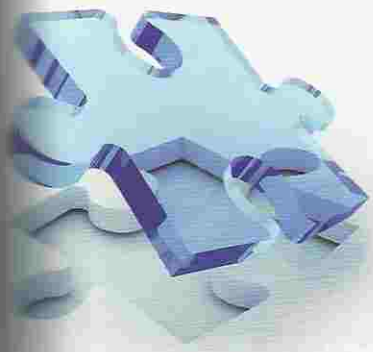
- The calculation of the tax exemption is currently ba… on value of increased exports. As the nature of t… healthcare services procured by foreigners could d… from patient to patient, even though the number patie… have increased, the provider may not necessarily achie… an increase in revenue if the type of medical treatm… is of a lower value. Therefore, if the Governmen… serious about promoting health tourism, the calculat… of the tax incentive should instead be determin… based on the actual export value for the year rat… than on an incremental basis.

- As mentioned above, the success of health tourism … not solely dependent on the healthcare provider… Incentives should be considered for other stakehold… such as travel agents offering health tour packa… and so on.

Conclusion

Health tourism is definitely an area which Malaysi… should focus in view of its potential. Vario… stakeholders involved in the entire supply cha… should be engaged to ensure that Malaysia ca… provide a holistic and efficient delivery system f… foreign tourist seeking medical attention here. Wi… the right engagement and support from th… Government, Malaysia can excel in this field and m… well be leading the industry in the region with th… *rakyat* benefiting from its success.

* *Steve Chia and Taariq Murad are Senior Executive Director and Consultant of PricewaterhouseCoopers Taxation Services Sdn B… respectively. The content of this article represents their personal views and not that of PricewaterhouseCoopers. They can be contac… at steve.chia.siang.hai@my.pwc.com and taariq.murad@my.pwc.com respectively.*



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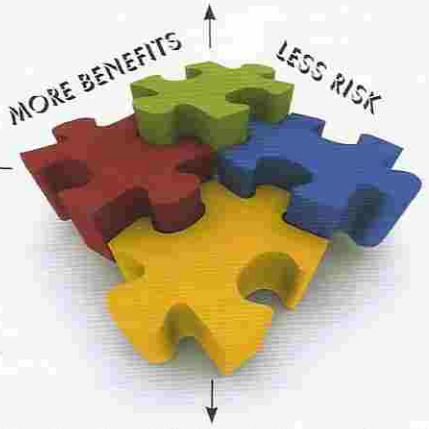

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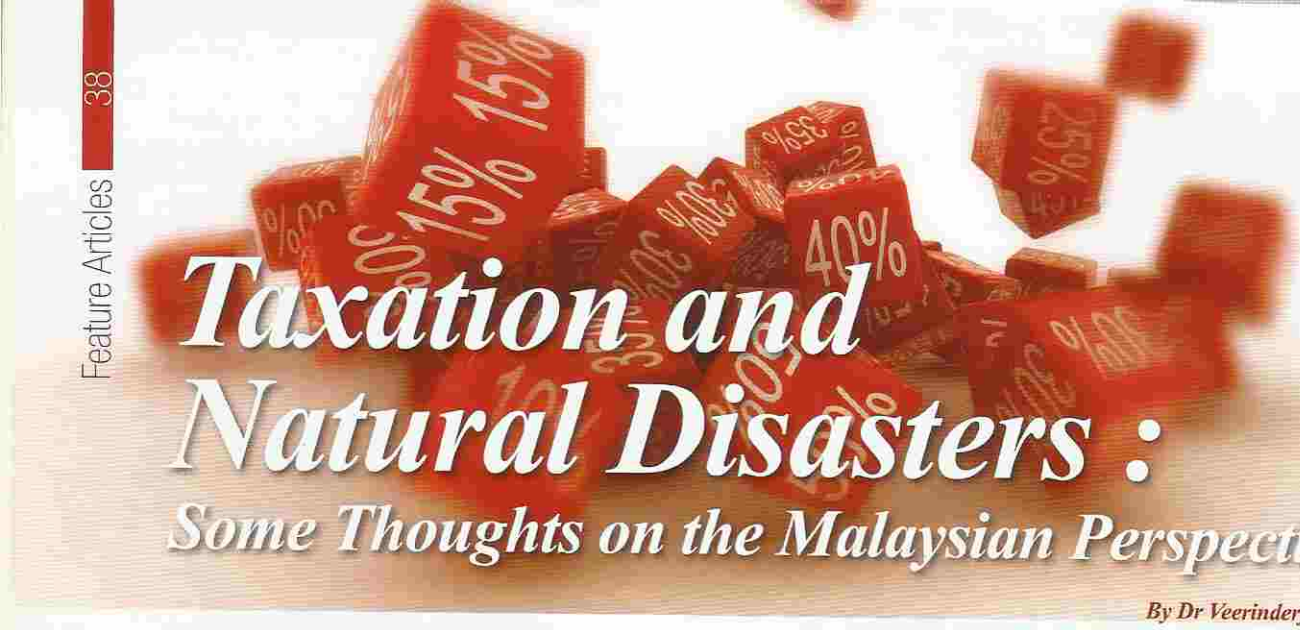


Taxation and Natural Disasters :

Some Thoughts on the Malaysian Perspective

By Dr Veerinderjeet Sin

The North-Eastern Japan recent earthquake and tsunami disaster, the Christchurch earthquake, the Australian floods, the 2004 tsunami disaster which affected the South Asia region and other calamities that have occurred over the last decade or so all served to show the generosity of mankind in contributing towards relief operations. The growing number of disasters that are happening around the world may make all of us acutely aware of the fragility of the world we live in. Notwithstanding the pain that many of us feel and go through, the need for assistance and funding during such disasters is absolutely essential to rebuild and help our fellow human beings to get back on their feet. No doubt Governments may have some funds that are allocated towards relief activities but more is needed in the form of cash contributions to strengthen such efforts.

This brings us to the down-to-earth matter of whether a donation in cash or kind would be allowed as a tax deduction to the donor whether in his/her personal capacity or via a corporation. Most may have donated without thinking whether their contribution would be a tax deductible item. Nevertheless, to businesses and corporations, such donations are an outflow/expense of the business and as such, such an outflow affects the bottomline of the business entity. After all, corporations are answerable to their shareholders who expect steady returns on their investments. Therefore, as a donation lowers distributable profits, the tax treatment of such outflows in terms of a deduction becomes important.

The *Malaysian Income Tax Act 1967* does specify in *s 44(6)* that cash donations are deductible but only against "aggregate income" (ie. net taxable income from all business and non-business sources of income after specific deductions) as follows:

- a full deduction if the donation is to the Government, State Government or a local authority.
- a deduction (for a company) for a donation made to an organisation or institution approved by the Inland Revenue Board (IRB) but restricted to 10% of the aggregate income of the company for the year in which the donation is made. For all other persons (ie. a non-companies), the deduction is restricted to 7% of the aggregate income.

So, firstly it is not a business deduction (ie. t specifically deducted against business profits); secondl it is deductible against aggregate income (if there is a thirdly, if the donation exceeds the prescribed percenta of aggregate income, the balance cannot be carri forward. There are a number of restrictions and pitfal in donating large sums without looking at the law a your tax status. It certainly does not make the law t "friendly" in so far as donations are concerned! The was a time when Malaysian legislation did not have limit on the amount that can be deducted as long as it di not exceed the aggregate income and was made t approved institutions/organisations. Philanthropy m not give you a tax-effective result!

There are some provisions for specific donations in kin (eg. gift of an artefact, manuscript, painting to th Government, painting to the National Art Gallery or a state art gallery, medical equipment to an approv healthcare facility, facilities in public places for disabl persons, etc). In Canada, if your donation to a char cannot be utilised due to insufficient taxable income, th excess can generally be carried forward for five year That sounds good! The restriction stated above in th Malaysian tax legislation came about following a Co of Appeal decision in the case of *Sabah Berjaya Sdn B v Ketua Pengarah Hasil Dalam Negeri* [(2000) MST 3771] where the Court held that the donation (of almo the entire profits of the company) was a deductib expense (even though it was to the holding compa which was an approved organisation and a charitab institution). The IRB felt that the donation should not b allowed as it was part of a "tax motivated scheme"--- s the law was changed to impose a 5% (later amended t 7% and 10%) restriction on all companies!

Philanthrop
may not give you
a tax-effective result!

What about the funds recently set up by various parties to collect donations for the earthquake/tsunami disaster? Were these set up by the Government or were these set up by approved organisations or institutions? It was never made clear despite press reports stating that "tax exemption" would be available for some of the cash donations. An exemption actually can only apply to income. When referring to an expense such as making donation, we should be referring to a deduction ie. tax allowable deduction. In the Malaysian context, when there was a drive in 2004 to collect funds following the tsunami disaster, enquiries revealed that cash donations to the National Disaster Relief Fund and the Malaysian Tsunami Disaster Fund were considered as donations to the Government. Cash donations by companies to approved organisations, such as the Red Crescent Society, would be subject to the restriction stated earlier. However, all this was not made clear to the public by the relevant authorities. Greater coordination and a focused public relations exercise would have made things so much clearer and avoid unnecessary enquiries.

It is not illogical to assume that the relevant agencies may probably be concerned with the income tax revenue "lost" due to donors eventually claiming deductions for their cash contributions to the various approved funds. Assuming that RM40 million is donated in cash to the Government and that all the donors were profitable corporations, at a corporate tax rate of 25%, income tax liability would be reduced by RM10 million. But should this be a cause for worry? Surely, if certain disasters were to occur, the Government would have to assist and spend money and this would be out of taxpayer's contributions. Now that taxpayers are donating for a cause, shouldn't such contributions be considered to be similar to "tax revenue" and be accounted for accordingly! We should look at the big picture!

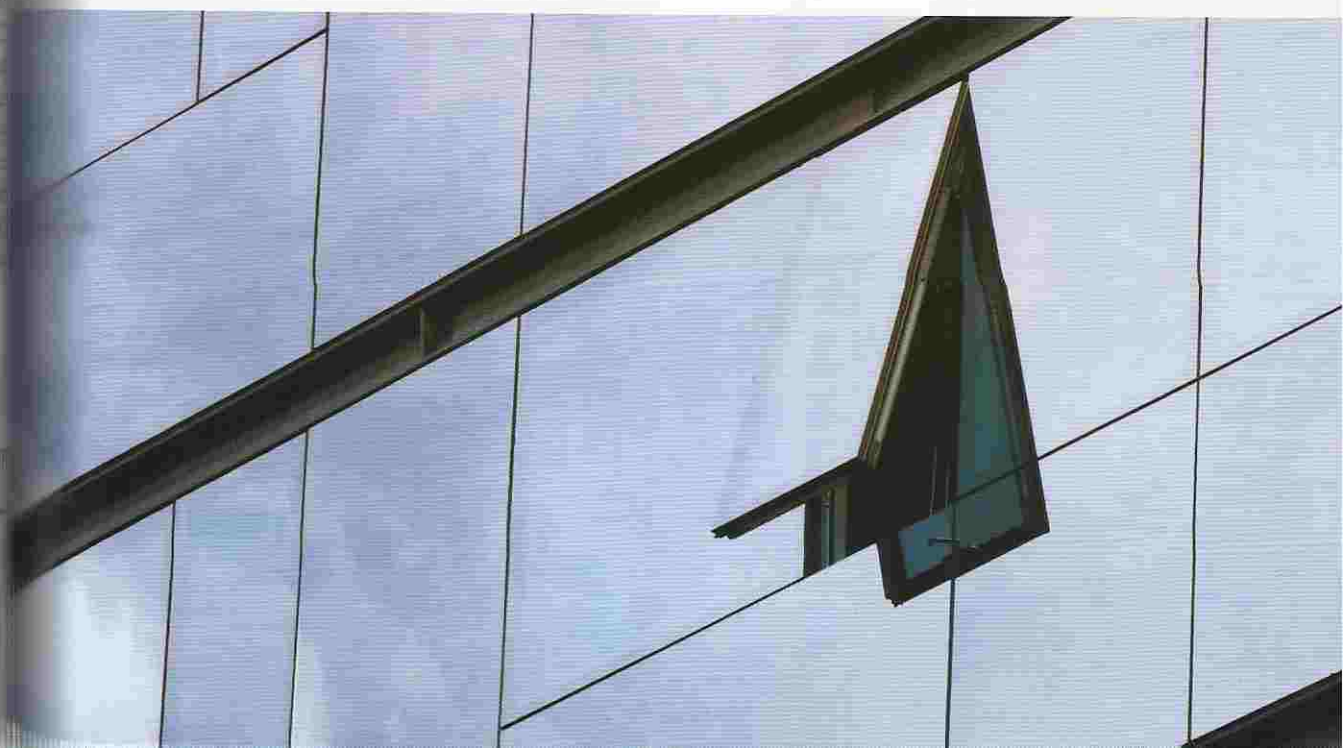
Referring back to the 2004 Asian tsunami disaster, the Australian Tax Office (ATO) issued a media release entitled "Tax and Tsunami Relief Activities" and this was posted on the website of the ATO. The statement together with frequently asked questions reflects a caring organisation which has "service" on its agenda rather than simply being a "tax collector'.

The ATO stated that it took a sympathetic approach in its dealings with taxpayers affected by the tsunami disaster, including relatives of those who were killed or injured as well as those directly involved in the relief operations (such as military, medical and other aid personnel) who had not been able to file their tax returns or pay their taxes. It stated that additional time could be granted to those affected and a hotline was listed so that persons could contact the ATO. It also provided information about when donations made for the disaster relief were tax deductible. What is more, the website has a list of non-profit organisations which persons can check to determine the tax deductible status of their intended donations.

The ATO did the same thing for the South Australian bushfires, the Queensland floods and to a lesser extent, the recent Japanese disaster. Some of the measures announced related to the following:

- fast tracking refunds;
- granting additional time to settle taxes, without interest (read as penalty, in the case of Malaysia);
- providing more time to file tax returns;
- assisting in reconstructing tax records where the taxpayer's documents had been destroyed;
- offering to send a field officer to assist the taxpayer to reconcile lost records.

The New Zealand authorities have also been discussing and considering measures to assist those affected by the Christchurch earthquake and in some ways, the response was similar to what has been outlined above for Australia.



In Japan, discussions are under way as well to consider a number of ways to assist taxpayers affected. This, it is learnt, could involve widening the relief given for donations made to charitable establishments, lengthening the carry forward period for unutilised businesses losses and even introducing a lower corporate tax rate for affected corporations besides looking at allowing more time to settle tax obligations. In this context, Australia issued a media release on 14 March 2011 declaring the earthquake and tsunami that hit Japan on 11 March 2011 as a disaster for tax purposes. This allows Australian taxpayers to claim an income tax deduction for donations made to the relief effort. Funds still need to apply to the ATO for formal endorsement as a deductible gift recipient and the ATO established a fast track process for this purpose. Donations to such funds are tax deductible for a period of two years from 11 March 2011. All these statements are found on the website of the ATO as well as in alerts and daily updates that are sent out by the ATO to registered users.

What is the situation in Malaysia? One was left to call the authorities to find out if a specific fund was a Government fund or a fund set up by an approved organisation or institution. Even after such calls, no one took the initiative to post a note on the relevant website(s). It is hoped that things will change in line with our reform-minded Prime Minister's directives to civil servants as well as the new leaders recently appointed to head the revenue agencies. Mindsets are difficult to change. Information is so crucial to decision-making and yet useful information is being kept from the public domain probably because some officials are caught up in micro-managing issues and do not see the big picture. It is hoped that the recent disasters, though not affecting Malaysians at the same level as some of the other countries, has taught us a lesson in terms of being prepared at all levels---including sharing information and pushing our policy-makers to "think out of the box" and making Government agencies truly service-oriented entities. This has to start from the top.

In conclusion, is it not the time to re-think the limitation on cash donations made by persons to approved organisations or institutions? Let us go back to allowing a full deduction and just limiting the deduction to the aggregate income of a person!

** Dr Veerinderjeet Singh is a tax consultant and Managing Director of Taxand Malaysia Sdn Bhd, a member of the Worldwide Tax Organisation of independent tax firms. The views expressed are his personal views and he can be contacted at vs@taxand.com.my.*

Appeal against Tax Recovery by the Inland Revenue Board

By Benjamin Poh Chee Seng

...is to be paid irrespective of excessiveness, incorrect assessment, under appeal or incorrect increase". This statement is extracted from *Section 106(3) of the Income Tax Act 1967* (ITA), which I believe is very familiar to all accountants and lawyers in tax practice, but most will argue that the legal procedure and practice is unfair and against natural justice as why should a taxpayer pay for something which is sometimes a clerical error, technical mistake, rough estimate or even wrong interpretation of the laws by the Inland Revenue Board (IRB) officers? And only obtain his tax refund back may be after few years of appeal to the IRB and Special Commissioner of Income Tax, where time and money have been wasted on preparation of the tax appeal without really getting any relief from the IRB except for minimal court fees if the case is won but even that sometimes are not enough to compensate for the interest cost of the tax paid in advance!

The intention of this article is to deal with the IRB's power of tax recovery procedure and practice, cases where such power of recovery are heard and reviewed by the courts and lastly what the legislation should do on tax recovery procedures in order to inject certainty and fairness into the current self-assessment tax regime.

IRB Tax Recovery's Power and Procedure

Section 103(1): ...tax payable under an assessment for a year of assessment shall be due and payable on the due date whether or not that person appeals against the assessment. S 106(3): In any proceedings under this section the court shall not entertain any plea that amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under s 103(3), (4), (5), (6), (7) or (8). Read together with *s 142(1): In a suit under s 106 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgement for that amount.*

The above sections have allowed the IRB to recover taxes without undue delay by invoking summary judgement under the *Rules of the High Court (RHC), Order 14* applicable to High Court procedure and *Subordinate Court Rules (SCR), Order 26A* applicable to subordinated court procedure. The rules and procedures are similar in High and Subordinated courts. The preliminary requirements to be satisfied, before the IRB can obtain summary judgement are[i]:-

- *a* The taxpayer must have entered an appearance;
- *b* The statement of claim must have served on the taxpayer; and
- *c* The application must be supported by affidavit.

The affidavit must satisfy the following requirements[ii]:-

- *a* It must be made by the plaintiff or by any person duly authorised to make it and who can swear positively to the facts;
- *b* It must verify the facts on which the claim or part of a claim to which the application relates is based; and
- *c* It must state the deponent's belief that there is no defence to that claim or part or no defence except as to the amount of damages claimed (eg. statement such as "I verily believes that there is no defence to the action" will suffice).

Once the above conditions are satisfied, unlike in a normal civil suit where much time is required for facts to be gathered and properly verified before making an application, the IRB's recovery procedure is further simplified by *s 142(1)* where only a certificate signed by DG is required to be produced to obtain summary judgement.

i. See Binariang Communication Sdn Bhd v I & P Inderawasih Jaya Sdn Bhd (2003) 3 MLJ 321, CA
ii. See Chai Cheon Kam v Hua Joo Development Co Sdn Bhd (1989) 2 MLJ 422

It seems like the taxpayers except for raising a preliminary objection of non-compliance with rules of procedure eg. defects in affidavit or notice of service, but this is usually curable under the *RHC Order 1A* or *SCR Order 2 Rule 3* or raising issue of "Tax Fraud" *(RHC Order 14 Rule 1(2)* excludes allegation of fraud, malicious prosecution, libel, slander, false imprisonment, seduction or breach of promise of marriage for summary judgment as there are always "triable issues" in these cases where oral evidence from witnesses are usually required from parties to the suit to establish their claims) pleaded by the IRB[iii] (raising issue of "Negligence" will not prevent the court from giving summary judgement), no other alternative but to pay the tax first no matter how incorrect the assessment was raised.

Recent High Court (in Sabah & Sarawak) case *Pauline Saggau v Government of Malaysia (2010)* on summary judgement by the IRB to recover tax from the taxpayer, the court agreed the principles enunciated in *Comptroller of Income Tax v. A. Co. Ltd. [1966] 2 MLJ 282* which had been approved by the Federal Court in *Sun Man Tobacco Co. Ltd v Government of Malaysia [1973] 2 MLJ 163* in which it said that:

"A taxpayer has no right to by-pass the Board of Review and take his complaint direct to court. And when the Comptroller of Income Tax sues a taxpayer to recover tax due under a notice of assessment, the taxpayer cannot be heard to say that the assessment on which tax has been levied was not made in accordance with the provisions of the Ordinance. Such a complaint must in the first instance be laid before the Board of Review. The provisions of Order XIV of the Rules of the Supreme Court must be read together with the provisions of the Income Tax Ordinance. If this is not done every unwilling taxpayer will refuse to pay tax and when sued in court, will challenge the merits of the assessment, thus causing considerable delay in the collection of the tax. The proper course for every aggrieved taxpayer is to pay his tax and present his arguments against the assessment made upon him before the Board of Review.....In place of a Board of Review we now have the Special Commissioners of Income Tax. It is open to a taxpayer to go before them and prove that he is not liable to assessment. The doors of justice are not shut to him merely because the claimant is the Government, but he has to enter the doors of the Special Commissioners first to raise the plea of non-observance of the principle of natural justice or to establish that the Director General acted arbitrarily and in a non-judicial manner. It is only after he has availed himself of that remedy as laid down by the law that he has a right to come to the courts."

Case Precedents on IRB's Recovery Power

Over the years, the taxpayers have been raising "triable issues" on summary judgement by the IRB to recover taxes, such as incorrect assessment, under appeal or excessive assessment were not successful[iv]. In *Arumugam Pillai v Government of Malaysia [1975] 2 MLJ 29 (Federal Court)*, the judge, Gill CJ said "the court to put it bluntly, had only one function to perform, and that was to give judgment in favour of the Government." In *Kerajaan Malaysia v Dato' Hj Ghani Gilong [1995] 2 MLJ 119 (Federal Court)*, plea of limitation based on *s 91(1)* and *91(3)* was not a defence in summary judgment though the issue could be brought before the appeal procedure under the ITA before Special Commissioners. This was further affirmed by subsequent cases in *Government of Malaysia v Dato' Mahindar Singh [1996] 5 MLJ 626* and *Integrated Credit and Leasing Sdn Bhd v Government of Malaysia [2008] MSTC 4, 371.*

Fortunately, avenues of challenging the IRB's tax recovery power are not closed entirely against the taxpayer in the following cases:-

In *Chong Woo Yit v Government of Malaysia [1989] 1 MLJ 473*, the Supreme Court exercised its inherent jurisdiction to **stay execution** until determination by the Special Commissioners of the taxpayer's appeal against the assessment raised against him due to his appeal to the Special Commissioners' had not been heard over 4 years. Subsequently, similar issue was raised in *Kerajaan Malaysia v Jasanusa Sdn Bhd [1995] 2 AMR 1477*, the Supreme Court held that neither *s 103(1)* nor *s 106(3)* barred a court, in appropriate circumstances, from exercising its inherent powers of granting a stay, even in a tax cases.

In this case the Government had obtained summary judgment against the taxpayer, but the taxpayer succeeded in obtaining six months stay to enable it to provide the voluminous information which the Government sought. Subsequently, the taxpayer applied for an extension of the stay, one of the grounds being that the IRB had still not forwarded the taxpayer's appeal to the Special Commissioners. The High Court Judge then granted an extension of the stay for the purpose of facilitating the taxpayers appeal to the Special Commissioners. In granting the stay, Edgar Joseph J said this about the exercise of the discretion to stay:-

"Matters of this nature involve, inter alia, balancing the need of the government to realize the taxes and the need of the taxpayer to be protected against arbitrary or incorrect assessments. The court should be ever vigilant against taxpayers who may use the

iii. **See Government of Malaysia v Chong Woo Yit (1988) 2 MLJ 534**

iv. **See Government of Malaysia v DC [1973] 1 MLJ 161 (High Court), Sun Man Tobacco Co Ltd v Government of Malaysia [1973] 2 MLJ (Federal Court), Arumugam Pillai v Government of Malaysia [1975] 2 MLJ 29 (Federal Court) and Government of the Federation of Malaysia v Lee Tain Tshung [1992] 1 MLJ 629 (High Court)**

procedure of the court, like applying for a stay of execution, to defer or postpone payment of his just dues or to abscond by migration or to dissipate the assets to defeat the judgment. The court should also bear in mind the possibility of arbitrary or incorrect assessments, brought about by fallible officers who have to fulfill the collection of a certain publicly declared targeted amount of taxes and whose assessments, as a result, may be influenced by the target to be achieved rather than the correctness of the assessment. It should not be much of a difficulty for the court to see the genuineness of an appeal or the willingness of the taxpayer to comply with all reasonable requests of the director, if they exist, and thus move the court to stay the execution. Having so apprised myself of the legal principles, I will now apply them to the facts and deliver my decisions."

Generally, raising of "special circumstances" will be considered by the court to grant a stay execution order. In *Ang Chee Kong & Anor v Tan Leng Kee [2001] 1 AMR 117 (High Court)*, Abdul Malik Ishak J said the following considerations would be taken into account in deciding whether a stay ought to be granted:-

- Merits in the appeal are not special circumstances to justify a stay;
- Whether a successful appeal would be render nugatory (eg. successful appeal should not be rendered futile) by a refusal to grant a stay;
- Whether irreparable damage would be done to the appellant should the stay be refused;
- Whether the stay will be granted in order to maintain the status quo until all the dispute between the parties have been resolved;
- Even in a situation where there are no special circumstances present but where the appellant would be irremediably injured if there was no stay should their appeal succeed;
- Whether the appellant has an arguable appeal;
- Where the appeal emanates from an interlocutory application (eg. interim order or summary judgement).

Another possible avenue to the taxpayer against the IRB's recovery power is to seek Judicial Review under *Order 53 RHC* in suitable tax cases where there is a clear demonstration of abuse of power or **mala fide** eg. with bad faiths by the IRB's officers in raising assessments. Though in *Government of Malaysia v Jagdis Singh [1987] 2 MLJ 185 (Supreme Court)*, the taxpayer was unsuccessful in quashing the IRB's estimate assessments of over RM1 million by means of Judicial Review due to availability of appeal procedure under the ITA, the door is not closed as in *Majlis Perbandaran Pulau Pinang v Sy Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan [1999] 3 MLJ 1 (Federal Court)*, Edgar Joseph FC J gave guidelines which are summarised as follows[v]:-

***"There are certain classes of cases such as planning, employment and tax cases whereby a statute provides for a specialized appeal procedure**, and so the courts understandably may not grant judicial review. However, this is always subject to the grant of review in certain cases, for example, where an applicant is able to **demonstrate excess or abuse of power, or breach of the rules of natural justice**. Though planning cases come under an extensive appellate structure provided for by the Town and Country Planning Act 1976, this does not prevent the Court in appropriate cases from entertaining an application for judicial review in a planning case where the statutory scheme provides no equally convenient remedy.*

*In the present case, main grounds on which the Society sought judicial review were based on distinct principles of public law or general issues of law, in particular, the Society had clearly raised an arguable case that the Council, a public body, had acted unfairly, abused its powers and had raised the general question of the extent to which representations can bind public bodies. These grounds involve a consideration of generalized principles of public law developed by the Courts to control the exercise of power by public authorities, and as such, judicial review would be the appropriate route to follow rather than appeal. **Judicial review in this case, rather than appeal, would be the appropriate route to follow, because by their application, the Society had raised issues of law of public importance, going beyond the significance of the case itself.***

*The issues which arose for decision were based substantially, if not wholly, on established or admitted facts, and so the only question was their legal significance. **The greater speed of judicial review as compared to appellate procedures is a factor which can rightly be put in the balance and weighed and tip the balance in favour of judicial review.** The Court is concerned here with a planning case involving a housing project, the object of which was to provide homes for members of a cooperative society belonging to the less affluent section of society. It was not disputed that many of the flats to be erected had been sold. In such a situation, a swift means of redress was indicated and judicial review would be the natural choice of remedy rather than appeal."*

Constitutionality of IRB's Tax Recovery Power

There were court cases argued against the IRB's tax recovery power from a constitutional law point of view. In *Comptroller-General of Inland Revenue v NP [1973] 1 MLJ 165 (High Court, Malaysia)*, one of the arguments raised was that the provision of *s 82 of Income Tax Ordinance 1947* (which required taxes to be paid notwithstanding an appeal to the authorities on the amount of tax to be imposed) read with *s 86(3)* of the same statute, were unconstitutional as they contravened Article 13 of the Federal Constitution. *Article 13(1)* stated that "***No person shall be deprived of property save in accordance with law***". One of the issues was the meaning of "save in accordance with law" under Article 13. It was held that the tax legislation was duly passed by the Parliament and such enactment is within the competence of the legislature, therefore was in accordance with law.

Subsequent case in *Arumugum Pillai v Government of Malaysia [1975] 2 MLJ 29 (Federal Court)* the court also took a rigid and literal interpretation of the meaning of "law" as above and stated that "*whenever a competent Legislature enacts a law in the exercise of any of its legislative powers, destroying or otherwise depriving a man of his property, that latter is precluded from questioning its reasonableness by invoking Article 13(1) of the Constitution, however arbitrary the law might palpably be*". Added that the method of tax recovery is laid down by the law and do not see how it can be challenged. Furthermore, the law does provide for an appeal against taxation to a separate tribunal from which there is further right of appeal to the High Court by way of a case stated.

In *Ong Ah Chuan v PP [1981] 1 MLJ 64*, an appeal on constitutional validity of *s 15 of the Misuse of Drugs Act*, from Singapore was submitted to Privy Council. The Privy Council rejected the literal interpretation of the word "law" in *Article 9(1) of Singapore Constitution* (similar to our *Federal Constitution Article 5(1): **No person shall be deprived of his life or personal liberty save in accordance with law***". Lord Diplock stated that the word "law" in an Westminster based Constitution, particularly in Fundamental Liberties chapters, must refer to a system of law which incorporates the fundamental rules of natural justice. Otherwise, the purported protection of the fundamental rights of citizens would be "full of sound and fury, signifying nothing", if such rights can be regulated and curtailed by an ordinary law which flouts natural justice rules[vi]. The rules of natural justice noted by Court of Appeal in *Haji Ali bin Haji Othman v Telekom Malaysia Bhd [2003] 2 MLJ 29* was "*the audi alteram partem and nemo judex rules which were directed at ensuring impartiality and fairness in public decision making. These were encompassed in Article 5(1) and Article 8(1) of the Federal Constitution and are directed at giving a citizen the minimum standard of fairness in all forms of State action.*"

In *Re Tan Boon Liat [1977] 2 MLJ 108* where the learned Chief Justice held that: "*..... in accordance with law' in Article 5 of our Constitution is wide enough to cover procedure as well. Here the point is not whether the question of procedure is more important under one Constitution than under the other. If the expression 'in accordance with law' were to be construed as to exclude procedure then it would make nonsense of Article 5.*" This was further affirmed by Federal Court in *Lee Kwam Woh v PP [2009] MLJU 0620*, where Gopal Sri Ram, FCJ stated that "*the expression 'law' in Article 5(1) includes written law and the common law of England, that is to say the rule of law and all its integral components and in both its **procedural and substantive dimension**.*" The Federal Court has affirmed recently in *Badan Peguam Malaysia v Kerajaan Malaysia [2008] 1 MLJ 285* that "*principles of constitutional interpretation are not the same as the ones normally used in interpreting an ordinary statute or law; that a constitution should be construed with less rigidity and more generosity than other statues.*"

It seems that local judiciary favoured rigid and literal interpretation in the 1970s has gradually shifted to a more purposive method of interpretation of our constitutional laws. This is an encouraging move for Malaysia as the world's economic and social condition become more integrated, protection of human rights and private property against arbitrary actions of States and government become much more significant to developing countries which are members of WTO (World Trade Organisation) and UN (United Nations) aspire to transform itself into a developed nation.

vi. Kevin YL Tan & Taho Li-ann, Constitutional Law In Malaysia & Singapore, 3rd Edition, pg 747.

Legislative Reform on Tax Recovery Procedure

It's time for the Legislature to reform the existing tax recovery procedure to incorporate due process tax collection procedures. The following 3 persuasive paragraphs from a lecture before the American College of Tax Counsel, by Nina E Olson on "Taking the *Bull* by Its Horns: Some Thoughts on Constitutional Due Process in Tax Collection (2010)[vii] which I consider is key to the Legislature to take prompt actions now to reform the existing tax collection procedures:-

1. *"The value of procedural due process goes beyond protecting an individual's interests, as important as that is. Procedural due process raises the question of what it means to be constituted as a government. It provides the individual with the ability to interact with the government, to be treated as a person and with dignity. It requires that there be a conversation about what is being done to that person and why it is being done. Even when the out¬come of the dialogue is clear—indeed, especially when the outcome will be unchanged—the right to be heard, that is, to explain to the sovereign how its action will affect you, and the right to have that government action explained to you, make individuals feel that their government is acknowledging their individual circumstances and importance even as it acts for the benefit of the whole. Procedural due process, then, is an aspect of procedural justice, which many commentators believe is a necessary component for individuals to come together and voluntarily consent to be governed."*

2. *"Other than when government takes a person's life or deprives a person of liberty, I can think of a no more significant interest than a person's means to have life, liberty, and property. In our modern society, money is that means. On a weekly if not daily basis, the Service is the sovereign's agent for taking from the populace its means to secure significant individual interests."*

3. *"Keep that consent in mind as we turn Bull v United States on its head for a bit: If taxes are the life-blood of government, then it is the taxpayers who provide that life-blood. So, if the government wants a long life, it is in its self-interest that taxpayers remain financially viable and in long-term tax compliance. For many taxpayers, their financial viability and long-term tax compliance are most affected by Service collection activities, because it is at that point that tax assessments have an actual financial impact. While the courts may say that this impact doesn't rise to a constitutionally significant taking, money is the life-blood of taxpayers to the same extent that money is the life-blood of government. For that reason, even though the government doesn't have to do it, it is good government policy to provide extra measures of protection against abuse in the collection arena."*

The reform of existing tax collection procedures may include:-

- A pre-trial collection hearing to determine arguments from the IRB and taxpayer regarding the ***genuineness of an appeal***.
- Considerations of ***current level of income*** of the taxpayers and any ***economic hardship*** that might impose on the taxpayers if the IRB is to allow collecting first appealing later.
- A ***monetary threshold*** for ***different entity*** such as private or public limited company, individual and etc before a pre-trial collection hearing is allowed to be held.

The following quoted from Nina E Olson above again to conclude this article:-

"In large and powerful sovereign agencies like the Service, accuracy and consistency very quickly become equated with efficiency, economy, and expediency. To these three "Es" I would like to add two others—effectiveness and efficacy. That is to say, a practical due process analysis not only weighs the government's need to operate with efficiency but also evaluates what the action is actually accomplishing in light of the stated goals for that action."

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Technical Updates

These technical updates are summarised from selected Government Gazettes published between 17 Feb 2011 and 6 May 2011 as well as Public Rulings and guidelines issued by the Inland Revenue Board (IRB) during the same period.

Income Tax

Public Ruling No 1/2011 - Taxation of Malaysian employees seconded overseas

This ruling, issued on 7 February 2011 by the IRB, explains the tax treatment of employment income derived by employees from Malaysia who are seconded by their employer to perform duties outside Malaysia. Provisions of the *Income Tax Act 1967* (ITA) which are related to this Ruling are *s 2, 7, 13, 25, 83, 132, 133* and *Sch 7*.

Public Ruling No 2/2011 - Interest expense and interest restriction

On 7 February 2011, the IRB issued this ruling, which deals with:

- **a** the deductibility of interest expense in computing the adjusted income of a person from a source for the basis period for a year of assessment under *s 33(1)(a)* of the ITA
- **b** restriction on the amount of interest expense deductible against gross business income under *s 33(2)* of the ITA, and
- **c** computation of allowable interest expense according to source of income chargeable under *s 4(a), 4(c), 4(d)* or *4(f)* of the ITA.

It also applies to gains or profits received and expenses incurred in lieu of interest in transactions conducted in accordance with *Syariah* principles.

Public Ruling No 3/2011 - Investment holding comp

The IRB on 10 March 2011 issued this ruling, whi explains:

- **a** letting of real property as a business source und *para 4(a)* of the ITA, and
- **b** letting of real property as a non-business source und *para 4(d)* of the ITA.

The provisions of the ITA related to this Ruling a *para 4(a)* and *4(d)*, *subsection 33(1)* and *39(1)*. T ruling is effective from the year of assessment 2006.

Public Ruling No 4/2011 - Income from letting of r property

This ruling, which was issued by the IRB on 10 Ma 2011, explains the tax treatment in respect of investment holding company resident in Malaysia.

The provisions of the ITA related to this Ruling a *para 4(a), 4(d), 4(f), 8(1)(b), 8(1)(c)*; *s 43, 44, 60F* a *60FA*; and *para 75, Sch 3*. This ruling is effective fr the year of assessment 2011.

Income Tax (Exemption) Order 2011 [PU 44/2011]

Effective from the year of assessment 2010 to the y of assessment 2014, a resident company incorpora in Malaysia is given an exemption from payment income tax up to 70% of the statutory income deriv from the export of motor vehicles, automob components or parts it manufactured.

The amount of statutory income to be exempted is equal to:

- 30% of the value of increased export where the export sales of products of the company attained at least 30% of the value added: or
- 50% of the value of increased export where the export sales of products of the company attained at least 50% of the value added.

The incentive is not applicable to a company if, in the basis period for a year of assessment, the company has been granted any incentive under the *Promotion of Investments Act 1986*, or has made a claim for reinvestment allowance or granted investment allowance under *Schedule 7A* and *7B* of the ITA respectively, or has been granted exemption under *s 127(3)(b)* or *s 127(3A)* of the ITA, or has qualified for a deduction under any rules made under *s 154* of the ITA including any rules that provide for a higher rate of capital allowances.

Income Tax (Exemption) (No 11) (Amendment) Order 2011 [PU (A) 76/2011]

The *Income Tax (Exemption) (No 11) Order 2009* which provides for tax exemption of 10 years to companies that undertake a qualifying forest plantation project has been amended by the *Income Tax (Exemption) (No 11) (Amendment) Order 2011* which provides that the application for the project must be made to the Minister charged with the responsibility for that project on or after 21 May 2003 but not later than 31 December 2005 (previously not later than 31 December 2011).

Finance Act 2011 (Act 719)

The *Finance Act 2011* (Act 719) has been gazetted on 27 January 2011. The Act is the same as the *Finance (No 2) Bill 2010* except that the amendment to *s 46* of the ITA now includes clarifications that "parents" shall be individuals resident in Malaysia, the medical treatment and care services are provided in Malaysia and the medical practitioner is registered with the Malaysian Medical Council.

Real Property Gains Tax

Notification of the demise of taxpayer

Pursuant to the amendment of *s 74(3)* of the ITA and *s 14(4)* of the *Real Property Gains Tax Act 1976*, as introduced by the *Finance Act 2011* (Act 719), the IRB has issued a prescribed Form CP57 (Notification of the Demise of Taxpayer). With effect from 27 January 2011, assessments and additional assessments must be issued by the IRB within 3 years after the end of the year of assessment in which the Director General of Inland Revenue is informed in writing by the executor of the death of a taxpayer using the Form CP57. The Form is be submitted to the IRB Branch where the taxpayer's income tax returns are filed.

Stamp Duty

Stamp Duty (Exemption) (No 2) Order 2011 [PU (A) 80/2011]

All instruments executed between a customer and a financier for the purpose of renewing any Islamic revolving financing facility in accordance with the principles of *Syariah* as approved by the Shariah Advisory Council on Islamic Finance are exempted from stamp duty, provided that the instrument for the existing Islamic revolving financing facility had been duly stamped. The *Stamp Duty (Exemption) (No 40) Order 2002* [PU (A) 432/2002] has been revoked.

Stamp Duty (Remission) Order 2011 [PU (A) 81/2011]

The stamp duty on any instrument relating to an Islamic financing facility executed between a customer and a financier for the purpose of rescheduling or restructuring any existing Islamic financing facility is remitted to the extent of the duty that shall be payable on the balance of the principal amount of the existing Islamic financing facility. In order to qualify for the remission, the instrument for the existing Islamic financing facility must have been duly stamped under item 22 or 27 of the *First Schedule to the Stamp Duty Act 1949*. The *Stamp Duty (Remission) (No 6) Order 2002* [PU (A) 433/2002] has been revoked.

Customs And Excise

List of taxable and non-taxable services for service tax purposes

The Royal Malaysian Customs Department (RMCD) has issued a list of taxable and non-taxable services for service tax purposes. The list only serves as a guide and is not exhaustive because the types of services rendered may be different between different types of businesses. The detailed list of taxable and non-taxable services is available at the RMCD's website.

Control of Tobacco Product (Amendment) Regulations 2011

The Amendment Regulations, amongst others, provide that every manufacturer or importer of tobacco should, within seven days of a change in excise duty and sales tax imposed on tobacco product, submit an application in writing to the concerned Director on the specified retail selling price every time there is a change in excise duty and sales tax.

They also provide that every manufacturer or importer should increase the retail selling price of each tobacco products to the rate of at least the sum of the retail selling price prior to this increment and add with the quantum of total excise duty and sales tax increased and the sum shall be rounded up to the nearest 10 sen.

The Amendment Regulations also prohibit a person from selling or offering for sale any tobacco product with a retail selling price not approved by the Director.

Case Commentaries

By Irene Yo

Alcatel-Lucent Malaysia Sdn Bhd (formerly known as Alcatel Network Systems (Malaysia) Sdn Bhd) ("Alcatel") and Alcanet International Asia Pacific Pte Ltd ("Alcanet") v Ketua Pengarah Hasil Dalam Negeri[1]

In a recent landmark decision on withholding tax in Malaysia, the High Court considered the two main withholding tax sections under the *Income Tax Act 1967* ("ITA") in a judicial review application filed by Alcatel-Lucent Malaysia Sdn Bhd (formerly known as Alcatel Network Systems (Malaysia) Sdn Bhd) ("Alcatel") and Alcanet International Asia Pacific Pte Ltd ("Alcanet") against the Director General of Inland Revenue ("IRB").

Facts

Alcanet, which is not tax resident in Malaysia, provided certain services relating to the provision of a global network for voice, data and video communication ("Services") to Alcatel.

Subsequent to a withholding tax audit conducted by the IRB, the IRB purported to subject payments made by Alcatel to Alcanet for the Services ("Payments") to withholding tax and increased withholding tax under "*s 109* **and/or** *s 109B of the ITA*" for the relevant years ("IRB's decision").

Alcatel and Alcanet (collectively "Applicants") disputed that the Payments were subject to withholding tax and filed an application for judicial review in the High Court of Malaya under Order 53 of the Rules of the High Court 1980 to, amongst other things, quash the IRB's decision ("JR Application").

Issues

The Court considered the following issues:

1. Whether the IRB's failure to provide reasons for the decision was unreasonable ("First Issue"); and

2. Whether the Payments are "royalty" subject withholding tax under *s 109* read with *s 2 of the I* ("Second Issue").

The material legislative provisions of the ITA are set below.

Section 109:

"(1) Where any person ... is liable to pay interest royalty derived from Malaysia to any other pers not known to him to be resident in Malaysia ... shall upon paying or crediting the interest ... royalty deduct therefrom tax at the rate applica to such interest or royalty, and ... shall within month after paying or crediting the interest royalty render an account and pay the amoun that tax to the Director General: ..."

Section 109B:

"(1) Where any person ... is liable to ma payments to a non-resident – ...

(b) for technical advice, assistance or service rendered in connection with technic management or administration of a scientific, industrial or commerci undertaking, venture, project or scheme; or ...

which is deemed to be derived from Malaysi *he shall, upon paying or crediting th payments, deduct therefrom tax at the ra applicable to such payments, and ... sha within one month after paying or creditin such payment, render an account and pay th amount of that tax to the Director Genera ..."*

Section 15A:

"Gross income in respect of – ...

(b) amounts paid in consideration of technic advice, assistance or services rendered connection with technical management o administration of any scientific, industri or commercial undertaking, ventur project or scheme; ...

[1] **Unreported decision of the High Court.**

shall be deemed to be derived from Malaysia – …

(ii) if responsibility for the payment of the above or other payments lies with a person who is a resident for that basis year; or

(iii) if the payment of the above or other payments is charged as an outgoing or expense in the accounts of a business carried on in Malaysia:

provided that in respect of paragraphs (a) and (b), this section shall apply to the amount attributable to services which are performed in Malaysia."

Section 2:

"In this Act, unless the context otherwise requires – … "royalty" includes –

(a) any sums paid as consideration for the use of, or the right to use –

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

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

(b) income derived from the alienation of any property, know-how or information mentioned in paragraph (a) of this definition."

Decision

The High Court found in favour of the Applicants on both issues.

In regard to the First Issue, the IRB had listed both sections of the ITA, ie. *s 109* and *s 109B* without providing any reasons, basis or further clarification for the IRB's decision.

On the First Issue, the Court held that:

"Public interest demands that a statutory power must be exercised reasonably and with due consideration. I agree with counsel for the applicants that in the circumstances of this case it was unreasonable of the Respondent to apply both sections 109 and 109B. I find that applying both sections 109 and 109B renders the Respondent's decision unreasonable."

In regard to the Second Issue, the Revenue contended that the Payments are "royalty" subject to withholding tax under *s 109* read with *s 2 of the ITA*.

On the Second Issue, the Court held that the Payments do not constitute "royalty" under *s 109* read with *s 2 of the ITA* as the IRB had failed to establish that the software was used to produce profits for Alcatel or that Alcatel was granted any rights to develop or exploit the software commercially. The Court also held that the Payments are not chargeable to withholding tax under *s 109B* read with *s 15A of the ITA* as the Services were wholly performed outside Malaysia at all material times.

It is noteworthy that the Court considered and applied the Commentary on the Model Tax Convention on Income and on Capital by the OECD Committee on Fiscal Affairs in determining the meaning of "royalty" under the ITA. The Court also referred to the judgment of the Federal Court of Appeal of Canada in *The Queen v St John Shipbuilding & Dry Dock Co Ltd*[2] where it was held that:

"Royalties", though a broad term, when used in the sense of a payment for the use of property, connotes a payment calculated by reference to the use or to the production or revenue or profits from the use of the rights granted."

Conclusion

This is a landmark decision on withholding tax in Malaysia dealing with the two main withholding tax sections in the ITA, that is *s 109* and *s 109B*. This decision makes it clear that the IRB must exercise its powers under the ITA reasonably or the courts would interfere to quash any unreasonable exercise of statutory powers.

Note: The IRB has lodged an appeal to the Court of Appeal against the decision of the High Court.

** The Tax and Revenue Practice Group of Shearn Delamore & Co. is a full-time dedicated tax law practice group that handles the full range of tax advisory, structuring, planning, litigation, audit and investigation matters and has been recognised, amongst others, as Malaysia Tax Litigation Firm of the Year (2007 to 2010) by the International Tax Review and the No. 1 law firm in Malaysia in Tax for successive years by Chambers Asia, Asialaw Profiles, Asialaw Leading Lawyers and the Asia Pacific Legal 500.*

Erratum

Tax Guardian Vol.4/No.1/2011/Q1
Tax Cases : Case Commentaries by Vijey M Krishnan and Kok Fie See

On page 43 of the Case Commentary on Isyoda (M) Sdn Bhd , the following introductory sentence before the facts of the case was inadvertently omitted:
"This commentary highlights the recent decision of the Court of Appeal in the *Isyoda* case with respect to the taxation of interest under s 4 of the ITA".

Any confusion arising from this matter is regretted and we would like to apologise to the authors for the omission.

International News

By Rachel So

The column only covers selected developments from countries identified by the CTIM and relates to the period 26 Janua 2011 to 15 April 2011.

China (People's Rep.)

Tax treatment of Foreign Invested Venture Capital Investment Enterprise (FIVCIE) confirmed

The State Administration of Taxation (SAT) issued a Notice on 13 December 2010 (Gong Gao [2010] No. 26) confirming that the tax treatment of a FIVCIE, as provided under the Notice (Guo Shui Fa [2003] No. 61), is still in force.

According to the Notice (Guo Shui Fa [2003] No. 61) a FIVCIE in the form of a non-legal person cooperative joint venture can be treated as transparent for the income tax purposes. As a result, not the FIVCIEs themselves, but the investors of the FIVCIE are subject to income tax for their own participations in the FIVICIE.

In cases where a FIVCIE assigns all of its investment activities to a separate fund manager, a foreign investor in a FIVCIE will be regarded as a foreign enterprise without an establishment in China which entails only withholding tax on dividends and capital gains derived from China (FIVCIE) at a rate of 10% unless a lower rate is provided under an applicable tax treaty.

Property tax on residential homes anticipated

It has been reported that the State Council of China approved the property tax on residential homes in certain cities on a trial basis. Under the current tentative regulations on property tax, residential homes are exempt from property tax. With the approval of the State Council, residential homes will become taxable.

Business tax on sale of residential properties amended

The Ministry of Finance (MoF) and the SAT jointly issued a Notice on 27 January 2011 (Cai Shui [2011] No. 12) amending business tax on sale of residential properties. The Notice applies as from 28 January 2011.

According to the Notice, the full proceeds of a residential property disposed by an individual are subject to business tax if such property has not been owned by the seller for at least 5 years. However, if such property has been owned by the seller for more than 5 years, a distinction is made between non-ordinary (i.e. luxury) properties and ordinary properties. In the case of a "luxury" property, the balance between the proceeds and purchase price is subject to business tax whereas the proceeds of sale of an ordinary property are exempt from business tax.

Preferential tax policy on low-profit enterprises extended

The MoF and the SAT jointly issued a Notice on 27 January 2011 (Cai Shui [2011] No. 4) to extend the preferential tax policy on low-profit enterprises to the tax year 2011. According to the Notice, only 50% of the taxable income of a low-profit enterprise will be subject to enterprise income tax at a reduced rate of 20% in the tax year 2011, provided that the annual taxable income of such an enterprise is lower than CNY 30,000 on an annual recurring basis.

Assets restructuring: outside VAT scope

The SAT issued an announcement on 18 February 201 (Gong Gao [2011] No. 13). The Announcement states th the transfer of the whole or part of assets (along wi related receivables, debts and labour force) to anoth entity or individual, in connection with an asset restructuri by way of a merger, spin-off, or sale and exchange, do not fall within the taxable scope of VAT and is therefore n subject to VAT. The Announcement applies as from March 2011.

Incentives for software and integrated circui enterprises extended and expanded

The State Council issued a Notice on 28 January 201 (Guo Fa [2011] No. 4) regarding preferential policies fo software and integrated circuits (ICs) enterprises. Th new policies contain tax and non-tax preferentia treatments of such enterprises and apply from the date o publication (i.e. 28 January 2011). All kinds o software and ICs enterprises (regardless of whethe private, state owned or foreign owned) are eligible fo the preferential policies which are summarize below.

VAT

The preferential VAT treatment of software and IC enterprises, as provided in the Notice of the Stat Council Guo Fa [2000] No. 18, is extended for an unde fined period of time.

Accordingly, ordinary VAT payers will be liable t charge VAT at the full rate of 17 percent on the sale o self developed software products. However, they ca obtain a refund immediately if and to the extent tha their VAT payable exceeds 3% of their turnover.

Business tax

Services such as software development and testing information system integration, consulting an maintenance, and ICs design provided by qualifie software enterprises and ICs design enterprises, ar exempt from business tax. The implementation rule of the exemption will be issued by the MoF and SAT.

Enterprise income tax

Commencing from the first profit-making yea qualified enterprises:

- engaged in the production of ICs smaller than 0.8 mm are exempt from tax in the first 2 years, and subject to tax at a rate of 12.5% (i.e. half of 25%) in the following 3 years.
- engaged in the production of ICs smaller than 0.25 mm are subject to tax at a rate of 15%. In cases where the enterprise has been in operation for more than 15 years, the income is exempt in the first 5 years, and subject to tax at a rate of 12.5% in the following 5 years.

...hat are newly established within China are exempt ...om tax in the first 2 years, and subject to tax at a ...te of 12.5% in the following 3 years.

... ICs design enterprises are subject to enterprise ...me tax at a rate of 10%.

...-tax policies

... non-tax preferential policies for software and ICs ...erprises announced in the Notice include: (i) financial ... from government; (ii) facilities for business ...cturing; (iii) venture capital; (iv) credit/loans from ...; (v) relaxed import procedures for import of ...-used equipment; (vi) stock options and other ...erential treatment (including resident permits for ... family members in the big cities) for researchers and ...; and (vii) protection of IP rights.

...cle and Vessel Tax Law published

... Vehicle and Vessel Tax Law (VVTL) was passed by ... National People's Congress (NPC) Standing Committee ... 25 February 2011 and applies from 1 January 2012. ... content is summarized below.

...onal cars are charged to tax according to seven ...ous emission levels and the size of engines. Further, ... Law provides for exemption and reduction of tax ... regard to vehicles for special purposes (fishing ...els or vehicles of police forces) and those being ...ssified as energy-saving and new clean energy ...ing. The State Council is authorized to issue the ...iled implementation rules. The tax is recurrent on an ...ual basis.

Hong Kong

...dget for 2011-12 – details

... Budget for 2011-12 was presented to the ...gislative Council by the Financial Secretary, Mr. ...n C Tsang on 23 February 2011. Details of the ...dget, which, unless otherwise indicated, will apply ...m 1 April 2011, are summarized below:

- child allowance and the additional one-off child allowance in the year of birth is to be increased by 20%, from HKD 50,000 to HKD 60,000 respectively;
- dependent parent/grandparent allowances are to be increased by 20% respectively
- the deduction ceiling for elderly residential care expenses is to be increased by 20%, from HKD 60,000 to HKD 72,000;
- waiver of property rates for year 2011/2012, capped at HKD 1,500 per tenement per quarter;
- tobacco duty is to be increased by HKD 0.50 per stick of cigarette; and
- First Registration Tax for private cars is to be increased by about 15%.

Indonesia

Guidelines for implementing CFC rule

The Tax Office issued Regulation PER-59/PJ/2010 on 30 December 2010, which provides further guidance on the implementation of the controlled foreign corporation (CFC) rule. The CFC rule applies to all Indonesian investments in all foreign countries, except where the foreign company's shares are listed on a recognized stock exchange.

The salient points of the Regulation are summarized below:

- qualifying shareholders are deemed to receive dividends from the CFC:
  - in the 4th month after the annual corporate income tax return deadline, or
  - 7 months from the end of the financial year, where (i) the company is not obliged to file a tax return or (ii) where the tax filing deadline is not stipulated;
- the deemed dividends are calculated based on the shareholding percentage and the CFC's after-tax profits;
- the dividends must be reported by the shareholders in the annual corporate income tax returns together with the CFC's financial statements;
- the CFC rule does not apply if the CFC has distributed dividends to the qualifying shareholders consistently with the prescribed formula and before the abovementioned deadline;
- dividends received in excess of the deemed dividends must be reported in the shareholders' corporate income tax returns in the year the dividends are distributed; and
- a foreign tax credit is available on foreign tax paid or withheld on the dividend.

Government Regulation No. 94/2010 – details

Government Regulation (GR) No. 94/2010 issued on 30 December 2010 provides further rules for the implementation of Law No. 36 Year 2008 and revokes GR No. 138/2000 on income tax.

The salient points of the Regulation are summarized below:

- Bonus shares distributed without payment do not constitute taxable dividends where they arise from:
  - the capitalization of a share premium provided that the total nominal value of the shares owned by the recipient of the bonus shares after distribution does not exceed the total capital payment; or

- the capitalization of gains on the revaluation of fixed assets.

- Participation profits and unit repayment profits earned by resident and non-resident holders of a participation unit of a Collective Investment Contract are not taxable.

- As provided by the law, donations, grants and bequests are not taxable provided that there is no business, employment, ownership or control relationship between the donor and the recipient. Pursuant to the Regulation:
  - a business relationship may exist if there are routine transactions between the parties;
  - an employment relationship exists if there is any form of employment, service provision or activities between the parties; and
  - a control or ownership relationship exists if it the transfer pricing definition of a "special relationship" is met.

- Non-interest bearing loans from shareholders to limited liability companies are allowed if:
  - the loan is from the shareholder's own funds and not from other parties;
  - the shareholder has a fully paid-up capital;
  - the shareholder is not in a loss position; and
  - the borrower is having financial difficulties affecting the continuity of its business.

  If the above conditions are not met, the loan will be deemed as interest-bearing at an arm's length rate.

- Non-creditable input VAT is deductible provided it has been settled and relates to expenditure incurred to generate and maintain income. Where the input VAT is related to the acquisition of fixed assets, it is capitalized and deductible through depreciation or amortization allowances.

- A tax treaty is only applicable to individual or corporate taxpayers that are Indonesian tax residents; and/or residents of a tax treaty partner country as evidenced by a certificate of domicile.

Revision of branch profits tax rules

The MoF issued Regulation No. 14/PMK.03/2011 dated 24 January 2011 which revises the branch profits tax (BPT) rules as provided under Regulation No. 257/PMK.03/2008.

Effective 24 January 2011, a branch or permanent establishment (PE) is not subject to the BPT if it (i) reinvests its profits in a newly established or existing company in Indonesia; or (ii) acquires fixed assets or intangible assets to be used by the branch to perform its business activities in Indonesia, subject to the following conditions:

- the reinvestment is done by the end of the tax year following the year in which the profits arose;
- where the reinvestment is made into a new company
  - the company is tax resident in Indonesia and actively conducts business activities for at least year from its incorporation; and
  - the branch maintains its investment in the new company until at least the 2nd year after the company commences its commercial activities;
- where the reinvestment is made into an existing company, the company actively conducts business in Indonesia, and the branch maintains investment in the company for at least 3 years; and
- where the reinvestment is made by acquiring fixed or intangible assets, the assets are not transferred for at least 3 years from their acquisition.

Singapore

Budget for 2011 – details

The Budget for 2011 was presented to the Parliament by the Finance Minister on 18 February 2011. Many details of the Budget, which, unless otherwise indicated, will apply from the year of assessment (YA) 2012, are summarised below:

Direct taxation

The Budget for 2011 was presented to the Parliament by the Finance Minister on 18 February 2011. Many details of the Budget, which, unless otherwise indicated, will apply from the year of assessment (YA) 2012, are summarised below:

(a) Corporate taxation

- for YA 2011, companies will receive a 20% corporate tax rebate capped at SGD 10,000. Small and medium sized enterprises (SMEs) will receive the higher of the 20% rebate or a cash grant amounting to 5% of the company's revenue, but capped at SGD 5,000. The cash grant is available only to SMEs that made Central Provident Fund (CPF) contributions in YA 2011;
- a foreign tax credit (FTC) pooling system will be introduced under which FTC is computed on a pooled basis for each particular stream of foreign income (FI) remitted into Singapore. The amount of FTC to be granted will be based on the lower of the pooled foreign taxes paid on the FI and the pooled Singapore tax payable on such FI, subject to the resident taxpayer meeting certain conditions;
- businesses can claim pre-commencement revenue expenses incurred in the accounting year immediately preceding the accounting year in which they earn the first dollar of trade receipts;

- the tax deduction of 250% on contributions to Institutions of Public Charter (IPCs) will be extended for another 5 years for donations made during 1 January 2011 to 31 December 2015;
- eligible companies that make voluntary contributions to the Medisave accounts of their self-employed person (SEP) partners from 1 January 2011 can deduct up to SGD 1,500 per SEP per year. The SEPs would be exempt from tax on these contributions;
- with effect from 1 April 2011, banks and other approved or licensed financial institutions will be exempt from withholding tax on interest and other qualifying payments made to all non-resident persons (excluding permanent establishments in Singapore), if the payments are made for the purpose of their trade or business; and
- companies that set-up special purpose vehicles (SPVs) to acquire shares for their equity-based remuneration schemes can deduct the cost of the shares, subject to conditions.

Personal taxation

- a one-off personal income tax rebate of 20% that is capped at SGD 2,000 will be granted to all residents for YA 2011;
- Tax exemption on alimony and maintenance payments received under a court deed or deed of separation;
- spouse relief and handicapped spouse relief will no longer be granted in respect of former spouses; and
- the progressive income tax rate schedule for resident individuals will change as follows:

Chargeable income (SGD)	Marginal rate (%)
up to 20,000	0
20,000 - 30,000	2
30,000 - 40,000	3.5
40,000 - 80,000	7
80,000 - 120,000	11.5
120,000 – 160,000	15
160,000 - 200,000	17
200,000 - 320,000	18
over 320,000	20

Tax incentives

Various enhancements were made to existing incentives such as (i) Productivity and Innovation Credit (PIC); (ii) Global Trader Program (GTP); (iii) Finance Treasury Centre (FTC); (iv) captive insurance; and (v) marine insurance.

Indirect taxation

- GST zero-rating measures were introduced for the marine, biomedical and logistics sectors.
- excise duties on certain non-cigarette tobacco products were raised by 5% to 10% effective 18 February 2011.
- all radio and television license fees are scrapped effective 1 January 2011;
- various stamp duty reliefs and remissions were introduced; and
- the Green Vehicle Rebate (GVR) scheme will be extended for 1 year until 30 December 2012

Other measures

- effective September 2011, the CPF employer contribution rate is increased by 0.5%, from 15.5% currently to 16%. The additional 0.5% will go into the Special Account; and
- the CPF salary ceiling is also revised from 4,500 to 5,000 per month, and the contribution cap within the Supplementary Retirement Scheme (SRS) will also be raised

Productivity and innovation credit deferral option

The Minister for Finance announced on 2 March 2011 that businesses will have the option to defer a dollar of current year of assessment (YA) tax for every dollar of Productivity and Innovation Credit (PIC) qualifying expenditure incurred for the current financial year. The deferral is capped at SGD 100,000. The tax will be deferred and is due for payment when the first assessment for the following YA is raised. The deferral option is available for YAs 2011 to 2014 based on the expenditure incurred in the corresponding financial years 2011 to 2014.

Example

Businesses that invest in PIC activities in financial year 2011 can defer their tax payable for YA 2011 based on PIC qualifying expenditure incurred, up to a cap of SGD 100,000. The deferred tax for YA 2011 will be due when the first assessment for YA 2012 is raised.

Thailand

Personal Income Tax – Deduction for retirement insurance premiums

Ministerial Regulations No. 279 was issued on 16 February 2011, granting a personal income tax (PIT) deduction for individuals who invest in "retirement life insurance". The Regulation is effective retrospectively from 1 January 2010.

An individual is entitled to deduct from his taxable income insurance premiums not exceeding 15% of his annual gross income or THB 200,000 per year, whichever is the greater.

This deduction is available in an addition to the existing PIT deduction for long-term (i.e. not less than 10 years) life insurance, which is limited to insurance premiums not exceeding THB 100,000 per year, subject to certain conditions.

Further, when this deduction is claimed together with the deductions available for investments in: (i) provident funds; (ii) the Civil Service Gratuity and Pension Funds; (iii) the Welfare Funds under the private school laws; and Retirement Mutual Funds, the deductions in total must not exceed THB 500,000 per year.

Trusts for capital market Investment – proposed tax incentives

On 15 February 2011, the Cabinet approved draft legislation for tax incentives to promote trusts for capital market, which is currently the only type of trust that is allowed to be established under Thai law. The draft legislation includes the following tax incentives:

- Exemption of income tax, value added tax (VAT), specific business tax (SBT) and stamp duties for the transfer of the ownership or any other rights in the assets between the trustor and trustee.
- The trustee is exempted from tax on incomes derived from the administration of the trust assets.
- Where the trustor is a Thai company and the trust assets include the shares issued by other Thai company, and the trustor will receive the manufactured dividends, the trustor will be entitled to the reduction of corporate income tax (CIT) on such dividends from the normal rate of 30% to 15% on net profits. The manufactured dividends will be completely exempted from CIT if the trustor is a listed company or holds (via the trustee) not less than 25% of the shares with the voting rights.

  This incentive will apply only if the shares are held for at least 3 months (including the periods during which the shares are held by the trustee) before and after the distribution of dividends.

  Where an individual beneficiary receives the manufactured dividends from the trust, instead of paying the progressive rate personal income tax (which range between 5% to 37%), he/she may opt to pay a final withholding tax of 10%. The draft legislation does not specify if this incentive will be equally applicable to both Thai and foreign resident individuals. The draft legislation is also silent as to whether the incentive will be applicable to a corporate beneficiary.

Vietnam

Guidelines for 2010 Corporate Income Tax (CIT) finalization

On 14 February 2011, the GDT issued the guidelines on the finalization of 2010 CIT ("OL518/TCT-CS").

Deductible and non-deductible expenses

(a) Depreciation of a fixed asset

Depreciation may still be claimed in respect of a fixed asset that is temporarily not in use due to: (i) seasonal factors (less than 9 months); or (ii) repair, relocation or periodic maintenance (less than 12 months), on the condition that the asset is used in the ordinary course of business of that enterprise and will continue to be used after its temporary disuse.

(b) Salary

Enterprises are not allowed to deduct bonuses paid to their employees if the condition for bonus entitlement and the bonus rate are not specified in: (i) the respective labour contracts or collective labour agreement; (ii) the financial policy of the enterprise/corporation/group of companies; or (iii) the bonus policy (as issued by the Chairman of the Management Board or General Director) based on the financial policy of the enterprise/corporation.

A provision for salaries for the subsequent year (i.e. 2011) is permitted so long as the provision does not exceed 17% of the total salaries paid during the year. The provision cannot create a loss position for the enterprise and any excess funds from the prior year's provision not utilized has to be reversed accordingly.

Secondary tuition fees borne by the enterprise in respect of its foreign employees' children is deductible if it is stated in that respective foreign employee's labour contract that the school fees are salary in nature, the corresponding laws and regulations on salary and wages are complied with, and the expense is supported with valid documentation.

(c) Overseas and domestic travelling per diem

Travelling per diems (excluding transportation and accommodation) are deductible up to two times the per diem amount paid to state employees (as regulated by the Ministry of Finance). Currently, the maximum amounts paid to state employees are VND 300,000 per day for domestic travel and USD 40-60 (depending on destination) per day for overseas travel.

Taxable income

(a) Income from difference in foreign exchange

Foreign exchange differences directly related to revenue/expenses of the enterprise's main business activities will be treated as operating income or business expenses. Foreign exchange differences not directly related will be treated as other income or business expenses. Foreign exchange gains and losses due to revaluation of payables can be offset against each other.

(b) Interest income from deposit/lending

In a tax year, where an enterprise generates interest income from any type of regulated deposit/lending of an

...e and at the same time incurs interest expenses on ...rowing(s), the income and expense may be offset ...nst each other. Where there is an excess of interest ...me over interest expense on borrowing(s), the excess ...treated other income. Conversely, where the interest ...ense is greater than the income, the difference is treated as ...usiness expense.

...idelines for loss determination and loss carry-forward

...enterprise having losses incurred from FY2009 ...wards must carry forward totally and continuously such ...sses to the taxable income of subsequent years, but ...bject to the 5-year cap, starting from the year following ...e year such losses arise. Losses incurred before FY2009 ...re carried forward in accordance with prevailing regulations ...t that time such losses arise.

Foreign contractor tax - GDT Guidelines

In February 2011, the GDT issued OL518/TCT-CS clarifying that the following services performed outside Vietnam do not fall under Circular 134/2008/TT-BTC, and are accordingly exempt from foreign contractor tax:

- a foreign organization/individual who provides international sea transport brokerage services for a ship's owner and acts as an intermediary in contacting, negotiating, and concluding cargo transportation contract(s); and
- a foreign organization/individual who provides brokerage services for a Vietnamese enterprise to provide/export software services to overseas persons.

Profit remittance – Ministry of Finance Circular

The MoF has issued Circular 186/2010/TT-BTC (Circular 186), replacing Circular 124/2004/TT-BTC (Circular 124), on profit remittance by foreign organizations and individuals investing directly in Vietnam, and is effective from 2 January 2011:-

- Circular 186 specifically provides that foreign investors shall be permitted to remit their profits annually at the end of the financial year or upon termination of their investment in Vietnam. Unlike Circular 124, there is no mention of provisional remittances; thus, it is likely that such provisional remittances of profits are no longer permitted.
- Circular 186 stipulates that foreign investors are not permitted to remit profits if the investee company has accumulated losses.
- Under Circular 124, approval was required before remittance was allowed. Circular 186 instead requires notification to be made to the tax authorities at least 7 working days prior to the scheduled remittance

New Circular on Science and Technology Development Fund of an Enterprise

On 9 February 2011, the MoF issued Circular 15/2011/TT-BTC (Circular 15) on the establishment, organization, operation, management, and usage of a Science and Technology Development Fund ("the Fund").

Previously, under the Law on Enterprise Income Tax 2008, an enterprise may allocate up to 10% of annual taxable income to establish a Science and Technology Development Fund. However, no additional guidance was provided. The Circular takes effect 45 days from the date of signing.

Malaysia – treaty developments

- On 16 February 2011 Qatar and Malaysia signed an amending protocol to the income tax treaty of 3 July 2008.
- *On 18 February 2011, India and Malaysia signed a* comprehensive economic cooperation Agreement (CECA), in Kuala Lumpur.
- **The tax treaty between** San Marino and Malaysia (signed on 19 November 2009) entered into force on 28 December 2010. The treaty generally applies in San Marino from 1 January 2011, in Malaysia from 1 January 2010 for income/withholding taxes and from 1 January 2011 for petroleum income tax.
- The amending protocol to the existing tax treaty between France and Malaysia, which was signed on 12 November 2009 entered into force on 1 December 2010. The protocol generally applies from 1 January 2010.
- Ireland has ratified the amending protocol, signed on 16 December 2009, to the **Ireland-Malaysia** income tax treaty of 28 November 1998, by way of Order S.I. No. 32 of 2011.

** 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 News Service. For further details, kindly contact the IBFD at ibfdasia@ibfd.org.*

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Driving a Global Shift in Tax Reporting

Up Close with Peter Boyle, Director of Corporate Tax Solutions, Global Integrator

Increasingly, tax practitioners around the world are weighed down by the Herculean task of completing their tax reporting and planning duties against a demanding timeline. **Peter Boyle**, Director of Corporate Tax Solutions, Global Integrator shares insights on how the profession can save many hundreds of hours with Global Integrator, a single system that integrates global tax reporting, compliance and planning.

In your view, what are the key challenges that global corporations face today in the area of tax?

There are four key challenges. One, ensuring that information reported to the various authorities are accurate and on time. There is increasing pressure to get things out faster and faster. But there is a risk in rushing things through, reviews are not very thorough as a lot of time is needed to gather and manipulate information.

Two, it is very difficult to look back into the past and get correct numbers. Often, there are no real records, even just 6 months back.

Three, companies are cutting back on resources globally. Staff are told to do more work, with increasing accuracy, and less people. There is a huge competition for resources and that is a significant challenge.

Four, the global environment makes it difficult to keep up with change. How do companies make sure that what they do matches pace with the shifting landscape?

How do they currently overcome these problems?

In many cases, they don't! Often, they throw people at the problem. They work longer and longer hours. But this doesn't address the problem of accuracy and timeliness of information.

Can you tell us what Global Integrator is in a 20-word nutshell?

A solution that gathers, validates, calculates and reports on tax information efficiently and repeatedly across complex or dispersed enterprises.

How can Global Integrator add value to a tax practitioner's work?

Global Integrator automates repetitive tasks. Now they simply need to go into the Global Integrator system and enjoy efficient use of the computer system to move data around. No longer do they need to rely on labour-intensive processes. Time is freed up to really add value to the business. Risk decreases significantly, and companies have better tools to do tax planning and restructuring and ultimately bring greater benefits to their company's shareholders.

Why is it important to have a central global depository for documents? Wouldn't it be easier if each region has its own localised tax platform?

Organised data may be extracted easily for tax planning. Data may be reused many times at different parts of the world. Procedures are standardised and now may be consistently followed. There is now visibility over what is done across the enterprise. This reduces auditor exceptions and pressure on the tax management team.

Who are your customers? Can you share with us some customers' experiences with Global Integrator?

We have MNCs, global groups operating in 80-90 countries managing a large volume of data, as well as small companies with 1-2 entities. One of our customers, Kimberly-Clark, has saved over 9000 hours on their annual return since adopting our system.

Is this only for MNCs?

We have business entities that use Global Integrator in their local regions alone. Global Integrator functions well not just at a multinational level, but at a domestic level as well. It has the same benefits of efficiency and traceability of information. It is also absolutely easy to implement and use.

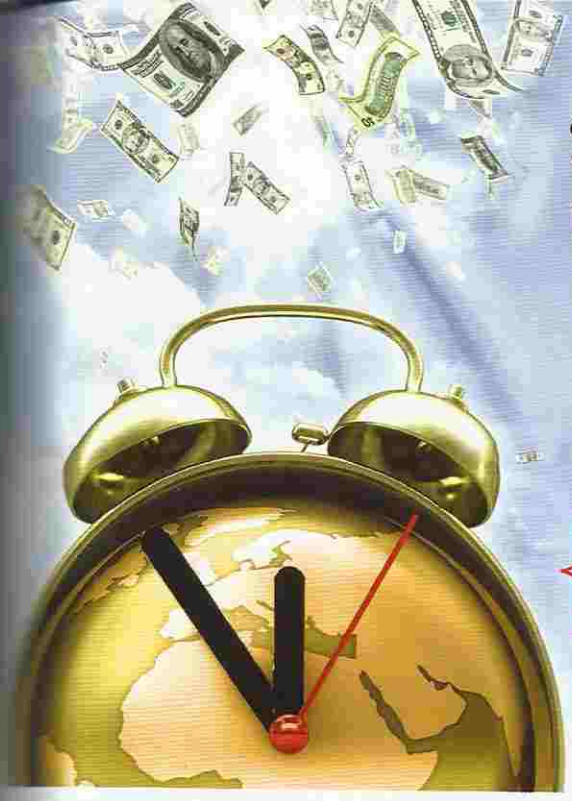
> ***"Global Integrator is able to aggregate data, … making it easy for strategists to do tax modeling and obtain maximum tax savings."***

Who are your competitors and how do they compare with you?

There are some competing applications in the market, each doing only a part of what Global Integrator does. They only focus on a part of the overall picture. In other words, there is no application doing what Global Integrator does today. The key differentiation is Global Integrator functioning as a 1-stop solution. If organisations were to spend time managing many different applications, it would cause confusion and inefficiency. Global Integrator combines all these separate functions in a single location, making processes streamlined and orderly.

How does Global Integrator help in tax planning?

Using the standard data Global Integrator collects and uses for tax accounting and compliance, we are able to aggregate the group in different ways and facilitate the modeling of changes to group structure. It provides tailored reporting, effective tax rate reporting and draws up both global and regional sets of numbers, making it easy for strategists to do tax modeling and obtain maximum tax savings.



Save over 9000 hours in the global tax function?

Make that your reality with the integrated global tax reporting, compliance & planning solution - **Global Integrator**

*With **Global Integrator**, we are implementing a single process for both US and local GAAP tax accounting across our 200+ US and international entities and have **saved over 9000 hours and 52 elapsed days** from our US tax compliance processes.*

Patrick Callahan,
Director Tax Accounting & Reporting, Kimberly-Clark

Are You Troubled by these Issues?

Untimely & inaccurate international data collection? Inefficient & inconsistent workflow management? Time-consuming statutory reporting activities?

Lift the burden off these fussy matters with **Global Integrator**, a web-based solution that provides a single, streamlined platform for data collection, analysis and tax reporting globally. **Global Integrator** eases your compliance and reporting obligations, allowing you to focus on more strategic and value-adding tax activities.

Experience these benefits

Clear Audit Trail – Simplify review and provide your auditors with the confidence they are after

Multi-GAAP reporting – Single solution providing reconciliation from head office GAAP to local GAAP to local tax

Integrated process – Integrate tax provision and compliance activity in one central repository that is easy to consolidate with general ledgers and local compliance tools

Less data manipulation & flexible calculation – Automated tax calculations, ranging from detailed provision calculation (with full tax basis balance sheet) to high level ETR calculation

Standardisation – Flexible calculations & schedules templates provide consistent reporting formats across all countries, automate transfer pricing document production

Streamlined currency conversion & aggregation – Simplify group tax review and reporting

Planning & forecasting – Facilitates calculation of tax positions based on estimates/restructures

Web based & scalable – Secure multi-user access anytime, anywhere, suitable for both small & large organisations

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Leadership is an Extreme Thing!

By Roshan Thira

Decision-making key to leadership success

In 1997, while I was working at NBC News, Mother Teresa, the Nobel Prize winner, died at 87 years old. As we were preparing a special programme on her life as a tribute to her, I started browsing stories and interesting facts about her. Here was a shy, introverted Albanian woman born as Agnes Gonxha Bojaxhiuin, who moved to India and impacted the world. In 1982, at the height of the siege in Beirut, she managed to persuade the Israelis and Palestinians to cease fire long enough to allow the rescue of 37 children from a hospital.

A story that captivated me and instigated my understanding of leadership was the time she went to an Indian bakery and insisted on getting free bread for her homeless children in Calcutta. The baker slapped her hard and asked her to get out of there. She did not become defensive or smack the baker for his assault on her. Instead, she calmly said, "I probably deserved that slap for asking for free bread. Now, please give me my bread." She kept bugging the baker for another 2 hours until he could not tolerate her anymore and just gave her the bread to get her out of the store. In her interaction with the baker, she not only displayed her extreme humility but also her extreme assertiveness. Two extremely contrasting leadership traits - and I started to get a sense of what leadership was.

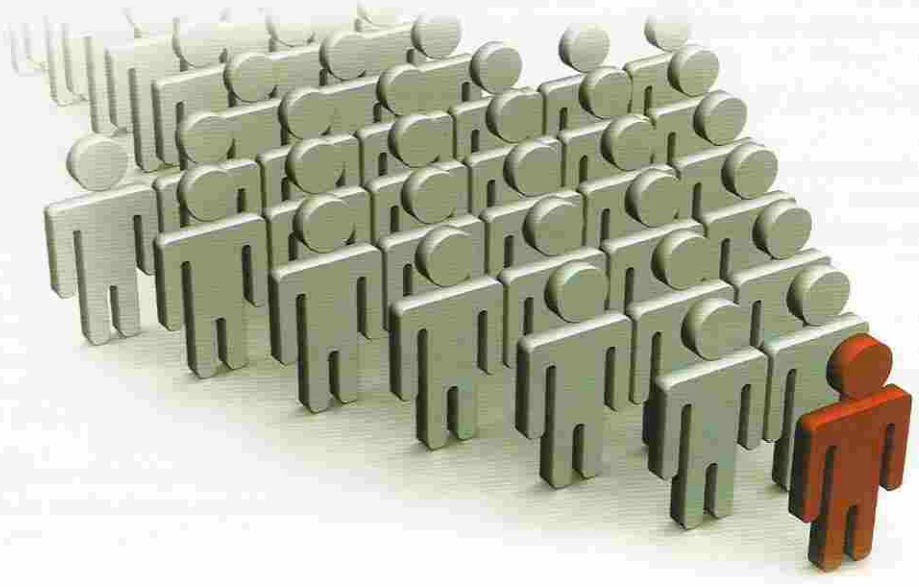
The success of nations and companies alike has often rested on the shoulders of great leaders. But what really makes a leader? If you ask this question to a hundred people, you will get a hundred answers. And a 100 different leadership gurus, will give you 100 different leadership models. The business community spends USD 60 billion on leadership development yet the biggest complaint of CEOs is that there is a scarcity of leaders.

In fact, so much is spent on leadership that there are more than thousands of leadership formulas with everyone coming up with their own leadership 'formula'. In fact, there are thousands of traits-based leadership books. But yet, there is little understanding of what leadership truly is. So what is leadership?

Being outspoken, charismatic, visionary, inspiring and passionate does not mean that you are a good leader. Leadership is not just about traits. It is about traits but it's not *just* about traits. From my personal experience and research interviewing more than a thousand leaders from all over the world, I have discovered that all leaders, from Mother Theresa to Jack Welch, have this same ability—they are experts at using the right traits at the right moment.

Here's a quick question: Which is more important for leaders to have - the ability to listen or the ability to talk? The ability to be detail-oriented or the ability to see the big picture and be strategic? The ability to learn or to teach? The ability to be humble or to be assertive? To rule by authority or by influence? The ability to drive change yourself or to empower others to lead the change?

These traits are generally the polar opposites of each other. Ironically, the answer to each of the questions above is both. Leadership is about context and



uation. It is the ability to behave in the right way at the right time and to say the right thing at the right moment. At the heart of it, leadership is decision-making. It's learning when to use those leadership traits at the right time.

In interviews, Mother Teresa said she learnt to move seamlessly between the two extremes from her studies of Jesus. She noted that Jesus seem to know exactly when to talk and when to listen. When to spend time with the community and when to retreat and spend time in solitude. He even knew when to be assertive and humble. He displayed such contrasting behaviour when he authoritatively removed the illegal sellers from the temple premise with a whip. And yet just after that, he humbles himself to wash the feet of his followers.

From my personal research and observation of top leaders in action, including Jack Welch, I find that great leaders are an 'extreme' bunch – when it comes to their leadership actions. They effortlessly move from opposite leadership traits when needed. They showcase their expertise in listening intently in one moment and speaking with power in the next. They swing from a rigid, disciplined routine to a flexible and spontaneous one. And they perform each of these extremes with such expertise.

Sun Tzu's The Art of War, says: "*Benevolence and righteousness may be used to govern a state but cannot be used to administer an army. Expediency and flexibility are used in administrating an army, but cannot be used in governing a state.*" Sun Tzu understood that leadership was contextual and situational. The same leadership "tricks" cannot be applied in government as to military as to business. It all depends on the context. So memorising some leadership manual does not guarantee you success. It's not going to make you a leader like Abraham Lincoln, Howard Schultz or Idris Jala.

Jack Welch always said that leadership was all about 4 E's - energy, energizes, edge and execution. Jack lied as he forgot to mention the other 'e' - extreme. Jack is a classic example of a person whose entire leadership legacy is based on swinging between extreme leadership traits. Having worked at GE for more than a dozen years, I have personally seen Jack Welch constantly switched between his big pictures, visionary lenses to getting his hands dirty by jumping into details. Jack knew when he had to stay macro and discuss strategy but at the same time, he also knew when to dig deep and ask questions that enable him to plough through the details of a situation. That's what real leaders do – swing from one extreme to another and be able to handle both extremes perfectly well.

I have also seen Jack use authority and fear to drive home a point or to ensure an action is taken, but at the same time, Jack also encouraged employees to have ownership, engagement and empowered them to take action by themselves. This seems rather contradictory but it is really situational. Jack knew when positional power was necessary to get things done and when to use influence to empower his employees. That's the power of great leaders – the ability to use both extremes of leadership traits to the fullest extent.

Nelson Mandela is another example of a leader who practiced extremes. In 1994, Mandela got on a tiny plane and was 20 minutes from landing when one of its engines failed. All on the plane began to panic except Mandela who remained calm. Fortunately, the pilot landed the plane safely. Later when asked why he was so cool, Mandela answered, "Man, I *was terrified* up there but I knew I had to be calm!" Mandela was often afraid. Yet on many other occasions, Mandela did not hesitate to show his vulnerability and fear when it was appropriate.

Great leaders know when to abandon or quit a failed idea and when to pursue it until it succeeds. Many would say that Mandela's greatest legacy as President of South Africa is the way he chose to leave it. Mandela could have been President for life (and he had good reason to do so!) but he chose not to. Mandela knew that leaders lead as much by what they choose not to do as what they choose to do. Yet, he did not quit the fight those 27 years he was in prison. He persevered. He knew when to quit and when not to.

Mahatma Gandhi led a fifth of humanity to independence in a leadership style that broke every political rule in the book. He took numerous beatings without a fight and readily accepted prison terms but at the same time, he also mobilised a march against the British in the 240 mile Salt March and defied his colonial rulers by urging his fellow countrymen to burn their foreign made clothing.

Gandhi was humble enough not to think that he had no need to learn from the experiences of others. Yet, he was assertive enough to make various non-violent stands against the British. Gandhi was also wise enough not to think he could do everything himself and mobilised people from all walks to stand up for him. Yet, he took the lead to personally inflict himself with pain and fasting and it had a significant effect on driving the British out of India. Here was a man that was the epitome of leadership – and he understood that leadership was not only being good at a number of traits but being able to swing between extreme traits. Gandhi's "extreme leadership" enabled the establishment of the biggest democracy in the world. And he was successful because he was extreme.

So, what does this mean for me? Can we become the next Gandhi, Jack Welch, Mandela, David Moyes or Helen Keller? Of course you can! Leaders learn very early in their lives the importance of decision making and leveraging each situation differently. If we want to become a great leader, we need to throw away our pre-conceived notions that leadership is about a specific formula. Leadership is about reading and reacting accordingly to every situation and knowing each is unique.

For example, if there is a decision that needs to be made, there are two ways to approach it – one by using data another by using intuition. Great leaders know when to use which. Or if there is an approach they need to take with their employees – should they use compliance or should they empower? Great leaders know when to employ a directive style and when an empowering leadership is needed. They react to each situation according to their context.

Markus Buckingham in his book "First Break all the Rules" did extensive research on thousands of managers and leaders in corporations. He found that the greatest managers in the world seem to have little in common. They differ in sex, age, and race. They employ vastly different styles and focus on different goals. Yet despite their differences, great managers share one common trait: They do not hesitate to break virtually every rule held sacred by conventional wisdom. And they break these rules because they understand that each situation faced was unique and required leadership "flexibility" in keeping both attributes in tension.

There is a time to be humble, yet there is a time to be assertive and take action. There is a time to ensure perfection yet there is a time to go for speed and simplicity. There is a time to smile and a time to get serious. Great leaders know when the right time to alternate between contrasting leadership traits. Decision making based on context and situation lies at the heart of great leadership.

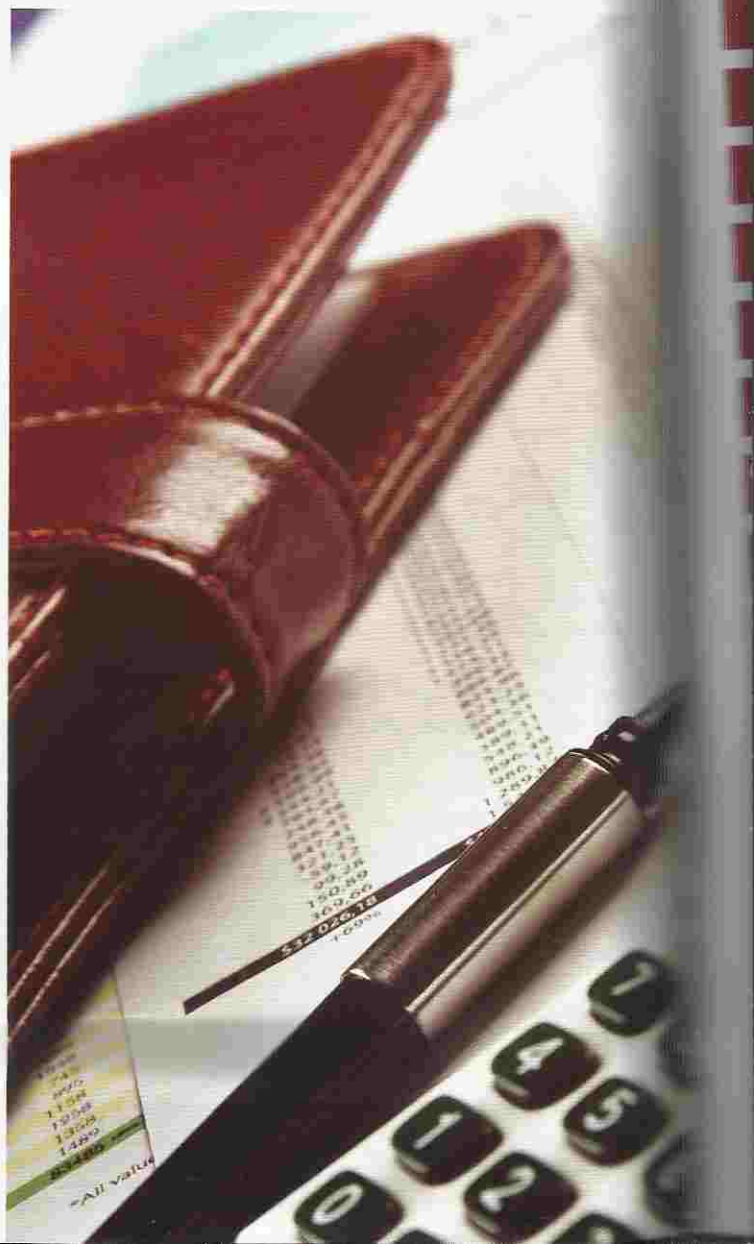
So, what does this mean for me and my leadership? Leadership is learnt through experience. There is no short-cut formula to learning leadership. As such, if you want to learn how to move between various leadership traits, you need to practice it. I still recall my first boss yelling at me after my first meeting I attended with him where I kept quiet the whole meeting. The next meeting I somehow mustered a few words to say. In the next few meetings, I started speaking more and more. Now, you can't seem to keep me quiet. But as I look back at this experience, if I did not get yelled at by my boss, I would remain a good Asian boy keeping quiet in meetings which I attended with my boss. That experience shaped my leadership.

Likewise, if you want to become a leader, learn the traits but more importantly, start practicing the traits so you know when to use these traits you learn.

So, you want to be a leader

– learn to be extreme

Leadership is, after all, an extreme thing!



A list of leadership traits and its polar opposite. It's important to be great not just in Trait A but also in Trait B and be able to flex between the traits depending on situation and context.

Table 1

Extreme Leadership Traits A	Extreme Leadership Traits B
Humility	Assertiveness
Visionary/Big Picture	Detail Oriented
Using Influence	Using Authority
Street Smart	Academic Knowledge
Time for Self	Time for Community
Discipline	Creativity
Task Oriented	People Oriented
Leveraging Strengths	Developing Weaknesses
Showing Love	Using Fear
Using Intuition	Data-based decisions
Extroverted	Introverted
Personal Reflection	Social Interactions
Ensuring Perfection	Ensuring Speed / Execution
Telling Stories	Using Data
Listening	Talking
Quitting	Pursuing Excellence
Teaching Others	Learning from Others
Doing It Yourself	Delegating to Others
Learning From Mistakes	Doing Things Successfully The First Time
Experimenting	Adhering to Policy

* Roshan Thiran is the CEO of Leaderonomics, a social enterprise, dedicated to developing leaders in developing countries. You ca watch Roshan's interview with great leaders at http://leaderonomics.com/theleaderonomicsshow/. His dream is to see Malaysia produc our own Gandhi and Mother Teresa to hopefully take Malaysia into greatness. He can be contacted at roshan.thiran@gmail.com.

Other Business Deductions

By Siva Subramanian Nair

- Contributions to Approved Schemes

Students will remember that we are still at "*deductions in ascertaining adjusted income*". Having discussed repairs and renewals in the last article, we now move on to *s 33(1)(d) of the ITA* which simply reads:

"such other deductions as may be prescribed."

This basically represents deduction permitted by the Minister of Finance, which generally would not rank for a deduction under the normal rules governing deductions, and usually are published as gazette orders (referred to as PU orders which are numbered and tagged with the year of gazette and signed by the Minister of Finance). The question is would it be law since it is not passed by Parliament and is only endorsed by the Minister of Finance?

The answer is in the affirmative because the Minister of Finance is empowered to sign this gazette order under *s 154(1)(b)* which states that

"***The Minister may make rule… prescribing, except where section 152(1) applies, anything required by this Act to be prescribed;***"

and since this provision is contained in the *Income Tax Act 1967*, which is an Act passed by the Parliament, therefore, the gazette orders are law.

Examples of recent gazette order relating to deductible expenditure issued in 2010 are:

- *Income Tax (Deduction For Premium For Export Credit Insurance Based On Takaful Concept) Rules 2010*
- *Income Tax (Deduction For Contribution To Retirement Fund) Rules 2010*

We now move on to *s 34* which deals with special provisions applicable to adjusted income from a business.

The first deduction relates to "wholly or partly irrecoverable debt". However, I have already discussed this when deliberating on recoveries relating to bad debts and write-off or write back of provision for doubtful debts. Students can view the Learning Curve article in Vol.17/2007/Q4.

Next, we have s *34(4)* relating to Employers' Contribution to an Approved Scheme which reads:

Where in the relevant period the relevant person has made a ***contribution to an approved scheme*** *in respect of an employee of his, then*

- *if the* ***employee's remuneration*** *as determined under the rules, regulations, by-laws or constitution of that scheme for the period for which the contribution is made (that period being a period which coincides with or overlaps the relevant period)* ***is deductible as a whole, or in parts*** *aggregating the whole, in computing the adjusted income from the business for any basis period or periods for a year or years of assessment in relation to the business, there may be deducted from the relevant gross income an amount equal to the* ***contribution or nineteen per cent of the employee's remuneration*** *as so determined for the period for which the contribution is made,* ***whichever is the less****;*

Note that firstly, the contribution must be made to an approved scheme. This is provided for in s 150 which states that

"*The Director General may, subject to such conditions as he may think fit to impose, approve any pension or provident fund, scheme or society for the purposes of this Act.*"

A good example of an approved scheme would be the Employees Provident Fund (EPF). Therefore when the question states "contribution to EPF", candidates should realise that it is an approved scheme. However, note 3 the obligatory contribution to EPF by an employer is only 12%. Some employers may want to contribute more for their employees. This can be done either by increasing their contribution to EPF or alternatively setting up their own fund or scheme. At this juncture, the employer can decide whether to seek approval from the Director General for the fund or scheme or not. Note that contributions to unapproved funds do not rank for a deduction under *s 39(1)(d)* which reads

"*...no deduction from the gross income from that source for that period shall be allowed in respect of... any amount in respect of any payment to any pension, provident, savings, widows, widowers and orphans or other similar fund or society which is not an approved scheme.*"

The second point to note is that the deduction is restricted to 19% of the total remuneration paid to the employees. This can be examined in two different ways.

Example 1

For year ended 31st December 2010, Alpha Sdn Bhd employed five executives who earn RM 10,000 per month. The company contributed 25% to EPF in respect of these employees.

Solution

Amount disallowed: RM 10,000 x 12 months x 5 employees x (25% - 19%) = RM 36,000

Example 2

Beta Sdn Bhd contributes 20% to EPF in respect of all its employees and the charge to the Income Statement for the year ended 31st December 2010 was RM 70,000.

Solution

Amount disallowed: RM 70,000 x (20% - 19%) / 20% = RM 3,500.

However, sometimes Examiners are generous wi the information provided and candidates can obta the amount disallowed by using either method.

For example in ***December 2007, Tax II Question Note 11*** reflects the following:

- Salaries, EPF, Socso : RM 1,638,000

	(RM
Salaries	1,300,00
EPF - management staff (RM 500,000 X 22%)	110,00
EPF - production staff (RM 800,000 X 15%)	120,00

Since the deduction allowable for EPF contributio by the employer is restricted to 19% of the employe remuneration, the contribution for the manageme staff will suffer a restriction whereby the amou allowed is only RM95,000 and accordingly t amount disallowed is RM15,000 (RM110,000 RM95,000).

This can be computed either as:

RM 500,000 x (22% -19%) = 15,000
OR
RM 110,000 x (22% -19%) / 22% = 15,000

The third point to remember is covered in part (of *s 34(4)* which reads:

"*if only a part or parts of that remuneration is are so deductible, there may be deducted from t relevant gross income an amount equal to so mu of the contribution or of that percentage of t remuneration (whichever of those amounts is l less) as bears to the whole of the contribution or that percentage of the remuneration, as the co may be, the same proportion as that part or t aggregate of those parts, as the case may be, bea to the whole of that remuneration.*"

So basically where the base for calculating t contribution does not qualify for a deduction, n will the contribution. However, if the base is par deductible, that same proportion of the contributi is also deductible. A good example of this would entertainment allowances which only qualifies fo 50% deduction under *s 39(1)(k)*.

Let us look at ***December 2009, Tax II Question 1, Note 8***

Directors' remuneration comprises:

i. Entertainment allowances amounting to RM 600,000

ii. Employees' Provident Fund contributions at the rate of 22% amounting to RM 594,000 in respect of the directors' salaries (RM 2,100,000) and entertainment allowances.

iii. Contributions to the Amsterdam Provident Fund established by the company amounting to RM 38,000. The fund was not approved by the Inland Revenue Board.

Solution

Amounts disallowed

i. *50% of entertainment allowances = RM 600,000 X 50% = RM 300,000*

ii. ***Either**: RM 2,100,000 x (22% - 19%) + RM 300,000 x (22% - 19%) + RM 300,000 x (22%) = RM 138,000*

***OR**: RM 2,100,000 x (22% - 19%) + RM 600,000 x (22% - 19%) + RM 300,000 x (19%) = RM 138,000*

***OR**: RM 594,000 x (22% - 19%) / 22% + RM 300,000 x (19%) = RM 138,000*

iii. *The full RM 38,000 since the fund was not approved by the Inland Revenue Board.*

Another interesting point to note is that a deduction is granted in respect of a special contribution by way of an initial sum to an approved scheme or fund which is approved by the Director General. This is provided for under *s 34(5)* which reads:

"*Where on the first establishment of a scheme of the kind referred to in subsection (4) a special contribution thereto is made in the relevant period by the relevant person whereby any of his employees engaged in activities relating to the production of the relevant gross income or gross income of the relevant person from the business for the basis period for a year of assessment (that basis period being prior to the relevant period) may qualify for the benefits under that scheme, the Director General may when approving that scheme authorize deductions in respect of that special contribution of such amounts (being amounts which in total are equal to or less than the special contribution) from the gross income of the relevant person from the business for the basis periods for such years of assessment as he thinks fit.*"

The interesting part is that such contributions did not qualify for a deduction in *Atherton v British Insulated Helsby Cables Ltd 10 TC 155*.

Facts

The company claimed as a deduction a sum of approximately GBP 30,000 which it had contributed irrevocably to a pension fund established under a trust for the benefit of its clerical and technical staff. The amount contributed was calculated actuarially as being the sum required to enable the past years' service of existing staff to rank for pension.

Decision

Although the Commissioners found for the company but the House of Lords ruled against them stating "where an expenditure is made not only once and for all, but with a view to bringing into existence an asset or advantage for the enduring benefit of a trade…such an expenditure is properly attributable not to revenue but to capital."

The enduring benefit in this case was an unusual one for it was held to be "…to offer to all its existing and future employees a sure provision for their old age, and so to obtain for the company the substantial and lasting advantage of being in a position throughout its business life to secure and retain the services of a contented and efficient staff."

That concludes our discussion on contributions to approved schemes. Next article, we shall look at the provisions in *s 34(6)*.

Further Reading

- Choong Kwai Fatt, Malaysian Taxation: Principles and Practice (2010), Infoworld
- Jeyapalan Kasipillai, A Comprehensive Guide to Malaysian Taxation under Self-Assessment (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 Asia
- Richard Thornton, 100 Ways to Save Tax in Malaysia for Small Businesses (2010), Sweet & Maxwell Asia
- Alan Yeo Miow Cheng, Malaysian Taxation (2010), YSB Management Sdn Bhd

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Notice Board

2011 Filing Programme

The Inland Revenue Board (IRB) has issued the 2011 Filing Programme where income tax return forms (ITRFs) with due dates falling in the calendar year 2011 will be granted a grace period of 3 working days automatically for paper filing by post or by hand. This grace period also applies to payment of balance of tax payable under *subsection 103(1) of the Income Tax Act 1967 (ITA)*, tax payable under *subsections 103(1A) and 103(2) of the ITA* for assessments issued in calendar year 2011 and debt due to the Government under *Finance Act 2007 and Finance Act 2009*. There is no grace period for e-Filing. On another note, for companies which commenced operations after 31 December 2007, the filing of Form R is not required.

Amendment to 2011 Filing Programme

The IRB has made the following revisions to the 2011 Filing Programme:

i Tax agents are not permitted to file the following ITRFs using pdf forms with immediate effect:

Category of ITRFs	Effective date
C, R, C1, TA and TC (except TR)	Year of Assessment 2009
B, BE, M, E, P, TP, TJ and TF	Year of Assessment 2008

ii Taxpayers are not allowed to file the following categories of ITRFs using pdf forms:

Category of ITRFs	Effective date
C, R, C1, TA and TC (except TR) and E, P, TP, TJ and TF	Year of Assessment 2010

iii Individual taxpayers who cannot go to the IRB office to request for a copy of the ITRF are allowed to use the pdf forms for the following categories of ITRFs:

Category of ITRFs	Effective date
B, BE and M	Year of Assessment 2010

iv Filing of ITRFs using pdf forms is allowed for the years of assessment before the abovementioned effective dates.

v Taxpayers who did not receive a copy of the paper ITRFs issued by the IRB may file their ITRFs by e-Filing.

Procedure for Receipt and Processing of ITRFs by the IRB Information Processing Department

The IRB has on 15 April 2011 announced the introduction of new procedures for the receipt of ITRFs. The following are some of the salient points:

1. Acknowledgement of receipt will be given at the counter for not more than 10 ITRFs submitted. For more than 10 ITRFs submitted, the acknowledgement of receipt will be given later and tax agents will be notified when they are ready for collection.

2. With effect from the year of assessment 2010, the following ITRFs will be considered as incomplete:

i No signature on the declaration section, the taxpayer signed in the space for tax agents and the taxpayer used the signature chop;

ii Information of the taxpayer is incomplete (eg. Name, IC No/Police No/Army No/Passport No and designation)

iii Taxpayers did not use the ITRFs prescribed under Section 152 of ITA (eg. photostated ITRFs, ITRFs in pdf format not printed in accordance with specifications, ITRFs in pdf format printed by IRB branches without their rubber stamp); and

iv Taxpayers not using the relevant ITRFs for the particular year of assessment.

3. With effect from year of assessment 2011, the following ITRFs will be considered as incomplete:

i Wrong computation of income tax payable/ refundable, wrong splitting of chargeable income taxable at 20% rate or inserting the chargeable income without supporting computations;

ii Inserting an incomplete or wrong accounting period;

iii Differences in the information in the ITRFs and the information contained in the IRB's system (eg. Name, Company Registration No/IC No [Taxpayers are advised to submit Form 13 (Change of Company Name) / Form 9 (Change of Registration No) / copy of IC / any other document supporting the difference in information]; and

iv Financial information is not furnished (eg. sales, purchases, net profit or loss and business code).

4. For Lampiran CP8D of Form E (the Employer's Return), only employees whose salary exceeds RM2,500 are required to be listed. Employers with more than 20 employees each earning a salary of more than RM2,500 are required to submit Lampiran CP8D in softcopy (CD Rom/diskette).

Notice Board

Introducing the New Business Code (MSIC 2008)

With effect from 15 February 2011, taxpayers who carry on a business are required to use the new business code (MSIC 2008) when completing their income tax return forms (ITRFs). The MSIC 2008 is applicable to all ITRFs (including ITRFs for backlog cases and amendments of / revisions to ITRFs for prior years of assessment) as well as e-filing.

The IRB has indicated that for investment holding company, the new business code is 64200. No mapping list is available. The MSIC 2008 business code is available at the IRB's website.

New sample of dividend voucher

The IRB has issued the new sample dividend voucher showing the different categories of dividends paid. The said sample is available at the IRB's website.

The Malaysian-Singapore Third Country Business Development Fund (MSBDF)

This fund is co-founded by Malaysia and Singapore, and jointly administered by the International Enterprise (IE) Singapore and the Malaysian Industrial Development Authority (MIDA). It aims to encourage partnership of Malaysian and Singaporean companies to expand their business operations to compete in the global arena. The fund is in the form of 50% matching grant, subject to a maximum of RM200,000 (in the case of joint feasibility studies) and is available to the services sector. Members who undertake joint feasibility studies, market research or business missions jointly with Singapore companies for investment and business opportunities in "third countries"(outside of Malaysia and Singapore) may be eligible for the fund. The detailed guidelines are available at the MIDA's website under e-services portal > Forms and Guidelines > Business Development Fund.

Proposed Categorisation (3-Tier) of Approved Tax Agents

The IRB had proposed to categorise tax agents into 3 categories at a dialogue with the professional bodies on 10 December 2010. The brief proposals are as follows:

Category of Tax Agent	Tax Agent's Scope
Category 1	Dealing with non-corporate cases, except investigation and incentive cases.
Category 2	Dealing with all tax cases (including corporate and non-corporate cases) except cases on specialised industries (such as sea and air transport, banking, insurance, leasing and petroleum) and incentive cases
Category 3	Dealing with all types of tax cases including cases on specialised industries and incentive cases.

The professional bodies have submitted a Joint Memorandum to the IRB to state their views on the proposed categorisation of tax agents. Further developments will be notified in due course.

Joint Tax Working Group on Financial Reporting Standards (JTWG-FRS)

The Joint Tax Working Group on Financial Reporting Standards (JTWG-FRS) has further reviewed the following Financial Reporting Standards (FRS) and has circulated to its members the draft Discussion Papers on tax implications related to the implementation of the FRS for comments:

- FRS 6 - Exploration for and Evaluation of Mineral Resources
- FRS 111 - Construction Contracts
- FRS 123 - Borrowing Costs
- FRS 138 - Intangible Assets

The JTWG-FRS has now finalised the Discussion Papers and is pleased to disseminate such information to its members via the Institute's website. The JTWG-FRS will also be having dialogues with the Tax Authorities on the tax implications highlighted in the Discussion Papers. The results thereto will be notified in due course.

Double Taxation Agreements (DTAs)

The following DTAs have been entered into force:

DTA with	Entered into force	Effective on and after		
		Withholding Tax	Petroleum Income Tax	Other Taxes
San Marino	28/12/2010	01/01/2011	YA 2012	YA 2011
Germany	21/12/2010	01/01/2011	YA 2012	YA 2011

The Technical Section in the New CTIM Website

Only public documents such as IRB public rulings, guidelines, Section 153 guidelines, CTIM rules and regulations and the latest developments, national budget speeches and appendices as well as the budget memorandums are available for public viewing at the "Technical Section" in the new CTIM website.

Additional information such as the list of legislation updates, members' e-circulars, professional practice developments, minutes of dialogues, archived updates and guidelines as well as reference resources are available in the "Members Only" section where only CTIM members can have access.

The Institute has assembled some useful hyperlinks in the "Link Section" for the convenience of members. More useful hyperlinks to international organisations, tax professional bodies and overseas revenue authorities can also be found at the "Resources" webpage in the "Members Only" section.

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F: 03-2162 3428
E: corporate3@corushotelkl.com

Impiana KLCC Hotel
Contact person: Carole
T: 03-2147 1111
F: 03-2147 1028
E: carole.heiw@impiana.com

Hotel Maya
Contact person: Jamie
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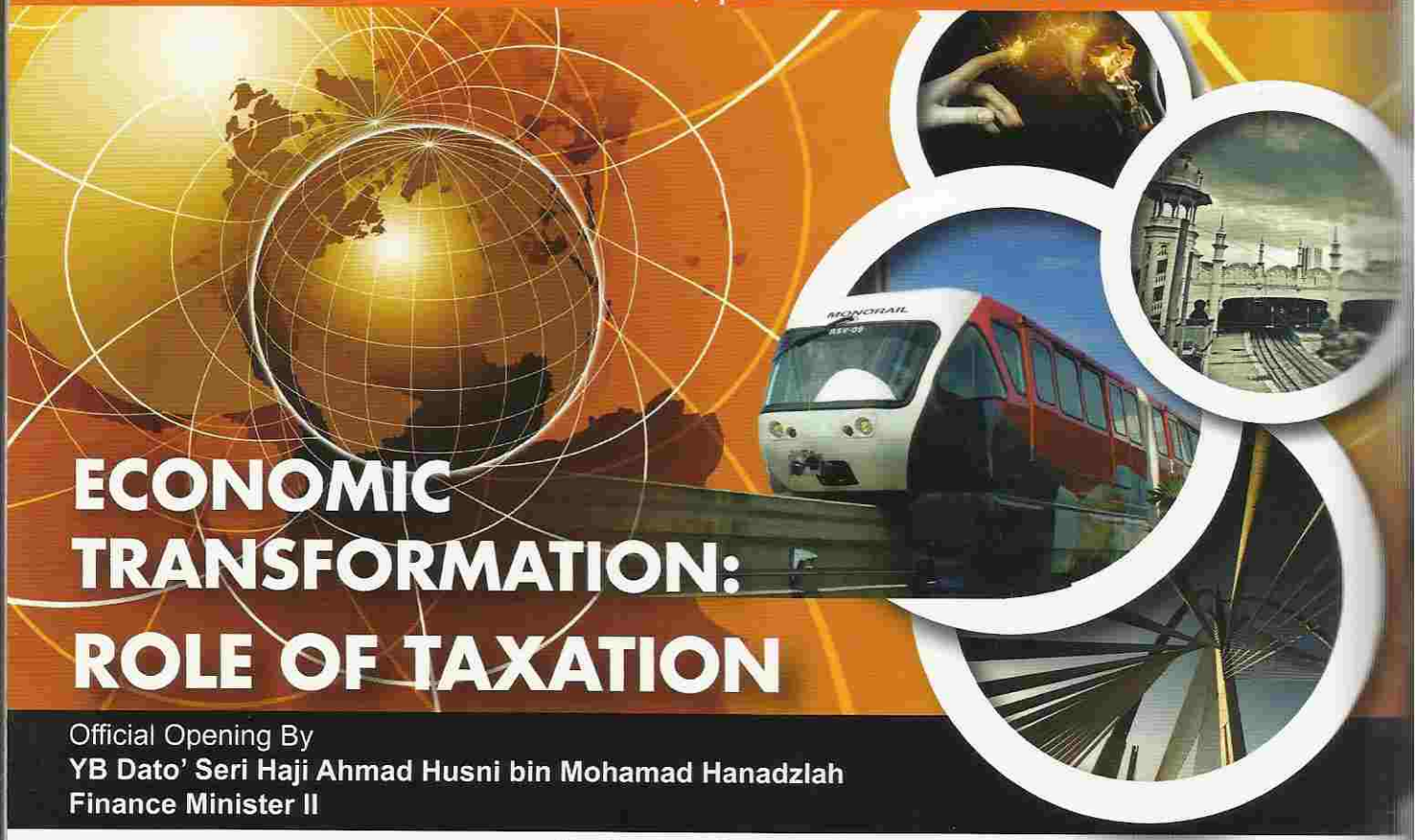

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