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CHARTERED TAX INSTITUTE OF MALAYSIA

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DATO' SRI DR. SABIN SAMITAH
CEO OF THE IRBM

IN CONVERSATION WITH

MS. FARAH ROSLEY PRESIDENT OF CTIM

Tax Audits – Opening Principles & Understanding Endgames

Anti-Dumping Duty: The Determination of Selling Price

Capital Allowances – Residual Expenditure

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

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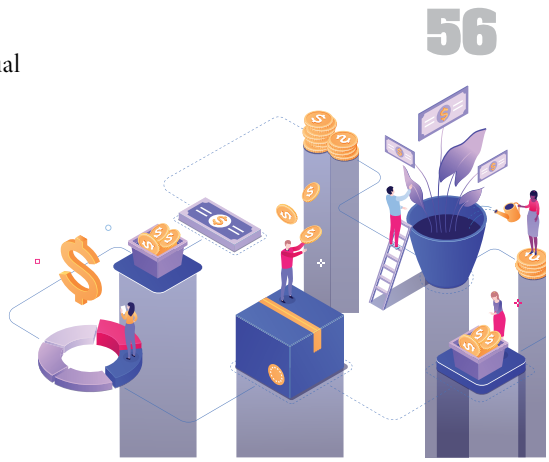

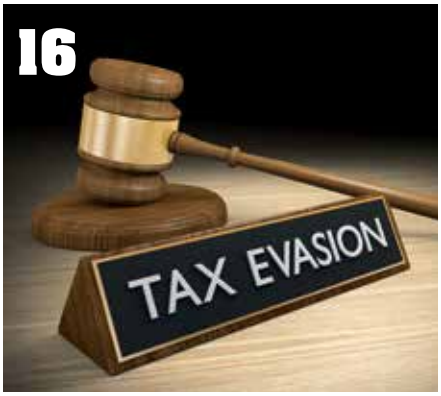

INVITATION TO WRITE

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

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

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FARAH ROSLEY

FORGING AHEAD IN 2021

Greetings! There is a saying that sometimes things have to get worse before they get better. This is true as we forge ahead in 2021 after battling a challenging 2020 on several fronts. The new normal has made us more resilient as we paused and evaluated ourselves and embraced alternatives such as a wider use of digital technology in our daily activities. We look forward to the forthcoming economic recovery and the end of the COVID-19 pandemic. I am confident that our taxation services sector will forge ahead in tandem with the business rebound. The Institute is also keeping in step with these rapid developments to ensure that all aspects of members' concern relating to taxation are covered and CTIM continues to be the voice of taxation matters

I'm excited to share with you what the Institute has been doing in Quarter 1 of 2021 which will also carry over into Quarter 2 of 2021 as follows: -

Online Dialogue to discuss on the Joint Memorandum on Issues Arising from Budget 2021 Speech & Finance Bill 2020*

CTIM technical committee on direct tax attended the above-mentioned Dialogue which was hosted virtually by the Inland Revenue Board of Malaysia (IRBM) and chaired by the Chief Executive Officer (CEO) of the IRBM - Dato' Sri Dr. Sabin Samitah on 8 February 2021. Other attendees were from the Ministry of Finance (MoF) and other professional bodies. The IRBM had provided preliminary draft responses to the issues raised in the Joint Memorandum beforehand which were only for the purpose of discussion at the Dialogue. Several of the responses were discussed by CTIM and other professional bodies with the IRBM and the MoF in respect of key issues raised on the following: -

- Tax rebate for start-up company / limited liability partnership;
- Liability to pay taxes notwithstanding institution of proceedings under any written law;
- Penalties for failure to furnish contemporaneous transfer pricing (TP) documentation and surcharge on TP adjustments;
- Introduction of a statutory definition of "plant" for the purposes of claiming capital allowances; and
- Company real property gains tax rates for society registered under Societies Act 1966.

The new normal has made us more resilient as we paused and evaluated ourselves and embraced alternatives such as a wider use of digital technology in our daily activities. We look forward to the forthcoming economic recovery and the end of the COVID-19 pandemic. I am confident that our taxation services sector will forge ahead in tandem with the business rebound. The Institute is also keeping in step with these rapid developments to ensure that all aspects of members' concern relating to taxation are covered and CTIM continues to be the voice of taxation matters

The IRBM's minutes of the Dialogue and finalised responses to issues raised in the Joint Memorandum have been circulated to members.

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

Submissions to the authorities

The following are the key submissions to various authorities from January 2021 to March 2021 on issues raised by members: -

Inland Revenue Board of Malaysia

- Memorandum of Tax Audit and Investigation Issues;
- Seeking guidance and directions for taxpayers on filing of returns and tax payments that are affected by the Movement Control Order (MCO 2.0) which began on 13 January 2021;
- Request in relation to tax filing under the Income Tax Act 1967 by a Labuan entity carrying on other trading activities; and
- Equity condition for exemption of income on allowances of increased exports under P.U. (A) 161/2019 and P.U. (A) 162/2019.

Royal Malaysian Customs Department

- Indirect tax issues arising due to the Movement Control Order from 13 January 2021 to 4 February 2021; and
- Feedback/comments on the Sales Tax and Service Tax technical issues.

Interview with the CEO of the IRBM and Online Courtesy Meetings with the Deputy CEO (Compliance) and the Deputy CEO (Policy) respectively

- I had the great pleasure of interviewing the CEO of IRBM - Dato' Sri Dr. Sabin Samitah on 11 March 2021. I'm glad that Dato' Sri Sabin accommodated us even though he had an extremely packed schedule. Dato' Sri Sabin gave me the opportunity to ply him with questions ranging from his aspirations for the IRBM to his views on the future tax landscape in Malaysia. Do have a good read of the interview in this issue of the Tax Guardian.
- Our tax audit and investigation working group (TAIWG) met with the Deputy CEO (Compliance) of the IRBM - Datuk Mohd Jaafar Embong and senior officers of the IRBM in an online courtesy meeting hosted by the IRBM on 6 January 2021. We discussed briefly on post Special Voluntary Disclosure Programme (SVDP) issues and proposed joint activities such as collaborating on webinars/seminars on tax audit and investigation updates and holding quarterly/periodic dialogues on tax audit and investigation issues. We appreciate this opportunity to meet with Datuk Mohd Jaafar and senior officers of the IRBM and exchange some thoughts on tax audit and investigation matters.
- The IRBM also hosted an online courtesy meeting on 15 March 2021 for CTIM tax committee on direct tax with the Deputy CEO (Policy) of the IRBM – En. Abu Tariq Jamaluddin, Director of Tax Policy Department – Pn. Salamatunnajan Besah and senior officers of the IRBM. Our meeting covered developments and focus on technical matters, providing inputs on tax reform initiatives and having regular online dialogue sessions on technical developments amongst others. It was a fruitful meeting which has set the roadmap for an enhanced collaboration with the IRBM to address technical issues.

Our tax audit and investigation working group (TAIWG) met with the Deputy CEO (Compliance) of the IRBM - Datuk Mohd Jaafar Embong and senior officers of the IRBM in an online courtesy meeting hosted by the IRBM on 6 January 2021. We discussed briefly on post Special Voluntary Disclosure Programme (SVDP) issues and proposed joint activities such as collaborating on webinars/seminars on tax audit and investigation updates and holding quarterly/periodic dialogues on tax audit and investigation issues.

We wish to accord our sincere thanks and appreciation to Dato' Sri Dr. Sabin for the exchanges of information and valuable inputs. A sincere thanks and appreciation also to Datuk Mohd Jaafar, En. Abu Tariq, Pn. Salamatunnajan and senior officers of the IRBM for the time given and thoughts during the the courtesy meetings respectively.

Joint Collaboration in the LHDNM-CTIM Tax Forum 2021

I'm pleased to inform that CTIM and the IRBM have brought back the LHDNM-CTIM Tax Forum by holding a half day webinar on 23 March 2021. The Tax Forum comprised of three sessions which covered trending topics such as capital allowance on customised computer software, gross income from business source of not more than RM50 million requirement for concessionary income tax rate, international tax issues due to COVID-19 travel restrictions and issues arising on tax audit and investigation on the SVDP. These sessions provided invaluable insights into the issues at hand and the considerations that needed to be taken into account from the perspective of the IRBM and the taxpayer. The panellists for each session comprised senior officers of the IRBM, CTIM Council Members and senior tax practitioners while Dato' Sri Dr. Sabin officiated the Tax Forum. The Institute cherished the opportunity for the exchange of thoughts and ideas

with the IRBM.

Tax Webinars (Quarter 1 of 2021) and upcoming CPD Events & Members Dialogues (Quarter 2 of 2021)

During Quarter 1 of 2021, the Institute successfully conducted 17 Tax Webinars out of which 4 Tax Webinars were conducted under the "Advanced Taxation Course 2021: A Practical Guide on Tax Principles and Procedures" which is a collaboration between the Institute and The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA). The Tax Webinars on TP received overwhelming response which is indicative of the importance that members and tax practitioners place on TP related issues especially TP documentation. A good number of participants were also seen for the Tax Webinars on Tax Issues on Interest Expense, Capital Statement for Tax Audits, Private Trusts and the Labuan Tax Regime. I trust that CTIM Tax Webinars have helped participants enhance their knowledge and fulfil their CPD points requirements.

Members are encouraged to look at upcoming CPD events for Quarter 2 of 2021 (April 2021 to June 2021) listed in our CPD Event Calendar in this issue of the Tax Guardian and the Institute's website (www.ctim.org.my). The CPD events include Quarterly Tax Updates; Dialogue Session with the IRBM on Recent Tax Audit and Investigation Issues; Managing Transfer Pricing in Times of Uncertainty; Service Tax on Digital Services, Information Technology Services and Imported Taxable Services; Service Tax on Management, Consultancy and other Group G Services; and Managing Customs Audits amongst others.

I'm also pleased to inform members that the Institute organised an online Members Dialogue for members in each region in April/May 2021 to discuss on members' issues arising from Direct Tax – technical, compliance and operations matters; Indirect Tax – Sales Tax, Service Tax, Customs, Excise and Free Zones; and Public Practice. In each Dialogue, a panel consisting of CTIM Council Members responded to members' issues submitted for the Dialogue.

Webinar Career Talks

The Institute represented by the education committee conducted three Webinar Career Talks on 13 January 2021, 25 January 2021 and 5 March 2021 for accounting and finance students from Universiti Teknologi Mara - Melaka, Asia Pacific University of Technology and Innovation and Kolej Professional MARA – Melaka respectively. The education committee also conducted three Webinar Career Talks in December 2020 for students from University Malaya, Tunku Abdul Rahman University College - Kampar and Universiti Malaysia Pahang respectively. The talks served to promote taxation as a career choice for all via CTIM qualification/examination. The committee also shared their wealth of practical experience and responded to a host of questions during the question and answer sessions. We hope that many of these students will pursue a career in taxation.

Congratulations

On behalf of the Institute, I would like to take this opportunity to congratulate Puan Che Nazli Jaapar for her recent appointment as the Under-Secretary of Tax Division in the MoF and thank her predecessor Mr. MA Sivanesan for the close working relationship between the Tax Division and CTIM. I look forward to continuing the close working relationship between the Institute and the MoF.

Thank You and Well Wishes

I would like record my sincere thanks to all members, the Council, Branch Chairmen, Committees, Working Groups and the Secretariat for supporting the Institute in this difficult and challenging time. Indeed 2021 is an important year for the Institute as we work together towards recovery which can only be made possible with members' continuous support in the year ahead. My prayers and well wishes for this year are for a strong recovery of our economy, continued growth in CTIM, the end of the COVID-19 pandemic and our safety and good health.

ERRATA

Tax Guardian – Volume 14 / No.1/2021/Q1 – January 2021
From the President's Desk

In the 1st paragraph of the President's Message in the above issue of Tax Guardian, the allocation for Budget 2021 should read RM322.5 billion instead of RM322.5 million. Any inconvenience caused is regretted.

Editor'sNote

YEO ENG PING

We have another exciting edition of the *Tax Guardian*, and this time we are proud to showcase an interview with Dato' Sri Dr. Sabin Samitah, the CEO of the Inland Revenue Board of Malaysia (IRBM), where he frankly shared thoughts on a range of current issues and some of the latest focus areas of the IRBM. Given the increasing number of tax controversy cases, we have two interesting articles, one on the tax audit process and tips on how taxpayers can be better prepared, and another article on the Special Voluntary Disclosure Programme that was in place from 3 November 2018 to 30 September 2019. The technical rules around the deductibility of interest expenses has undergone through a number of changes and we have an article that neatly summarises the key changes, and finally we also have an article on anti-dumping duty, an area that we do not encounter very often, but the article provides interesting insight on how the Malaysian courts interpret laws relating to "export price" under the Countervailing and Anti-Dumping Duties Act 1993.

In the time since our last edition, the Malaysian government has announced two more stimulus packages to counter the effects of the continuing Covid-19 restrictions – PERMAI and PEMERKASA, valued at RM35 billion. It is unfortunate that we are still seeing disruptions, but it is heartening that we not only have the government fiscal support, we also have the support of the IRBM as well, as articulated by Dato' Sri Dr. Sabin in his interview.

On a separate note, we have read reports that the foreign direct investment into Malaysia has reduced significantly. Malaysia is falling behind its Asean neighbours in terms of favourability and this trend is worrying. On 6 April 2021, it was announced that the government has agreed to provide certain relaxation of conditions (e.g. a minimum amount of investment in fixed assets, incurring minimum amounts of research and development expenditure, hiring employees with certain levels of qualifications, partnering with local businesses and educational institutions, etc.) imposed on manufacturing and services companies that have been granted incentives by MIDA. Upon application, companies may be given approval to achieve the required thresholds, subject to compliance with certain criteria set by the government. The relaxation of the conditions will apply for the period between 2020 and 2021. This is part of the government's initiative to continue supporting the country's economic revitalisation efforts by facilitating investments and restoring investor confidence, which is a very welcome move. This move will also take some pressure off when such companies are subject to tax audits by the IRBM, which is especially relevant where their business have been adversely impacted by the pandemic.

The technical rules around the deductibility of interest expenses has undergone through a number of changes and we have an article that neatly summarises the key changes, and finally we also have an article on anti-dumping duty, an area that we do not encounter very often, but the article provides interesting insight on how the Malaysian courts interpret laws relating to "export price" under the Countervailing and Anti-Dumping Duties Act 1993.

Finally, on behalf of the Editorial Committee, I would like to close off this editorial by giving my thanks to our Ms Jeeva Jothy, who is retiring on 30 April 2021. Her support and dedication over the years has been invaluable, and we wish her the very best on her next endeavour.

CPD EVENTS (January-March 2021)

The following CPD events were successfully conducted virtually:

Topic	Date	Speaker/(s)
Workshop: Taxation Benefits on Specialised Industries	5 Jan	Vincent Josef
Workshop: Updates on Transfer Pricing Documentation Requirements and Managing Transfer Pricing Audits	7 Jan	Harvindar Singh
Workshop: Tax Issues and Law Relating to Property Transactions, Estates & Trusts	18 Jan	Dr Tan Thai Soon
Workshop: Can You Survive a Transfer Pricing Audit?	22 Jan	Yong Mei Sim
Webinar: Private Trusts: Key Legal, Administrative and Tax Considerations	4 Feb	Chua Wei Min, Azhar Iskandar Hew & Wong Chow Yang
Webinar: Labuan Tax Regime	8 Feb	Nicholas Crist, Abdul Salam Chandran
Workshop: Cross Border Transaction and Withholding Tax	9 Feb	Harvindar Singh
Workshop: 2021 Employers and Employees Statutory Obligations	22 Feb	Yong Mei Sim
Workshop: Preparation of Transfer Pricing Documentation	24 Feb	Ho Yi Hui
Workshop: Learn to Develop, Build Upon and/or Appreciate the Importance of the Capital Statement in Tax Audits	25 Feb	Karen Koh
Workshop: Capital Allowances Maximation	2 Mar	Harvindar Singh
Workshop: Corporate Tax Planning	8 Mar	Harvindar Singh
Webinar: Current Tax Issues on Interest Expense	10 Mar	Chong Mun Yew, Leow Mui Lee & Soh Lian Seng
LHDNM – CTIM Tax Forum 2021	23 Mar	LHDNM & CTIM
Advanced Malaysian Taxation Course 2021 (in collaboration with MAICSA)	19 Jan, 26 Jan, 2 Feb & 10 Feb	Vincent Josef

The MoF Training Programmes were conducted as follows:

Topic	Date/ Time	Platform/ Venue	Speaker
Industrial Building Allowance	19 Jan, 9.00am – 1.00pm	Zoom Meeting	Chow Chee Yen
Reinvestment Allowance	10 Feb, 2.00pm – 5.30pm	Zoom Meeting	Farah Rosley & Soh Lian Seng
Basic of Transfer Pricing	23 Feb, 9.00am – 12.30pm	Zoom Meeting	Leow Mui Lee
Preparation of Corporate Tax Computation	29 Mar, 9.00am-1.00pm	MOF Training Room, Putrajaya	Steve Chia & Koot Chiew Khuin

National Tax Conference 2021

The Inland Revenue Board of Malaysia (IRBM) and the Chartered Tax Institute of Malaysia (CTIM) have jointly co-hosted the National Tax Conference (NTC) for the last 21 years. We are proud to co-host once again the 2021 National Tax Conference from 27 to 28 July 2021 at the Kuala Lumpur Convention Centre.

This year, the NTC will be conducted in a hybrid format i.e. a combination of virtual participation and with a limited number of

physical participants including speakers, panellists and moderators. The NTC programme discussions with YBhg Dato' Sri Dr. Sabin Samitah, CEO of the IRBM, the Deputy CEOs and NTC committee members was held on 10 March 2021 at the IRBM's headquarters, Cyberjaya. The CTIM delegation was led by Ms. Farah Rosley, CTIM President.

Courtesy Meetings by CTIM Technical

On 6 January 2021 Ms. Farah Rosley [CTIM President], Mr. Chow Chee Yen [CTIM Deputy President], Mr. Soh Lian Seng [Chairman of Tax Audit and Investigation Working Group], Mr. Mohd Noor Abu Bakar [Chairman of Compliance & Operations Working Group] and members of Tax Audit and Investigation Working Group met virtually with the IRBM –Datuk Mohd Jaafar Embong [Deputy CEO (Compliance)] & senior officers of the IRBM to discuss on possible joint activities between the IRBM and CTIM on tax audit and investigation matters.

On 15 March 2021 Ms. Farah Rosley , Mr. Chow Chee Yen , Mr. Thenesh Kannaa [Chairman of Technical Committee – Direct Tax (I)], Mr. Steve Chia [Co-Chairman of Technical Committee – Direct Tax (I)] and members of Technical Committee – Direct Tax (I) met in a virtual meeting at the IRBM – En. Abu Tariq Jamaluddin [Deputy CEO (Policy)], Pn. Salamatunnajan Besah [Director of Tax Policy Department] and senior officers to discuss on possible joint activities between the IRBM and CTIM on technical matters.

Career talk events for Q2 2021

The Education Committee of CTIM conducted a number of Career Talks via Webinar on "Career in Taxation" and the importance of obtaining CTIM Professional qualification. Details as follows:

No	University	Programme	Speakers	Date	No. of students
1	University Malaya (UM)	Opened to all students	Mr Chong Mun Yew	9 Dec 2020	110
2	Tunku Abdul Rahman University College (TARUC) - Kampar	Opened to all students	Ms Stefanie Low, Mr Chong Mun Yew, Mr Lam Weng Keat	11 Dec 2020	100
3	Universiti Malaysia Pahang	Master of Business Administration	Mr Wong Seng Chong	12 Dec 2020	21
4	Universiti Teknologi Mara (UiTM) - Melaka	Bachelor in Accountancy	Ms Stefanie Low, Dr Rani Diana Othman	13 Jan 2021	191
5	Asia Pacific University of Technology and Innovation (APU)	BA (Hons) in Accounting and Finance	Ms Stefanie Low, Mr Chong Mun Yew	25 Jan 2021	86
6	Kolej Professional MARA - Ayer Molek, Melaka	Diploma in Accountancy	Ms Stefanie Low, Mr Chong Mun Yew	5 March 2021	157

June 2021 Examination Timetable

SUBJECTS	DETAILS	
	Date	Time
Company & Business Law	21 / 06 / 2021	9.00 a.m. – 12.15 p.m.
Personal Taxation	21 / 06 / 2021	2.00 p.m. – 5.15 p.m.
Revenue Law	22 / 06 / 2021	9.00 a.m. – 12.15 p.m.
Business Taxation	22 / 06 / 2021	2.00 p.m. – 5.15 p.m.
Advanced Taxation 1	23/ 06 / 2021	9.00 a.m. – 12.15 p.m.
Financial Accounting	23/ 06 / 2021	2.00 p.m. – 5.15 p.m.
Advanced Taxation 2	24 / 06 / 2021	9.00 a.m. – 12.15 p.m.
Economics	24 / 06 / 2021	2.00 p.m. – 5.15 p.m.

DISCLAIMER: The above timetable is correct at the time of printing.


SABIN

DATO' SRI DR. SABIN SAMITAH CEO OF THE IRBM

IN CONVERSATION WITH

MS. FARAH ROSLEY PRESIDENT of CTIM

Good Morning Dato' Sri Dr. Sabin. It is wonderful to meet you and having this opportunity to speak to you on current issues and your thoughts on some of the important issues as the CEO of the Inland Revenue Board of Malaysia (IRBM). I look forward to our conversation. A lot has happened in the past year and the major event being the Covid-19 pandemic, an unprecedented situation that you had to face as the CEO and the prospects and challenges with the local and global economy. We would like to hear from you.

Q1 WHAT ARE THE CHALLENGES FACED BY THE IRBM RESULTING FROM THE COVID-19 PANDEMIC?

Dato' Sri Dr. Sabin
Good morning to you and CTIM. When the Movement Control Order (MCO) was first announced in March 2020, we at the IRBM mobilised our crisis management team to look into staff capacity and operations in a move to ensure service delivery to our customers went on uninterrupted. We also divided the management into two teams and we met virtually from time to time.

Initially, we did not allow anyone to come to office as we were not in the essential services list. We were unable to process refunds, issue tax clearance for retrenchment cases or attend to calls. We managed to subsequently get letters for 200 staff to be considered as performing essential services and 30% of staff came to work. The challenge that followed was the comfort level of staff to come to the office to work. I issued a circular to all staff to come to work with flexibility given to those with health issues and those having children in daycare or kindergarten with the condition that they could perform their duties from home.

One aspect that we never anticipated was the equipment requirements for the staff. In 2019, laptops were assigned to senior staff such as Head of departments and at Branch level on a sharing basis. 95% of our staff worked on desktops and this meant that 70% of our staff working from home had no access to their desktops. We still had to raise assessments and to continue with the work.

We were worried we would not be able to meet the targets for April, May and June 2020 and monthly projection dropped by 50%. Meeting revenue targets was one of the biggest challenges facing us.

Apart from our role as a tax administrator, we were given additional task to implement the various government stimulus packages, of which one was the Bantuan Prihatin Nasional. The IRBM's portal on Bantuan Prihatin Nasional was developed in-house during the MCO. About 400 staff were involved in the development. Most staff were working from home when the registration of a few million was done. There were about 24 million people logging onto the system and this data needed to be matched with ten agencies and among them were the National Registration Department.

For the time being, tax collection from corporations looks promising and is even better than last year. If there is any component showing decline in tax collection, then it would be the salaried group and collection from petroleum. This is nothing out of the ordinary, as we know there have been numerous retrenchment exercises by companies due to the pandemic as well as reduction in salaries and perks given to employees in this trying times. For petroleum, the quantum of tax collection depends on the price of oil which we know was quite low at US$40 per barrel previously. We hope collection from this category will pick up by May 2021 as the oil industry recovers from the aftermath of the health crisis.

Q2 THE GOVERNMENT HAS ALLOCATED RM322.5 BILLION IN THE BUDGET 2021, BEING THE LARGEST SO FAR. NO NEW TAXES WERE INTRODUCED BY THE BUDGET BUT WITH A PROJECTED DIRECT TAX REVENUE OF RM144 BILLION. HOW ARE WE TRACKING IN TERMS OF THE COLLECTIONS TO DATE?

Dato' Sri Dr. Sabin

To date, we are doing good in terms of tax collection. For record purposes, our tax collection for the first two months of 2021 has outperformed our tax collection figure for the same period in 2020.

Q3 CAN YOU DESCRIBE THE STRATEGY THAT THE IRBM IS ADOPTING TO ENSURE THAT THE RISK OF TAX LEAKAGES IS MITIGATED?

Dato' Sri Dr. Sabin

The buzzword when it comes to strategies adopted by tax administrations around the globe, including the IRBM, to mitigate tax leakages would be data-driven and digitalisation. Our strategies based on these two elements would be:

i. **Capacity building** – Investigating illegal activities and financial crimes which are listed as high risk threats to money laundering i.e. fraud, smuggling, corruption and illicit drugs trafficking, with the focus on organised crimes which are assessed to have higher risks of tax evasion.
ii. **Enhanced risk detection** – through data gathering, data management and risk profiling techniques. Enhanced use of Big Data and Artificial Intelligence continues to be at the core of our data strategy.
iii. **Whole of government** – by sharing of information and expertise, joint operations with other enforcement agencies and providing technical assistance. Taxpayers must come to realise that avoiding and evading taxes can be riskier now, as data sharing makes it easier to track those who accumulate wealth, regardless of it being in the country or abroad.
iv. **Whole of the IRBM's coordination** – form a Steering Committee for Shadow Economy, Coordinated Strategy Framework for Shadow Economy and Streamline as well as Evaluation.
v. **Research and development** – collaboration with universities, participating in local and international forum, dialogue and doing research papers.
vi. **Public engagement** – having dialogue sessions with professional bodies, creating networking with Trade Associations, Industry Representatives and the media.

We at the IRBM are not too focused on the salaried income taxpayers as their information is readily available from their employers for verification purposes. On top of that, tax recovery from this segment is easier as employees would require a tax clearance letter from us to settle any outstanding taxes before the employer releases the money to them.

What we are more concerned on are the business and sole proprietors. Our aim is not to disrupt or disturb their business

operations, but it must be stressed that not all businesses were adversely affected by the pandemic. It is these groups that we will continue to audit or investigate to ensure full compliance to the tax laws in place. This will be done by taking full advantage and making good use of the data we have through the measures I mentioned above. Moving forward, we are also planning to register the following segments:

a) Malaysians of the age of 18 years and above, regardless of whether they have income or not;
b) Foreigners in Malaysia who are not here for tourism purposes;
c) All individuals with business licenses and/or EFP, SOCSO and insurance policies as well as those with banking accounts and properties.

In times to come, we may even propose that a tax number be given to children born in Malaysia, just as is the practice with registering a temporary identification number at birth. This will ensure early mapping of the relevant tax compliance, awareness and education strategies for the various groups of taxpayers.

As regards digitalisation of work processes, it will greatly assist us in improving our effectiveness and efficiency, not only in terms of compliance strategies through detection of riskier cases but includes providing better services to taxpayers through the numerous online facilities available.

Q4 THE HONOURABLE PRIME MINISTER HAS JUST LAUNCHED MYDIGITAL — THE MALAYSIA DIGITAL ECONOMY BLUEPRINT WITH THE AIM OF TRANSFORMING MALAYSIA INTO A REGIONAL DIGITAL PULSE BY 2030. WITH THE DIGITAL ECONOMY BLUEPRINT, WE ENVISAGE FURTHER ACCELERATION OF E-COMMERCE. WOULD WE BE EXPECTING FURTHER UPDATES ON THE GUIDELINES ON THE TAXATION OF E-COMMERCE TRANSACTIONS OR THE ISSUANCE OF ANY NEW GUIDELINES?

Dato' Sri Dr. Sabin
We already have the relevant guidelines in place for the taxation of e-commerce, and these will be updated from time to time depending on the development on the industry in question.

Q5 BASED ON THE UN REPORT, FOREIGN DIRECT INVESTMENT (FDI) INTO MALAYSIA PLUNGED BY MORE THAN TWO-THIRDS TO JUST US$2.5 BILLION IN 2020. TAX INCENTIVES MAY INFLUENCE THE DECISIONS BY FDIs TO CONTINUE MAKING MALAYSIA A PREFERRED DESTINATION FOR FDI. HOW DO YOU THINK TAX INCENTIVES AND THE INCENTIVE COMPLIANCE COULD BE BALANCED?

Dato' Sri Dr. Sabin
We have given our views to the Ministry

For the time being, tax collection from corporations looks promising and is even better than last year. If there is any component showing decline in tax collection, then it would be the salaried group and collection from petroleum. This is nothing out of the ordinary, as we know there have been numerous retrenchment exercises by companies due to the pandemic as well as reduction in salaries and perks given to employees in this trying times.

of Finance on how much tax incentives should be given and the corresponding amount of tax foregone.

When we audit companies with incentives, questions may arise as to why tax incentive companies need to be audited. It must be clarified that we audit for the sole purpose of ensuring that the company complies with the relevant tax law in place. However, in the course of an audit, should it be evident that a company has failed to comply with an incentive given, then we at the IRBM would put up a recommendation to the relevant agency handling the incentive for their consideration whether to discontinue the incentive approved.

Q6 CAN YOU SHARE MORE ON THE IRBM'S PLANS IN SUPPORTING TAXPAYERS ON THEIR TAX OBLIGATIONS. WHAT IS THE ASSISTANCE PROVIDED? ARE THERE NEW PLATFORMS TO BE INTRODUCED?

Dato' Sri Dr. Sabin
To date, we have 28 online services and six application based services to support the public in meeting their tax obligations. We also introduced various measures during the Covid-19 pandemic to support taxpayers during the challenging time to ease filing of tax returns, payments as well as tax estimates.

It is a new one-stop information gateway and service platform for taxpayers and this latest online facility is intended to provide the public with convenient access to various tax-related information and interactive data from one place and with a single sign-on. MyTax will make it easier for taxpayers to access their latest information without having to come to the IRBM's office.

Recently we launched our latest online facility known as MyTax portal which is a gateway to the online services provided by the IRBM to all taxpayers, in the form of a modern dashboard display. It is a new one-stop information gateway and service platform for taxpayers and this latest online facility is intended to provide the public with convenient access to various tax-related information and interactive data from one place and with a single sign-on. MyTax will make it easier for taxpayers to access their latest information without having to come to the IRBM's office. Taxpayers can visit the MyTax portal at https://mytax.hasil.gov.my.

Q7 HOW CAN CTIM AND OTHER PROFESSIONAL BODIES PLAY A MEANINGFUL ROLE IN SUPPORTING THE IRBM'S ROADMAP OF NAVIGATING THE FUTURE TAX LANDSCAPE?

Dato' Sri Dr. Sabin
CTIM plays a crucial role in shaping the tax compliance of taxpayers in Malaysia. In this regard, CTIM must continue to provide us with the relevant feedback and respond from the ground as to how we can better facilitate taxpayers in fulfilling their tax obligations. This is important as CTIM acts as mediators between the tax body and the clients you represent. You will have a much better understanding of the business

model of your client which will prove to be useful input during the numerous dialogue sessions which we regularly have.

CTIM must also continue to strengthen your internal knowledge and information sharing platform amongst members on the latest tax laws, tax policies or tax practices issued by the IRBM. Any issues arising at CTIM's end on this can be discussed the soonest possible and these exchanges of information and issues arising will allow greater understanding between all parties concerned.

We understand the difficulties taxpayers face and will not audit them on new businesses this year. This will allow businesses to focus on doing well and managing the current unprecedented situation. Although the IRBM may have target collections to meet, we will need to see how the industry is performing and support the industry or sectors mostly affected due to the pandemic. This is to reduce hardship faced by these businesses.

Q8 WHAT IS THE IRBM DOING TO ASSIST TAXPAYERS ESPECIALLY SMALL BUSINESSES IN THESE ECONOMIC CHALLENGING TIMES?

Dato' Sri Dr. Sabin

We have to help taxpayers in enhancing their understanding of the tax laws and on meeting their tax obligations This includes their responsibilities on tax payments during the pandemic. We do not want to oppress the taxpayers. We are also working on the Taxpayers Charter to provide better service to the taxpayers.

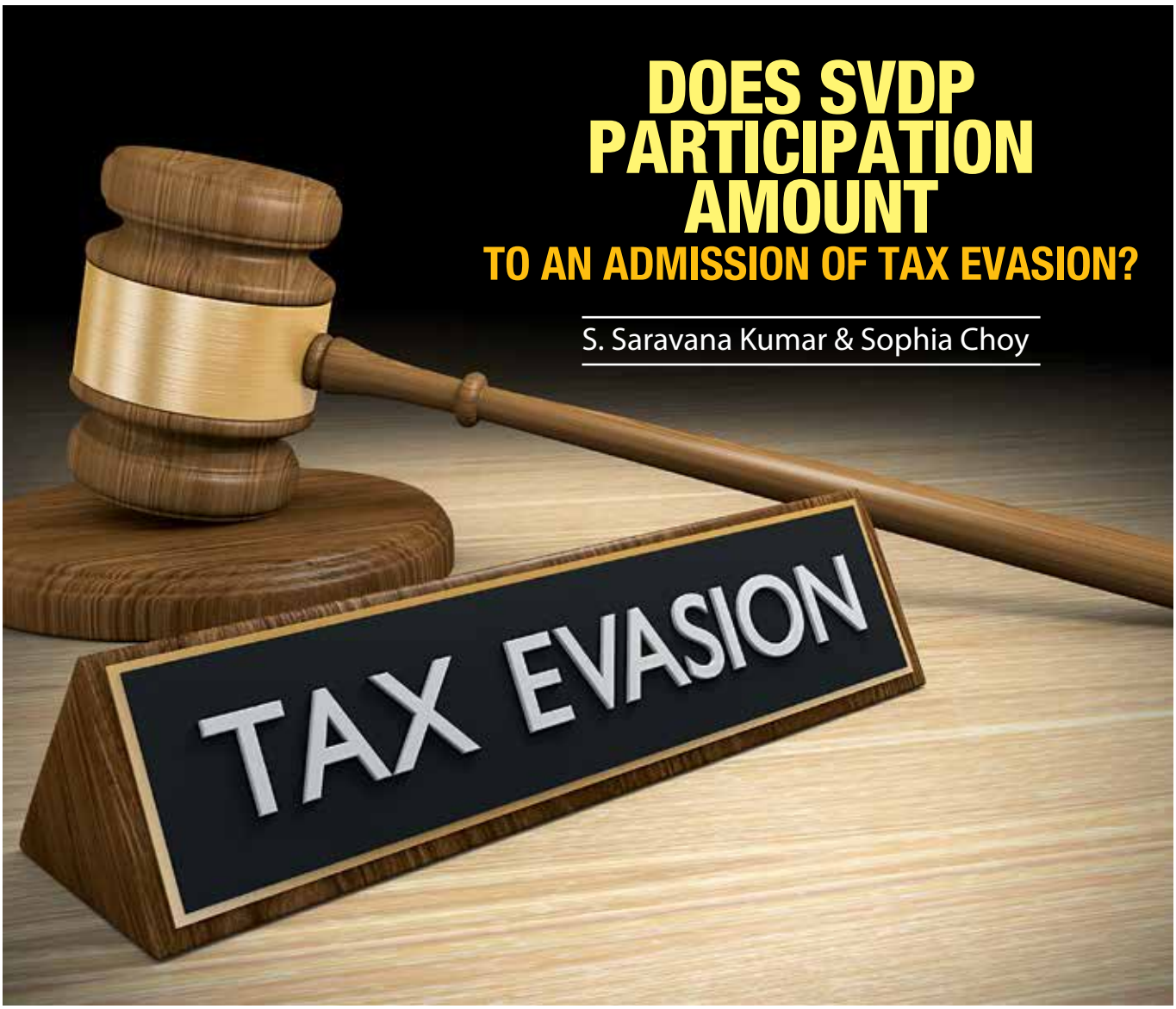
We understand the difficulties taxpayers face and will not audit them on new businesses this year. This will allow businesses to focus on doing well and managing the current unprecedented situation. Although the IRBM may have target collections to meet, we will need to see how the industry is performing and support the industry or sectors mostly affected due to the pandemic. This is to reduce hardship faced by these businesses.

Q9 LAST BUT NOT LEAST, WHAT WOULD YOU CONSIDER AS YOUR GREATEST ACCOMPLISHMENT AS THE CEO OF THE IRBM FOR THE PAST THREE YEARS AND WHAT IS YOUR FUTURE ASPIRATION FOR THE IRBM?

Dato' Sri Dr. Sabin

I managed to increase tax revenue which is important for the country's development. In addition, improvement on the level of competencies of the officers to deal with taxpayers. This will hopefully result in better understanding of tax issues and better delivery by my officers. The level of satisfaction of staff is also very important and through this period, I am able to achieve that level by 90%.

Thank you very much Dato' Sri Dr. Sabin for taking time to be with me this morning sharing candidly and having an open conversation on the various matters. I really do appreciate this. It has been a pleasure meeting you and having this conversation.



DOES SVDP PARTICIPATION AMOUNT TO AN ADMISSION OF TAX EVASION?

S. Saravana Kumar & Sophia Choy

In 2018, the then Pakatan Harapan government introduced the Special Voluntary Disclosure Programme ("**SVDP**") to encourage taxpayers who had underreported their incidence of tax to voluntarily declare such unreported income. The initiative was in force from 3 November 2018 to 30 September 2019 whereby reduced penalty rates ranging between 10% to 15% of the underpaid taxes would be imposed on any disclosure of unreported income. It is reported that more than RM 7 billion was collected under the SVDP.

However, in light of the recent controversies surrounding the SVDP where claims were made that the Inland Revenue Board of Malaysia (IRBM) had issued letters demanding for taxes from those who had enrolled in the amnesty programme, a legal polemic question arises i.e., whether the IRBM can reopen the years of assessment covered in a SVDP declaration. There are also concerns as to whether the participation in the SVDP amounts to an admission of tax evasion or a tax offence.

A U-turn from the SVDP?

It is apposite to note the CEO of the IRBM had previously said that the SVDP is a "clear indication of the government's desire to reduce the burden of the people through taxation." To establish taxpayer's trust in the SVDP, the CEO had also given assurance that the confidentiality of taxpayers' information will be protected and will not be shared with a third party.

The Ministry of Finance has also assured that taxpayers coming clean

i.e. acting in good faith will not have the years of assessment covered in the SVDP reopened or be classified as tax evaders. This is on the premise that the SVDP was offered as a win-win situation for both the taxpayer to account for undeclared income and for the government to collect taxes due from such undeclared income. The SVDP was described as an opportunity for taxpayers who were not so careful in attending to their tax affairs as a means of redeeming themselves.

The Ministry of Finance has also assured that taxpayers coming clean i.e. acting in good faith will not have the years of assessment covered in the SVDP reopened or be classified as tax evaders. This is on the premise that the SVDP was offered as a win-win situation for both the taxpayer to account for undeclared income and for the government to collect taxes due from such undeclared income. The SVDP was described as an opportunity for taxpayers who were not so careful in attending to their tax affairs as a means of redeeming themselves.

It is noted that the then Finance Minister had given assurance in Parliament that once a declaration under the SVDP has been accepted and a clearance letter has been issued, there will be no further tax audit or tax investigation for the years covered under the SVDP. The following excerpt from the speech titled "Countdown To Special Voluntary Disclosure Programme" delivered by the then Finance Minister on 16.9.2019 in the presence of amongst others, the Director General of Inland Revenue himself announced that:

> *"4. The SVDP serves as an avenue for taxpayers,* ***especially for taxpayers with overseas bank accounts who have Malaysian source income,*** *which has yet to be declared for Malaysian tax purposes.*
>
> *5. At the same time,* ***the SVDP provides an avenue for any taxpayer who has forgotten or failed to fulfil his or her tax obligation, to come forward and declare the right amount of income during this period*** *without incurring high and burdensome penalty rates....*
>
> *7. In this last phase of the SVDP, taxpayers who come forward and voluntarily declare their misreported income and deductions will be offered a low penalty rate of only 15 per cent...*
>
> ***13. Be rest assured, the IRBM will issue taxpayers who partake in the SVDP with a clearance letter, as an assurance that the voluntary disclosure which has been made in good faith, has been received by the IRBM, also in good faith, and no further review will be made on that declaration.***
>
> ***16. Please be rest assured that taxpayers who come forward during the SVDP will not be classified as tax evaders, as is the perception among certain quarters.'***
>
> ***17. Rather, the SVDP is a break for taxpayers who were negligent or careless in attending to their tax matters. Hence the low penalty regime offered is a win-win situation for both the taxpayer and the government.***
> *18. Therefore,* ***I urge you to put aside any doubts that may still be lingering around the implementation of the SVDP and to grab this "gift"*** *by the Pakatan Harapan government by acting accordingly before 30 September 2019."*

The above assurance by the then Finance Minister is a clear illustration that the participation in the SVDP is not an admission of tax evasion. Neither persons are to be regarded as tax evaders by the mere fact of participating in the SVDP. Instead, in the light of the assurance provided by the then Minister, they are treated as taxpayers who were either negligent or careless in attending to their tax matters.

The IRBM has also given a similar assurance, provided in paragraph 5.10 of the Operational Guidelines of No. 1 of 2019 whereby there will be no further tax audit or tax investigation for the years covered under the SVDP:

> *"Audit / investigation will not be carried out on the years of assessment where voluntary disclosure has been made."*

This gives the impression and legitimate expectation that the IRBM had conveyed confidence to the public that it will not take any further action, including but not limited to criminal prosecution, for the years of assessment covered by the SVDP against a taxpayer whose SVDP declaration has been accepted by the IRBM.

If there are doubts by the IRBM, the IRBM has the discretion to refuse to accept a voluntary disclosure made by a

taxpayer as not all taxpayers are eligible to participate in the SVDP. As clearly stated in the Operational Guidelines No. 1 of 2019 issued by the IRBM, the SVDP implementation is only available for eligible taxpayers. This is evident from para 5.4.2 of the said Guidelines which reads:

> *5.4. This Special Programme does not apply to voluntary disclosures made involving:*
>
> *5.4.1. non-taxable cases, reduced assessment or repayment; or*
>
> *5.4.2 cases where criminal investigation has commenced or prosecution proceedings as a result of criminal investigation has been instituted in courts pursuant to the provisions of the ITA 1967, PITA 1967, RPGTA 1976, SA 1949 or Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.*

However, once accepted, it necessitates positive affirmation on the principle of good faith by the IRBM. The sine qua non for the success of the SVDP is the acceptance of the SVDP in good faith by the IRBM. The entire programme operates on the principle of good faith. This is even emphasised in the answer to Question 22 of the FAQ, whereby even if the IRBM subsequently receives information from third parties or complaints, there will not be any audit or further review on the reported information for the years of assessment where voluntary disclosure covers.

The above completes the triumvirate of essential features of the SVDP: a declaration, an acceptance and mutual good faith. To recapitulate, a voluntary admission under the SVDP cannot on its own volition be used against the taxpayer in any proceedings and dispense the burden of proof in any proceedings against the taxpayer.

WHETHER A VOLUNTARY PARTICIPATION UNDER THE SVDP AMOUNTS TO ADMISSION?

The burden of proof in any litigation is governed under Section 110 of the Evidence Act 1950:

> *"(1) Whoever desires any court to give judgement as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

Unless the statutory legislation provides otherwise, the burden of proof is on the Plaintiff to prove the facts of the case to the required standard of proof. The presumption of guilt from a case/charge to be superimposed on another case/charge may abridge the principle of natural justice and procedural fairness. In other cases, it may even be unconstitutional (***Alma Nudo Atenza v Public Prosecutor and another appeal [2019] 4 MLJ 1***).

In the Singaporean High Court case of ***Re Lim Chor Pee [1991] 2 MLJ 154***, the Court held that the compounding of the offence of tax evasion by the lawyer, in that case, cannot be considered as an admission of tax evasion by him in a subsequent disciplinary proceeding brought against him.

Briefly, one Lim Chor Pee ("**Mr. Lim**") is an advocate and solicitor of the Supreme Court and he was charged for, amongst others, manipulating the accounts of the firm of Chor Pee & Hin Hiong. In particular, the allegation was in relation to the disbursements account for fraudulent evasion of tax. After long and extensive discussions and negotiations for a settlement, all the charges were negotiated and settled. According to a term of the settlement, Mr. Lim pleaded guilty to one of the charges. He was convicted and fined $5,000 and paid tax penalties in respect of himself and one Mr. Khoo amounting to $84,854. Four Penal Code charges against Mr Lim (all involving dishonesty) were withdrawn

by the prosecution and Mr. Lim was acquitted of these charges.

The Attorney General wrote to the Law Society who issued an order to the inquiry committee to inquire whether there should be a formal investigation by a disciplinary committee into the information against Mr. Lim. The inquiry committee conducted an inquiry accordingly and recommending that there should be a formal investigation by a disciplinary committee into the information against Mr. Lim. The disciplinary committee that was appointed found that seven of the charges had been proved and that in respect of six of them, Mr Lim was guilty of gross improper conduct. The committee held that the commission of an offence under the Income Tax Act was a factor that could legitimately be taken into consideration together with all other evidence in considering the guilt of the respondent on a disciplinary charge under the Act and constitute an admission of guilt.

In particular, the committee relied on the compounded offence under the Income Tax Act and opined that where a taxpayer pays a large sum of money at the rate payable upon conviction in court to compound an offence under the Income Tax Act, it is reasonable to infer as a matter of common sense that the taxpayer is guilty of that offence because no person in his proper mind will do that if he is really innocent.

The High Court disagreed. The High Court found that the fact that the payment made is a penalty, a large sum, and is imposed at the same rate applicable upon conviction of the offence by the court, is not a valid ground for raising the inference of guilt against the alleged offender. In particular, the High Court remarked that the burden of proof still lies on the Law Society to prove the alleged wrongdoing by Mr. Lim:

> *"In taking on the burden of establishing this charge against the Respondent, the Law Society does not have the benefit of the presumption found in Section 96(2) of the Income Tax Act; it is therefore incumbent on the Law Society to adduce evidence to prove the charge. The burden is not on the Respondent to prove that he had not evaded payment of tax on the fee of $85,000…*

The Attorney General wrote to the Law Society who issued an order to the inquiry committee to inquire whether there should be a formal investigation by a disciplinary committee into the information against Mr. Lim. The inquiry committee conducted an inquiry accordingly and recommending that there should be a formal investigation by a disciplinary committee into the information against Mr. Lim.

> *In the opinion of this committee, where a taxpayer pays a large sum of money at the rate payable upon conviction in court to compound an offence under the Income Tax Act, it is reasonable to infer as a matter of common sense that the taxpayer is guilty of that offence because no person in his proper mind will do that if he is really innocent…*
>
> *With respect, we are unable to accept this reasoning. Whether the offence is compounded under the Code or under the Income Tax Act, payment of a sum of money is eligible from the alleged offender.* ***The fact that the payment made is a penalty, is a large sum and is imposed at the same rate applicable upon conviction of the offence by court is not a valid ground for raising the inference of guilt against the alleged offender…***
>
> *We agree entirely with the views of Mr Michael Hwang that while there is no substance in the suggestion or allegation of any improper conduct by Mr Glenn Knight, a person in the respondent's position would have been under considerable pressure to come to some form of a settlement with the authorities to bring an end to the prolonged criminal investigations into his affairs regardless of his guilt or innocence. In our judgement, the compositions made by the respondent ought not to be considered as an admission of guilt."*

The above case was applied by the Court of Appeal in ***Lembaga Jurutera Malaysia v Leong Pui Kun [2008]* 2 CLJ 466**. In this case, the Board of Engineers ("**the Board**") had cancelled the registration of one Leong Pui Kin ("**Mr. Leong**"). Aggrieved, Mr Leong alleged that the Board did not at any time give any explanation on the burden of proof, the standard of proof and had ordered the Applicant to come out with his defence 'straightaway'.

The Court of Appeal held that in so doing, the Board had placed the burden of proof on Mr. Leong and as such presumed that he was guilty. This was contrary to law and the rules of natural justice and procedural fairness. In particular, the Court of Appeal held:

"It was wrong for the Respondent to state that the "report and the charges stand by themselves" as for a charge to be established the Board must adduce evidence to prove the charge. The failure to do so will mean that the charges had not been proven beyond reasonable doubt, i.e. the Board has not got any benefit of a presumption in law."

Although the Federal Court reversed the decision of the Court of Appeal, the apex court did so in finding that every administrative body is the master of its own procedure and need not assume the trappings of a court as it was a proceeding before the Board of Engineers and not a Court of Law. This included the rigidity of all the requirements of natural justice that must be observed by a court.

Notwithstanding that, the presumption of guilt premised on another offence may be unconstitutional. In the case of *Alma Nudo Atenza v Public Prosecutor and another appeal [2019] 4 MLJ 1*, the Federal Court held that Section 37A of the Dangerous Drug Act 1952 was unconstitutional. In precis, Section 37A had the effect of allowing that the accused was presumed to have possession and knowledge of the drug of the accused had custody and control of anything containing it. This "deemed possession" could aggravate into a presumption of trafficking if the quantity of the dangerous drug exceeded a certain weight. The presumption of trafficking not based on proof of possession, but the presumption of possession was a violation and unjustified departure from the requirement that the prosecutor bears the burden of proof to prove the guilt of the accused beyond reasonable doubt.

Based on the case law as stated above, an admission made by a taxpayer cannot be treated or inferred as an admission of tax evasion and used to the taxpayer's aggrievance and detriment. The imposition of a presumption of guilt of an offence on the mere fact that a person may be guilty of another is contrary to the fundamental rules of natural justice and fair trial.

Disclosures made through the SVDP do not discharge the IRBM's statutory burden of proof under the legislation and common law to prove the existence of tax evasion and/or tax avoidance. As a public decision-making body, the IRBM must act following the principles of natural justice and procedural fairness and also are restricted to act in violation of taxpayer's legitimate expectations impressed by the IRBM.

CONCLUSION

In conclusion, taxpayers should always take reasonable and prudent action in conducting their tax affairs. Although there may be instances whereby the taxpayers are negligent and careless that may inadvertently cause errors in their tax returns, any errors identified should be corrected at the earliest opportunity as this displays qualities of a law-abiding taxpayer. Therefore, a taxpayer's participation in the SVDP should not be interpreted as guilty of being privy to any alleged tax evasion arrangement. The burden of proof firmly lies on the IRBM to adduce evidence of any alleged wrongdoings to the standard of proof required.

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ANTI-DUMPING DUTY
THE DETERMINATION OF SELLING PRICE

S. Saravana Kumar & Sophia Choy

Dumping is an anti-competitive trade practice whereby a merchandise is sold to a foreign country at lower than its normal value as sold in the domestic market of the exporting country. Where there are sufficient grounds to suspect there is in existence price discrimination practise, the Ministry of International Trade and Industries ("**MITI**") is empowered under the Countervailing and Anti-Dumping Duties Act 1993 ("**CADDA**") to take action against dumping by foreign exporters by imposing anti-dumping duties.

One of the most contentious aspects of dumping investigation is the determination of "normal value" or "export price" of the imported merchandise. This is because either of the figures directly affects the computation of the dumping margin (the difference between the normal value and the export price). The determination of the "export price" was recently tested in the case of ***BX Steel Posco Cold Rolled Sheet Co Ltd v Ministry of Finance and others*** **[2020] MLJU 751**.

In this case, BX Steel Posco Rolled Sheet Co Ltd ("**BX Steel**") applied for judicial review to quash the decision of MITI and the Ministry of Finance for imposing anti-dumping duties on steel-related products exported to Malaysia. In a landmark ruling, the High Court quashed the anti-dumping duties imposed on BX Steel.

BACKGROUND FACTS

BX Steel is a company incorporated in the People's Republic of China. It is in the business of the production and sale of various products produced by steel. It is apposite to note that BX POSCO does not directly export to the Malaysian market as the transaction is handled by a related trader in Taiwan.

A petition for anti-dumping duties was initiated against BX POSCO which led to an anti-dumping investigation on 25 July 2018. Vide P.U.(B) 624, MITI had recommended a provisional anti-dumping duty of 6.24% on Flat Rolled

Product originating from BX POSCO. Accordingly, the Ministry of Finance imposed the provisional anti-dumping duty.

The Investigative Authority ("**IA**") conducted a visit at BX Steel's premises in China for verification of documents sent pursuant to the dumping investigation. The IA released its final disclosure in the Notice of Essential Facts recommending a final anti-dumping duty of 5.47%. BX Steel alleged that the calculation by the IA was erroneous and tried to convince the IA to rectify the purported mistake.

Vide Customs (Anti-Dumping Duties) Order 2019 P.U.(A) 69, a final anti-dumping duty of 5.47% was imposed on flat rolled product of iron alloy or non-alloy steel, plated or coated with zinc, using hot dip process exported from BX Steel from 8 March 2019 to 7 March 2024.

SECTIONS 17 AND 18(5) OF THE CADDA

The determination of "export price" within the CADDA are as follows:

(i) the export price shall be the price actually paid or payable for the merchandise;

(ii) where the exporter and importer or a third party are related, the export price may be constructed:-
   (a) on the basis of the price at which the merchandise first resold to an independent buyer; or
   (b) on any reasonable basis where the merchandise is not sold to an independent buyer.

The relevant part of Sections 18(5) and (6) of the CADDA reads as follows:

> *"(5) In a case where the subject merchandise is not imported directly from the country of origin but is exported from an intermediate country, the price at which the subject merchandise is sold from the exporting country to Malaysia shall be compared with the comparable price in the exporting country*
>
> *(6) Notwithstanding subsection (5), comparison may be made with the price in the country of origin if:*
> (a) the subject merchandise is merely transhipped through the exporting country;
> (b) the subject merchandise is not produced in the exporting country; or
> (c) there is no comparable price for the subject merchandise in the exporting country."

The Investigative Authority ("IA") conducted a visit at BX Steel's premises in China for verification of documents sent pursuant to the dumping investigation. The IA released its final disclosure in the Notice of Essential Facts recommending a final anti-dumping duty of 5.47%. BX Steel alleged that the calculation by the IA was erroneous and tried to convince the IA to rectify the purported mistake.

APPLICATION OF THE LAW

On a plain reading of Section 17, it appears that the export price is prima facie the price paid by the Malaysian importer. If the export was made from the country of origin but vide an intermediary country, the price at which the exporting country exports to the Malaysian importer is the price comparable in the country where the merchandise was manufactured.

However, where the exporter and the Malaysian importer are related, then the

One of the issues that the High Court had to answer was whether the export price and normal value determined by the IA and MITI correct in law or in fact. In this vein, BX Steel had advanced evidence that the figures taken into consideration was the export price in which BX Steel had sold the merchandise to its related trader in Taiwan instead of looking at the transaction in totality and utilising the price paid by the Malaysian importer instead.

price shall be the price of the merchandise when sold to an independent importer. If the merchandise is not exported to any independent importer, a reasonable approach is warranted.

This position is largely in line with the approach by the World Trade Organisation ("WTO"). In the WTO Panel Report – European Union Anti-Dumping Measures on Biodiesel from Indonesia WT/DS 480/R (EU-biodiesel), the WTO panel held that export price is the actual price paid by the importer:

> *"7.112*
> *Article 2.3 of the Anti-Dumping Agreement authorizes a Member of construct the export price where, inter alia, the actual export price is unreliable because of association between the exporter and importer. The plain language of Article 2.3 makes clear that 'the price charged to the first independent buyer is a starting-point of the construction of an export price*
>
> *…*
>
> *There is no dispute that customers purchasing the biodiesel from P.T. Musim Mas' related importer are the first independent buyers.*
>
> *…*
>
> *Accordingly, in constructing the export price,* ***we consider that the Member must begin by determining the sum in money for which the importer product was bought by or sold to an independent buyer.*** *A member may thereafter make any adjustments for allowances to the extent permitted under the fourth sentence of Article 2.4 of the Anti-Dumping Agreement. However, this does not change the fact that a Member must begin with the price charged to the first independent buyer."*

One of the issues that the High Court had to answer was whether the export price and normal value determined by the IA and MITI correct in law or in fact. In this vein, BX Steel had advanced evidence that the figures taken into consideration was the export price in which BX Steel had sold the merchandise to its related trader in Taiwan instead of looking at the transaction in totality and utilising the price paid by the Malaysian importer instead. This was not in line with the methodology set out in Section 17 and Sections 18(5) and (6) whereby the export price ought to be the price paid by the Malaysian importers and compared with the price at which the merchandise was transacted within China.

The Taxpayer argued that the adoption of the price paid by the Taiwan related trader as the export price is not aligned with trade principles as set out by the WTO. In a commentary on the GATT/WTO Agreement, an analogy described the interpretation of the export price where if "… producer x in country X sells T-shirts to importer y in country Y, then the price charged by producer x to importer y is the export price".

Upon hearing the parties submission on this point, the High Court found that in refusing to adopt price paid by Malaysian importers as the export price was in contravention of the CADDA and excess of their jurisdiction.

FACTS DO NOT SUPPORT THE CONCLUSION

It is trite law that where the relevant facts do not support the decision arrived at by a public body is a ground for judicial review. This was held in the Federal Court in the case of ***Alam Ventare Sdn Bhd & Anor v Abdul Aziz bin Abdul Majid & Ors*** **[2015] 4 MLJ 270.** Where the conclusion was made pursuant to irrelevant facts, the entire edifice of the decision must crumble.

In its affidavit, MITI admitted that the IA had committed an error in computing the recommended anti-dumping duty. More specifically, the IA had deducted the ocean freight value from the total Free on Board Export Price which artificially increased the dumping margin. Had the error been rectified, a lower margin of 3.12% would apply instead.

In light of the admission made by MITI and the continued cavalier approach by the IA in disregarding BX Steel's request for revision of the dumping margin calculation, the Learned High Court Judge went as far as holding that this ground alone would suffice in setting aside the imposition of the anti-dumping duty.

ACTUAL BIAS ON THE FACE OF THE RECORD

BX Steel valiantly alleged that there was an error in law when the final anti-dumping duty was made as MITI had acted without appreciating all the relevant facts and issues and pre-judged the matter.

The timeline of events leading up to the imposition of the final anti-dumping duty would evidently display perverse and unreasonable conduct by MITI. The IA issued the Final Determination Report on 7.3.2019. This would be one of the important supporting documents for the imposition of the anti-dumping duty. However, MITI had signed the Notice of Affirmative Determination on 27.2.2019, one week before the Final Determination Report was released.

The High Court found that the pre-judgment by MITI defies logic and rational as the timeline would abridge any arguments to the contrary. Although MITI attempted to advert that there were other versions of the Final Determination Report in which the Notice of Affirmative Determination relied upon, this argument is bereft of any merit in the absence of any evidence to this point.

CONCLUSION

After given due consideration to the points above, the High Court quashed the anti-dumping duties imposed. This case highlights the importance of proper exercise of discretion and the law does not countenance arbitrary imposition of taxes without good and cogent reasons. The CADDA sets out a comprehensive process for the determination of anti-dumping duties and any brazen disregard for the due process is a ground amenable to judicial revenue. This serves as a timely reminder that revenue officers must conduct themselves in decorum and act in accordance with the principle of natural justice in reaching decisions concerning tax and revenue and not to be overly fixated with the imposition of taxes without substantiation.

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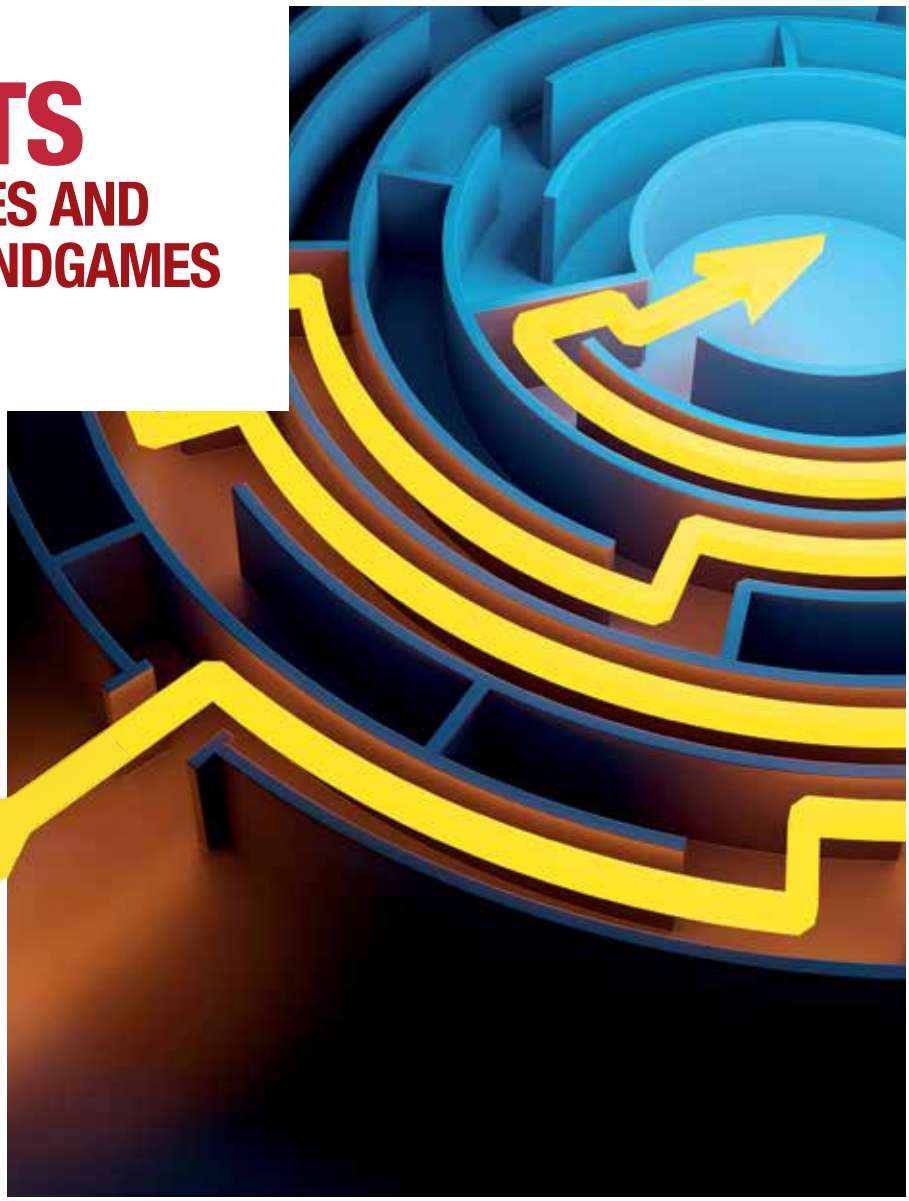
TAX AUDITS
OPENING PRINCIPLES AND UNDERSTANDING ENDGAMES

Wong Yu Sann



In Malaysia, the introduction of the self-assessment tax regime in 2001 for companies and 2004 for businesses, partnerships, co-operatives and salaried individuals have effectively shifted the duty of computing taxpayer's annual tax liabilities from the Inland Revenue Board of Malaysia ("IRBM") to taxpayers. Ever since tax audits became a primary activity carried out by the IRBM to ensure that taxpayer is compliant with tax laws and regulations, upon their submission of Income Tax Return Forms ("ITRF") since 2001. Tax audit is also used to enhance the voluntary disclosure by the taxpayers.

With Malaysia's 2021 RM143.9 billion direct tax collection target announced by the IRBM[1], we expect that the IRBM will significantly intensify tax audits activities into taxpayer's financial businesses affairs from 2021. This is expected to ensure that taxpayers are paying their taxes responsibly.

1) What is a Tax Audit?

Generally, every company, limited liability partnership, trust body or co-operative society must submit their ITRF within seven months from the date following the closing of their accounting period. Tax audit is carried out to ensure the right amount of income has been declared, and the right amount of tax has been computed as per the ITRF submitted.

Generally, the IRBM can conduct two types of the tax audit - desk audit and field audit.

Descriptions	Desk Audit	Field Audit
Place of conduct	IRBM's office	Taxpayer's premises
Issues of concern	Straightforward	Non-straightforward
Examination of records	Review of documents/information obtained via correspondence and interviews at the IRBM's office	Demands a visit to the taxpayer's premises for a detailed review of all the relevant supporting documents

Desk audit can be stretched to field audit if the IRBM requires a review on other issues with regards to certain business transactions. Recently, in lieu of the pandemic, we see a high volume of tax audits conducted via virtual meetings or email for both desk audits and field audits.

2) Pre-Audit, during Audit, post Audit, Checkmated!

When a taxpayer is selected for a tax audit, the first consideration is - Will there be any additional tax adjustment together with hefty penalties being imposed for incorrect returns?

The inconvenience of locating old documents/information for tax audit purposes can be a psychological barrier for taxpayers to settle the tax audit, in the fastest possible manner. This is especially challenging as with the current pandemic, they are most likely working from home. This would mean no easy access to physical documents stored at the warehouse, which is likely to be voluminous.

Notwithstanding the above, a taxpayer is required to keep sufficient records for the IRBM to ascertain the income or loss from the taxpayer's business. The taxpayer is guided by Section 82 of the Income Tax Act 1967 ("ITA") which stated the duty to keep records and give receipts. Also, Section 82A of the ITA which states that it's the taxpayer's duty to keep documents for ascertaining chargeable income and tax payable.

A taxpayer is allowed to submit documents electronically i.e. softcopy documents if it is originally issued electronically instead of manual forms. This is guided by Section 82(7) of the ITA as follows:

> *"Any person who is required by this section to keep records and-*
> *"Any person who is required by this section to keep records and-*
> *(a)* ***does so electronically*** *shall retain them in an electronically readable form and shall keep the records in such a manner as to enable the records to be readily accessible and convertible into writing; or*
> *(b)* ***has originally kept records in a manual form*** *and subsequently converts those records into an electronic form shall retain those records prior to the conversion in their original form.*
> *Additionally, if a taxpayer fails to provide the documents or records within the stipulated timeframe, this will result in the expenses to be disallowed under Section 39(1A) of the ITA as extracted below:*
> *"Notwithstanding any provision of this Act, where a person is required under Section 81 to furnish to the Director General any information within the time specified in a notice or such other time as may be allowed by the Director General, and that information concerns wholly or in part a deduction claimed by that person in arriving at the adjusted income of that person from any source for the basis period for a year of assessment, no deduction from the gross income from that source for that period shall be allowed in respect of such claim if the person fails to provide such information within the time specified in that notice or such extended time as allowed by the Director General."*

Like chess, the tax audit process is divided into three key stages

- The Opening Games - pre-audit
- The Middle Games - audit visit
- The End Games - post-audit

To win, you must first understand the tax audit process and guidelines in relation to your case. In chess, when we choose a solid and safe opening, we are able to get an advantage in the first few moves and ultimately take control the whole chessboard. Similarly, this applies to handling a tax audit. The key is getting to know the concepts behind the tax audit and finalise the tax audit by having good planning.

2.1 Pre-audit ("the Opening Games")

A tax audit regularly commences with the IRBM's Request for Documents and Information Letter/Notification of Audit letter ("Letter"). However, for certain desk audit cases, the IRBM will not issue the Letter. Instead a notice of assessment together with tax audit adjustments is issued. A taxpayer might be informed via email/letter if a tax audit visit is required. The period between the audit and the audit visit is 14 days.

A taxpayer will have to ensure authenticity, accuracy, full and complete supporting documents are submitted upon the request by the IRBM. This is with the view on the increasing appeal cases in Court i.e. TNB case[2]. It is important to note that all submissions for the case might be used at the litigation stage.

2.2 Audit visit ("the Middle Games")

The purpose of the tax audit visit by the IRBM will be included in their notification of audit letter.
Taxpayers are expected to cooperate with the IRBM throughout the tax audit process. At present, IRBM officers can access the taxpayer's computer system, server or gadgets as well as download records in any form of media including CD, diskette, pen drive and any portable hard disk when conducting an audit visit at taxpayer's premises.

The interview process will be conducted by the IRBM with the taxpayer or their representative tax agent.
Generally, a taxpayer is requested to provide presentation slides to explain the following:

- Company background or history of business operation in Malaysia
- Global business operations
- Management structure and its different types of functions in the company
- Accounting software used
- Location of keeping the company's book and account

For a manufacturing company, the IRBM may visit their manufacturing plant. They may also visit related companies involved in the controlled transaction.

2.3 Post-audit ("Understanding Endgames")

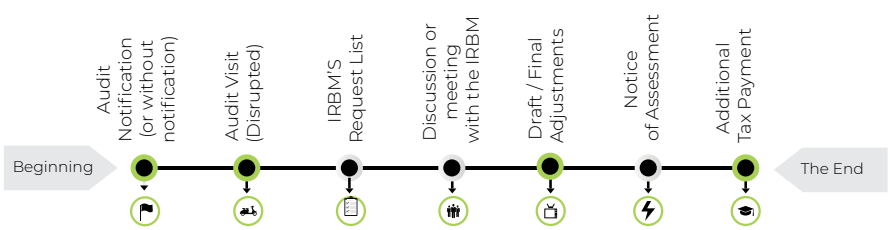
Upon completion of the tax audit review, the IRBM will issue a report on their tax audit findings. The taxpayer will be given 18 days to respond by submitting an official objection letter, together with the additional supporting documents and evidence. There are also instances where no adjustments are required. In this case, the IRBM will issue a tax clearance letter to the taxpayer.

Notice of assessment or Notice of Additional Assessment will be issued for the finalisation of a tax audit for a case with tax audit adjustment. Generally, tax audit cases will not be repeated on the same issues for the same year of assessment.

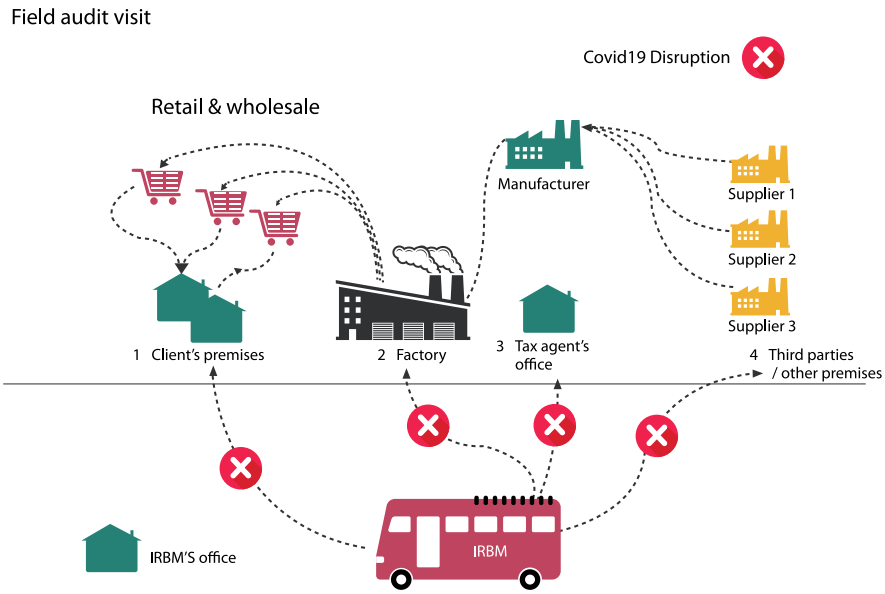
The IRBM will also inform the taxpayer on the progress of the tax audit, if the case requires more than three months to settle.

Tax Audit process
Snapshot

The Commencement and Finalisation of Tax Audit



THE TAX AUDIT PROCESS



3) Tax audit visited is disrupted

The current pandemic has caused field audit to be disrupted, especially with the enforcement of the Movement Controlled Orders ("MCO"). The IRBM and the taxpayer are encouraged to conduct virtual meetings to conduct tax audits.

4) Updates on Tax Audit Frameworks in Malaysia

Tax audit activities have generally been guided by tax audit frameworks. The IRBM has issued the first Tax Audit Framework in November 2000 and the latest Tax Audit Framework dated 15 December 2019 supersedes the earlier version. It has been further expanded to include tax audit framework for different industries i.e. Petroleum, Finance and Insurance industries and specific tax compliance audits i.e. Transfer Pricing and withholding tax compliance audit (Refer to **Diagram 1**).

5) Key nuances between Tax Audit Frameworks

Commonly, a taxpayer in financial, insurance and Petroleum industries will take a longer period to finalise the tax audit due to the size and complexity of the business transactions. The IRBM will notify the taxpayer if the cases have exceeded the settlement period indicated above. Generally, the tax audit covers from three to five years of assessment.

6) Time-Bar (when the statute is limited)

Transfer Pricing cases are covered up to seven years of assessment according to the time-bar provision under Section 91(5) of the ITA. However non-Transfer Pricing cases is covered only up to five years of assessments according to Section 91(1) of the ITA as extracted in **Table 1**:

Section 91(1) of the ITA states:

The Director General, where for any year of

DIAGRAM 1: UPDATES ON TAX AUDIT FRAMEWORKS IN MALAYSIA

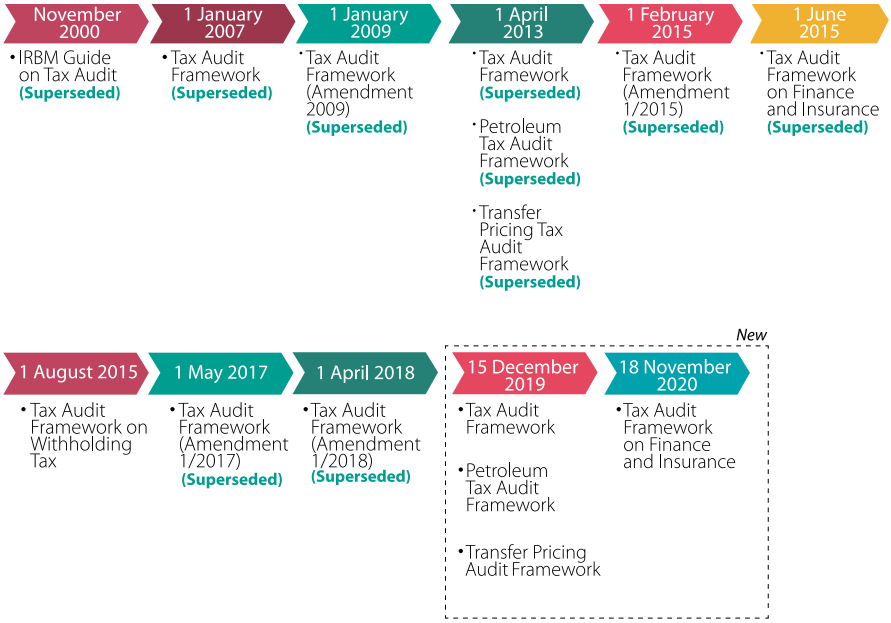


TABLE 1

Tax Audit Framework	General	Petroleum ("O&G")	Finance & Insurance ("FI")	Withholding Tax	Transfer Pricing
Applicability	Taxpayers other than O&G and FI	Taxpayers in Petroleum industries	Taxpayers in the Finance and Insurance industries	Withholding tax audit cases involved all industries	Transfer Pricing cases which involved all industries
Settlement period	3 months (90 calendar days)	(8 months) 240 calendar days for exploration / (15 months) 450 calendar days for production	Finance / Islamic Finance Insurance/ Takaful (3 to 8 months) [90 to 240 calendar days]	6 months	Did not explicitly mention
Year of coverage	3 to 5 years	3 to 5 years	3 to 5 years	3 to 5 years	3 to 7 years

assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax, may ***in that year or within five years after its expiration make an assessment or additional assessment****, as the case may be, in respect of that person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that person ought to have been made for that year.*

Section 91(5) of the ITA states:

The Director General, where for any year of assessment it appears to him that no or no sufficient assessment has been made on a person chargeable to tax in consequence of the Director General's determination pursuant to subsection 140A(3), may ***in that year or within seven years after its expiration make an assessment or additional assessment,*** *as the case may be, in respect of that person in the amount or additional amount of chargeable income and tax or in the additional amount of tax in which, according to the best of the Director General's judgment, the assessment with respect to that person ought to have been made for that year.*

Note: The year or within five years under Section 91(1) and the year or within seven years under Section 91(5) of the ITA refers to year assessment and is defined as "calendar year" under Section 2 of the ITA.

For example, a company has a financial year-end of 30 September 2019 and the year of assessment is 2019. In this connection, the company submission of ITRF is due on 30 April 2020 as follows:

Calendar year	Basis year	Year of assessment
1.10.2018 – 30.09.2019	2019	2019

In this case, the statute of limitation (time-bar) under Section 91(1) and 91(5) of the ITA is summarised below:

Description	Calculation of time-bar
The period when assessment / additional assessment may be made under Section 91(1) of the ITA	In the year 2019 or by 2024 (within 5 years after the expiration of 2019)
The period when assessment / additional assessment may be made under Section 91(5) of the ITA in relation with Transfer Pricing adjustment	In the year 2019 or by 2026 (within 7 years after the ***expiration of 2019***)

However, the statute of limitation does not apply to cases with fraud, willful default and negligence. The IRBM may at any time (beyond time-bar i.e. 5 years or 7 years)

issue assessment to recover any tax loss as a consequence of fraud, willful default and negligence according to Section 91(3) of the ITA as extracted below:

The Director General where it appears to him that—

*(a) any form of **fraud** or **wilful default** has been committed by or on behalf of any person; or*

*(b) any person has been **negligent**,*

*in connection with or in relation to tax, **may at any time make an assessment** in respect of that person for any year of assessment for the purpose of making good any loss of tax attributable to the fraud, wilful default or negligence in question.*

7) Selection of tax audit cases

What are the factors that may trigger a tax audit? The following are some selection criteria :

1. Big data analytics computerised systems which assess the risk analysis of taxpayer;
2. Specific issues for a certain group of taxpayers i.e. tax deduction for Bumi Quota releases
3. Location;
4. Specific industries i.e. property developer,manufacturing industries etc;
5. Information obtained from the third party on underdeclared or omission of income.
6. Large repayments of taxes;
7. Significant controlled transactions between related companies especially for Transfer Pricing cases;
8. Internal reference in the IRBM;
9. A significant decline in profits post tax-holiday;
10. Tax evasion involving shell companies of tax haven countries;
11. A taxpayer who is enjoying certain tax incentives i.e. Reinvestment Allowances, Pioneer Status, Investment Tax Allowances etc. The IRBM will review on the fulfilment of the condition granted for each tax incentives.

At the National Tax Conference 2020 on Navigating Tax Through Challenging Times, we learnt that there are focused sectors for the IRBM's Compliance & Enforcement Activities[4]:

1. Food, beverages, tobacco;
2. Health ;
3. Existing government or ongoing contracts;
4. High net-worth individuals;
5. Digital media and entertainment; and
6. Insurance companies and agents.

Some other severely impacted industries like tourism, aviation, property and construction are not within the focused industries announced by the IRBM. This as an encouraging move.

Notwithstanding the above, we will most likely see increased scrutiny of the IRBM on transactions related to business restructuring without commercial substance. A deliberate over-shifting of profit from one year to another (including low tax jurisdictions) could set a volatile pattern for IRBM's trend-spotting software to "red-flag" the taxpayer for tax audit purposes. Common issues generally targeted by the IRBM includes the provision of interest- free loans to related companies, disposal of real properties whether it should be subjected to Real Property Gains Tax or Income Tax, withholding tax compliance for payment to non- residents and transfer pricing issues among others.

To help Small and Medium Enterprises (SME) and individual taxpayers[3], the IRBM has also announced for auto refunds for cases with no and low risk of being a wrongful refund claim, large businesses with refund amount of less than RM1million each.

8) Short timelines to submit documents

Timely submission of documents is essential to demonstrate the taxpayer's cooperativeness. A taxpayer is required to submit documents and information or an objection to the IRBM's proposed tax audit adjustment based on the due date summarised below as **Diagram 2**:

9) Penalty for under-declaration/omission

For a tax audit cases, a maximum penalty to be imposed on a taxpayer is 100% under Section 113(2) of the ITA, where the taxpayer has "omitted or understated any income" liable to be taxed. However, a taxpayer will be allowed a concessionary penalty rate at 45% if it is undergoing a first time tax audit. Nevertheless, the DGIR may exercise his discretion under

DIAGRAM 2

Tax Audit Framework 2019

Using calendar day

1. Submission of Documents and information from the date of receipt of the IRBM (due date)

14 calendar days

2. Submission of objection to the IRBM's proposed tax audit adjustment (due date)

18 calendar days

if no objection is received, the taxpayer is deemed to have agreed to the IRBM's audit findings. if the taxpayer has objected, his objections will be reviewed, and the taxpayer will be properly informed of the IRBM's final audit findings.

subsection 124(3) of the ITA to reduce or eliminate penalties imposed as extracted below:

> *"The Director General may abate or remit any penalty imposed under this Act except a penalty imposed on conviction."*

Based on the Tax Audit Framework 2019 (included in the Tax Audit Framework on Finance and Insurance), the repeated offence is defined to include:

9.1 Taxpayers who have been audited or investigated and the original/additional/composite assessment with the penalty imposed under Section 113(2) of the ITA; and

9.2 The first offence is only taken into account from the date of the original/additional/composite assessment issued from 1 January 2020.

However, please be reminded that the taxpayer is not eligible to make a voluntary disclosure if the tax audit has begun.

TAX AUDIT FRAMEWORK 2019

Snapshot - Voluntary disclosure

Duration of making a voluntary disclosure	Duration of making a voluntary disclosure
1. Before being selected for tax audit	
Within 60 days	10%
> 60 days but < 6 months	15.5%
> 6 months	35%
2. After being selected for tax audit	
VD after taxpayer has been informed of the tax audit	45% for 1st offence from 1 January 2020
Repeated offence	55%

10) The much needed out-of-court settlement

If the tax audit cannot be resolved amicably at the IRBM's tax audit Branch, the taxpayer will be issued a Notice of assessment/additional assessment to conclude the tax audit. However, the taxpayer can appeal against the notice of assessment/notice of additional assessment via Form Q within 30 days from the date of the notices. If an appeal via Form Q has not been submitted within 30 days from the date of the notices, an application for extension of time for appeal can be made via Form N. It is good to note that with effect from the year of assessment 2020, section 100 of the ITA provides the appellant must submit Form N to the IRBM within seven years from 30 days after the notice of assessment was served. This provision applies from the year of assessment 2020 onwards. Section 100(1) of the ITA as extracted below:

> *"(1) A person seeking to appeal against an assessment after the expiration of the period to make an appeal under subsection 99(1), may within seven years after the end of that period, make to the Director General a written application in the prescribed form for an extension of that period within which a notice of appeal against that assessment may be given under that subsection"*

The IRBM will then review the case to seek an avenue for settlement of the tax audit appeal. If IRBM finds that there is no avenue for an amicable resolution, the form will be forwarded

to Dispute Resolution Division or the State Director's office for review.

Dispute Resolution Division handles cases for taxpayer's files under Multinational Tax Branch, Special Industry Branch, Large Taxpayer Branch, Investigation Branch, Special Operation Department and Special Task Department[5] Other cases will be handled at the State Director's office.

If both taxpayer and the IRBM has not come into an amicable resolution within 12 months (or maybe extended to 18 months on certain cases) from the date of the Form Q, it will be registered for Court Mention before the Special Commissioners of Income Tax (SCIT), and thereafter the Tax Litigation of the IRBM's Legal Department will take over the tax audit appeal. It is still possible for an out of court settlement, even the case has been taken over by the Tax Litigation of the IRBM Legal Department. Cases which is not able to come to an amicable resolution at this stage will be registered for Court Hearing before the SCIT and will be advanced to the High Court and Court of Appeal.

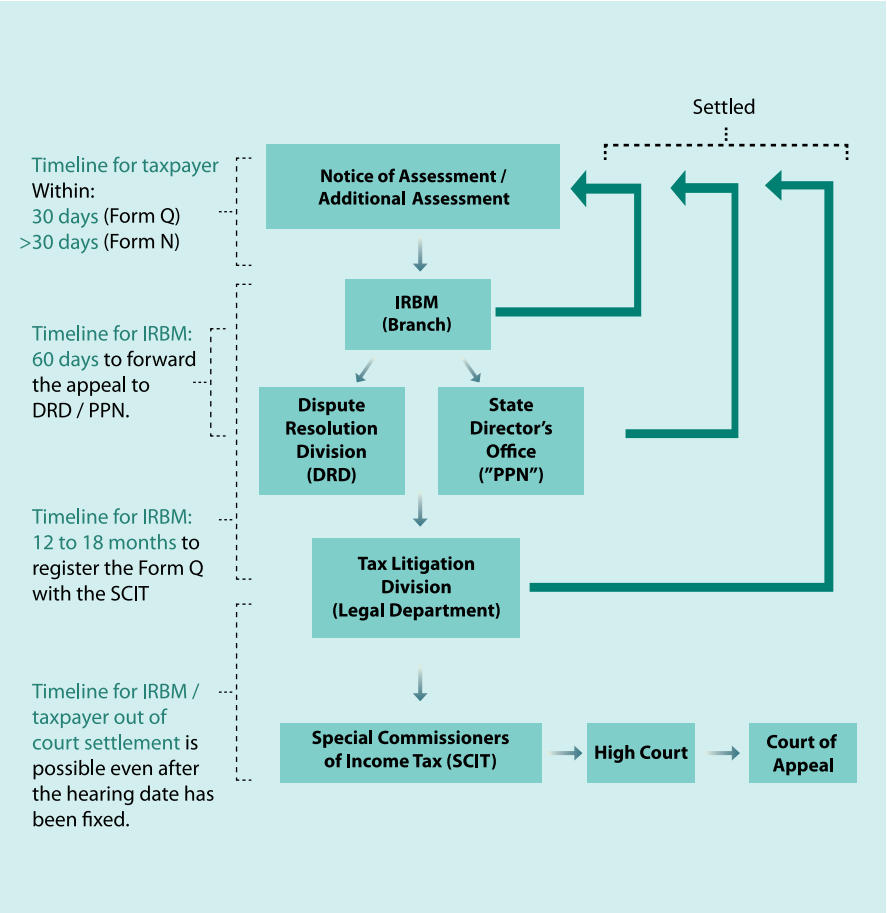
Tax audit appeal cases can be applied via Judicial review application at High Court (End up at Federal Court) although the remedy of appeal had not been exhausted if it was shown that there existed a clear lack of jurisdiction, a blatant failure to perform any statutory duty or there was a serious breach in the principle of natural justice as indicated in the Supreme Court case of *Government of Malaysia & Another v Jagdis Singh [1987] 2 MLJ 185*.

11) Conclusion

Take time to replay the tapes, start reviewing and assessing your ITRF submitted. Identify the tax issues on hand and start to seek appropriate corrective measures by looking for a tax agent. You can do it yourself, but you don't' have to.

Engaging a tax agent to conduct a health check review based on your supporting documents will be helpful. The earlier you identify the tax issues, the faster you can address it and make a voluntary disclosure to reduce any subsequent penalties. Submitting a wrong document or addressing the tax issues late may be expensive and incur hefty penalties.

APPEAL AGAINST AN ASSESSMENT



[1] *https://www.theedgemarkets.com/article/malaysias-2021-rm144b-direct-tax-collection-target-achievable-says-irb-ceo*

[2] *https://www.theedgemarkets.com/article/irb-cancels-rm244b-worth-tax-penalties-imposed-tnb*

[3] *OECD Tax administration responses to COVID-19: Measures taken to support taxpayers dated 21 April 2020.*

[4] *CTIM' tax guardian Vol.13/No.4/2020/Q4 with the title of National Tax Conference 2020 Navigating Tax Through Challenging Times.*

[5] *http://lampiran2.hasil.gov.my/pdf/pdfam/GUIDELINE_DRP_03042019.pdf*

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IN THE MATTER OF INTEREST

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"Interest is the monetary charge for the privilege of borrowing money, typically expressed as an annual percentage rate. Interest is the amount of money a lender or financial institution receives for lending out money. Interest can also refer to the amount of ownership a stockholder has in a company, usually expressed as a percentage."[1]

"Interest" is defined as the return or compensation for the use or attention by one person of a sum of money belonging to or owed to another in Halsbury's Laws of England. In *Riches v Westminster Bank Ltd (1947) AC 390*, Lord Wright observed that "interest is payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or conversely the loss he suffered because he had not that use".

In the Malaysian tax landscape, there is no statutory definition of interest given in the Malaysian Income Tax Act 1967 (MITA).

This article seeks to examine on the type of interest income which is chargeable to tax in Malaysia and, on the flip side, on whether interest expense incurred is deductible against the gross income.

INTEREST INCOME – BUSINESS OR NON-BUSINESS SOURCE

Generally, interest income is chargeable to tax under Section 4(c) of the MITA. However, certain types of income are also taxed as business income under Section 4(a) of the MITA. Several cases went to the courts in Malaysia to debate the fact of whether interest income should be treated as part of the business income or taken to be passive investment income. Among the notable cases are *Ketua Pengarah Hasil Dalam Negeri v Pan Century Edible Oils Sdn Bhd (2002) MSTC3967* and *I(M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2005) MSTC 3,609*. Following this, a new Section 4B was introduced in the MITA which provides that interest income shall be treated as business income only if the debenture, mortgage or other source to which the interest relates forms part of the stock-in-trade of a business of a person or the interest is receivable by a person from the business of lending money and that business is one which is licensed under any written law. This new Section 4B of the MITA which came into effect from the year of assessment (YA) 2013, effectively means that any interest, other than interest received by financial

institutions (banks and so on), shall not be treated as business income.

Further to the introduction of Section 4B, the Inland Revenue Board of Malaysia (IRBM) has issued Public Ruling (PR) 3/2016 on "Tax Treatment on Interest Income Received by a Person Carrying on a Business", which provided explanation on the tax treatment in respect of interest income received by a person carrying on a business. Among the examples of interest income mentioned in PR 3/2016 that cannot be treated as business income from YA 2013 are interest charged due to delay in payment of trade debt, interest from an easy payment plan, interest from fixed deposit placed as security and interest received by a person from loan given to employees. With the introduction of Section 4B of the MITA, the question arises as to whether the fundamental tax principle of any income receivable incidental to and in the course of carrying out a business activity should be treated as part of that business income is still in place?

INTEREST INCOME - WHEN IS IT DERIVED?

The derivation of interest income is governed under Section 15 of the MITA. Generally, only interest derived from Malaysia is subject to tax in Malaysia. Any foreign sourced interest income is exempted from tax. When the interest income is derived from Malaysia, how will it be recognised as a taxable income? Section 27(1) of the MITA lays out that where interest first becomes receivable in the relevant period, it shall, when it has been received, be treated as gross income of the relevant person for the relevant period. Interest must be treated as being received by a person at the time when the person is entitled to the interest income accruing in or derived from Malaysia and is able to obtain the receipt thereof on demand [Section 29(1) of the MITA]. This means that the interest income is taxable even though the interest has not been received yet.

With effect from YA 2014, pursuant to Section 29(3) of the MITA, interest on loan transactions between related parties is deemed obtainable on demand when the interest is due to be paid. The introduction of this anti-avoidance provision is to tighten the provision in order to bring the interest income to tax at the same time as the interest would be claimed as a deduction by the borrower. Sections 29(3) and (4) of the MITA were put in place to deem that the lender is able to obtain payment on demand when the interest is due to be paid and the interest expense is deductible only when the expense is due to be paid. While Sections 29(3) and (4) of the MITA address the timing of recognition of interest, the timing of deductibility amendments are covered in Sections 33(4) and (5) of the MITA.

DEEMED INTEREST INCOME FROM LOANS OR ADVANCES TO DIRECTOR

At times, companies may extend loans or advances to its directors either from its internal funds or from external borrowings. These loans or advance would generally be free of interest as there is no additional funding incurred by the company. By virtue of Section 224 of the Companies Act 2016, a company (other than an exempt private company) is explicitly prohibited from providing a loan to a director of the company or of a related company except in certain situations. Effective from YA 2014, Section 140B of the MITA was introduced to deem the interest income from loans or advances to directors as taxable income of the lending company. The IRBM also issued PR8/2015 on "Loan or Advances to Director by a Company" to explain on the tax treatment of interest income deemed to be received by the company from the loans or advances to directors of the company without interest or with interest rate lower than the arm's length rate. The interest income for the basis period for a year of assessment shall be the aggregate sum of monthly interest in the basis period, computed in accordance with the following formula:

1/12 x A x B

where A is the total amount of loans or advances outstanding at the end of the calendar month, and B is the average lending rate of commercial banks published by the Central Bank at the end of the calendar month, or where there is no such average lending rate, such other reference lending rate as may be prescribed by the Director General.

The Tax Policy Department of the IRBM has clarified that Section 140B of the MITA is applicable to directors of the company (as defined in Section 75A(2) of the MITA and to loans or advances which are financed by the company's internal funds only. It does not apply to loans/advances funded from external loans or loans from third parties.

INTEREST INCOME DURING THE MORATORIUM PERIOD

Under the Prihatin Rakyat Economic Stimulus Package, a moratorium was approved by banks or financial institutions on repayment of loans or financing for the period form 1 April 2020 until 30 September 2020. The Income Tax (Special Treatment for Interest on Loan) Regulations 2020[P.U.(A) 237] were gazetted on 25 August 2020 to set out the tax treatment of interest due and payable in respect of loans related to the moratorium programme. In this regulation, the loan is granted by a bank or financial institution to an individual, small and medium enterprises (SMEs) or any company other than an SME. Such interest due on a loan will not constitute gross income of the bank or financial institution for the YA. However, where

[1] *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020*

interest on such loans is received from 1 April 2020 to 30 September 2020 or becomes receivable on or after 1 October 2020, such interest will constitute gross income of the bank or financial institution. The Regulations also provide that no deduction from the gross income of a financial institution is allowed under the MITA based on any impairment of a loan involved in the period of the moratorium programme. A separate account is to be maintained for the amount of interest and payment received under the moratorium programme.

INTEREST EXPENSE – DEDUCTIBILITY RULE

Section 33(1)(a) of the MITA states that 'any sum payable for that period (or for any part of that period) by way of interest upon any money borrowed by that person and -

(i) employed in that period in the production of gross income from that source, or

(ii) laid out on assets used in or held in that period in the production of gross income from that source;'

Based on the reading of the law, interest expense is deductible when it is incurred in the production of income. The purpose of borrowing the money is an essential factor to consider when determining the deductibility of this type of expense. Typically, if money is borrowed for general working capital or purchase of fixed assets, the interest paid on the indebtedness would qualify for deduction. However, the deductibility of certain types of interest expense may be impaired by the operation of anti-avoidance provisions such as Section 33(2) of the MITA. This provision provides for a restriction of the interest deductible where a person borrows money for business purposes, but the money is partly used to finance non-business operations.

INTEREST EXPENSE – WHEN IS IT DEDUCTIBLE?

The question on the timing of deductibility of interest expenses was addressed with effect from YA 2014 through Section 33(4) of the MITA. A taxpayer is only eligible to claim a deduction in respect of the interest expense when such interest is due to be paid. When interest expense becomes "due to be paid", the taxpayer must relate the interest expense to that period for which it was payable. Thus, the deduction would be given in the year the interest is payable. Following the inclusion of this provision in the MITA, the IRBM has issued PR 9/2015 on "Deduction of Interest Expense and Recognition of Interest Income for Loan Transactions Between Related Persons" which explains on the deduction of interest by the borrower. Subsequent to that, a new Section 33(5) of the MITA was also included to address the compliance aspects of the claiming the tax deduction on the interest expense. The taxpayer will have to initiate the process of notifying the IRBM in writing not later than twelve (12) months from the end of the basis period for the YA when the sum is due to be paid with the amended tax computations for the prior YAs to claim interest deductions in the respective YAs. Subsequently, the IRBM will review and confirm the deductibility of the interest expense before the assessments for each YA is amended to allow the claim.

INTEREST EXPENSE DURING THE MORATORIUM PERIOD

As mentioned in the paragraph above, the interest income of the bank or financial institutions under the moratorium would only be taxable when the interest income is received after the moratorium period. How about the deductibility of the interest expense incurred by individuals and SMEs during the moratorium period? Having looked at the provisions of Section 33(4) of the MITA above, the interest expense is deductible when such interest is due to be paid. Effectively, the moratorium period only allows for payments to be deferred and it doesn't change the due to be paid date. Therefore, the interest expense would be deductible based on the due to be paid date as set out in the loan agreement between the financial institutions and the borrower. However, the situation may be different

if the parties have initiated to amend the original loan agreement to vary the due dates.

RESTRICTION ON INTEREST DEDUCTION

To restrict the deductibility of interest in relation to financial assistance in controlled transactions, Section 140C of the MITA was introduced in the 2018 Budget announcement. Following that, the Income Tax (Restriction on Deductibility of Interest) Rules 2019 (Rules) was gazetted for the implementation of Section 140C of the MITA. The Rules which came into operation on 1 July 2019 provides that there is now a maximum threshold on the allowable deduction on interest expense for a YA in the context of group financing. The maximum amount of interest expense allowed is 20% of the tax-EBITDA (earnings before interest, taxes, depreciation and amortisation) of a taxpayer from each of his sources consisting of a business for a YA. The tax-EBITDA is determined as follows:

A + B + C

Where:

(a) "A" is the amount of adjusted income of a taxpayer before any restriction on deductibility of interest;

(b) "B" is the total amount of qualifying deductions allowed; and

(c) "C" is the total amount of interest expense incurred in relation to the gross income of the taxpayer for any financial assistance in a controlled transaction.

Interest restriction is inapplicable where the total amount of interest expense in respect of all financial assistance is equal to or less than RM500,000 in a YA. In addition, the Rules do not apply to selected classes of taxpayers, namely, individuals, banks, insurers, development financial institutions, construction contractors and property developers. In relation to the Rules, the IRBM published its Guidelines on Restriction on Deductibility of Interest on 5 July 2019 (the Guidelines). The Guidelines provide detailed explanation into the interpretation of the Rules by the IRBM together with examples of how the Rules will be applied. However, the Guidelines have no legal effect. There are inconsistencies in relation to the scope in covering the domestic and cross-border related party financial assistance as depicted by Section 140C of the MITA, the Rules and the Guidelines. The Guidelines appear to limit the scope of the restriction on the deductibility of interest to cross-border transactions only. However, the wording of Section 140C of the MITA seem to have a wider scope which covers both domestic and cross border related party financial assistance. Following the issuance of the Guidelines, can the IRBM decide to expand the scope of Section 140C of the MITA to cover domestic financing arrangements as well? Although the Guidelines do not have the force of law, are they binding on the Director General of Inland Revenue? In light of the restriction on the deductibility of interest in relation to financial assistance in controlled transactions, taxpayers in Malaysia with cross-border financing arrangements should ascertain whether their interest expense exceeds 20% of their tax-EBITDA and ensure compliance with the provisions of the MITA and the Rules.

Interest restriction is inapplicable where the total amount of interest expense in respect of all financial assistance is equal to or less than RM500,000 in a YA. In addition, the Rules do not apply to selected classes of taxpayers, namely, individuals, banks, insurers, development financial institutions, construction contractors and property developers.

CONCLUSION

In conclusion, it is evident from the above analysis of the tax treatments of interest in Malaysia that the law has changed significantly. Generally, interest income is subject to tax when it is received, and interest expense is deductible when it is incurred. In the event of a loan between related parties, anti-avoidance provisions will be invoked to synchronise the deduction of interest expense with the taxing of the interest income. The tax law relating to interest will continue to evolve with the various types of transactions carried out by individuals, companies and organisations. All stakeholders must work hand-in-hand to ensure that the tax collection and tax compliance process benefits the nation as a whole. Frequent dialogues and discussions must be held between the tax authorities, taxpayers, tax agents and the business owners before a new tax law is implemented.

Disclaimer: This article does not seek to address all issues associated with interest income and interest expense. All views expressed herein are purely the personal opinions of the authors.

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InternationalNews

The column only covers selected developments from countries identified by the CTIM and relates to the period 16 November 2020 to 15 February 2021.

CHINA (PEOPLE'S REP.)

China Amends Withholding Rule for Low Income Employees

Effective 1 January 2021, a withholding agent (employer) will not be required to withhold individual income tax (IIT) from the wages and salaries of a resident individual whose annual employment income in the preceding year is less than CNY 60,000. This is because the employer may take the annual total amount of the standard deduction (i.e. CNY 60,000 a year) into account when withholding the IIT.

The withholding agent is still required to file a tax return for the relevant resident individual, but should include a footnote in the tax return stating that "the annual income of the preceding year is less than CNY 60,000". However, once the accumulated wages or salaries of the employee have exceeded CNY 60,000 in a certain month, IIT will be withheld in that month and the remaining months of the current tax year.

The withholding rule equally applies to income from personal services derived by a resident individual in respect of which the payer has a withholding obligation. The new rule is published in SAT Public Notice [2020] No. 19 issued on 4 December 2020.

China Updates Rule on Deduction of Advertisement and Promotion Expenses

From 1 January 2021 to 31 December 2025, enterprises in the cosmetic, pharmacy and (non-alcoholic) beverage industries will be able to claim deductions on advertisement and promotion expenses, limited to 30% of current year sales. Excess expenses may be carried forward to future tax years for subsequent deduction. Where associated enterprises have entered into a cost sharing agreement on advertisement and promotion expenses, one of the parties to the agreement may choose to deduct such expenses or to allocate part or all of the expenses to another party to the agreement for deduction, provided that the deductible amount does not exceed the 30% limitation. The other party may, in computing its own deduction limitation, exclude the part of the expenses allocated to it.

Nonetheless, advertisement and promotion expenses incurred by tobacco industries are not deductible for enterprise income tax purposes.

The new rule is laid down in Circular [2020] No. 43 jointly issued by the MoF and the State Taxation Administration on 27 November 2020 and will supersede

the Circular [2017] No.41 (which will be abolished effective 1 January 2021) on the same subject.

HONG KONG

Hong Kong Abolishes Doubled Ad Valorem Stamp Duty on Non- Residential Property Transactions

The Chief Executive of the Hong Kong Special Administrative Region announced in her Policy Address the abolition of doubled ad valorem stamp duty (DSD) on non-residential property transactions. In this regard, the ad valorem stamp duty rates chargeable on nonresidential property transactions will revert to the Scale 2 rates effective 26 November 2020.

The abolition of DSD is intended to facilitate the selling of non-residential property by businesses that are encountering financial difficulties or liquidity needs because of the economic downturn, and mitigate the impact of the COVID-19 pandemic on Hong Kong's economy and business activities.

Hong Kong Considers Tax Concessions for Carried Interest

The government has proposed tax concessions for carried interest distributed by eligible private equity funds operating in Hong Kong, including exemption from profits tax and salaries tax.

In this regard, the government published the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021 in the Gazette of 29 January 2021. Carried interest refers broadly to a return linked to the performance of an investment of a private equity fund, typically upon the disposal of the investment after it has been held for a period of time. The Bill exempts eligible carried interest from profits tax, while 100% of eligible carried interest will be excluded from employment income for the calculation of salaries tax. In addition, the Bill also proposes to expand the classes of assets that may be held and administered by a special purpose entity on behalf of a fund for the purpose of a profits tax exemption regime for funds, with a view to facilitating the operation of funds in Hong Kong. The Bill will be introduced into the Legislative Council for first reading on 3 February 2021.

INDIA

Union Budget 2021 – Highlights

On 1 February 2021, the Finance Minister presented the Union Budget 2021/22 before Parliament. The key highlights of the amendments introduced in the Finance Bill 2021 are summarized below.

Corporate tax

- There will be no change in the corporate tax rate.
- Late deposit of employees' contribution to the provident fund by employers shall not be allowed as a deductible expenditure in the hands of the Company.
- Goodwill (other than acquisition of goodwill by purchase) of a business or profession shall not be considered as an asset and therefore not be eligible for depreciation.

Personal tax

- There will be no change in the slab rates for individuals.
- Additional annual deduction of INR 150,000 for interest on a loan taken for first time purchase of affordable housing property will be available up to 31 March 2022.
- New rules were proposed for the removal of double taxation for non-resident Indians (NRIs).

Incentives for financial services

- Dividend payments to real estate investment trusts (REITs) and infrastructure investment trust (InvITs) shall be exempt from tax deducted at source (TDS).
- Advance tax liability on dividend income shall arise only after declaration or payment of dividend.
- For foreign portfolio investors, treaty rates can be availed for withholding tax (WHT) on dividend income.
- To further incentivize operations of units in the International Financial Services Centre (IFSC) in GIFT City, the Finance Minister proposed to allow an exemption on capital gains for aircraft leasing companies, a tax exemption for aircraft lease rentals paid to foreign lessors, a tax incentive for relocating foreign funds in the IFSC and to allow a tax exemption for the investment division of foreign banks located in the IFSC.
- To incentivize investment in eligible start-ups, the eligibility for claiming a tax holiday for start-ups is extended by 1 more year – until 31 March 2022. Further, in order to incentivize funding of start-ups, the capital gains exemption for investment in startups is also extended by one more year - until 31 March 2022.

Tax administration and other measures

- Relief measures will be granted to senior citizens by removing the need to file income tax returns for those aged 75 years and above, having only pension and interest income. Paying banks will be required to deduct the necessary tax on their income.
- Details of capital gains, dividend income, income from listed securities and interest income from bank deposits will also be pre-filled in the income tax return form.
- The following amendments on tax audit, assessment and appellate proceedings were proposed:
  - The tax audit limit will be increased from INR 50 million to INR 100 million for persons carrying out 95% of their transactions digitally.
  - The time limit for re-opening income tax assessment cases will be reduced from 6 years to 3 years. Only in serious tax evasion cases, where there is evidence of concealment of income of INR 5 million or more in a year, can reassessment be opened for up to 10 years.
  - A National Faceless Income Tax Assessment Tribunal (ITAT) Centre will be set up. All communication between the ITAT and the appellant shall be electronic. Where personal hearing is needed, it shall be done through videoconferencing.
  - A dispute resolution committee will be created for small taxpayers with taxable income up to INR 5 million and disputed income up to INR 1 million.
- The definition of the term "slump sale" will be amended so that all types of "transfers" as defined in section 2(47) of the Income Tax Act are included within its scope.
- NRIs will be allowed to operate one person companies in India.

INDONESIA

Indonesia Introduces Tax Exemptions under New Law on Job Creation

Indonesia has introduced various tax exemptions under the new Law on Job Creation. The key changes to the Income Tax Law (ITL) are summarized below.

Tax exemptions will be introduced for the following types of income:

- dividends received or derived by a resident company, cooperative or state-owned enterprise from participation in another company established in Indonesia;
- domestic dividends, if received by a domestic individual as long as it is invested in Indonesia for a specific time period;
- foreign dividends received by a resident company or resident individual from foreign entities and income after tax of an overseas permanent establishment, as long as:
  - the dividend distributed or income after tax is at least 30% of the profit after tax and it is invested or used to support other business activities in Indonesia for a specific time period; and
  - the dividend from a non-listed foreign entity is invested before the issuance of the tax assessment letter.
- surplus funds received/ obtained by a social and religious body or institution registered with the relevant agency, which is reinvested in the form of social and religious facilities and infrastructure within a maximum period of 4 years from the time the surplus was obtained, or placed as endowment funds;
- WHT rate on interest including premium and discount paid to non-residents which is currently subject to a final WHT at 20% on the gross amount may be reduced under a government regulation; and
- a foreign citizen individual who becomes a tax resident in Indonesia will be subject to tax only on the income received or sourced from Indonesia (not applicable to foreign citizen individuals claiming benefits under a tax treaty) provided that:
  - the individual possesses certain skills; and
  - the exemption is valid for 4 years from the date when the individual became a tax resident.

Indonesia has also amended the Value Added Tax (VAT) Law and the General Provision and Procedure on Taxes (GTL) Law under the new Law on Job Creation. Some of the key changes to the VAT Law and GTL Law are summarized below:

VAT Law

- The delivery or transfer of taxable goods on consignment basis will not be subject to VAT.
- The transfer of goods in exchange of shares for the purpose of capital injection will not be considered as transfer of taxable goods that are subject to VAT as long as the transferor and transferee are both taxable entrepreneurs.
- Input VAT on taxable goods or services which is directly related to the said goods or services can be credited by the taxable entrepreneur in the pre-operation phase (previously, creditable input VAT was limited to the acquisition or import of capital goods only). Where taxable goods or services are not delivered within 3 years from the first time the input VAT is credited, the input VAT can no longer be creditable.
- Input VAT will be creditable in the following situations:
  - deemed input VAT equal to 80% of the output VAT that should be collected before registering as a taxable entrepreneur;
  - input VAT that is not reported in the monthly VAT returns, but which is subsequently discovered during an audit, subject to conditions; and
  - input VAT that is charged through a tax assessment letter is now creditable from the assessed VAT, subject to conditions.
    - Coal mining products are no longer exempt from VAT.
    - Additional information about the purchaser should be included in a tax invoice, i.e. name, address, and identification number or passport number (for foreign individuals).

GTL Law

- Amendments to the tax administrative sanctions include the following:
  - the monthly interest will now be determined by the monthly interest rate issued by the Ministry of Finance (MOF), plus an additional rate which varies from 5%, 10% and 15% depending on the situation, and then divided by 12 months; and
  - the administrative penalty for taxable entrepreneurs who have not issued or issued incomplete tax invoices is lowered to 1% of the tax

base (previously, 2% of tax base).
- Adjustment of the interest compensation for taxpayers, where the monthly interest rate will be determined by the rate issued by the MOF divided by 12 months.
- Tax assessment letters will not be issued for tax criminal cases which already have a final and binding decision from the court.
- The statute of limitation for the issuance of a tax collection letter is 5 years.

Indonesia Issues Implementing Regulations on Tax Incentives for Special Economic Zones

The MoF has provided further details

on the tax incentives available for companies operating in special economic zones (SEZs) such as exemption from income tax, VAT, sales tax on luxury goods, import duties, tax on importation and excise duties.

In this regard, the MOF has issued Regulation No. 237/PMK.010/2020 (PMK-237) to implement the incentives announced under Government Regulation Number 12 of 2020. The salient features of PMK-237 are set out below.

A business entity (i.e. state-owned enterprises, region-owned enterprises, cooperatives, private companies and joint ventures) operating in SEZs may avail of the abovementioned tax incentives provided that the entity:
- is a resident corporate taxpayer conducting business activities in SEZs;
- is an entity approved by the authority to conduct business in SEZs;
- has clear boundaries in accordance with the stages of SEZ development; and
- has a business licence.

Meanwhile, a businessperson (i.e. companies with or without legal form or individual businesses) may avail of the above tax incentives provided that it is a resident corporate taxpayer conducting business in SEZs and has a business license.

Income tax
- A 100% reduction in corporate income tax (CIT) payable, provided that the investment is at least IDR 100 billion, may be granted to:
- business entities, on income received from the transfer or lease of land and/ or buildings in SEZ or income from other main business activities in SEZs, for a period of 10 years; or
- businesspersons, on income from investments in main business activities carried out in SEZs for the following time period:
  - 10 years: for investment between IDR 100 billion to 500 billion
  - 15 years: for investment between IDR 500 billion to 1 trillion
  - 20 years: for investment above 1 trillion
- After the expiration of the above-mentioned incentive period, eligible taxpayers will be granted a 50% reduction in CIT payable for 2 subsequent years.
- WHT will not apply to the abovementioned exempt income.
- Eligible taxpayers that invest at least IDR 100 billion in certain business fields and/or regions may be entitled to:
  - a 30% reduction in net income on the total investment on fixed assets (including the cost of land used for business purposes), reduced over 6 years at 5% each year;
  - accelerated depreciation allowances of up to 100% for the use of tangible and intangible assets, subject to conditions;
  - a reduced WHT rate of 10% (from 20%) or the treaty rate, whichever is lower, on dividend payments made to non-resident recipients rate, whichever is lower, on dividend payments made to non-resident recipients (except payments made to permanent establishments in Indonesia); and
  - compensation for losses for up to 10 years.

VAT and sales tax on luxury goods

Exemptions will apply on the importation, utilization or delivery of certain taxable goods, intangible goods and/ or services by eligible taxpayers in SEZs or between taxpayers in and outside SEZs, subject to conditions.

Import duties, tax on importation and excise duties

Exemptions will apply on the

importation of the following dutiable/taxable goods by qualified taxpayers, subject to conditions:

- on capital goods for the construction or development of SEZs for a maximum period of five years; and
- for taxpayers that process goods, on taxable goods (e.g. raw materials, auxiliary materials, machinery and equipment, etc.).

Taxpayers must comply with all the administrative requirements set out in PMK-237 in order to avail of the tax incentives.

Indonesia Further Extends Tax Incentives and Expands List of Eligible Business Sectors

The MoF has further extended the tax incentives period previously provided under Regulation No.110/PMK.03/2020 (PMK-110) and Regulation No.86/PMK.03/2020 (PMK-86) to eligible taxpayers and/or certain business sectors until June 2021 (previously, until December 2020). The MoF has also expanded the scope of eligible business sectors. The tax incentives remain the same as follows:

- WHT on employment income (article 21 of the Income Tax Law (ITL)) will be borne by the government for employees earning annual income not exceeding IDR 200 million;
- 0.5% final tax on the gross revenue of qualifying small and medium-sized enterprises will be borne
- by the government;
- 50% reduction of monthly corporate tax instalments (article 25 of the ITL;
- final tax on income of certain construction services will be borne by the government;
- preliminary refund of VAT of not more than IDR 5 billion; and
- exemption from the collection of import tax (article 22 of the ITL).

Taxpayers claiming the tax incentives are required to submit a monthly realization report in the prescribed format via www.pajak.go.id by the twentieth day of the following month.

Eligible employers or taxpayers in relation to the article 21 of the ITL and final income tax incentives that have yet to submit realization reports for tax year 2020 must submit any outstanding reports by 28 February 2021 in order to take advantage of the incentives for tax year 2020.

Taxpayers who have submitted the notifications or applications under the earlier regulations for utilization of the incentives related to articles 21, 22 and 25 of the ITL, are required to re-submit a notification or application for tax year 2021 by 15 February 2021 to avail of the said incentives from January 2021. The expanded list of eligible taxpayers and other administrative requirements are set out in MoF Regulation No.9/PMK.03/2021

(PMK-9) dated 2 February 2021.

SINGAPORE

Singapore Clarifies Tax Treatment of Foreign Digital Taxes

The Inland Revenue Authority of Singapore (IRAS) has clarified the tax treatment of the following taxes imposed by foreign jurisdictions on digital transactions for persons subject to tax in Singapore:

- taxes imposed as income tax are not deductible under Section 15(1)(g) of the Income Tax Act (ITA); and
- taxes imposed as turnover tax, such as India's equalization levy and the United Kingdom's digital services tax, are generally deductible under Section 14(1) of the ITA.

The said tax treatment is based on existing provisions of the ITA.

Singapore Issues Intellectual Property Income Regulations

The MoF has issued the regulations that set out the determination of intellectual property (IP) income subject to the concessionary tax rate under Section 43ZI(5) of the Income Tax Act (ITA), deemed income subject to the regular corporate tax rate and record-keeping requirements for an approved company.

The salient features of the regulations are summarized below.

Percentage and computation of qualifying intellectual property income subject to concessionary tax rate

The percentage of qualifying intellectual property income earned by an approved company during a taxable period that falls within the tax relief period from each elected qualifying IP right subject to the concessionary tax rate under section 43ZI(5) of the ITA is determined using the following formula:

$$\frac{C * 130\%}{C + D}$$

where:

C = sum of the following expenditure incurred or made in the periods with records by the approved company, less excluded expenditure:

- expenditure incurred, except under a cost-sharing agreement, for connected research and development (R&D) carried out directly by or carried out on behalf of the approved company; and
- payments made under a cost-sharing agreement (not being an excluded cost-sharing agreement) to carry out connected R&D; and

D = sum of the following expenditure incurred or made in the periods with

records by the approved company, less excluded expenditure:

- expenditure incurred in obtaining a specified right from another person, except under a cost-sharing agreement;
- expenditure incurred for connected R&D carried out on behalf of the approved company by a non-resident related party or where the R&D is not carried out in Singapore;
- payments made under an excluded cost-sharing agreement to carry out connected R&D; and
- payments made in order to become a party to a cost-sharing agreement (to the extent that the payments were made to obtain a specified right).

The above-mentioned expenditure, in relation to the computation of the percentage, may be modified in the absence of records before or on or after the approval date of the company.

Deemed income

Where an approved company is subject to the concessionary tax rate for qualifying IP income derived from a patent application and the Comptroller discovers that the approved company has ceased to have the patent application in any year of assessment, the approved company will be deemed to have derived an income subject to the regular tax rate under Section 43(1) (a) of the ITA in the basis year.

Record-keeping requirements

An approved company:

- beginning on the approval date must keep records of all pertinent expenditures, information and details of qualifying IP income; and
- must provide information on any qualifying IP right that ceases or becomes part of the elected family of qualifying IP rights in the tax return for the year of assessment in which it elects or is treated as having elected a family of qualifying IP rights for the purposes of availing the concessionary tax rate.

The regulations came into effect on 22 January 2021.

Singapore Clarifies Additional Deductions for Research and Development

On 29 January 2021, the Inland Revenue Authority of Singapore (IRAS) issued an updated e-Tax Guide to clarify that the additional deduction for qualifying research and development (R&D) expenditure

under Section 14DA(1) of the Income Tax Act (ITA) for the years of assessment (YAs) 2019-2025 is 150% of the qualifying expenditure.

Under the previous e-Tax Guide of 1 December 2017, the additional deduction for qualifying R&D under section 14DA(1) of the ITA for YAs 2009-2025 was set at 50% of the qualifying expenditure. The rate was subsequently amended in Act 45 of 2018.

In addition, the IRAS lowered the threshold of the preclaim scheme from SGD 20 million to SGD 15 million. The scheme is available to large and complex projects and was implemented to provide upfront certainty for R&D claims.

Singapore Tightens Rules for Claiming Input Tax

The IRAS has clarified that taxpayers will not be entitled to claim input tax for goods and services tax (GST) purposes on purchases that they knew or should have known to be part of a missing trader fraud (MTF) arrangement, notwithstanding that all conditions for claiming the input tax have been satisfied, effective 1 January 2021.

In this regard, the IRAS introduces the Knowledge Principle, based on which a taxpayer should have known that a supply is part of an MTF arrangement if:

- the circumstances connected to the supply made to or by the taxpayer carried reasonable risk that the supply may be part of an MTF arrangement; and

the taxpayer did not take reasonable steps to ensure that the supply was part of such an arrangement; or

the taxpayer took reasonable steps but:

- concluded that the supply was not part of such an arrangement and the conclusion is not one that a reasonable person would have made;
- was unable to conclude that the supply was not part of such an arrangement; or
- did not make any conclusion as to whether the supply was or was not part of such an arrangement.

The IRAS updated the guides to include the Knowledge Principle in the conditions for claiming input tax for businesses in general; motor vehicle traders; biomedical industry; prior to GST registration; and with respect to fringe benefits.

The Knowledge Principle aims to counter such MTF arrangements by ensuring that all businesses across the supply chain take equal responsibility to undertake the necessary precautions and be accountable for the GST arising from transactions therein.

The aforementioned input tax disallowance was introduced in the GST (Amendment) Act 2020.

THAILAND

Thailand Approves Additional Incentives for Investments in Large Scale Projects and Digital Technology Adoption

The Board of Investments (BoI) has approved incentives, including an additional 50%CIT deduction ranging from three to five years for approved projects and existing businesses that invest in digital technology adoption, to accelerate investments and promote digitalization.

The following incentives were announced in a press release on 21 December 2020:

- projects with investments of at least THB 1 billion realized within 12 months from the issuance of the promotion certification will be eligible for an additional 50% CIT deduction for five years, applicable after the standard 5-8 years CIT exemption. Applications for the incentive must be submitted from 4 January 2021 to the last working day of 2021;
- approved applications from existing businesses of all sizes for investments under the digital technology adoption program in systems and activities, such as software integration, artificial intelligence, machine learning or big data analytics by the end of 2022 will be granted a 3-year 50% CIT deduction on their existing business; and
- the application period to avail of the incentives scheme for investments in special economic zones and certain districts in the five southernmost provinces is extended by 2 years until the end of 2022.

Thailand Approves Additional Tax Relief and Social Security Contribution Reduction for Individuals and Businesses

On 12 January 2021, the government approved additional tax and social security contribution relief, among other benefits, for individuals and businesses in view of the ongoing COVID-19 pandemic. The measures are summarized as follows:

- personal tax exemption for financial aid granted to individuals under several government subsidy programs to stimulate domestic spending, such as the co-payment scheme for qualified purchases, domestic travel subsidy, travel subsidy for health volunteers and officials of certain hospitals, and unemployment benefits;
- reduction of WHT rates to 2% (from 5% and 3%, respectively) for payment of income through the e-WHT system from 1 October 2020 to 31 December 2022;
- double deduction for investments by companies in the digital or electronic tax system from 1 January 2020 to 31 December 2022; and
- further extension of the reduction of social security contributions to 3% from 1 January 2021 to 31 March 2021 for both employers and employees.

Thailand To Impose 7% VAT on Digital Services

A standard VAT rate of 7% on foreign electronic services (e-services) sold or delivered in Thailand will take effect from 1 September 2021.

Non-resident sellers of e-services (including intangible properties delivered electronically) that provide such services to consumers in Thailand that are not VAT registered will be liable to register for VAT, collect and remit the VAT without deduction for input tax and file VAT returns.

However, if a non-resident seller provides the e-services through an electronic platform (e-platform) that supports a continuous process from the payment and delivery of such services and other activities, as may be prescribed by the Revenue Department, the operator of the e-platform will be liable to collect and remit the VAT on behalf of the non-resident seller without the need to provide separate details for each foreign seller to the Revenue Department.

Non-resident sellers that provide foreign e-services to consumers in Thailand that are not VAT registered cannot issue tax invoices.

The imposition of VAT on e-services was gazetted on 10 February 2021.

VIETNAM

Vietnam Announces Incentive for Donations by Companies

Donations made by companies to support activities that prevent and control the COVID-19 pandemic will be allowed as deductible expenses in determining the taxable income.

The government announced the above incentive in Resolution 128/2020/QH14 of 12 November 2020. Resolution 128/2020/QH14 also outlined the government's focus in combating tax loss, tackling transfer pricing and tax evasion issues, issuance of electronic invoices, reforming the tax agencies and other prevalent issues, which form part of the measures in administering the State budget for 2021.

Implementing regulations will be issued and reported in due course.

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

The technical updates published here are summarised from selected government gazette notifications published between 17 November 2020 and 16 February 2021, including Public Rulings (PRs) and guidelines, if any, issued by the Royal Malaysian Customs Department and other regulatory authorities.

INCOME TAX

Incentives for food production projects

Food production projects as approved by the Minister of Finance (MoF) for the planting of vegetables, fruits, kenaf, herbs or spices; rearing of cows, buffaloes, goats or sheep and aquaculture and deep-sea fishing, qualify for certain tax incentives where applications were received by the Ministry of Agriculture and Agro-Based Industry by 31 December 2015. The incentives are as follows:

- For a company that makes an investment in a subsidiary company undertaking a new food production project, a tax deduction equivalent to the amount of investment made in that subsidiary for that year of assessment (YA)
- For a company carrying out new food production projects, a 100% income tax exemption of the statutory income for 10 YAs, or
- For a company carrying out an expansion of an existing food production project, a 100% income tax exemption of the statutory income for five YAs

In Budget 2016, the government, recognizing that it needs to continue to support the development and growth of the agro-food industry, proposed to extend the application period of the incentives for another five years, to 31 December 2020. It was also proposed that the list of approved food projects that qualify for tax incentives be extended. To legislate the above proposals, the following Exemption Order and Rules were gazetted on 24 December 2020 and are deemed to have come into operation on 1 January 2016.

(a) Income Tax (Exemption) (No. 6) Order 2020 [P.U.(A) 373]

The Order provides that a qualified person (which includes companies, sole proprietorships, partnerships and associations solely engaged in agriculture or fishery) that is resident in Malaysia is exempted from the payment of income tax in relation to:

- A new project for a period of 10 consecutive YAs in respect of its statutory income, commencing from the first YA in which the qualified person derived statutory income in relation to that project, or
- An expansion project for a period of five consecutive YAs in respect of its statutory income from the expansion project, commencing from the first YA in which the qualified person derived statutory income in relation to the expansion project, and the first YA shall not be earlier than the YA in the basis period in which the date of approval from the relevant Minister falls

(b) Income Tax (Deduction of Investment in New Food Production Project or Expansion Project) Rules 2020 [P.U.(A) 374]

The Rules provide that in ascertaining the adjusted income of a company which has made an investment in its related company undertaking a new or expansion project under the Income Tax (Exemption) (No. 6) Order 2020, there shall be allowed a deduction equivalent to the value of investment (as defined) for the sole purpose of financing the new or expansion project in the basis period for a YA.

Tax deduction on costs for renovation and refurbishment of business premises

As part of the First Economic Stimulus Package announced on 27 February 2020, it was proposed that a tax deduction of up to RM300,000 be given on costs for renovating and refurbishing business premises, where such costs are incurred between 1 March 2020 and 31 December 2020. Thereafter, in the Short-term Economic Recovery Plan announced on 5 June 2020, it was proposed that the tax deduction be extended to cover such costs incurred until 31 December 2021.

To legislate this, the Income Tax (Costs of Renovation and Refurbishment of Business Premise) Rules 2020 [P.U.(A) 381] were gazetted on 28 December 2020. The Rules provide that in ascertaining the adjusted income of a person from its business for a YA, there shall be allowed a deduction, capped at RM300,000, for the costs of renovation and refurbishment of a business premise incurred by the person from 1 March 2020 until 31 December 2021, and used for the purpose of its business. The

Rules provide a list of the qualifying costs (which should be certified by an external auditor) and a list of the non-qualifying costs.

Deduction for issuance of sustainable and responsible investment sukuk extended to YA 2023

The Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) Rules 2017 [P.U.(A) 221], gazetted on 28 July 2017, provide that a deduction shall be allowed for the expenditure incurred by a company on the issuance or offering of a Sustainable and Responsible Investment (SRI) sukuk, approved or authorized by, or lodged with, the Securities Commission Malaysia (SC) under the Capital Markets and Services Act 2007. To qualify for the deduction, 90% of the proceeds raised from the issuance or offering of the SRI sukuk must be used solely for the purpose of funding the SRI project specified in the guidelines issued by the SC. The Rules are effective from YA 2016 until YA 2020.

In Budget 2020, it was proposed that the above-mentioned tax deduction be extended for another three years, until YA 2023.

To legislate this, the Income Tax (Deduction for Expenditure on Issuance or Offering of Sustainable and Responsible Investment Sukuk) (Amendment) Rules 2021 [P.U.(A) 2] were gazetted on 6 January 2021. The Amendment Rules provide that for the purpose of the Rules, a "company" would now mean a company resident in Malaysia which is:

a) Incorporated, or deemed to be registered, under the Companies Act (CA) 2016, or
b) Incorporated under the Labuan Companies Act 1990

Extension of tax incentive for issuance of sukuk under the principles of Wakalah

In Budget 2020, it was proposed that the tax deduction for issuance cost and further deduction on additional issuance cost of sukuk under the principles of Wakalah be extended for another five years, until YA 2025.

To legislate the above, the Income Tax (Deduction for Expenditure on Issuance of Sukuk and Retail Sukuk Structured Pursuant to Principles of Wakalah) Rules 2021 [P.U.(A) 5] were gazetted on 12 January 2021. The Rules provide that the following "expenditure" or "additional expenses" incurred by a company on the issuance of sukuk or retail sukuk shall be allowed as a deduction (single and/or double) in ascertaining the adjusted income of the company from its business for a YA:

(a) Single deduction on the expenditure incurred on the issuance of sukuk structured pursuant to the principles of Wakalah comprising mixed asset and debt components:
    (i) Approved or authorized by, or lodged with, the Securities Commission Malaysia (SC) under the Capital Markets and Services Act 2007 (CMSA), or
    (ii) Approved by the Labuan Financial Services Authority (LFSA) established under the LFSA Act 1996

and

(b) Single deduction on the "expenditure" and double deduction on the "additional expenses" incurred on the issuance of retail sukuk structured pursuant to the principles of Wakalah comprising mixed asset and debt components and approved or authorized by the SC under the CMSA

The Rules are effective from YA 2021 until YA 2025.

Flexible Work Arrangement incentives

a) Income Tax (Exemption) Order 2021 [P.U.(A) 30] – effective for YA 2020
   The Order, gazetted on 26 January 2021, provides that in ascertaining the gross income from his employment for a YA, an employee is exempted from the payment of income tax on the value of benefit (in the form of a smartphone, tablet or personal computer) received from his employer. The value of benefit is capped at RM5,000.
b) Income Tax (Deduction for Value of Benefit given to Employees) Rules 2021 [P.U.(A) 31] – effective for YA 2020

The Rules, gazetted on 26 January 2021, provide that in ascertaining the adjusted income of a Malaysian resident from his business for a YA, a deduction shall be allowed for the value of benefit (for the purchase of a smartphone, tablet or personal computer) given to his employee.

Tax incentives for the employment of senior citizens, ex-convicts, parolees, supervised persons and ex-drug dependents

To further encourage the employment of senior citizens (i.e. those above 60 years of age), ex-convicts, parolees, supervised persons and ex-drug dependents, the Government proposed in Budget 2021 that the further deductions given on the remuneration of such individuals employed in a full-time capacity be extended to YA 2025. The monthly remuneration for employees in these categories cannot exceed RM4,000.

This proposal has now been legislated pursuant to the Income Tax (Deduction for Employment of Senior Citizen, Ex-Convict, Parolee, Supervised Person and Ex-Drug Dependant) (Amendment) Rules 2021 [P.U.(A) 47] which were gazetted on 9 February 2021.

Further extension of special deduction on rental discounts given to SME tenants

In the recent wrapping-up speech on Budget 2021 on 26 November 2020, the Government announced that the special deduction given to property owners who provide at least 30% rental discounts to small and medium enterprises (SMEs) will be extended further for another six months, until March 2021. The Perlindungan Ekonomi & Rakyat Malaysia (PERMAI) Assistance Package announced by the Prime Minister on 18 January 2021 expands this special deduction to cover the rental reduction also given to non-SMEs. This special deduction period will also be extended until 30 June 2021.

Double deduction for COVID-19 screening costs borne by employers

Following the announcement of the (PERMAI) Assistance Package on 18 January 2021, the Finance Minister of Malaysia, Tengku Dato' Sri Zafrul Tengku Abdul Aziz has further announced that as part of the PERMAI Assistance Package, employers who bore the COVID-19 screening costs for their employees from 1 January to 31 December 2021, will be eligible for a double deduction.

Public Ruling No. 12/2020 – Tax Incentive for Angel Investor

PR No. 12/2020: Tax Incentive for Angel Investor, dated 17 November 2020, was issued to replace PR No. 11/2015 (dated 16 December 2015). The contents of the new PR are broadly similar to the earlier PR. The PR has been updated mainly to reflect the extension of the application period for the tax exemption for angel investors, which was legislated via the following amendment orders:

- Income Tax (Exemption) (No. 3) 2014 (Amendment) Order 2017 dated 27 December 2017, which extended the application period to 31 December 2020, and
- Income Tax (Exemption) (No. 3) 2014 (Amendment) Order 2019 dated 31 December 2019, which further extended the application period to 31 December 2023

The new PR has also been updated to clarify that to qualify for the exemption, the amount of investment made per annum must not be less than RM5,000 and must not exceed RM500,000.

Updated tax audit framework on finance and insurance

The Inland Revenue Board of Malaysia (IRBM) has issued on its website the updated Tax Audit Framework – Finance and Insurance (TAF), dated 18 November 2020. This new TAF replaces the earlier TAF (2015 TAF) that was effective from 1 June 2015. The contents of the new TAF are broadly similar to those of the earlier framework and apply specifically to taxpayers in the finance and insurance industries. The new TAF is updated to be in line with the general Tax Audit Framework that was issued on 15 December 2019.

Updated tax collection framework

The IRBM Tax Collection Framework dated 3 February 2021 replaces the IRBM Tax Collection Framework (Amendment 1/2016) dated 20 April 2016. It provides further clarity and takes into account administrative changes and amendments in the tax legislation.

2021 income tax return filing programme

The 2021 income tax return filing programme (2021 filing programme) titled "Return Form (RF) Filing Programme For The Year 2021" has been issued by the IRBM and it is broadly similar in concept to the position laid out in the original 2020 filing programme. Where a grace period is given, submissions shall be deemed to have been received by the stipulated due date if received within the grace period. The grace period also applies to the settlement of the balance of tax payable under Section 103(1) of the Income Tax Act (ITA). Where the income tax return form or balance of tax payable is not furnished within the grace period, the original due date will be taken for the purpose of calculating penalties.

Practice Note No. 4/2020: Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or LLP

The IRBM has issued Practice Note (PN) No. 4/2020: Clarification on Determining the Gross Income from Business Sources of not more than RM50 million of a Company or Limited Liability Partnership (LLP), dated 21 December 2020. This new PN replaces PN No. 3/2020, which was issued on 18 May 2020. The contents of the new PN are broadly similar to the earlier PN, with additional clarifications on the tax treatment for the two scenarios outlined below:

- The company or LLP carrying on a business does not have gross business income but has current year business losses instead.
- The company or LLP does not have gross business income but has current year business losses instead due to the temporary closure of its business operations.

Updated Transfer Pricing Guidelines

Paragraph 11.2.3 of 11.3.5 of Chapter XI of the Transfer Pricing (TP) Guidelines have been updated such that TP documentation should be made available within 14 days upon request by the IRBM for TP audit cases which have commenced on or after 1 January 2021 and penalty will not be imposed in cases where this requirement is complied with.

Updated guidelines for upstream petroleum industry tax incentive claim

The IRBM has published on its website, updated guidelines for upstream petroleum industry tax incentive claims dated 30 December 2020. The new 2020 Guidelines replace the earlier Guidelines dated 22 May 2014.

The new Guidelines are broadly similar to the earlier guidelines, and provide clarification on whether chargeable persons undertaking petroleum operations in marginal fields and in fields that require intensive capital investment, would qualify for the incentives listed below:

- Petroleum Income Tax (Accelerated Capital Allowances) (Marginal Field) Rules 2013 [P.U.(A) 119] as amended by the Petroleum Income Tax (Accelerated Capital Allowances) (Marginal Field) (Amendment) Rules 2014 [P.U.(A) 58]
- Petroleum Income Tax (Exemption) Order 2013 [P.U.(A) 122] (as amended by the Petroleum Income Tax (Exemption) (Amendment) Order 2014 [P.U.(A) 57]
- Petroleum Income Tax (Marginal Field) Regulations 2013 [P.U.(A) 121]
- Petroleum Income Tax (Investment Allowances) Regulations 2013 [P.U.(A) 120] (as amended by the Petroleum Income Tax (Investment Allowance) (Amendment) Regulations 2014 [P.U.(A) 69]

Updated guidelines for submission of estimated tax payable

The IRBM has published on its website, Operational Guidelines No. 1/2021 (Guidelines) dated 22 December 2020, to replace the earlier Operational Guidelines No. 1/2017 dated 23 February 2017. The new Guidelines are broadly similar to the earlier guidelines and provide clarification on the procedures for the submission of tax estimation forms.

Update on Malaysia's double tax agreement with Cambodia

The Malaysia-Cambodia double taxation relief agreement (DTA), which was signed on 3 September 2019, entered into force on 28 December 2020 and is effective from 1 January 2021. The following table summarizes some of the withholding tax rates under the DTA in respect of payments from Malaysia to a Cambodian resident:

Payments	Withholding tax rate	
	Normal rate	DTA rate
Interest	15%	0% / 10% Note
Royalties	10%	10%
Fees for technical services	10%	10%

Note:
The 0% applies if the recipient is the Government of Cambodia or certain qualifying institutions of Cambodia. In other cases, the 10% rate applies.

Frequently Asked Questions on International Tax issues due to the COVID-19 Travel Restrictions

The IRBM has recently published an updated version of the "Frequently Asked Questions on International Tax Issues due to the COVID-19 Travel Restrictions" (FAQs) document, dated 9 February 2021, which addresses questions pertaining to the following:

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

MIDA guidelines and procedures for the application of automation capital allowance for the manufacturing and services sectors

The Automation Capital Allowance (ACA) incentive is now available for the manufacturing and services sectors, until YA 2023. The incentive will apply to applications received by the Malaysian Investment Development Authority (MIDA) from 1 January 2020 to 31 December 2023.

As such, MIDA has issued the guidelines and procedures for the application of

ACA. The guidelines also explain the application process, the documents which are to be furnished in support of the application, and the procedures for the application.

In addition to the guidelines, further details are also available on the MIDA website [Forms & Guidelines - MIDA | Malaysian Investment Development Authority → Services Sector or Manufacturing Sector → Automation Capital Allowance].

Guidelines on the application for green technology tax incentives

In Budget 2020, the government proposed to extend the green technology incentives for another three years (i.e. until YA 2023) and expand the scope of the incentives to include companies undertaking solar leasing activities.

In line with the above-mentioned proposals, the updated "Guidelines for Green Technology Tax Incentive (GITA / GITE)" were recently published on the MyHijau website to provide guidance on the following tax incentives:

(a) Green Investment Tax Allowance (GITA) Assets
(b) Green Investment Tax Allowance (GITA) Project
(c) Green Income Tax Exemption (GITE) Services
(d) Green Income Tax Exemption (GITE) Leasing

As applications for GITA Assets are to be submitted to the Malaysian Green Technology and Climate Change Centre (MGTC), whereas applications for the remaining incentives (i.e. Points (b) to (d) above) are to be submitted to the Malaysian Investment Development Authority (MIDA), MIDA has also published on its website the latest "Guidelines on application for incentive and/or expatriate posts for green technology" dated 25 January 2021, to explain the incentives under its care.

REAL PROPERTY GAINS TAX

Real property gains tax exemption on the disposal of low-cost, medium-low and affordable residential homes

The Real Property Gains Tax (Exemption) Order 2018 [P.U.(A) 360], gazetted on 28 December 2018, provides that a Malaysian citizen individual is exempted from real property gains tax (RPGT) on the chargeable gain derived from the disposal of a chargeable asset, other than shares, from 1 January 2019. This Order will apply only if:

(a) The disposal of the chargeable asset is made in the sixth year after the acquisition date of the chargeable asset, or any year thereafter; and
(b) The disposal consideration of the chargeable asset is not more than RM200,000.

Following the above, the Real Property Gains Tax (Exemption) 2018 (Amendment) Order 2021 [P.U.(A) 48] was gazetted on 9 February 2021. The Amendment Order provides that in addition to point (a) above, the exemption will now apply only if:

(i) The disposal consideration or market value, whichever is the higher, of the chargeable asset is not more than RM200,000; and
(ii) The total consideration or market value, whichever is the higher, of the chargeable asset, as a whole, is not more than RM200,000.

STAMP DUTY

Stamp duty exemption on the instrument of loan or financing agreement executed between Bank Negara Malaysia and a financial institution

The Stamp Duty (Exemption) Order 2020 was gazetted on 14 May 2020 to provide stamp duty exemption on the instrument of loan or financing agreement relating to the Special Relief Facility executed between a small and medium enterprise (SME) and a financial institution (FI).

Following the above, the Stamp Duty (Exemption) (No. 6) Order 2020 [P.U.(A) 328] was gazetted on 10 November 2020 to provide stamp duty exemption on the instrument of loan or financing agreement relating to the Special Relief Fund (SRF) under Bank Negara Malaysia (BNM)'s Fund for SMEs, executed between BNM and a participating FI between 1 June 2020 and 31 December 2020.

Stamp duty exemption on financing agreements under the TSPKS and IPPKS financing programmes

The Stamp Duty (Exemption) (No. 7) Order 2020 [P.U.(A) 379], gazetted on 28 December 2020, provides stamp duty exemption on the financing agreements under the Oil Palm Smallholders Replanting (TSPKS) and the Oil Palm Smallholders Agriculture Input (IPPKS) financing programmes pursuant to the Tawarruq concept, executed between an individual and Bank Pertanian Malaysia Berhad (Agrobank). The exemption will apply to financing agreements executed between 24 July 2019 and 31 December 2021.

The Order is effective 24 July 2019.

Stamp duty exemptions on instruments for the purchase of a flat under the PPR-MTEN and PA DBKL programmes

The Stamp Duty (Exemption) (No. 8) Order 2020 [P.U.(A) 423], gazetted on 31 December 2020, provides stamp duty exemption on qualifying instruments for the purchase of a flat under the National Economic Action Council's People Housing Programme (PPR-MTEN) and Dewan Bandaraya Kuala Lumpur (DBKL)'s Public Housing Programme (PA DBKL), which are executed between 1 January 2020 and 31 December 2024.

Stamp duty exemptions extended to 31 December 2025

Stamp duty exemptions to revive abandoned housing projects	
Stamp duty (Exemption) (No. 5) 2013 (Amendment) Order 2020 [P.U.(A) 395]	This Order amends the Stamp Duty (Exemption) (No. 5) Order 2013 [P.U.(A) 91] that provides stamp duty exemption on the relevant instruments executed by the original house purchaser.
Stamp Duty (Exemption) (No. 6) 2013 (Amendment) Order 2020 [P.U.(A) 396]	This Order amends the Stamp Duty (Exemption) (No. 6) Order 2013 [P.U.(A) 92] that provides stamp duty exemption on the relevant instruments executed by a rescuing contractor or developer approved by the Minister of Housing and Local Government (MHLG).
Stamp duty exemption on Tenang Insurance products	
Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2020 [P.U.(A) 397]	This Order amends the Stamp Duty (Exemption)(No. 5)(2018) Order 2018 [P.U.(A) 359] that provides stamp duty exemption on any insurance policies and takaful certificates for Perlindungan Tenang products issued by a licensed insurer or a licensed takaful operator until 31 December 2025, with an annual premium or takaful contribution not exceeding RM100.
Stamp duty exemption for sale and purchase transaction of an exchange-traded fund	
Stamp Duty (Exemption) (No. 5) 2018 (Amendment) Order 2020 [P.U.(A) 397]	This Order amends the Stamp Duty (Exemption)(No. 5)(2018) Order 2018 [P.U.(A) 359] that provides stamp duty exemption on any insurance policies and takaful certificates for Perlindungan Tenang products issued by a licensed insurer or a licensed takaful operator until 31 December 2025, with an annual premium or takaful contribution not exceeding RM100.

Extension of stamp duty exemption on the instrument of loan or financing agreement relating to the restructuring or rescheduling of a business loan or financing executed between a borrower or customer and a financial institution (FI)

The Stamp Duty (Exemption) (No. 2) Order 2020 [P.U.(A) 165], gazetted on 21 May 2020, provides stamp duty exemption on the instrument of loan or financing agreement relating to the restructuring or rescheduling of a business loan or financing between a borrower or customer and a financial institution (FI), which is executed between 1 March 2020 and 31 December 2020. The exemption is not automatic and must be applied for.

Following the above, the Stamp Duty (Exemption) (No. 2) 2020 (Amendment) Order 2021 [P.U.(A) 27] was gazetted on 25 January 2021. The Amendment Order provides that:

(a) The exemption will be extended to instruments of loan or financing agreements executed by 30 June 2021 (previously 31 December 2020).

(b) The exemption will apply to instruments of loan or financing agreements of loan or financing between a borrower or customer and an FI (previously restricted to business loan or financing).

(c) The exemption is subject to the following conditions:
- The existing instrument of loan or financing agreement has been duly stamped under Item 22 or 27 of the First Schedule of the Stamp Act 1949 (per P.U.(A) 165/2020), and
- The instrument of loan or financing agreement relating to the restructuring or rescheduling of a loan or financing does not contain the element of additional value to the original amount of loan or financing under the existing instrument of loan or financing agreement* (additional condition outlined in the Amendment Order).

*Excludes any interest or profit accrued from the restructured or rescheduled payments

(d) The application for the exemption will have to be accompanied by the relevant documents relating to the restructuring or rescheduling of that loan or financing (previously, the application had to be accompanied by a letter of offer from the FI).

The Amendment Order is deemed to have come into operation on 1 March 2020.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 6) Order 2020

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 6) Order 2020 [P.U.(A) 360] was gazetted on 17 December 2020.

The Order provides that any tax payable under the ITA and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

(a) Islamic Medium-Term Notes issued by the Federal Land Development Authority pursuant to the Islamic Medium-Term Notes Programme (GG Sukuk Murabahah Programme) in nominal values of up to RM9.9 billion

(b) GG Sukuk Murabahah Programme in nominal values of up to RM9.9 billion, and

(c) Guarantee provided by the government of Malaysia relating to the GG Sukuk Murabahah Programme

The Order came into operation on 18 December 2020.

Stamp duty exemptions on the purchase of first residential homes

Stamp duty exemptions on the purchase of first residential homes

To further encourage Malaysians to purchase their first home, in Budget 2021, the government proposed to waive the stamp duty on the instruments of transfer and loan agreements for the purchase of first residential homes valued up to RM500,000 (previously RM300,000). The exemptions are applicable for sale and purchase

agreements (SPAs) executed between 1 January 2021 and 31 December 2025.

To legislate this proposal, the following Exemption Orders were gazetted on 10 February 2021 and are deemed to have come into operation on 1 January 2021:

- Stamp Duty (Exemption) Order 2021 [P.U.(A) 53]
  The Order provides that all instruments of transfer executed in relation to the purchase of a residential property valued up to RM500,000 (based on market value) by an individual, will be exempted from stamp duty.
- Stamp Duty (Exemption) (No. 2) Order 2021 [P.U.(A) 54]
  The Order provides that any loan agreement to finance the purchase of a residential property valued up to RM500,000, will be exempted from stamp duty.

The Exemption Orders will apply to only one unit of residential property, on condition that:

(a) The SPA is executed between 1 January 2021 and 31 December 2025, and
(b) The individual has never owned any residential property, including a residential property obtained by way of inheritance or gift, which is held either individually or jointly.

The application for the exemptions will have to be accompanied by a statutory declaration (under the Statutory Declarations Act 1960) by the individual confirming point (b) above.

The Exemption Orders will apply to only one unit of residential property, on condition that:

(a) The SPA is executed between 1 January 2021 and 31 December 2025, and
(b) The individual has never owned any residential property, including a residential property obtained by way of inheritance or gift, which is held either individually or jointly.

The application for the exemptions will have to be accompanied by a statutory declaration (under the Statutory Declarations Act 1960) by the individual confirming point (b) above.

LABUAN

Updates on Labuan income tax exemption orders

Four Income Tax (Exemption) Orders on services rendered in Labuan were gazetted on 19 December 2011. The Orders are effective for YA 2011 until YA 2020 and provide for the following tax exemptions:

(i) Income Tax (Exemption) (No. 7) Order 2011 [P.U.(A) 419]
Income tax exemption is given in respect of fees received by a non-Malaysian individual in his capacity as a director of a Labuan entity.
The Income Tax (Exemption) (No. 7) 2011 (Amendment) Order 2021 [P.U.(A) 6] was gazetted on 12 January 2021 to extend the exemption for another five years, i.e. until YA 2025.

(ii) Income Tax (Exemption) (No. 6) Order 2011 [P.U.(A) 418]
Income tax exemption is given on 65% of the statutory income of any person from providing qualifying professional services in Labuan to a Labuan entity.

(iii) Income Tax (Exemption) (No. 8) Order 2011 [P.U.(A) 420]
Income tax exemption is given on 50% of the gross income received by a non-Malaysian individual from exercising employment in a managerial capacity with a Labuan entity in Labuan, a co-located office or marketing office.

(iv) Income Tax (Exemption) (No. 9) Order 2011 [P.U.(A) 421]
Income tax exemption is given on 50% of the gross housing allowance and gross Labuan Territory allowance received by a Malaysian citizen for exercising employment in Labuan with a Labuan entity.

The Labuan Financial Services Authority (LFSA) has issued a circular dated 4 December 2020 to inform that no further extensions will be granted to the Exemption Orders outlined in Points (ii) to (iv) above.

Tax compliance requirements for Labuan entities carrying on "other trading" activities

Following the gazettement of the Labuan Business Activity Tax Act (Requirements for Labuan Business Activity) 2018 (Amendment) Regulations 2020 [P.U.(A) 375] on 24 December 2020, the IRB's Labuan International Unit has issued a letter dated 5 February 2021 to the Association of Labuan Trust Companies. The letter states that Labuan entities carrying on "other trading" activities, which are classified under Code 23 for Labuan Business Activity Tax Act 1990 (LBATA) filing purposes, will be required to submit their income tax return forms (ITRFs) under the ITA instead of under the LBATA.

The due dates for the submission of the ITRFs under the ITA are as follows:

YA	Due date
2019	31 March 2021
2020 (accounting period up to 30 June 2020)	
2020 (accounting period up to 31 July 2020 – 31 December 2020)	In accordance to the ITA

No penalties will be imposed under Section 112(3) of the ITA if the ITRFs are submitted within the stipulated timelines above. Further, no penalties will be imposed for the non-submission of Form CP204 for YA 2019 and YA 2020. However, the Form CP204 for YA 2021 must be submitted as soon as possible.

The letter also states that in cases where a Labuan entity has remitted any tax

payments under the LBATA for the respective YAs, the amount will be transferred to the accounts under the ITA.

Substantial activity requirements for a Labuan International Commodity Trading Company (LITC)

The substantial activity requirements for a Labuan International Commodity Trading Company (LITC) were removed from the Labuan Business Activity Tax Act (Requirements for Labuan Business Activity) 2018 (Amendment) Regulations 2020 [P.U.(A) 375], which were gazetted on 24 December 2020. The Labuan Investment Committee (LIC) has recently issued LIC Pronouncement 4-2020 dated 9 February 2021, to clarify that the substantial activity requirements for LITCs will be regulated under a separate gazette order which will be released in due course.

INDIRECT TAX

CUSTOMS DUTIES

Customs Duties (Amendment) (No. 3) Order 2020

The Customs Duties (Amendment) (No. 3) Order 2020 [P.U.(A) 398] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for amendments in relation to subheadings "3842.99", "8543.70" and "9614.00" under the First Schedule of the Customs Duties Order 2017 [P.U.(A) 5/2017].

Customs Duties (Langkawi) Order 2020

The Customs Duties (Langkawi) Order 2020 [P.U.(A) 409] was gazetted on 31 December 2020 and came into operation on 1 January 2021. Import duties shall be levied on and paid by the importer in respect of cigarettes, tobacco products and smoking pipes (including pipe bowls) imported or transported from the principal customs area into Langkawi at the rates specified in column (5) of the First Schedule of the Customs Duties Order 2017 [P.U.(A) 5/2017].

Customs Duties (Pangkor) (Amendment) Order 2020

The Customs Duties (Pangkor) (Amendment) Order 2020 [P.U.(A) 412] was gazetted on 31 December 2020 and came into operation on 1 January 2021. Import duties shall be levied on and paid by the importer in respect of motor vehicles, cigarettes, tobacco products and smoking pipes (including pipe bowls) imported or transported from the principal customs area into Pangkor at the rates specified in column (5) of the First Schedule of the Customs Duties Order 2017 [P.U.(A) 5/2017].

Customs Duties (Tioman) (Amendment) Order 2020

The Customs Duties (Tioman) (Amendment) Order 2020 [P.U.(A) 413] was gazetted on 31 December 2020 and came into operation on 1 January 2021. Import duties shall be levied on and paid by the importer in respect of motor vehicles, cigarettes, tobacco products and smoking pipes (including pipe bowls) imported or transported from the principal customs area into Tioman at the rates specified in column (5) of the First Schedule of the Customs Duties Order 2017 [P.U.(A) 5/2017].

Customs Duties (Labuan) Order 2020

The Customs Duties (Labuan) Order 2020 [P.U.(A) 414] was gazetted on 31 December 2020 and came into operation on 1 January 2021. Import duties shall be levied on and paid by the importer in respect of cigarettes, tobacco products and smoking pipes (including pipe bowls) imported or transported from the principal customs area into Labuan at the rates specified in column (5) of the First Schedule of the Customs Duties Order 2017 [P.U.(A) 5/2017].

Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) (Amendment) (No. 4) Order 2020

The Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) (Amendment) (No. 4) Order 2020 [P.U.(A) 416] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for amendments in relation to subheadings "3824.99", "8543.70" and "9614.00" in the Second Schedule of the Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2017 [P.U.(A) 100/2017].

Customs Duties (Goods under the Framework Agreement on Comprehensive Economic Co-Operation between ASEAN and China) (Amendment) (No. 2) Order 2020

The Customs Duties (Goods under the Framework Agreement on Comprehensive Economic Co-Operation between ASEAN and China) (Amendment) (No. 2) Order 2020 [P.U.(A) 424] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for amendments in relation to subheadings "3824.99", "8543.70" and "9614.00" under the Second Schedule of the Customs Duties (Goods under the Framework Agreement on Comprehensive Economic Co-Operation between ASEAN and China) Order 2019 [P.U.(A) 212/2019].

Customs Duties (Goods under the Framework Agreement on Comprehensive Economic Co-Operation among the Government of the Member States of the ASEAN and the Republic of Korea) (Amendment) Order 2020

The Customs Duties (Goods under the Framework Agreement on Comprehensive

Economic Co-Operation among the Government of the Member States of the ASEAN and the Republic of Korea) (Amendment) Order 2020 [P.U.(A) 425] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for amendments in relation to subheadings "3824.99", "8543.70" and "9614.00" under the Second Schedule of the Customs Duties (Goods under the Framework Agreement on Comprehensive Economic Co-Operation among the Government of the Member States of the ASEAN and the Republic of Korea) Order 2020 [P.U.(A) 202/2020].

Customs Duties (Goods under the Agreement on Comprehensive Economic Partnership among the Government of the Member States of the ASEAN and Japan) (Amendment) Order 2020

The Customs Duties (Goods under the Agreement on Comprehensive Economic Partnership among the Government of the Member States of the ASEAN and Japan) (Amendment) Order 2020 [P.U.(A) 426] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for amendments in relation to subheadings "3824.99", "8543.70" and "9614.00" under the Second Schedule of the Customs Duties (Goods under the Agreement on Comprehensive Economic Partnership among the Government of the Member States of the ASEAN and Japan) Order 2020 [P.U.(A) 191/2020].

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

The Customs Duties (Goods under the Malaysia-New Zealand Free Trade Agreement) (Amendment) Order 2020 [P.U.(A) 427] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for amendments in relation to subheadings "3824.99", "8543.70" and "9614.00" under the Second Schedule of the Customs Duties (Goods under the Malaysia-New Zealand Free Trade Agreement) Order 2020 [P.U.(A) 286/2020].

Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) (Amendment) (No. 3) Order 2020

The Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) (Amendment) (No. 3) Order 2020 [P.U.(A) 428] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for amendments in relation to subheadings "3824.99", "8543.70" and "9614.00" under the Second Schedule of the Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) Order 2019 [P.U.(A) 266/2019].

Customs Duties (Goods under the Agreement Establishing the ASEAN – Hong Kong, China Free Trade Area) (No. 2) (Amendment) (No. 2) Order 2020

The Customs Duties (Goods under the Agreement Establishing the ASEAN – Hong Kong, China Free Trade Area) (No. 2) (Amendment) (No. 2) Order 2020 [P.U.(A) 429] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for amendments in relation to subheadings "3824.99", "8543.70" and "9614.00" under the Second Schedule of the Customs Duties (Goods under the Agreement Establishing the ASEAN – Hong Kong, China Free Trade Area) (No. 2) Order 2019 [P.U.(A) 279/2019].

EXCISE DUTIES

Excise Duties (Tioman) (Amendment) Order 2020

The Excise Duties (Tioman) (Amendment) Order 2020 [P.U.(A) 407] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides that excise duties shall be levied on and paid by the importer in respect of motor vehicles, cigarettes, tobacco products, electronic cigarettes and similar personal electric vaporizing devices, smoking pipes (including pipe bowls) and preparation of a kind used for smoking through electronic cigarette and electric vaporizing devices, in the form of liquid or gel, not containing nicotine, imported or transported from the principal customs area into Tioman

at the rates specified in column (5) of the Schedule under the Excise Duties Order 2017 [P.U.(A) 92/2017].

Excise Duties (Pangkor) (Amendment) Order 2020

The Excise Duties (Pangkor) (Amendment) Order 2020 [P.U.(A) 408] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides that excise duties shall be levied on and paid by the importer in respect of motor vehicles, cigarettes, tobacco products, electronic cigarettes and similar personal electric vaporizing devices, smoking pipes (including pipe bowls) and preparation of a kind used for smoking through electronic cigarette and electric vaporizing devices, in form of liquid or gel, not containing nicotine, imported or transported from the principal customs area into Pangkor at the rates specified in column (5) of the Schedule under the Excise Duties Order 2017 [P.U.(A) 92/2017].

Excise Duties (Langkawi) Order 2020

The Excise Duties (Langkawi) Order 2020 [P.U.(A) 410] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides that excise duties shall be levied on and paid by the importer in respect of cigarettes, tobacco products, electronic cigarettes and similar personal electric vaporizing devices, smoking pipes (including pipe bowls) and preparation of a kind used for smoking through electronic cigarette and electric vaporizing devices, in form of liquid or gel, not containing nicotine, imported or transported from the principal customs area into Langkawi at the rates specified in column (5) of the Schedule under the Excise Duties Order 2017 [P.U.(A) 92/2017].

Excise Duties (Labuan) Order 2020

The Excise Duties (Labuan) Order 2020 [P.U.(A) 411] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides that excise duties shall be levied on and paid by the importer in respect of cigarettes, tobacco products, electronic cigarettes and similar personal electric vaporizing devices, smoking pipes (including pipe bowls) and preparation of a kind used for smoking through electronic cigarette and electric vaporizing devices, in form of liquid or gel, not containing nicotine, imported or transported from the principal customs area into Labuan at the rates specified in column (5) of the Schedule under the Excise Duties Order 2017 [P.U.(A) 92/2017].

Excise Duties (Amendment) Order 2020

The Excise Duties (Amendment) Order 2020 [P.U.(A) 417] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for the amendments and insertions of Chapters 38, 85 and 96 under the Excise Duties Order 2017 [P.U.(A) 92/2017].

SALES TAX

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 3) Order 2020

The Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 3) Order 2020 [P.U.(A) 367] was gazetted on 22 December 2020 and came into operation on 1 January 2021. This Order provides for the amendment and insertion of Item 5A into Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) 2018 [P.U.(A) 210/2018].

Sales Tax (Amendment) (No. 2) Regulations 2020

The Sales Tax (Amendment) (No. 2) Regulations 2020 [P.U.(A) 418] were gazetted on 31 December 2020 and came into operation on 1 January 2021. These Regulations provide for amendments to Regulation 17 of the Sales Tax Regulations 2018 [P.U. (A) 203/2018].

Sales Tax (Imposition of Sales Tax in respect of Designated Areas) (Amendment) Order 2020

The Sales Tax (Imposition of Sales Tax in respect of Designated Areas) (Amendment) Order 2020 [P.U.(A) 420] was gazetted on 31 December 2020 and came into operation on 1 January 2021. This Order provides for amendments to Paragraph 2 of the Sales Tax (Imposition of Sales Tax in respect of Designated Areas) 2018 [P.U.(A) 206/2018].

SERVICE TAX

Service Tax (Digital Services) (Amendment) (No. 2) Regulations 2020

The Service Tax (Digital Services) (Amendment) (No. 2) Regulations 2020 [P.U.(A) 419] were gazetted on 31 December 2020 and came into operation on 1 January 2021. These Regulations provide for the insertion of Regulation 6A and amendments to Regulations 5A and 10, and the headers for Part IIA and III under the Service Tax (Digital Services) Regulations 2019 [P.U.(A) 269/2019].

Service Tax (Amendment) (No. 2) Regulations 2020

The Service Tax (Amendment) (No. 2) Regulations 2020 [P.U.(A) 422] were gazetted on 31 December 2020 and came into operation on 1 January 2021. These Regulations provide for amendments to Regulation 11 of the Service Tax Regulations 2018 [P.U.(A) 214/2018].

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

CASE 1

EGMSB V KETUA PENGARAH HASIL DALAM NEGERI (2020) (HIGH COURT)

FACTS

The taxpayer is a Malaysian company carrying on the business of providing offshore petroleum drilling services.

The taxpayer frequently enters into charter agreements with a Labuan company from the same group of companies ("Labuan Co"), to lease drilling rigs from Labuan Co ("Leasing Transactions").

The taxpayer was previously subjected to a tax audit, which progressed to litigation – on 10.4.2013, the Director General of Income Tax ("DG") had issued additional assessments on the basis that the taxpayer and Labuan Co were associated persons. In 2013, the taxpayer argued that Labuan Co and the taxpayer were not "associated persons" within the definition of the Income Tax Act 1967 ("ITA"), and this position was successfully defended all the way up to the Court of Appeal, where the DG's additional assessment was quashed.

In 2020, following another tax audit, the DG issued another set of additional assessments for the years of assessment ("YAs") 2012 to 2017, arguing that the Leasing Transactions are not at arm's length pursuant to Section 140A of the ITA. As a result of this audit, the DG sought to impose a 5% mark-up on the leasing charges paid to Labuan Co.

The taxpayer filed a judicial review application to quash the DG's decision, and the case has been heard at the leave stage.

TAXPAYER'S ARGUMENTS

At the leave stage, the taxpayer successfully argued that there are exceptional circumstances justifying leave for judicial review to be granted as:

(i) the DG had acted in excess of its jurisdiction when it blatantly disregarded the earlier binding decision of the High Court in 2013, which was confirmed by the Court of Appeal. The Courts had decided, as stated in their written grounds, that the DG had failed to prove that the taxpayer and Labuan Co were in control of one another for the purpose of the ITA for the earlier YAs of 2006, 2007, and 2008.
(ii) the DG had illegally and/or unlawfully invoked Section 140A ITA when the requirement that there be an "associated person" was not satisfied.
(iii) the DG had failed to provide its reasons/transfer pricing analysis for invoking Section 140A ITA.

DG'S ARGUMENTS

The DG argued that leave ought not to be granted on the following grounds:

(i) the taxpayer has an alternative route of remedy under Section 99 ITA.
(ii) there is no clear lack of jurisdiction as the DG has the discretionary power under Section 140A ITA to adjust the taxpayer's leasing transactions.
(iii) the earlier decisions of the Courts are not binding as they concern the application of a different provision i.e., Section 140(6) ITA.

HIGH COURT'S DECISION

The High Court held that although there was an alternative route of remedy, there were exceptional circumstances justifying leave for judicial review to be granted.

The DG had prima facie failed to apply the earlier High Court and Court of Appeal decisions, which had decided on the same legal issue between the same parties based on the same facts. The DG being an arm of the executive, is bound by the decisions of the Courts, especially when the facts remain unchanged throughout the relevant YAs. The DG's present attempt to revisit the decided "arm's length" issue under the guise of a "new" provision in Section 140A of the ITA is blatantly wrong.

The High Court granted leave for judicial review to further examine the legality of the DG's actions in invoking Section 140A to make adjustments to the leasing transactions.

The High Court also granted a stay of enforcement of the DG's assessment pending the outcome of the judicial review.

COUNSEL FOR THE TAXPAYER
DATO' ARIEF EMRAN ARIFIN, JASON LIANG, KELLIE ALLISON YAP, AND JEFF SUM (WONG & PARTNERS)

COUNSEL FOR THE DG
AHMAD ISYAK BIN MOHD HASSAN

COUNSEL FOR THE AGC
FITRI BIN SADARUDIN

DECISION DATE
22 DECEMBER 2020

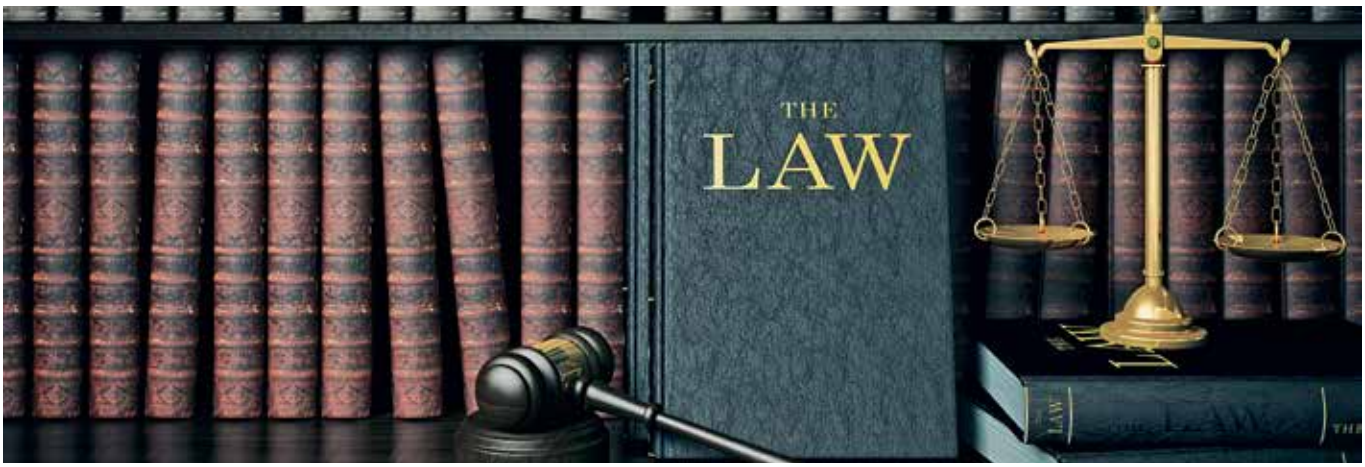
CASE 2

IDSB V KETUA PENGARAH HASIL DALAM NEGERI (2021) (HIGH COURT)

FACTS

The taxpayer was a Malaysian company carrying on the business of property development and construction.

The taxpayer entered into an agreement with Datuk Bandar Kuala Lumpur ("DBKL") for a contract sum of about RM 284 million 25 November 2014 ("Agreement"), where:



(i) the taxpayer was to develop a public housing project to be handed to DBKL, the cost of which was valued at about RM 137 million ("Public Housing") to be borne by the taxpayer; and
(ii) the taxpayer was to pay a cash consideration of RM 147 million to DBKL.

In return, DBKL was to transfer ownership of a new piece of land ("Land") to the taxpayer. The Land was transferred to the taxpayer in 2017, after the condition precedents to the agreement were fulfilled.

Following a tax audit, the Director General of Inland Revenue ("DG") found that the contract sum should be regarded as being equivalent to the market value of the Land in 2017 when it was finally transferred to the taxpayer i.e., at about RM 443 million, instead of at about RM 284 million as stated in the agreement.

The DG then imposed additional taxes on the taxpayer on the basis that the taxpayer had understated its income. The taxpayer filed a judicial review application to quash the DG's decision, and the case has been heard at the leave stage.

TAXPAYER'S ARGUMENTS

At the leave stage, the taxpayer argued that there were exceptional circumstances for leave of judicial review to be granted. The DG had illegally and/or unlawfully altered the terms of the contract between the taxpayer and DBKL, which were agreed between independent parties in 2014 when the agreement was signed.

The contract sum is tied materially to the costs of the Public Housing and the expected returns to be generated for DBKL. It is irrelevant whether the Land may have increased in value as the market value of the Land was not the basis of the contract.

It is illegal for the DG to dictate and tax the increased market value of the Land, some 3 years after the signing of the Agreement (in which the value of the Land was agreed between independent parties), especially when the taxpayer had not earned any income from the purported increase in value of the Land. There was no income received by the taxpayer from the Land as alleged by DG.

In relation to the taxpayer's application for stay, the taxpayer argued that Section 103B of the Income Tax Act 1967 ("ITA") does not explicitly inhibit the Court's power to grant stay, and that the ITA does not have overriding power over the Rules of Court 2012 and/or the Court Judicature Act 1964.

DG'S ARGUMENTS

The DG argued that leave ought not to be granted on the following grounds:
(i) the taxpayer has an alternative route of remedy under Section 99 ITA.
(ii) the contract sum and the taxpayer's income ought to be assessed based on the market value of the Land in 2017, when the condition precedents to the agreement were fulfilled.

Further, the DG argued that the Court no longer has the jurisdiction to grant a stay in view of the newly legislated Section 103B ITA.

HIGH COURT'S DECISION

The High Court agreed that not all tax cases are suitable for judicial review, but held that the taxpayer in this case had shown exceptional circumstances for leave for judicial review to be granted to the taxpayer.

There was prima facie illegality in the DG's assessment for altering the contract sum agreed at arm's length (i.e., between two independent parties). The Agreement was entered into on a "willing buyer and willing seller" basis.

More importantly, the High Court in this case also held that the newly-legislat-

ed Section 103B ITA did not inhibit the Court's powers to grant a stay of enforcement of the DG's assessment. The High Court granted a stay pending the outcome of the judicial review.

COUNSEL FOR THE TAXPAYER
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COUNSEL FOR THE DG
RIDZUAN BIN OTHMAN AND ASYRAF BIN ZAKARIA

COUNSEL FOR THE AGC
ROHAIZI BINTI HAMZAH

DECISION DATE
23 FEBRUARY 2021

CASE 3

UMSB V DIRECTOR GENERAL OF CUSTOMS AND EXCISE (2020) (FEDERAL COURT)

FACTS

The taxpayer was a GST-registered company in the clothing retail business sector.

In 2015, the taxpayer submitted an application to the Director General of Customs and Excise ("DG") for a special refund of sales tax pursuant to Sections 190 of the Goods and Services Act 2014 ("GST Act").

The DG rejected the taxpayer's special refund application, without providing any reasons for his decision, other than:

> *"Dimaklumkan, permohonan tuan DITOLAK kerana melalui semakan didapati:-*
> *-Keputusan Ketua Pengarah".*

The taxpayer filed a judicial review application to challenge the DG's decision, but was unsuccessful at the High Court. The taxpayer later succeeded in its appeal to the Court of Appeal, and the DG thereafter appealed to the Federal Court. The DG's application for leave to appeal was heard before the Federal Court.

DG'S ARGUMENTS

At the leave stage, the DG posed two questions to be answered by the Federal Court:

(i) whether the DG has to provide reasons for rejecting the taxpayer's special refund application, in the absence of any provision in the GST Act requiring the DG to give reasons; and
(ii) whether the DG's failure to give reasons had invalidated its decision, when the taxpayer had not satisfied the requirements under Section 190 of the GST Act.

The DG argued that the questions posed satisfied the requirements for obtaining leave under Section 96(a) of the Courts of Judicature Act 1964 ("CJA"). It was argued that they are questions of general principle decided for the first time and are of public importance to be determined by the Federal Court.

TAXPAYER'S ARGUMENTS

The taxpayer argued that the leave questions posed are not novel as it is trite law that the DG has a duty, as a public decision-making body, to provide reasons for its decision. This principle has been well-established by the Federal Court in Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2018] 2 MLJ 590.

The taxpayer also argued that the question of whether the taxpayer has complied with the express requirements of Section 190 of the GST is purely a question of fact, which the Court of Appeal has decided in favour of the taxpayer.

For the reasons above, and with the repeal of the GST Act, the leave questions posed by the DG cannot be deemed to be of public importance under Section 96(a) of the CJA.

FEDERAL COURT'S DECISION

The Federal Court denied the DG leave to appeal to the Federal Court as the questions posed do not involve novel questions of law.

The principle that the DG, as a public authority, owes a duty to provide reasons for its decisions – including in matters of taxation involving exercise of its discretionary powers – is already well-established by previous Federal Court decisions.

The absence of specific provisions in the legislation which requires a public authority to give reasons for its decisions cannot be interpreted to mean that there is no duty to give reasons. If no reasons are needed to be given by the public authority, the legislation must expressly state so.

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

COUNSEL FOR THE DG
PAVANI KASI, SYAKIL BIN ZULKIFLI

DECISION DATE
4 NOVEMBER 2020

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

CAPITAL ALLOWANCES

RESIDUAL EXPENDITURE

Having meandered through the mechanics of computing capital allowances in the last article, we shall now look at the concept of residual expenditure. Generally it commands little attention, as it is merely the tax equivalent for net book value in accounting but we will see that it appears in many parts of the Income Tax Act 1967 and plays a significant role in ascertaining certain figures in the tax computation.

RESIDUAL EXPENDITURE [RE]

The concept itself is defined in Paragraph 68 of Schedule 3 which reads:

A reference in this Schedule to residual expenditure at any date in relation to an asset in respect of which qualifying expenditure has been incurred by a person is to be construed as a reference to the total qualifying expenditure incurred by him on the provision, construction or purchase of the asset before that date, reduced by—
(a) the amount of any initial allowance made to that person in relation to that asset for any year of assessment;
(b) any annual allowance made to that person in relation to that asset for any year of assessment before that date;
(c) any annual allowance which, if it had been claimed (or could have been claimed, if the expenditure in respect of the asset had been qualifying expenditure and if the asset had been in use for the purposes of a business of his) by that person in relation to that asset, would have been made to him for a year of assessment before that date.

Basically this is QE – [IA +AA +NAA] = RE

Then again as a reminder, we have Paragraph 18 Schedule 3 which states:

An allowance made to a person in relation to a business of his … for a year of assessment in respect of any expenditure in relation to an asset shall not exceed the amount of the residual expenditure at the end of the basis period for that year.

This is in relation to computing the annual allowances for the last qualifying year of assessment where the capital allowances rate is an "odd i.e. not divisible evenly over a number of years" figure for example 14%, then in that year we need to restrict the annual allowances (computed normally as QE X the AA rate) to the RE at the beginning of the year of assessment.

For example a plant (not heavy machinery) with a QE of RM 100,000 in year of assessment 2021 will have initial allowances of RM 20,000 for year of assessment 2021 and annual allowances of RM 14,000 for each year of assessment 2021 to 2025 resulting in an RE of RM 10,000 at the end of year of assessment 2025 [and beginning of YA 2026]. Therefore in year of assessment 2026, the annual allowance claimable is RM 10,000 and not RM 14,000.

I could not find a sample of this in CTIM past year papers but I have seen this being tested quite commonly in other examinations and frequently candidates delve into multiplying the QE with the AA rate and writing that answer without realising that the RE brought forward is a lower figure!
Now we shall discuss how this concept permeates through the different areas of income tax.

A. CONTROLLED TRANSFERS

One fundamental principle of controlled sales transactions is that for the disposer the sales price is disregarded and instead is deemed to equate the RE. For example, when a holding company transfers a plant to a subsidiary with a RE of RM 25,000, for a consideration of RM 30,000 the plant is deemed to be transferred at RM 25,000. An obvious consequence to this is that there will be no balancing

adjustments. The law is stated in Paragraph 39(1) Schedule 3 as detailed below:

> *"Subject to any rules … the disposal of the asset shall be deemed to have taken place … for a sum equal to the disposer's residual expenditure on that day."*

B. ASSET HELD FOR SALE [AHFS]

This was discussed in the last article in respect of notional allowances which should be claimed in the year of assessment of classification as AHFS if the asset is not sold in that year.

The rule relating to the computation of the RE of the asset at the end of the year of assessment of classification and beginning of the following year of assessment is enshrined in Paragraph 61A (5) Schedule 3:

… in determining the residual expenditure of such asset for that following basis period, the total qualifying expenditure incurred by that person shall be reduced by

(a) any initial allowance made to that person in relation to that asset for any year of assessment;

(b) any annual allowance made to that person in relation to that asset for any year of assessment; and

(c) an amount of annual allowance which would have been made to that person for the basis period in which the asset was classified as held for sale as if the asset had been in use in that basis period for the purpose of a business of his.

Essentially the RE = QE – [IA +AA + NAA (for the year of classification as AHFS)]

C. A SIGNIFICANT PART OF AN ASSET IS REPLACED

Sub paragraph (3) of Paragraph 61B Schedule 3 reads:

> *"The residual expenditure … in respect of the part of the asset disposed shall be the qualifying expenditure of the part of an asset disposed reduced by the amount of allowance that have been made or would have been made under this Schedule to that person prior to the disposal of that part of the asset."*

Principally where any part of an asset which ceases to be used for the purposes of a business carried on by the taxpayer in a basis period for a year of assessment is replaced and the new item is depreciated separately, that part of the asset is deemed to have been disposed of in that basis period for that year of assessment.

The qualifying expenditure of that part disposed will be ascertained in accordance with the generally accepted accounting practice [GAAP] and rules i.e. a discounted value basis is applied to the cost of the new part in ascertaining the QE of the disposed part, as illustrated in the example below.

The residual expenditure in respect of the part of the asset which is deemed disposed of shall be the QE of that part reduced by the amount of allowances that has, or would have, been made for that part of the asset prior to disposal.

Examples of such assets given in Public Ruling 7 of 2017 include aircraft engines that need to be replaced several times during the life span of the aircraft or pump and generator that are part of a large machine.

A numerical example in the Public Ruling illustrates an airplane costing RM 310 million purchased in 2014 whose engine was damaged and disposed of in 2017. To replace the engine, a new engine was purchased on 1.10.2017 for RM150 million. To determine the cost of the old engine, the company had used the discounted value basis at a discounted rate of 5% per annum. In this example, RM150 million (the cost of the new engine) will be used and discounted for 4 years, from the year of assessment 2014 until the year of assessment 2017. It is assumed that the airline company maintains a 31 December year-end.

For year of assessment 2017, computation of AA for the airplane is based on the new QE after deducting the cost of the old engine i.e. RM186,593,994 (310,000,000 - 123,406,006) X 20% = 37,318,799

QE of old engine determined as follows:	
RM 150 million / $(1.05)^4$)	= 123,406,006 (involves some element of rounding)
Less IA (20%) + AA (20% for 3 years)	= 98,724,804
RE	24,681,202
For the aircraft	
QE	310,000,000
Less IA (20%) + AA (20% for 3 years)	= 248,000,000
	62,000,000
Less RE for old engine	24,681,202
RE for airplane (excluding the disposed part)	37,318,799

D. COMPENSATION RECEIVED

Paragraph 67A (a) and Paragraph 67B (2)(a) provides that for public road and ancillary structures and for buildings constructed by a person pursuant to an agreement entered into between that person and the government on a build-lease-transfer basis residual expenditure shall be reduced by the amount of any compensation received.

E. RESTORATION OF SITE UPON REMOVAL OF ASSET

Paragraph 67C(1) provides that:

where—

(a) a person has incurred qualifying plant expenditure in respect of an asset for the purposes of a business of his and in the basis period for a year of assessment the asset is disposed of; and

(b) pursuant to any written law or agreement, that person is subsequently required to dismantle and remove the asset and restore the site on which the asset is located, the residual expenditure … shall be deemed to include any amount incurred for dismantling and removing the asset and restoring the site.

Effectively this is to provide a "deduction" for the cost incurred in restoring a site after an asset has been removed. This cost can be added on to the RE of the asset which will result in (upon disposal of the asset):

a. an increased balancing allowances (BA)
b. a balancing charge being converted to a balancing allowances, or
c. a decreased balancing charge (BC)

As an example assume an asset has a RE of RM 100,000 and is sold for:
(i) RM 95,000
(ii) RM 103,000
(iii) RM 120,000

The resultant balancing adjustments will be as follows:
(i) BA: RM 5,000
(ii) BC: RM 3,000
(iii) BC : RM 20,000

However, if the company incurred restoration cost of RM 5,000, its RE will be RM 105,000 and the balancing adjustments will now be:
(i) BA: RM 10,000
(ii) BA: RM 2,000
(iii) BC : RM 15,000

Note that this concession will not apply if the asset which has been dismantled and removed is subsequently used for any other business of that person or any other person [sub-paragraph (3)] and where the restoration costs include any amount paid to a non-resident which are subject to Section 109B and the tax has not been deducted therefrom and paid to the Director General under that Section [sub-paragraph (4)].

F. ASSET IS USED ONLY PARTLY FOR THE PURPOSES OF THE BUSINESS

The proviso to Paragraph 73 of Schedule 3 provides that

> *"…in ascertaining the residual expenditure at any date in relation to the asset regard shall be had, with respect to any allowance claimed in relation to that asset for any year of assessment, to the full amount of that allowance which but for this paragraph would then have been made to him for that year in relation to that asset."*

In essence this proviso is indicating that when computing the capital allowances for an asset, the full allowances is computed and the resultant RE is ascertained before an apportionment is made for the non-business usage of the asset. This aspect will be detailed in a later article.

G. REINVESTMENT ALLOWANCES (RA)

Schedule 7A, Paragraph 1B relates to acquisition of an asset for RA purposes through a controlled sale, whereby the acquirer is prohibited from claiming RA on the asset (even though all conditions have been fulfilled) if the disposer has claimed RA on that asset.

Therefore where the disposer has NOT claimed RA on the asset than the acquirer is eligible to claim RA on it. Public Ruling 10/2020 provides guidance on the determination of QCE for RA purposes, for the acquirer as follows:

1. In the case where the disposer **acquires an asset not for the purposes of a qualifying project** and that asset is **subsequently disposed** of to a related company, the **acquirer is eligible to claim RA** on the same asset if the asset is used for a qualifying project. The q**ualifying capital expenditure** for RA for the acquirer in respect of the asset is the **market value of the asset on the date of acquisition**. The provision of control transfer will not regard the amount paid to the related company as the capital expenditure incurred.
2. Where a company **acquires an asset for a qualifying project but does not claim RA** on the qualifying capital expenditure **as the company chooses to claim a mutually exclusive incentive and subsequently disposes of the asset** by way of control transfer, the acquirer is eligible to claim RA on the qualifying capital expenditure of the asset if it is used in a qualifying project of the acquirer. **The qualifying capital expenditure is the residual expenditure of the asset.**

The emphasis (**bold**) has been added to help candidates remember the key words for exam purposes

That concludes our discussion on the concept of Residual Expenditure.
For all candidates taking the June 2021 examinations, all the best and may the good Lord be your constant companion throughout the exams.

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FURTHER READING

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

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: APRIL – JUNE 2021

Month /Event	Details				Registration Fee (RM) (excluding SST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
APRIL 2021								
Dialogue Session with LHDNM on the Recent Tax Audit and Investigation Issues	1 Apr	9 a.m. - 11 p.m.	Webinar	LHDNM & CTIM	90	-	120	2 WE/004
Workshop: Taxation of Property Developers and Contractors	5 Apr	9 a.m. - 5 p.m.	Webinar	Harvindar Singh	300	330	400	8 WS/010
Seminar: Quarterly Tax Updates 2021	8 Apr	9 a.m. - 5 p.m.	Webinar	Various Speaker	350	400	450	8 SE/001
Indirect Tax Webinar Series: Service tax on digital services, information technology services and imported taxable services	16 Apr	9 a.m. - 11 a.m.	Webinar	David Lai, Alan Chung & Annie Thomas	50	-	90	2 WE/005
Workshop: Tax Audits & Investigations	19 Apr	9 a.m. - 5 p.m.	Webinar	Harvindar Singh	300	330	400	8 WS/011
Workshop: Tax Agents Under Section 153(3) of the ITA 1967	21 Apr	9 a.m. - 5 p.m.	Webinar	Karen Koh	300	330	400	8 WS/012
Members' Dialogue: Central Region	22 Apr	11.30 a.m. - 1 p.m	Webinar	Council Members	FOC	FOC	FOC	-
Members' Dialogue: Northern Region	23 Apr	11.30 a.m. - 1 p.m	Webinar	Council Members	FOC	FOC	FOC	-
Seminar: Managing Transfer Pricing in Times of Uncertainties	27 Apr	9 a.m. - 5 p.m.	Webinar	Various Speaker	350	400	450	8 SE/002
Public Holiday ***(Nuzul Al-Quran: 29 Apr)***								
MAY 2021								
Members' Dialogue: East Coast Region	3 May	11.30 a.m. - 1 p.m	Webinar	Council Members	FOC	FOC	FOC	-
Members' Dialogue: Southern Region	5 May	11.30 a.m. - 1 p.m	Webinar	Council Members	FOC	FOC	FOC	-
Members' Dialogue: Sabah	7 May	11.30 a.m. - 1 p.m	Webinar	Council Members	FOC	FOC	FOC	-
Members' Dialogue: Sarawak	10 May	11.30 a.m. - 1 p.m	Webinar	Council Members	FOC	FOC	FOC	-
Workshop: Updates on Transfer Pricing Documentation Requirements and Managing Transfer Pricing Audits (Re-Run)	19 May	9 a.m. - 5 p.m.	Webinar	Harvindar Singh	300	330	400	8 WS/013
Indirect Tax Webinar Series: Service tax on management, consultancy and other Group G services	21 May	9 a.m. - 11 p.m	Webinar	Thenesh Kannaa, Tan Eng Yew & Ng Sue Lynn	50	-	90	2 WE/006
Workshop: Tax Issues and Law Relating to Property Transactions, Estates & Trusts (Re-Run)	25 May	9 a.m. - 12 p.m	Webinar	Dr Tan Thai Soon	300	330	400	8 WS/014
Seminar: Topical Tax Issues Facing SMEs	27 May	9 a.m. - 12 p.m	Webinar	Various Speakers	350	330	400	8 SE/003
Public Holiday ***(Hari Raya Aidilfitri: 13 & 14 May)***								
JUNE 2021								
Workshop: Workshop: The Changing Tax Landscape and Recent Tax Developments in Malaysia	4 June	9 a.m. - 5 p.m.	Webinar	Yong Mei Sim	300	330	400	8 WS/015
Workshop: Learn to Develop, Build Upon and/or Appreciate the Importance of the Capital Statement in Tax Audits (Re-Run)	10 June	9 a.m. - 5 p.m.	Webinar	Karen Koh	300	330	400	8 WS/016
Indirect Tax Webinar Series: Managing Customs Audits	18 June	9 a.m. - 11am	Webinar	Jalbir Singh, Saravana Kumar & Huang Shi Yang	180	-	240	2 WE/007
Workshop: Corporate Tax Strategy (Re-Run)	24 June	9 a.m. - 5 p.m.	Webinar	Harvindar Singh	200	220	250	8 WS/017

DISCLAIMER: The above information is correct and accurate at the time of printing. The Institute reserves the right to cancel, make any amendments and / or changes to the programme, speaker, date and time if warranted by circumstances beyond the control of the Institute.

ENQUIRIES: Please contact the CPD Secretariat i.e Ms Yus, Ms Zaimah and Ms Jaslina at 03-2162 8989 ext 108, 107 and 131 respectively or email to **cpd@ctim.org.my** for more information.

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