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ALL EYES ON UNEXPLAINED EXTRAORDINARY WEALTH

CAPITAL STATEMENT AS A DEFENCE?

The first rule of chess is that the white piece moves first, then the black piece. Similarly, this applies to the self-assessment tax regime in Malaysia.

Cryptocurrency: Tax Is Not Virtual 2.0

The Cameco Corporation Case: "Thou Shalt Not Disregard"

Unlisted Labuan Entities - To Be Taxed Under the LBATA 1990 or the ITA 1967?

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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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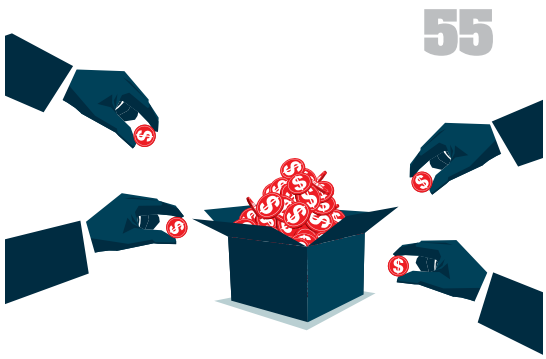

INVITATION TO WRITE

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 a 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

EMBRACING THE CHALLENGES AHEAD AND EMERGING STRONGER

WELCOME TO THE QUARTER 3 ISSUE OF THE TAX GUARDIAN FOR 2021.

With the global pandemic, 2021 continues to test the resilience of everyone. Although the half year mark has passed, 2021 continues to present its challenges and the impetus to embrace the challenges with tenacity. Even though it has not been possible for the Institute to hold physical events and for us to meet in-person, I really want to say a big thank you to all members who have been supportive of the Institute throughout this unprecedented time.

The Institute concluded its first ever virtual 29th Annual General Meeting on 19 June 2021. I would like to thank the CTIM Council for giving me the opportunity once again to lead CTIM as the President for the 2021/2022 term along with the Deputy President, Chow Chee Yen. I look forward to another exciting and fruitful year.

Nicholas Crist, Yeo Eng Ping and K. Sandra Segaran have retired from the CTIM Council and my heartfelt appreciation to them for their immense contribution to CTIM. They have played an integral role in advancing the Institute. I would like to welcome Leow Mui Lee who has been re-elected to the Council as well as Anil Kumar Puri, Harvindar Singh and Tan Hooi Beng, the newly elected Council Members. My congratulations to everyone! The Council for the 2021/2022 term will continue to carry on the CTIM agenda and hope to achieve further milestones for CTIM.

The Institute's Response to the Total Lockdown

In response to the challenges faced by the tax professionals during the Total Lockdown from 1 June 2021, the Institute has engaged with the relevant authorities on the following matters: -

To the Minister of Finance: -

- Request for the Taxation Services Sector to be included in Essential Services that are allowed to operate during the full Movement Control Order (MCO).

To the Ministry of Finance (MOF): -

- Tax Policy Considerations During Total Lockdown Period.

To the Inland Revenue Board of Malaysia (IRBM): -

- Appeal to the Chief Executive Officer of IRBM for extension of time to submit the income tax return forms, initial/ revised estimate of tax payable and deferment of tax payments due to the Total Lockdown from 1 June 2021 to 14 June 2021;
- Enquiries on Frequently Asked Questions (FAQs) on Tax Matters During the MCO 3.0 (As at 2 June 2021); and
- Requests on behalf of Taxpayers and Tax Practitioners affected by the Total Lockdown.

To the Royal Malaysian Customs Department (RMCD): -

- Indirect tax issues arising due to the Total Lockdown from 1 June 2021 to 14 June 2021 which included queries on whether there will be any extension of time for the filing of Sales Tax and Service Tax Returns (i.e. Form SST-02 and SST-02A) and payment of tax which are due on 30 June 2021 and 31 July 2021, among others.

I am pleased to note that the IRBM has considered and granted our request for automatic blanket extension of time for the filing of tax returns which has subsequently been informed to members via e-Circular. The IRBM has issued its Frequently Asked Questions on Tax Matters During the Movement Control Order 3.0 (Updated on 26 June 2021) and its Return Form Filing Programme for the Year 2021 (Amendment 3/2021) (Updated on 26 June 2021) which reflects this. We hope that the authorities will also consider several of our other requests in the event the Total Lockdown period is extended further.

Submissions to the Authorities

The following are the other key submissions to various authorities from April 2021 to June 2021 on issues raised by members: -

Inland Revenue Board of Malaysia

- Feedback/Comments on IRBM's Consultation Papers on Proposed Tax Reforms;
- Seeking clarification and confirmation from IRBM in respect of the PEMERKASA announcement on 17 March 2021 on the deferment of monthly income tax instalment payments from 1 April 2021 to 31 December 2021 for companies in the tourism industry and selected industries such as cinemas and spas;
- Issues with regard to e-SMUP and request for a meeting to discuss on profiling issues;
- List of Industries/ Areas/ Topics/ Issues for upcoming Public Rulings,

Regulations and Guidelines;
- Guidance for taxpayers on filing of tax returns and tax payments due to MCO 3.0;
- Recently emerged tax issues arising from Public Rulings, Gazette Orders, FAQs, Practice Note and PENJANA Tax Measures;
- Issues relating to Malaysian Income Tax Reporting System (MITRS);
- Request for the draft Transfer Pricing (TP) Rules, draft TP Framework, draft TP Guidelines, etc for feedback/ comments by CTIM;
- CTIM Memorandum on Compliance and Operational Issues;
- CTIM Memorandum on Additional Issues Arising from Tax Treatment of Labuan Entities;
- Feedback/Comments on IRBM's Guidelines on the Application of Section 12(3) and Section 12(4) of the Income Tax Act 1967 dated 21 May 2020; and
- Confirmation and clarification sought on Income Tax (Accelerated Capital Allowance) (Machinery and Equipment Including Information and Communication Technology Equipment) Rules 2021 [P.U. (A) 268/2021].

Royal Malaysian Customs Department
- Technical issues for deliberation at the "Mesyuarat Jawatankuasa Teknikal Isu Perlaksanaan Cukai Jualan & Cukai Perkhidmatan Bil. 1/2021".

Ministry of Finance
- Request for recognition of CPD Points from Online Tax Training beyond 30 June 2021; and
- Tax Issues Raised at the PEMUDAH-TWGPT Meeting for the Ministry of Finance's Consideration.

Ministry of Human Resource
- Exclusion of Tax Profession from Human Resource Development Fund contribution.

Virtual Courtesy Meeting with the Director of the IRBM Multinational Tax Branch

The Institute organised a Virtual Courtesy Meeting (VCM) with Encik Hisham Rusli, the Director of the IRBM Multinational Tax Branch and the IRBM Transfer Pricing (TP) Policy Team on 4 May 2021. The main objective of the VCM is for the CTIM and IRBM TP teams to get to know each other better, to strengthen the good rapport between CTIM and IRBM and to discuss on how CTIM and IRBM can carry out joint activities on TP matters.

Highlights of CPD Events and Members' Dialogues in the Second Quarter of 2021

Throughout the second quarter of the year 2021, the Institute has successfully conducted a number of CPD webinars and online Members' Dialogue sessions, some of which are reported below.

CTIM organised an online Dialogue Session with the IRBM on Tax Audit & Investigation Issues on 1 April 2021 featuring the Director of Investigation Department of IRBM and the Deputy Director of Tax Compliance Department of IRBM. The participants had a better and more in-depth understanding of the IRBM's perspective in terms of their latest policies, processes and practices by attending this online Dialogue Session.

On 8 April 2021, the Institute organised a full day Quarterly Tax Updates 2021 webinar with moderators, panellists and speakers from CTIM, MOF, IRBM and the private sector. The various topics discussed were in relation to highlights of Budget 2021 and Finance Act 2020, special tax incentives from the government during the Covid-19 pandemic and the latest public rulings, practice notes and guidelines.

The Institute organised a full day TP 2021 webinar on 27 April 2021 with invited guests from the IRBM. The topics discussed in this webinar were in relation to managing TP in times of uncertainty, legislative changes to TP, TP audits, tax cases on TP, intricacies of managing intra-group services from a TP perspective and TP vs Customs valuation.

Other notable CPD webinars that were conducted included the following: -
- Indirect Tax Webinar Series – Beginning with "Service Tax on Digital Services, Information Technology Services and Imported Taxable Services" on 16 April 2021 followed by "Service Tax on Management, Consultancy and other Group G Services" on 1 June 2021 and "Managing Customs and SST Audits" on 18 June 2021.
- "Topical Tax Issues Facing SMEs" on 27 May 2021; and
- "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting - The Time is Now" on 6 May 2021.

I am pleased to convey that all these online events were strongly supported and well received with good attendance by members and others in the tax community.

A series of six Members' Dialogue webinars were organised by the Institute in April and May 2021 to get in touch with members and address issues raised by members nationwide in relation to direct tax, indirect tax, transfer pricing and public practice. The dialogues sessions had given a great opportunity to members to ask questions that affect them as taxpayers and tax practitioners in their regions and also discussed tax treatments, tax laws and practices in general. I would like to express my big thanks to my dedicated fellow Council Members and all the Branch Chairmen who have participated and contributed immensely in these series of Members' Dialogue sessions.

Our premier tax event of the year, The National Tax Conference was held on 27 and 28 July 2021, with the theme of Taxation: Achieving Economic Resilience and Supporting Business Continuity. This informative conference was held virtually

over two days. This is an event that you would not want to miss with the participation of tax administrators, economists, industry experts and tax practitioners joining hands together to present updates and insights on the economy and taxation.

CTIM Professional Examination (June 2021 Sitting)

I also would like to congratulate the 123 students who successfully sat for the CTIM Professional Examination which was held online from 21 till 24 June 2021. Online examination is an endeavour by the Institute to ensure that students' taxation education pathway is not disrupted amidst the pandemic.

Thank You and Well Wishes

In conclusion, I would like to acknowledge the roles that the CTIM Council, Branch Chairmen, Committee Chairmen, Committee Members, Working Group Chairmen, Working Group Members and Secretariat have played in the development of CTIM over the years. A big thank you and not to forget, to our valued members too. We have lined up exciting events for the 2nd half of 2021 and look forward to your participation.

Wishing everyone the best of health always. Take care and stay safe.

Editor'sNote

YEO ENG PING

There is so much happening in the world of tax, and the latest major international news is the G7 finance ministers agreeing earlier this month on a minimum global corporate tax of 15%. The OECD has already been working on this and published their proposal of such a framework as Pillar Two of their "BEPS 2.0" project – which was launched in response to the tax challenges arising from the digitalisation of the economy. Pillar One focuses on a re-allocation of taxing rights and in particular the recognition of taxing rights for market jurisdictions. There are still many areas to be agreed on the OECD BEPS 2.0 proposals, but the G7 meeting reinforces the urgency of the need to reach an agreement. There is much to do to fully understand the implications to our country and what preparations we need to make in order to engage with other countries and achieve a fair outcome for us.

On the local front, we are now waist-deep into the usual corporate tax filing season, and for the second time, having to cope with continued strict restrictions under Movement Control Order (MCO) 3.0. Based on the latest decision by the IRBM, there will be no further extension of time for the filing of tax returns for several categories of taxpayers including companies, limited liability partnerships and trusts for YA 2020 and YA 2021 (the existing extension of time given remains the same as stated in the Return Form Filing Programme). However certain categories of individuals will be allowed additional time to file their YA2020 tax return i.e. by 31 July 2021. The decision not to allow further extension of time is causing some consternation among tax practitioners and taxpayers, and no doubt there will be special requests being made for more latitude. It is clear we are still subject to many uncertainties and disruptions from the pandemic, and hope that these will be resolved amicably from time to time as they arise.

As MCO 3.0 was being implemented beginning 1 June 2021, the Prime Minister had unveiled the RM40 billion Supplementary Strategic Programme to Empower the People and Economy (PEMERKASA Plus) to help enhance the public health capacity, continue the Prihatin Rakyat agenda and support business continuity. To help alleviate the burden on businesses, it was announced that the Inland Revenue Board of Malaysia (IRBM) will consider appeals on penalties and defer penalty payments to 2022, as well as provide or revisit repayment schedules for outstanding tax payments to affected taxpayers and businesses. Some of the tax measures announced in the earlier stimulus packages are also extended to 31 December 2021, such as the special deduction on rental discounts given to tenants, stamp duty exemption on the purchase of residential property under the National Home Ownership Campaign 2020 / 2021 and sales tax exemption on passenger cars.

This edition of the *Tax Guardian* brings a couple of articles that are well-timed with increasing tax controversy on the horizon – we have a walk through on Capital Statements and also an article that analyses the tax implications of crypto-currency gains. Cryptocurrency has seen great gains over the last 15 months, and questions on the taxability of gains on crypto-currency transactions is once again gaining a lot of interest, for example, the CEO of the IRBM, Dato' Sri Dr. Sabin Samitah was quoted several months in the media as suggesting an implementation of a capital gains tax in Malaysia, and how without a capital gains tax regime, "crypto" assets will be left untaxed. Finally, for those who need

a refresher amidst the various changes to the taxation of Labuan companies, there is an article that covers the potential tax implications for unlisted Labuan entities.

For the last 15 months, we have had to live through constant disruptions and changes. So many things that seemed impossible or unacceptable, have become real options and a way of life. Change is good as it makes us more innovative, allows us to see fresh perspectives, gets us out of our comfort zones and strives for greater success and better results.

This is my last note to you as Editor of the *Tax Guardian*, written from my desk at home as we continue through MCO 3.0. This is a role I was humbled and honoured to receive for five years as this publication represents CTIM's brand and standing, and holds out our commitment to quality and excellence in taxation. I retire as Council Member on 19 June 2021, having served for eight years over two terms, and the winds of change will bring a new Council Member to helm the Editorial Committee and with that a new Editor for the *Tax Guardian*. I learned a great deal from my fellow committee members and contributors of articles, and received immense support from the Council, the secretariat and many more. So, to all, and especially those who have been through feverish moments with me - of endless planning, seeking writers, placing reviewers, designing, amending, proof-reading, dealing with the printers, meeting deadlines amidst the Covid-19 pandemic disruptions – thank you! I wish the best to the new Editorial Committee Chair and all its members, and eagerly look forward to more excellent editions of the *Tax Guardian*.

InstituteNews

CPD EVENTS (1 April – 1 June 2021)

The following CPD events were successfully conducted virtually:

Topic	Date	Speaker/(s)
Dialogue Session with the IRBM on Tax Audit & Investigation Issues	1 April 2021	CTIM: Ms Farah Rosley and Mr Soh Lian Seng LHDNM: Mr Khairul Halimin and Mr Jafni Hashim
Workshop: Taxation of Property Developers and Contractors	5 April 2021	Mr Harvindar Singh
Seminar: Quarterly Tax Updates 2021	8 April 2021	CTIM: Ms Farah Rosley, Mr K. Sandra Segaran, Mr Thenesh Kannaa, Ms Stefanie Low & Mr Zen Chow Guests: Puan Che Nazli (MOF), Puan Salamatunnajan (LHDNM), Mr Chris Low (BDO) & Mr Mohd Fariz (Deloitte)
Indirect Tax Webinar Series: Service Tax on Digital Services, Information Technology Services and Imported Taxable Services	16 April 2021	Mr David Lai, Mr Alan Chung and Ms Annie Thomas
Workshop: Tax Audits and Investigations	19 April 2021	Mr Harvindar Singh
Workshop: Tax Agents Under Section 153(3) of the ITA 1967	21 April 2021	Ms Karen Koh
Seminar: Managing Transfer Pricing in Times of Uncertainties	27 April 2021	Ms Theresa Goh, Mr Hisham Rusli, Ms Bernice Tan, Ms Kalsumawati, Ms Leow Mui Lee, Dr. Esther A. P. Koisin, Mr SM Thanneermalai, Puan Hairaneey, Ms Anushia, Mr Sockalingam, Mr Thenesh Kannaa, Ms Krystal Ng, Mr Foo Meng Huei, Mr Bob Kee, Mr Alan Chung, Mr Subhabrata and Ms Annie Thomas.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting – The Time is Now	6 May 2021	Mr Tan Hooi Beng, Mr Kelvin Yee and Ms Eunice Hoo
Workshop: Updates on Transfer Pricing Documentation Requirements and Managing Transfer Pricing Audits (re-run)	19 May 2021	Mr Harvindar Singh
Workshop: Tax Issues and Law Relating to Property Transactions, Estates & Trusts (re-run)	25 May 2021	Dr Tan Thai Soon
Seminar: Topical Tax Issues Facing SMEs	27 May 2021	Mr Chow Chee Yen, Mr Koong Lin Loong, Mr Elias Mohammad and Ms Gan Cheng Yee
Indirect Tax Webinar Series: Service Tax on Management, Consultancy and Other Group G Services	1 June 2021	Mr Thenesh Kannaa, Mr Tan Eng Yew and Ms Ng Sue Lynn

Members Dialogues 2021

Region	Date	Panel Members / Moderators
Central (Selangor, Kuala Lumpur)	22 April 2021	Farah Rosley, Thenesh Kannaa, Nicholas Crist, David Lai & Mohd Noor
Northern (Perlis, Penang, Kedah & Perak)	23 April 2021	Farah Rosley, Thenesh Kannaa, David Lai, Zen Chow, Soh Lian Seng, Kellee Khoo & Lam Weng Keat
East Coast (Pahang, Terengganu & Kelantan)	3 May 2021	Farah Rosley, Chow Chee Yen, Steve Chia, Zen Chow, Mohd Noor, Alan Chung & Wong Seng Chong
Southern (Melaka, Negeri Sembilan & Johor)	5 May 2021	Farah Rosley, Chow Chee Yen, Steve Chia, Nicholas Crist, Soh Lian Seng, Alan Chung, Jesu Dason, & Choo Ah Kow
Sabah	7 May 2021	Chow Chee Yen, Thenesh Kannaa, Mohd Noor, Soh Lian Seng, Alan Chung & Viviana Lim
Sarawak	10 May 2021	Farah Rosley,Thenesh Kannaa, David Lai, Nicholas Crist, Zen Chow & Kenny Chong

Members Dialogue Sessions

The Members Dialogue Sessions were held from 22 April 2021 till 10 May 2021 for the respective Northern, East Coast, Central and Southern regions as well as Sabah and Sarawak. In each Dialogue, a panel consisting of CTIM Council Members responded to members' issues submitted for the Dialogue. The wide ranging issues included:

- **Direct Tax – Technical, Compliance and Operations Matters**
- **Indirect Tax – Sales Tax, Service tax, Customs, Excise and Free Zones**
- **Public Practice**

The Members Dialogues have provided members the opportunity to raise and discuss issues on broad subject matters as well as in specific areas.

Transfer Pricing 2021 Seminar

The Transfer Pricing (TP) 2021 Seminar on "Managing Transfer Pricing in Times of Uncertainties" was held virtually on 27 April 2021. The moderators, speakers and panel members comprising tax administrators, tax practitioners, corporate and legal representatives provided valuable insight to participants on the legislative changes to TP, TP audits, tax cases on TP, intricacies of managing intra-group services from a TP perspective and TP vs Customs valuation.

Virtual Courtesy Meeting

The Institute organised a virtual courtesy meeting (VCM) with Encik Hisham Rusli, the Director of Multinational Tax Branch of IRBM and Pn. Hairaneey Mhd of the TP Policy together with their team on 4 May 2021.

The aim of the VCM was to strengthen the good rapport between CTIM and IRBM. The VCM also covered a meaningful discussion on how CTIM could enhance its representation at dialogues with the authorities on TP issues, recommend effective proposals to enhance the development of TP in the country and carry out joint activities with IRBM TP Policy.

June 2021 CTIM Professional Examination

The June 2021 Examination was held online from 21 to 24 June 2021. A total of 123 students sat for 167 papers over 8 subjects. Well done to all the students who rose above the occasion despite the pandemic challenges.

29th ANNUAL GENERAL MEETING OF THE INSTITUTE

The Chartered Tax Institute of Malaysia held its 29th Annual General Meeting (AGM) on 19 June 2021. The AGM witnessed the presence of 60 members who joined the event. This is the first time the AGM was held via virtual platform.

ELECTION OF COUNCIL MEMBERS

At the AGM, Leow Mui Lee was re-elected to the Council to serve a second four-year term and Anil Kumar Puri, Tan Hooi Beng and Harvindar Singh A/L Chanan Singh were elected as new members of the Council.

RE-ELECTION OF PRESIDENT & DEPUTY PRESIDENT

The Institute is pleased to announce the re-election of Farah Rosley as the President and Chow Chee Yen as the Deputy President for the 2021/2022 term at the first Council meeting which was held immediately after the AGM on the same day.

President
Farah Rosley
Partner Ernst & Young Tax Consultants Sdn Bhd

Deputy President
Chow Chee Yen
Senior Executive Director Grant Thornton Malaysia

Koong Lin Loong
Managing Partner Reanda LLKG International

David Lai Shin Fah
Executive Director BDO Tax Services Sdn Bhd

Mohd Noor Abu Bakar
Managing Partner IMRAN

Zen Chow Tuck Him
Head of Tax YYC Tax Consultants Sdn Bhd

Thenesh Kannaa
Partner TraTax

Leow Mui Lee
Senior Executive Director Tricor Taxand Sdn Bhd

Soh Lian Seng
Executive Director KPMG Tax Services Sdn Bhd

Stefanie Low Geok Ping
Executive Director Deloitte Tax Services Sdn Bhd

Alan Chung Ch'ung Yit
Senior Executive Director Grant Thornton Malaysia

Chong Mun Yew
Executive Director Crowe KL Tax Sdn Bhd

Steve Chia Siang Hai
Partner PwC Taxation Services Sdn Bhd

Anil Kumar Puri
Partner Ernst & Young Tax Consultants Sdn Bhd

Tan Hooi Beng
Partner Deloitte Tax Services Sdn Bhd

Harvindar Singh A/L Chanan Singh
Partner SCS Global Consulting (M) Sdn Bhd

ALL EYES ON UNEXPLAINED EXTRAORDINARY WEALTH CAPITAL STATEMENT AS A DEFENCE?

Wong Yu Sann

1.INTRODUCTION

The first rule of chess is that the white piece moves first, then the black piece. Similarly, this applies to the self-assessment tax regime in Malaysia. An individual taxpayer (the white piece) is obliged to compute his or her annual tax liabilities and submit his or her Income Tax Returns first. Then the IRBM (the black piece) will audit/investigate, to ensure that the taxpayer is in compliant with the tax laws and regulations.

By conducting a tax audit/investigation, the IRBM aims to find out if there are any under-declaration/omission of income by taxpayers. With this, taxpayers may be required to prepare capital statements to substantiate their net worth.

A tax task force is also set up to scrutinise and investigate unexplained extraordinary wealth displayed by the possession of luxury goods, jewellery, handbags or property.[1] If the individual is found guilty of tax evasion, the IRBM will use all necessary measures permitted by the law to recover such monies, whether in the form of additional taxes, penalties or fines.

Apart from the above, given the recent spotlight on Automatic Exchange of Information (AEOI) originating from Base Erosion and Profit Shifting (BEPS) action plans issued by the Organisation for Economic Co-operation and Development (OECD), a taxpayer who has an overseas bank account will also be scrutinised. The AEOI provides for the automatic exchange

of a predefined set of information between tax authorities including IRBM (AEOI Standard). This AEOI Standard requires the annual exchange of information on financial accounts held by individuals and entities in a pre-defined format. The information exchanged includes details about the financial account (e.g., the financial institution maintaining it, the account number and the account balance) and details about the account holders (e.g., their name, address, date of birth and taxpayers' identification number).[2]

This is to ensure that no gross income derived from Malaysia which has not been subjected to income tax is transferred overseas. AEOI Standard provides a powerful tool to help deter and identify offshore tax evasion through holding financial assets abroad.[2]

Based on the above, individual taxpayers should be vigilant in preparing Capital Statement to substantiate that there is no under-declaration, no evasion and omission of income before or upon being investigated by the IRBM.

2. WHAT ARE CAPITAL STATEMENTS? ASKING THE BIG QUESTION

A Capital Statement, also known as Net worth Statements, is a combination of balance sheets embracing the assets and liabilities, similar to a profit and loss account of an individual taxpayer. In preparing it, it follows the money trail, based on a cash basis.

There are only two ways a taxpayer's income can go i.e., either spend it or save it somewhere. The basic principle is "Source of the fund (Total Income) = the application (Spending + Saving)". Through this statement, we can see how the total income is received by a taxpayer, as well as how the money is being spent.

The capital statement can then be used to work out the business net profit where records are incomplete or insufficient. If no income is omitted, "Savings + Expenses must equal to available income".

Capital Statement goes by many names i.e., assets betterment method, net worth method etc. As its name denotes, Capital Statement is a statement of the financial net worth of an individual.

The IRBM requests for a taxpayer to prepare capital statement during a tax investigation, to detect any understatement, omission, evaded, omitted, and unreported income of an individual taxpayer, in comparison with his or her declared income. A capital statement applies to individuals who are directors of companies or those who are self-employed.

3.NOTICES C.P.102 AND C.P.103 – A FORCING MOVE?

In chess, a forcing move is a move that requires an opponent to respond in a certain way, or which significantly limits how one can respond. In the case of a forcing move i.e., check, it forces the opponent to respond by getting out from the check. These are moves that the opponent must respond to immediately to avoid losing material or the game.

Similar to a tax investigation, the IRBM will issue the following notices under Sections 78 and 79 of the Income Tax Act 1967 (the Act) to an individual taxpayer, to call for specific returns and productions of books and call for a statement of bank accounts, etc. for preparing a capital statement. The taxpayer is required to respond via the following Statements:

a. Statement of personal and private expenses via C.P.102 under Section 78 of the Act;
b. Statement of the net asset via C.P.103 under Section 79 of the Act.

Form CP102 consists of a statement of personal and living expenses of the taxpayer and his family at an estimated amount which is considered at most reasonable in his opinion for each year.

Form CP103 consists of a complete statement of all property and its related liabilities of the taxpayer's business and private, his wife/wives and children of his dependents as of 31 December for each year which includes the business and private located anywhere and either in the taxpayer's name or the names of the taxpayer's nomination among others.

SAMPLE FORMAT OF CAPITAL STATEMENTS

CAPITAL STATEMENT

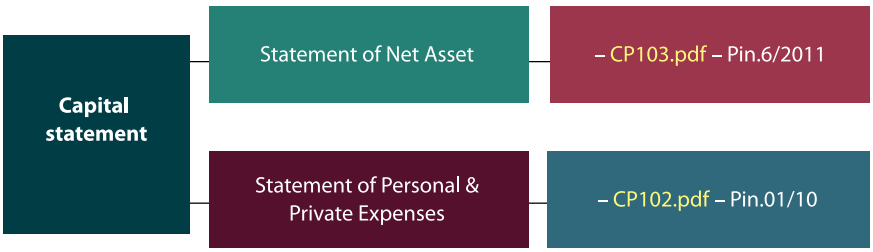
NAMA PEMBAYAR CUKAI (NAME OF TAXPAYER)

NO. CUKAI PENDAPATAN (INCOME TAX REFERENCE NO.)

	PERIHAL HARTA	TAHUN TAKSIRAN TAHUN ASAS	2014	2015	2016	2017	2018	2019	2020	ULASAN / CATITAN
1	PELABURAN / BUSINESS	(Investment in Quoted Share at Cost)	0	0	0	0	0	0	0	Lampiran A
2	HARTANAH / PROPERTIES	(Land/Properties at Cost)	0	0	0	0	0	0	0	Lampiran B
3	PELABURAN	(Investment in Unquoted Share at Cost)	0	0	0	0	0	0	0	Lampiran C
4	SIMPANAN BANK	(Bank balances, Fixed deposits etc)	0	0	0	0	0	0	0	Lampiran D
5	PELABURAN & SIMPANAN BANK DI LUAR NEGARA	(Investment & Bank balances - outside Malaysia at cost)	0	0	0	0	0	0	0	Lampiran E
6	KENDERAAN	(Motor Vehicle at cost)	0	0	0	0	0	0	0	Lampiran F
7	AKAUN SEMASA PENGARAH	(Director's Account)	0	0	0	0	0	0	0	Lampiran G
8	PERABOT PERALATAN RUMAHTANGGA	(Household items at cost)	0	0	0	0	0	0	0	Lampiran H
9	WANG TUNAI DI TANGAN	(Cash in Hand)	0	0	0	0	0	0	0	Lampiran I
10	BARANG KEMAS	(Jewellery)	0	0	0	0	0	0	0	Lampiran J
11	PENGHUTANG	(Debtors)	0	0	0	0	0	0	0	Lampiran K
	JUMLAH KASAR TOLAK : TANGGUNGAN	(Total Assets) (Liabilities)	0	0	0	0	0	0	0	Lampiran L
	JUMLAH aset pada 31/12 TOLAK : BAKI BAWA HADAPAN	(Net Assets as at 31 December) (Balance brought forward)	0	0	0	0	0	0	0	Lampiran B
	PERTAMBAHAN ASET BERSIH PADA 31/12			0	0	0	0	0	0	
	TAMBAH/(TOLAK):			0	0	0	0	0	0	
	(Keuntungan) / Rugi modal - Saham	(Capital Gains/ Loss on disposal of Quoted shares)		0	0	0	0	0	0	Lampiran Ai
	(Keuntungan) modal - Pertukaran Wang Asing	(Capital Gains on Exchange Rate)		0	0	0	0	0	0	Lampiran E
	Keuntungan modal - Hartanah	(Capital Gains on disposal of Land, properties)		0	0	0	0	0	0	Lampiran M
	Rugi modal - lupus kenderaan	(Loss on disposal of motor vehicles)		0	0	0	0	0	0	Lampiran M
	TAMBAH : PERBELANJAAN PERSENDIRIAN	(Personal and Private Expenses)		0	0	0	0	0	0	Lampiran N
	APPARENT INCOME			**0**	**0**	**0**	**0**	**0**	**0**	
	TOLAK : PENDAPATAN SEDIA ADA	(Available Income)		0	0	0	0	0	0	
	Available Income	(Declared/Reported Income)		0	0	0	0	0	0	Lampiran O
	PENINGGALAN : Pendapatan Umum Pendapatan Tertentu	 (General Omission of Income) (Specific Omission of Income)		0	0	0	0	0	0	
	JUMLAH PENINGGALAN	**[DEFICIT/ (SURPLUS)]**		**0**	**0**	**0**	**0**	**0**	**0**	

CAPITAL STATEMENT IN A TAX INVESTIGATION BY THE IRBM

Capital statement encompasses:



The IRBM will also call for information or particulars orally or via notice under section 81 of the Act together with Form C.P.102 and C.P.103 as summarised below[4]:

3.1 The details of property owned and/or disposed of in the name of the taxpayer or his wife/wives, his children and/or in the names he nominated in the years together with the following:
- a) date/year of acquisition/ disposal of the property;
- b) type of property owned/ disposed of;
- c) full name and address of the seller/buyer;
- d) the price paid/received concerning the property; and
- e) additional expenses incurred on the acquisition/disposal of property.

3.2 All bank statements, savings vouchers, check slips and savings passbooks for all bank accounts of both accounts of the taxpayer and his business or in the name of taxpayer's wife/wives or other names in which the taxpayer has the power to exercise it jointly or alone and whichever is available in the related years of assessment.

3.3 A list of the total balances of all the taxpayer's savings, loans or fixed deposits which the taxpayer has or has had rights in the power to exercise jointly or alone as of 31 December for each year concerned.

3.4 Certified true copies of all current accounts of the taxpayer and his/ her spouse in the partnership and limited company, for each year ended 31 December of the year in question.

The taxpayer is required to respond within 30 days from the date of the IRBM Notices. Like a forcing move in chess, if a taxpayer fails to respond to the letter under Sections 78, 79 and 81, he or she will be liable to a fine of not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding six months or to both as per Section 120 of the Act. Sections 78, 79, 81 and 120 of the Act are extracted below for your ease of understanding:

SECTION 78 - POWER TO CALL FOR SPECIFIC RETURNS AND PRODUCTION OF BOOKS

For the purpose of obtaining full information for ascertaining whether or not a person is chargeable to tax or for determining his liability the Director General may by notice under his hand requires that or any other person-

(a) to complete and deliver to the Director General within a time specified in the notice (not being less than thirty days from the date of service of the notice) any return specified in the notice;

(b) to attend personally before the Director General and produce for examination all books, accounts, returns and other documents which the Director General deems necessary;

(c) to make a return in accordance with paragraph (a) and also to attend in accordance with paragraph (b); or

(d) to provide in writing such information or particulars which the Director General deems necessary.

SECTION 79 OF THE ACT - POWER TO CALL FOR STATEMENT OF BANK ACCOUNTS, ETC.

The Director General may by notice under his hand require any person to furnish within a time specified in the notice (not being less than thirty days from the date of service of the notice) a statement containing particulars of-

(a) all banking accounts-
- (i) in his own name or in the name of a wife or dependent child of his or jointly in any such names;
- (ii) in which he is or has been interested jointly or solely; or
- (iii) on which he has or has had power to operate jointly or solely, being accounts which are in existence or have been in existence at any time during a period to be specified in the notice;

(b) all savings and loan accounts, deposits, building society accounts and co-operative society accounts in regard to which he has or has had any interest or power to operate solely or jointly during that period;

(c) all assets which he and any wife or dependent child of his possess or have possessed during that period;

(d) all sources of his and the gross income from those sources; and

(e) all facts bearing upon his present or past chargeability to tax.

SECTION 81 OF THE ACT - POWER TO CALL FOR INFORMATION

The Director General may require any person to give orally or may by notice under his hand require any person to give in writing within a time specified

in the notice all such information or particulars as may be demanded of him by the Director General for the purposes of this Act and which may be in the possession or control of that person:
Provided that, where that person is a public officer or an officer in the employment of a local authority or statutory authority, he shall not by virtue of this section be obliged to disclose any particulars as to which he is under a statutory obligation to observe secrecy.

SECTION 120(1)(A) - OTHER OFFENCES

section 120(1) Any person who without reasonable excuse-
(a) fails to comply with a notice given under section 78, 79, 80(3), 81, 84(1), 85 or 87;
(b) …;
(c) …;
(d) …
(e) …
(f) …
(g) …
(h) …
(i) …
shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than two hundred ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

SECTION 120(2)

Where a person has been convicted of an offence under subsection (1), the court may make a further order that the person shall comply with the relevant provision of this Act under which the offence has been committed within thirty days, or such other period as the court deems fit, from the date the order is made.

Thus, where taxpayer is convicted by the court, he may still be required to comply with the relevant provisions of the Act within a specified period from the date the order is made. It is thus essential to be aware of what exactly is a capital statement.

4. TIME-BAR (WHEN DOES IT NOT APPLY?)

The Statute of Limitations does not apply to cases of fraud, wilful default and negligence. The IRBM may at any time (beyond time-bar i.e., five years for non-transfer pricing cases) issue assessment to recover any tax loss as a consequence of fraud, wilful default and negligence according to Section 91(3) as extracted below:

Section 91(3)

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.*

For the preparation of a capital statement, the IRBM requires a taxpayer to prepare C.P. 103 for seven years where the first year is the opening year. A taxpayer will also be required to prepare C.P.102 for the six financial years.

5. SEVEN ELEMENTS OF CAPITAL STATEMENT

The word "Capital" from Capital Statement is equivalent to net worth. "Capital"means anything that can be converted into money. Examples of capital include business and private capital, cash hoards and others. All capital should be recorded at the end of the year i.e., 31 December of each year.

5.1 Assets

Examples of assets include bank savings, business equity, lands, properties, motor vehicles, shares, unit trusts, jewellery, handbags, watches, investments, furniture and fittings etc.

5.2 Bank/savings accounts

The IRBM analyses the bank accounts of a taxpayer by reviewing the deposits and withdrawal appearing in the bank statements. From the bank statements, then the IRBM will be able to assess the following:

a. To understand the lifestyle of the taxpayer;
b. To discover any undisclosed income from the deposits;
c. To scrutinise any payment of financings/purchase of assets/other expenses from the withdrawals or payments out;
d. To discover any unexplained expenses from the withdrawals; and
e. To trace crime activities.

Any unexplained expenses will be added into the capital statements as personal and private expenses.

Savings includes bank savings accounts, fixed deposit accounts, current accounts, stocks and debtors and other accounts.

5.2.1 Cash on hand

Apart from cash in bank accounts, there is cash on hand which is used daily by the taxpayer. A taxpayer will need to prove the cash on hand as of 31 December with reasonable certainty.

5.3 Investments

An "investment" means owning an asset or an item to generate income from the investment or the appreciation of one's investment which is an increase in the value of the asset over some time.[3] Investment is captured in the capital statement at cost value.

Based on the source and its application of money, the type of assets financing (source) must be linked to its application of money (purchase of assets/ investments). Examples of investments include quoted shares from Public Companies, unquoted shares from Private Limited companies, premium bonds, advances to and from others.

5.3.1 Depreciation

The underlying concept to prepare a capital statement is by using a cash basis (as compared with accrued basis) to record the assets. As such, the depreciation/ diminution on the assets will not be included for the preparation of a capital statement. In this respect, the assets will be recorded at their full cost price.

5.4 Liabilities

5.4.1 "Liabilities" (the source of funds)

Liabilities, mean the source for the purchase of assets/ investments i.e., properties, motor vehicles and other assets. Liabilities can include bank borrowings, overdraft, hire purchase, etc. This is where it shows where you have money to support your purchases. Loans from a financial institution (third party) will be good to support the source of fund to purchase an asset.

5.4.2 Repayment of Liabilities (Loans and interest)

If the taxpayer pays his or her monthly instalment on the borrowed loans, we will have to capture the reduced amount of borrowings as of the year ended.

5.5 Capital Gains and Losses

If the taxpayer disposed of his asset or investment, the following entry will be shown in the capital statements:

a. the asset or investment will be removed from the list of his asset or investment in the year of disposal since the taxpayer is not owning the asset or investment as as at the end of the particular year.
b. From the disposal, the taxpayer will have to compute the gains or losses from the disposal of the asset or investment by comparing the disposal price with the original acquisition price cost;
c. If there is a gain from disposal of assets say gains from the disposal of a 3-storey house, the gains will be money coming into the taxpayer and will be deducted from the capital statement; and
d. On the other hand, if a loss is arose from the disposal of assets or investment the loss will be added back in the capital statement.

5.6 Personal and Private & Demestic Expenditure

A taxpayer will have to gather information on the personal and private spending for himself, his spouse, children and other dependents. Most taxpayers have a hard time recalling their daily spending, especially backdate it seven years. In this instance, it is advisable for taxpayers to estimate their yearly spending. However, this must fairly indicate their lifestyle and usual spending habits. These are a few ways to prepare the spending on personal and private expenses:

a. Use credit cards statement as an indication of spending habits. This can reveal the existence of capital, income or assets previously unknown or even undisclosed income;
b. Use current year as the base to best estimate the earlier years expenditure (i.e., work backwards);
c. The withdrawals from the bank via bank statements can also indicate the spending habits; and
d. The IRBM will also require a taxpayer to fill in the number of his or her family members. This will be used as a base to best estimate the cost of living for the relevant years.

Examples of personal and private expenditure stated in Form CP 102 are expenses for food, rent, rates, electric, water and telephone, wages (for servants, gardeners, drivers), the cost for repairs and furnishings, clothing, motor car expenses (insurance and taxes, petrol, repairs and maintenance), tobacco, drinks, entertainment, holidays, amusement and recreation, medical and hospitals, dentists, school fees and expenses, gifts, donations and subscriptions, religious and other festivals, private legal expenses, mortgage or loan expenses, hire-purchase payments, remittances abroad and other expenses.[4]

Personal and private expenditure also include interest charges (paid) on loans to finance the assets of the taxpayer, employees' provident fund contributions.

5.7 Income (the main source of incomes?)

5.7.1 Declared income

Taxpayer's income in the income tax returns includes business income, employment income (salary), rental, interest, discount, royalty, annuity payments, dividend and other incomes.

5.7.2 Gambling, lotteries, inheritances and legacies

Private income includes lottery winnings, betting profits etc. even though lottery winnings are exempted from income tax.

Gambling or lotteries win will form part of the taxpayer's available income. As such, the taxpayer is required to provide supporting documents such as winning tickets etc., to substantiate the win.

Similarly, to inheritances and legacies, the taxpayer is also required to provide supporting documents like grant of probate, etc.

6. GENERAL UNDERSTATEMENT, DISCREPANCIES OR SPECIFIC UNDERSTATEMENT/OMISSION

In preparing the capital statement, if the total amount saved plus the total amount spent exceed the total income, the difference is a general understatement, or we will call it a discrepancy. This is the same as per the comparison between apparent income and the available income. The discrepancy may have resulted from understatement or non-disclosure of the following:

- income or any profit; and
- specific taxable income such as commission income received, rental income and other income.

What is the available income?

Available income is the taxpayer's income declared in his income tax returns and other private incomes.

What is the apparent income?

Apparent income is shown from the extract below:

Descriptions	2019	2020
Total Assets	2,000	5,000
Less: Liabilities	(1,000)	(1,500)
Net Assets	1,000	3,500
Total net assets brought forward		(1,000)
Increase in net assets		2,500
Add: Loss on disposal of shares		200
		2,700
Less: Gains on the disposal of property		(1,000)
		1,700
Add: Personal & Private Expenses		200
Apparent Income		**1,900**
Less: Available Income		(1,000)
Discrepancy		900

On the other hand, if available income is more than apparent income, it will result in a surplus. The surplus may have resulted from the following:

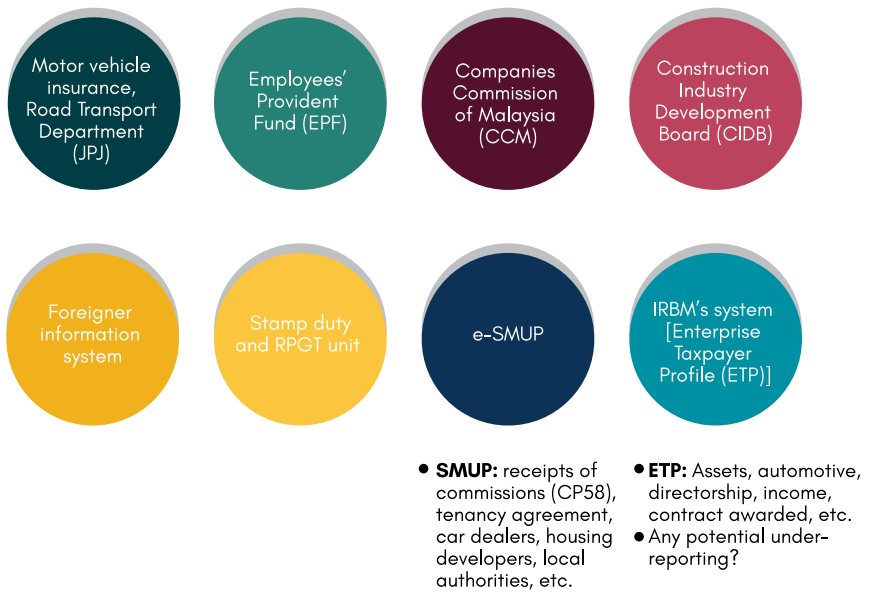
- An undisclosed capital, for example, investment in shares or fixed deposits

etc.; and

- Understatement of personal and private expenditure. In this respect, the IRB will generally increase the personal and private expenditure to nullify the surplus.

7. WHAT ARE THE IRBM'S SOURCES OF INFORMATION?

Before you submit your annual income tax returns, the IRBM would have already collected enough information about each taxpayer to detect an errant and non-compliant taxpayer. The IRBM has set up a big data analysis system internally, which is used to help detect and counter tax evasion. The IRBM has access to third party information to identify a taxpayer's wealth i.e., from Transport Department, Companies Commission of Malaysia, Employees' Provident Fund, Construction Industry Development Board, Land office, Stamp Duty Office , newspapers, social media or even from third parties. From third party information, the IRBM would have identified the automotive, directorship, income, contract awarded, individual owned assets, properties and compare this with his declared income. The question is whether there is any potential under-reporting of income. Also, with the implementation of the Automatic Exchange of Information (AEOI) under Common Reporting Standard (CRS), the IRBM would have access to information on financial assets kept outside Malaysia.



ALL EYES ON UNEXPLAINED EXTRAORDINARY WEALTH: CAPITAL STATEMENT AS A DEFENSE?

Compare with an individual's tax returns submitted, any under-declared income?

CONCLUSION

Your assets must match with your declared income every year. Understanding the basic principles of capital statements and can help you review your assets and ensure that they are matched with your declared income.

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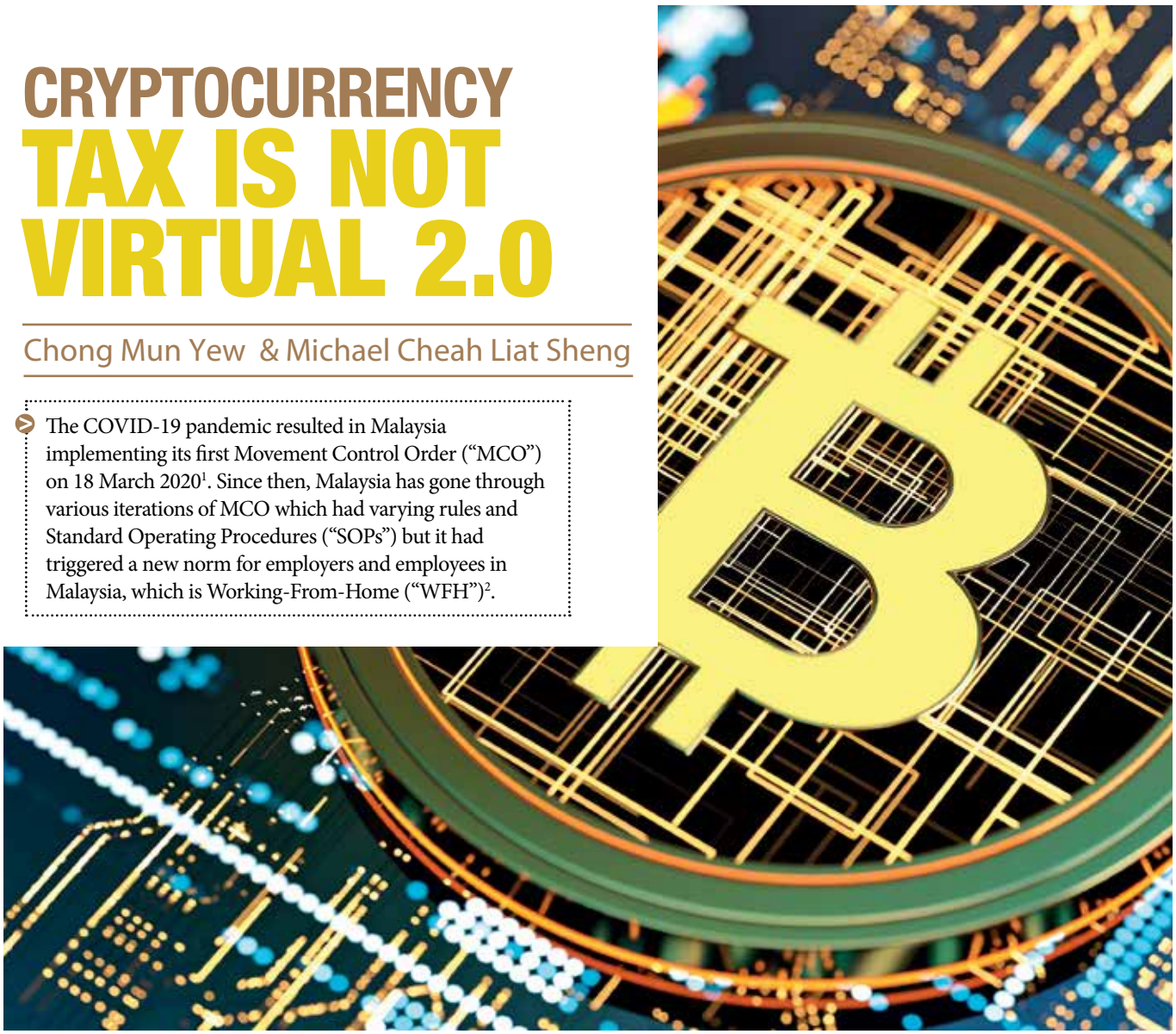
CRYPTOCURRENCY TAX IS NOT VIRTUAL 2.0

Chong Mun Yew & Michael Cheah Liat Sheng

The COVID-19 pandemic resulted in Malaysia implementing its first Movement Control Order ("MCO") on 18 March 2020[1]. Since then, Malaysia has gone through various iterations of MCO which had varying rules and Standard Operating Procedures ("SOPs") but it had triggered a new norm for employers and employees in Malaysia, which is Working-From-Home ("WFH")[2].



The WFH culture coupled with the economic uncertainties resulting from the COVID-19 pandemic worldwide has encouraged Malaysians to seriously consider investments as an additional income source or as an alternative to traditional investments such as buying shares, bonds, options, etc. One such investment opportunity is in cryptocurrency[3]. The surge of new investors in cryptocurrency has seen Luno Malaysia's[4] registering an influx of new users of 588,994 verified users in the fourth quarter of 2020, which represents over 300% quarter-on-quarter customer growth[5].

Given the upward trend of investing in cryptocurrency in Malaysia, the question then arises on whether the gains from investing in cryptocurrency is subject to tax in Malaysia. Although cryptocurrency has already been around for many years, but regulators are still trying to come to grips with the legal and tax aspects of this asset class.

This article seeks to examine the premise of cryptocurrencies and its potential effect on the taxation industry and update the previous article published in *Tax Guardian* in April 2018[6] on the same subject matter.

The rise of Digital Currency

Prior to 2009, no one seriously foresaw the rise of digital currency. After the financial crisis highlighted the oversight by the central banks and financial institutions which led to losses in

monetary reserves, people started looking for a more secure replacement to traditional fractional reserve banking. Then, cryptocurrencies were seen as one such alternative.

Over the past twelve years, cryptocurrencies have steadily grown in value and recognition as a digital currency. Elon Musk, a well-known enthusiast of Bitcoin, through Tesla acquired USD1.5 billion of Bitcoin during the first quarter of 2021 and then followed up with an announcement that Tesla's customers will be able to purchase their cars with Bitcoin[7]. This view has since changed due to recent announcement by Elon Musk on 13 May 2021 which is discussed further below.

All these together with a myriad of other factors culminated in cryptocurrencies values rising substantially in 2021. Ethereum posted a record high value of USD3,616 on 7 May 2021, which represented a price gain of over 385%[8]. On the other hand, Bitcoin posted its record high value of USD63,000 on 13 April 2021[9], which is double the price since the start of 2021[10]. Analysts are forecasting that cryptocurrencies, and in particular Bitcoin still have further potential for growth[11]. However, after the announcement made by Elon Musk, the prices of cryptocurrencies seem to be plunging. As can be seen, the prices of cryptocurrencies are highly volatile.

What is cryptocurrency?

Cryptocurrency is a form of decentralized digital currency that is based on blockchain[12] technology. They are secured by cryptography, thus making it almost impossible to counterfeit or double-spend[13]. For example, Bitcoins are registered with a Bitcoin address which makes the entire system pseudonymous with transactions being recorded under pseudonyms so that the identities of the parties are kept private. Bitcoins are stored in a Bitcoin wallet. The Bitcoin wallet is basically just a collection of Bitcoin addresses. Each of the Bitcoin addresses was created with a valid private key.

According to CoinLore, there are currently more than 5,000 cryptocurrencies in circulation [14].

Cryptocurrencies have the characteristic of a Fiat currency which means that it is not backed by a physical commodity like gold or government guarantees. Currently, most nations utilise fiat currency to drive their economies. The biggest fiat currency would be the United States Dollar which has been a fiat currency since 1971.[15] The thing that gives a fiat currency value is its scarcity, guarantee of value from the issuing state and the laws of supply and demand.

Using Bitcoin as an example, assuming the supply and demand remains stable, but the community was to lose faith in the value of Bitcoin, the community would then start to sell their Bitcoin bringing down the price of Bitcoin due to oversupply of Bitcoin in the market.

What can cryptocurrency be used for?

Cryptocurrency can be spent just like any conventional currency at any merchants that accept it. One such example is Tesla, which has recently announced that it will be accepting Bitcoin as a payment method for its customers to purchase their cars[16]. However, on 13 May 2021 Elson Musk said that Tesla would no longer accept bitcoin due to fossil fuel issue[17]. He has not indicated whether Tesla would accept other digital coins to replace Bitcoin. Alternatively, it can be sold to people who wish to purchase the cryptocurrency for whatever purpose.

How can you own cryptocurrencies?

One way to own cryptocurrency, which is the easiest way is to purchase it at one of the many new cryptocurrency exchanges. In Malaysia, there are three cryptocurrency exchanges registered with the Securities Commission of Malaysia which are Luno Malaysia Sdn Bhd, SINEGY Technologies (M) Sdn Bhd and Tokenize Technology (M) Sdn Bhd[18].

The alternative is cryptocurrency mining. Let us use Bitcoin mining as

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an example. Mining Bitcoin involves adding Bitcoin transaction data to the Bitcoin's global public ledger of past transactions. Each group of transactions is called a block. Blocks are secured by Bitcoin miners and built on top of each other to form the blockchain. The blockchain confirms the transactions as having taken place to the rest of the network. Bitcoin nodes running the Bitcoin program use the blockchain to distinguish legitimate Bitcoin transactions from those transactions that attempt to re-spend coins that have already been spent elsewhere.

However, Bitcoin mining is getting more expensive as more and more processing power is required to compute the hash functions required to secure a block to the blockchain. This has led to many Bitcoin mining pools being set up to share in the costs of mining Bitcoin. This is akin to a joint venture with many miners from all over the world to contribute to a mining pool.

Is Cryptocurrency the next tax frontier?

Different jurisdictions across the world have taken a different approach in respect of the taxation of cryptocurrency. We will examine a few of the approaches below.

United States

The United States Internal Revenue Service classifies virtual currency as property for United States Federal tax purposes.[19] Therefore, capital gains taxes are applicable for gains on the value of virtual currency in the United States.[20]

Singapore

In Singapore, the Inland Revenue Authority of Singapore has held that businesses that buy and sell virtual currencies in the ordinary course of their business will be taxed on the profits derived from trading in the virtual currency. Profits derived by businesses which mine and trade virtual currencies in exchange for money are also subject to tax.

However, like Malaysia, there is no capital gains tax in Singapore. Hence, long term investment in cryptocurrency would not be subjected to tax.[21]

Europe

In Europe, there is no consensus on whether cryptocurrency is a currency. However, the European Court of Justice has held that Bitcoin exchanges should be exempted from Value Added Tax ("VAT") on the basis that the only purpose of Bitcoin is as a means of payment, the court concluded that the 'currency' exemption in Skatteverket v David Hedqvist Case C-264/14 should apply.

What is the Malaysian Stance on Cryptocurrency?

Bank Negara has held that digital currencies are a payment instrument that is not regulated by Bank Negara and therefore cannot be considered legal tender in Malaysia. However, the Securities Commission of Malaysia ("SC") recognises digital currencies as an investible class of assets and has prescribed digital assets as securities that is regulated under the SC's laws[22].

Is cryptocurrency subject to Malaysian income tax?

Inland Revenue Board of Malaysia ('IRBM') has yet to issue definitive guidelines on how to subject the cryptocurrency transactions to tax. However, the IRBM has cited Section 3 of the Income Tax Act 1967 ("ITA") and indicated the said provision can be applied to active cryptocurrency traders. Therefore, the current provisions of the ITA can be applied to active cryptocurrency traders.

The IRBM went on to say that the determination of whether the profits from cryptocurrency activities is taxable would depend on the facts and circumstances of the case to determine whether there is a pattern of the badges of trade.

If one is determined as an active trader of cryptocurrency, then the net gains from the cryptocurrency activities would be subject to income tax and would be required to be disclosed in

their income tax returns under the "any other income" section[24]. Therefore, they would need to keep proper books of accounting and business records in Malaysia for the purpose of being audited by the relevant law enforcement agencies.

Notwithstanding, there are a few arguments that taxpayers can raise to argue against the imposition of tax on their gains from cryptocurrency as we will discuss below. For the avoidance of doubt, these factors have been highlighted in the previous article published by CTIM in August 2018.

1. FOREIGN SOURCE INCOME

Taxpayers can argue that the income gained from the cryptocurrency transaction is foreign-sourced income[25], and therefore not subject to tax i.e. that it is derived from outside Malaysia. This argument will likely be challenged by the IRBM - in which case the taxpayer would need to prove that the transaction was indeed performed outside Malaysia. With travel restrictions on account of the pandemic, this task is made that much more difficult for the taxpayer.

The nature of cryptocurrency is such that the transactions can be performed at a click of a button on a laptop or smartphone anywhere in the world. As such, the taxpayer would have a hard time proving that the location of the transaction or the originating source of the cryptocurrency lies overseas.

2. TAX RESIDENCY

The taxpayer can move around the world to avoid being classified as a tax resident in Malaysia. As mentioned, given the global nature of the cryptocurrency in general, these Malaysian taxpayers can sell their Bitcoins from anywhere without the hefty cross border transaction fees. These taxpayers could argue that they are not tax residents of Malaysia and therefore are not subject to Malaysian income tax. However, one should take guidance from the case of ***Hii Yii Ann v Deputy Commissioner of Taxation of the Commonwealth of Australia & Others [2017] MLJU 2302*** a Malaysian taxpayer derived income from Australia and was taxed on the said income by the Australian revenue authorities. The taxpayer however claimed he is not chargeable to income tax in Australia as he was not a tax resident in Australia. His appeal against the assessment was rejected by the Australian court.

Another issue to consider is who is actually making the profits. In the age of Virtual Private Networks, the identity of the person making those gains may not be clear. The money when remitted back for utilisation is an ancillary issue.

3. INCOME FROM HOBBY OR FROM INVESTMENT

The taxpayers can argue that they bought cryptocurrency merely as a hobby or as a long-term investment.

However, if a business arises as a by-product of a hobby or other non-commercial activities, its profits could also be subjected to tax.

This is seen in the tax case of ***Hawes v Gardiner (37 TC 671)*** where a taxpayer bred and trained dogs as his hobby. The General Commissioners found that the selling of puppies for substantial prices by the taxpayer was in the nature of trade and subjected the profits from the sale of puppies to tax.

Applying this principle, in the current circumstances, the trading of cryptocurrency may be subjected to tax. The taxable transactions occur every time the cryptocurrency is traded in virtual exchanges. The blockchain ledger will have records on the transacted prices and time of transfer. The taxpayers have to subtract the cost of the cryptocurrencies against the selling price to determine the gain or loss. In this regard, the taxpayers must keep track their cryptocurrency transactions continuously to report the gain or loss on each cryptocurrency transaction properly.

The application of the 40-year-old principles of the badges of trade from ***NYF Realty Sdn. Bhd. v Controller*** of

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[11] *Finextra Research, Crypto forecast for the first half of 2021 on 22 January 2021, https://www.finextra.com blogposting/19799/crypto-forecast-for-the-first-half-of-2021.*

[12] *Wikipedia, Blockchain, on 3 May 2021, https://en.wikipedia.org/wiki/Blockchain. A blockchain, originally block chain, is a continuously growing list of records, called blocks, which are linked and secured using cryptography. Each block typically contains a cryptographic hash of the previous block, a timestamp and transaction data. By design, a blockchain is inherently resistant to modification of the data. It is "an open, distributed ledger that can record transactions between two parties efficiently and in a verifiable and permanent way". For use as a distributed ledger, a blockchain is typically managed by a peer-to-peer network collectively adhering to a protocol for validating new blocks. Once recorded, the data in any given block cannot be altered retroactively without the alteration of all subsequent blocks, which requires collusion of the network majority. Investopedia, Cryptocurrency on 7 March 2021, https://www.investopedia.com/ terms/c/cryptocurrency.asp.*

[13] *Investopedia, Cryptocurrency on 7 March 2021, https://www.investopedia.com/ terms/c/cryptocurrency.asp.*

[14] *Forbes, What Is Cryptocurrency? on 18 December 2020, https://www.forbes.com/ advisor/investing/what-is-cryptocurrency/.*

[15] *American Monetary Association, How American became a fiat currency 2 March 2018, http://americanmonetaryassociation. org/how-the-us-dollar-came-to-be-a-fiat-currency/.*

[16] *BBC News, Tesla: Bitcoin sales and environmental credits boost profits on 27 April 2021, https://www.bbc.com/news/ business-56897457.*

Inland Revenue could still be applicable in determining whether there is an intention to trade:

i. **Subject matter of the transaction**
Cryptocurrency is a speculative instrument that is extremely difficult to value[26] and as such is normally the subject of investment. However, even gains from investment can be subject to income tax if they are performed actively.
This is seen in the tax case of ***Dr. Zanariah Binti Ramli v Ketua Pengarah Hasil Dalam Negeri Civil Appeal No. W-01-711-12/2011***, *where the Court of Appeal held that the gains made from the bond market is subject to income tax based on the grounds that the appellant had in fact been actively trading in bonds during the period.*
Numerous or repetitive acts done by the appellant would suggest the action was in the nature of a trade. In view of the above, holding cryptocurrency would likely have the characteristic of an asset held for trading in the eyes of the IRBM.

ii. **Period of ownership**
The period of ownership of the cryptocurrency is one aspect which is in total control by the taxpayer. The benefit of holding cryptocurrency is that there are virtually no holding costs unless the taxpayer has borrowed money to purchase this cryptocurrency. If a taxpayer has held the cryptocurrency for a long period of time, he could argue that he is a long-term investor of the currency. However, for all recent transactions, it would likely be considered an adventure in the nature of a trade and be subjected to tax.

ii. **Frequency of transactions**
This is a significant consideration to identify speculators of cryptocurrency. There will be multiple cryptocurrency transactions to and from the same address or wallet within a short period of time. Most cryptocurrency transactions are public, traceable and stored on a network based on blockchain technology. In the present case, if the IRBM can look behind the cryptocurrency pseudonyms and identify the owner of the cryptocurrency wallet, the IRBM can further investigate the owner of cryptocurrency and tax them accordingly.

iii. **Alteration of property to render it more saleable**
Due to the nature of cryptocurrency, the taxpayer is unlikely to be able to alter the cryptocurrency to make it more saleable.

iv. **Methods employed in disposing of property**
If special exertion was made to find or attract purchasers for the cryptocurrency, it might indicate an intention to sell it for profit. However, in the case of cryptocurrency, the taxpayer has easy access to buying and selling of cryptocurrency via the numerous cryptocurrency exchanges available. Further, cryptocurrency is currently a very liquid asset that can be spent on goods and services just like conventional currency, albeit it not being recognised as legal tender by Bank Negara. Arguably, this badge of trade may not paint a clear picture of the intention of the taxpayer.

vi. **Circumstances responsible for sale**
The principle here is that if the sale of cryptocurrency is occasioned by a sudden emergency or unanticipated need for funds, such facts will tend to indicate that the cryptocurrency was not acquired for the purpose of resale at a profit and that the sale was not pursuant to a profit-making undertaking or scheme.
This principle involves a subjective study into the surrounding circumstances relating to the sale of cryptocurrency and will be determined according to the merits of each individual case.

vii. **Financing**
Generally, the source of financing can indicate whether an asset was purchased with the intention to trade. If the taxpayer has taken a short-term loan to purchase the cryptocurrency, it will tend to indicate that the cryptocurrency was acquired for the purpose of resale

for profit and subject the gains to tax.

Based on the analysis of badges of trade above, the cryptocurrency speculators may be considered as engaging in an adventure in the nature of a trade and their gains will be taxable.

Is there an upside?

On the bright side, if the taxpayer is held to be engaging in an adventure in the nature of a trade, all expenses wholly and exclusively incurred in earning that income will be deductible under Section 33(1) of the ITA provided that they are not specifically disallowed under Section 39 of the ITA. Therefore, taxpayers may even claim the interest costs or any directly related costs incurred to hold the cryptocurrency.

However, it is difficult to draw the line between capital versus revenue in an actual situation, a person may initially purchase cryptocurrency for investment purposes but subsequently uses it to settle debts. The question that arises would be – will this still be a capital transaction? If not, which value to be used for tax purposes?

Cryptocurrency Staking

An alternative method to getting returns on cryptocurrency is by staking. Staking is the holding of cryptocurrency in the cryptocurrency wallet to support the security and operations of the blockchain network[27]. By locking the cryptocurrency, the cryptocurrency exchange will provide rewards which are usually in the form of a cryptocurrency of choice of the wallet owner.

This concept would be similar to that of placing a fixed deposit with a licensed bank to earn the interest income. However, individuals earning interest income from deposits placed with licensed banks are exempted from tax[28] on the interest income. The same cannot be said for the returns earned from cryptocurrency staking where there are no specific provisions in the ITA nor any rules that exempt it from tax in Malaysia. Therefore, similar to the trading of cryptocurrency, individual and corporate taxpayers alike earning rewards from cryptocurrency staking may potentially be required to bring it to tax under Section 3 of the ITA.

So, what's next?

How to tax a decentralised currency powered by blockchain technology is still very much the question on every government regulator's mind. One thing for certain is that they have to update their respective tax laws or potentially continue losing out on a digital gold mine of tax revenue.

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[17] *Financial Times on 13 May 2021 reported that "Musk says Tesla no longer plans to accept payment in bitcoin - Cryptocurrency's price falls after chief executive goes from evangelist to critic, citing environmental impact".*

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[23] *The Malaysian Reserve, Active cryptocurrency traders not spared from LHDN on 5 January 2021, https://themalaysianreserve.com/2021/01/05/active-cryptocurrency-traders-not-spared-from-lhdn/.*

[24] *The Edge Markets, The Wall: Profited from trading bitcoin? Find out if you need to pay taxes on 1 March 2021, https://www.theedgemarkets.com/article/thewall-profited-trading-bitcoin-find-out-if-you-need-pay-taxes.*

[25] *Paragraph 28 Schedule 6 of the Income Tax Act 1967.*

[26] *The Malaysian Reserve, Bitcoin expected to reach another record high, but…, on 18 December 2020,*

[27] *https://themalaysianreserve.com/2020/12/18/bitcoin-expected-to-reach-another-record-high-but/. Binance Academy, What Is Staking? on 12 May 2021, https://academy.binance.com/en/articles/what-is-staking.*

[28] *Income Tax (Exemption) (No. 7) (Amendment) Order 2009*

Disclaimer: This article does not seek to address all tax issues associated with cryptocurrency and all views expressed are purely the personal opinions of the authors.

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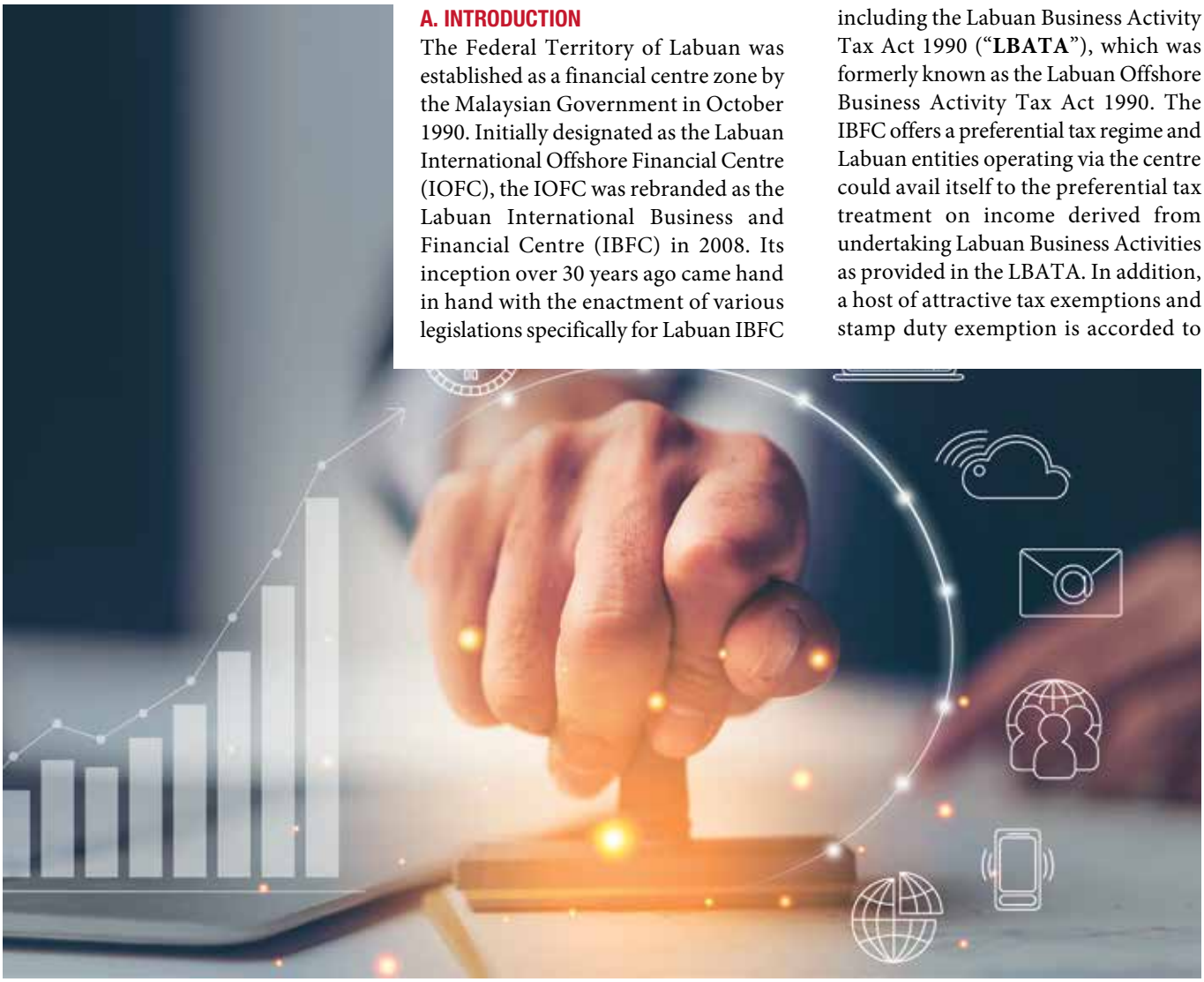
UNLISTED LABUAN ENTITIES

TO BE TAXED UNDER THE LBATA 1990 OR THE ITA 1967?

Datuk D.P. Naban, S. Saravana Kumar & Elani Mazlan



A. INTRODUCTION

The Federal Territory of Labuan was established as a financial centre zone by the Malaysian Government in October 1990. Initially designated as the Labuan International Offshore Financial Centre (IOFC), the IOFC was rebranded as the Labuan International Business and Financial Centre (IBFC) in 2008. Its inception over 30 years ago came hand in hand with the enactment of various legislations specifically for Labuan IBFC including the Labuan Business Activity Tax Act 1990 ("**LBATA**"), which was formerly known as the Labuan Offshore Business Activity Tax Act 1990. The IBFC offers a preferential tax regime and Labuan entities operating via the centre could avail itself to the preferential tax treatment on income derived from undertaking Labuan Business Activities as provided in the LBATA. In addition, a host of attractive tax exemptions and stamp duty exemption is accorded to

Labuan Entities undertaking Labuan Business Activities in Labuan IBFC.

In the year 2019, arising from the recommendations as agreed by the Forum on Harmful Tax Practices ("**FHTP**") established by the Organisation for Economic Cooperation and Development ("**OECD**"), substantial changes were made to LBATA as well as other relevant laws of Labuan IBFC. (Note: Malaysia is not a member of OECD but is a member of the FHTP). The objective of FHTP was to remove harmful tax practices and ensure compliance with the internationally agreed tax standards and best practices. Member countries were encouraged to adopt the standards by making the necessary changes in the legislations and FHTP agreed to impose sanctions if countries fail to implement such standards. Sanctions could be in the form of non-recognition of treaty benefits under the Double Tax Agreements or listing as a non-compliant jurisdiction. The sanctions if imposed would erode the competitiveness of the financial centres.

One of the key amendment that was made in LBATA is the introduction of a new Section 2B(1). The new provision specifically provided that certain Labuan entities must satisfy substance requirements, namely operate via a physical office located in Labuan Island and incur operating expenditure in Labuan Island. On the other hand, 'Labuan Entities' was retained as *'those which are specified in the Schedule'* of the LBATA. These include, inter alia, any person declared by the Minister of Finance ("**Minister**") to be a Labuan entity under Section 2B(2) of the LBATA. It must be noted that Section 2 of the LBATA provides the definition of a 'Labuan entity' as *'the entity specified in the Schedule'*.

Labuan entities which are listed in the Schedule to the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2018 ("**Regulations 2018**") also have additional requirements to qualify as undertaking Labuan Business Activity prescribed by the Minister, by virtue of Section 2B(1) of the LBATA. Labuan entities undertaking business activities as listed in the Regulations 2018, which fail to comply with the said substance requirements face the consequence of not being able to enjoy the preferential tax treatment and will be taxed at a rate of 24% upon its chargeable profits[1]. These are new prominent features in LBATA in tandem with FHTP's recommendation, whereby entities which are accorded preferential tax treatment must have in place economic substance at the place where the incentives are offered. In other words, preferential tax should NOT be accorded to entities listed in the Schedule of the Regulations 2018 that do not meet the prescribed substance and expenditure requirements and the headline tax should apply.

Briefly, these additional requirements under Section 2B(1) are:

(i) in relation to a Labuan trading activity, the adequate number of employees and the adequate amount of annual operating expenditure in Labuan; and

(ii) in relation to a Labuan non-trading activity, the adequate number of employees, the adequate amount of annual operating expenditure in Labuan, and the prescribed conditions to be complied with in relation to control and management in Labuan.

A second glance at the current legislation raises the inevitable question: what of those Labuan entities which are not listed in the Schedule to the Regulations 2018 ("**Unlisted Labuan Entities**")? There may appear to be an uncertainty in respect of this. A number of questions then naturally follow suit: what are the consequences which the Unlisted Labuan Entities now face? Would these Unlisted Labuan entities still be able to enjoy the perks of the LBATA in the form of lower tax rates? Or, would the Income Tax Act 1967 ("**ITA 1967**") then come into the picture to govern these Unlisted Labuan entities?

To shed light on the above, this article will determine the following questions:

(a) Whether an Unlisted Labuan Entity maintains its status as a Labuan entity notwithstanding that the Minister did not prescribe any substance and expenditure requirement as stipulated under Section 2B(1) of the LBATA; and

(b) Whether these Unlisted Labuan Entities are subject to tax under the ITA 1967 or the LBATA.

At the outset, it must be stated that there is much debate currently regarding these issues and in particular, the interpretation of Section 2B(1) of the LBATA and the Regulations 2018. The view adopted by the Inland Revenue Board of Malaysia ("**IRBM**"), for instance, is that Unlisted Labuan Entities will not be entitled to the preferential tax treatment accorded by the LBATA. Instead, the IRBM contends that these Unlisted Labuan Entities will be charged to tax under the ITA 1967.

B1. CAN AN UNLISTED LABUAN ENTITY MAINTAIN ITS STATUS AS A LABUAN ENTITY UNDER THE LBATA?

(i) The Statutory Provisions

While Section 2B imposes an additional requirement for certain Labuan Entities carrying out Labuan Business Activities, it is important to note that the prescription by the Minister by way of regulations made under the LBATA is not in respect of which entity should be regarded in law as a Labuan entity. As previously mentioned, what constitutes a Labuan entity is that which is clearly specified in the Schedule to the LBATA and this includes Unlisted Labuan Entities[2]. In the event that the Minister

[1] *Section 2B(1A) of the LBATA.*

[2] *Section 2 and Section 2B(1) of the LBATA.*

wishes to amend the Schedule to the LBATA to include any other person to be a Labuan entity, it is expressly provided that he shall do so on the recommendation of the Director General of Inland Revenue by way of an order published in the *Gazette*[3].

A Labuan entity which is listed in the Schedule to the Regulations 2018 ("**Listed Labuan Entities**"), which does not comply with the requirements under the Regulations 2018 for a basis period shall

be charged to tax at 24% upon chargeable profits for that year of assessment only[4]. It would be noted that despite the Labuan entity's failure to comply with the Regulations 2018, the status of the Labuan entity is not changed. Instead, it remains a Labuan entity and therefore, is taxed under the LBATA albeit at the rate of 24%. This is very different from being subjected to tax under the ITA 1967. The term '*chargeable profit*' is defined as the net profits as reflected in the audited accounts in respect of such Labuan trading activity of a Labuan entity for the basis period[5]. Alternatively, the ITA 1967 imposes a tax on 'chargeable income' as ascertained under Section 5 of the ITA 1967.

In clear and unambiguous terms, the LBATA provides the circumstances in which a Labuan entity falls under the jurisdiction of the ITA 1967 instead of the LBATA itself. This is found in Section 2(3) and Section 3A of the LBATA. In a similar clear and unambiguous manner, the ITA 1967 also provides the circumstance in which a Labuan entity will be governed by the ITA 1967 instead of the LBATA[6]. This is only when a Labuan company has made an irrevocable election to be taxed under the ITA 1967 in accordance with Section 3A of the LBATA.

The charging section of the LBATA[7] stipulates that only a Labuan entity carrying on a Labuan business activity is chargeable to tax under the LBATA in respect of that Labuan business activity. Labuan Business Activity is defined under Section 2 of the LBATA as 'a *Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan, excluding any activity which is an offence under any written law*'. The fact that the Labuan business activities being carried out by the Labuan entity are not prescribed whether for substance or expenditure under the Regulations 2018 is irrelevant. Section 2B of the LBATA does not mandate the Minister to prescribe a substance or expenditure requirement in respect of every Labuan entity set out in the Schedule to the LBATA.

As such, it can be reasonably concluded that an Unlisted Labuan Entity remains a Labuan entity notwithstanding that the Minister has not prescribed any substance and expenditure requirement as stipulated under Section 2B(1)(b) of the LBATA. In the authors' view, there is no doubt in this matter.

(ii) The Legal Arguments

In the event that it is suggested that there is any doubt or uncertainty whatsoever, the conclusion above is supported by the Parliamentary debates as contained in the Hansard when Section 2B(1A) of the LBATA was introduced via the Labuan Business Activity (Amendment) Act 2020 to which the insertion was deemed to be in force from 1 January 2019. This date is concurrent with the date when Section 2B(1) was first amended under the Finance Act 2018.

Where there is no ambiguity, the words of a statute must be interpreted according to their plain and ordinary meaning. It is trite law that taxing statutes should be interpreted strictly by looking merely at the plain wording. This is clearly established in the Supreme Court case of ***National Land Finance Co-Operative Society Ltd v Director-General***

> **"This differs from Section 2B(1A) which states that the 24% tax rate is to be imposed upon chargeable profits. Instead, this is similar to Section 4 of the LBATA, which states that tax is to be charged at the rate of 3% upon the chargeable profits"**

of Inland Revenue [1993] 4 CLJ 339. Furthermore, the Federal Court in ***Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd [2005] 3 MLJ 97*** had held that the correct approach in interpreting a taxing statute is to give the words their ordinary meaning and to merely look at what is clearly said. By applying the legal principles in ***National Land Finance*** (supra) and ***Palm Oil Research*** (supra), it is evident that the law states that Labuan entities as specified in the Schedule to the Regulations 2018 are required to comply with the substance and expenditure requirements under the Regulations 2018. On the other hand, the law is silent on the need for Unlisted Labuan Entities to comply with the substance and expenditure requirements. Further and more importantly, nowhere in the LBATA does it state that Unlisted Labuan Entities cease to be Labuan entities. In this regard, it is important to note that it is an established principle in law that words cannot be read into a statute[8].

Therefore, taking into account all of the above, it can be argued that the law states that only Listed Labuan Entities must comply with the substance and expenditure requirements. On the contrary, the Unlisted Labuan Entities are not required to comply with the substance and expenditure requirements as set out in the Regulations 2018. These Unlisted Labuan Entities remain Labuan entities by virtue of the Schedule to the LBATA.

B2. ARE UNLISTED LABUAN ENTITIES SUBJECT TO TAX UNDER THE ITA 1967 OR THE LBATA?

(i) The Current Situation

We are now met with a situation in which the Minister had not prescribed the substance and expenditure requirements for Unlisted Labuan Entities. Nevertheless, as concluded above, these Unlisted Labuan Entities remain as Labuan entities.

In respect of the Labuan business activities which are chargeable to tax under the LBATA, it is stipulated as follows:

Type of Business Activity	Tax Rate
Labuan *trading activity, which includes "banking, insurance, trading, management, licensing, shipping operations or any other activity which is not a Labuan non-trading activity".*	3% **Section 4 of the LBATA*
Labuan *non-trading activities, which is defined as activities "relating to the holding of investments in securities, stock, shares, loans, deposits or any other properties situated in Labuan by a Labuan entity on its own behalf".*	0% **Section 9 of the LBATA*

This begs the question – what is the tax treatment for the Unlisted Labuan Entities?

(ii) The Statutory Provisions

In this respect, we can first refer to Section 2B(1A) of the LBATA, which was inserted by Labuan Business Activity Tax (Amendment) Act 2020. This provision, which came into force on 1 January 2019, states that a Labuan entity carrying on a Labuan business activity which fails to comply with regulations made under Section 2B(1) shall be charged at a rate of 24% upon its chargeable profits for that year of assessment. It is clear that Listed Labuan Entities carrying on Labuan business activities that fail to comply with such requirements continue to be taxed under the LBATA, albeit at 24% instead of 3% under Section 4 of the LBATA or 0% under Section 9 of the LBATA. As for the Unlisted Labuan Entities, they are not required to comply with the substance requirements and so, there is no 'failure' involved.

Furthermore, this provision can be compared and contrasted with the charging provision under the ITA 1967[9], which provides that the tax is chargeable on the *income* of a person. This differs from Section 2B(1A) which states that the 24% tax rate is to be imposed upon *chargeable profits*. Instead, this is similar to Section 4 of the LBATA, which states that tax is to be charged at the rate of 3% upon the chargeable profits.

On the other hand, any imposition of tax either pursuant to the LBATA or the ITA 1967 has been explicitly set out in the LBATA. As explained above, both the statutory provisions of the LBATA and the ITA 1967 have specified the circumstances in which a Labuan entity is to be charged under the ITA 1967[10]. In particular, Section 2(3) of the LBATA states the circumstances in which provisions of the ITA 1967

[3] *Section 2B(2) of the LBATA.*
[4] *Section 2B(1A) of the LBATA.*
[5] *Section 2B(1B) of the LBATA.*
[6] *Section 3B of the ITA 1967.*
[7] *Section 3 of the LBATA.*
[8] *Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang & Anor [2007] 6 MLJ 581; [2007] 2 MLRA 187.*
[9] *Section 3 of the ITA 1967.*
[10] *Sections 2(3) and 3A of the LBATA; Section 3B of the ITA 1967.*

shall apply, which is in respect of an activity other than a Labuan business activity carried on by a Labuan entity and a Labuan business activity carried on by a Labuan entity which makes an election under Section 3A of the LBATA.

In addition to that, there is nothing in the LBATA to indicate that Labuan entities not included in the Schedule to the Regulations 2018 i.e. Unlisted Labuan Entities are subject to be charged under the ITA 1967. Based on the statutory provisions (or lack thereof) explained above, it then cannot be said that Unlisted Labuan Entities are to be charged under the ITA 1967, instead of the LBATA.

(iii) The Legal Arguments

The courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists, and which would impose tax without clear words present in the statute[11]. It is also trite law that where the meaning of the words in a statute is ambiguous, the taxpayer must be given the benefit of the doubt[12].

Consequently, in the event that the words of the provisions of the LBATA are unclear or ambiguous, we must apply the purposive approach in construing the statute in accordance with Section 17A of the Interpretation Acts 1948 and 1967. In ***Andrew Lee Siew Ling v United Overseas Bank [2013] 1 CLJ 24***, the Federal Court stated that where the plain meaning of a piece of legislation is in doubt, the broad purpose of the legislation will then be sought out and the reading of the statute in support of such purpose may be adopted by the courts. This purposive approach should be applied in order to determine whether the Unlisted Labuan Entities remain subject to the LBATA or are subject to the ITA 1967 as it is now well established that taxing statutes like all other statutes must be given a purposive interpretation to fulfil the objective of the statute, unless the circumstances demand otherwise[13].

"We can also look to extrinsic evidence in the form of another Hansard to interpret Section 2B(1A) of the LBATA. The contents of the said Hansard prove that the intention of the Parliament in enacting Section 2B(1A) is to enable Labuan entities to continue to be subject to tax under the LBATA, as opposed to the ITA 1967."

To ascertain the rationale, purpose or objective of the statute, it is permissible to resort to extrinsic evidence, such as the Hansard, as an aid to statutory interpretation[14]. The key extrinsic evidence in our case is the Hansard[15] wherein it was evident that the rationale behind the enactment of the LBATA is to set up a tax incentivised status for Labuan which came in the form of a preferred tax regime. Therefore, if the LBATA and the Regulations 2018 are construed to mean that the Unlisted Labuan Entities are subject to tax under the ITA 1967, this would defeat the intention of Parliament, that is to enable Labuan entities carrying out Labuan activities to enjoy the preferential tax treatment available under the LBATA.

We can also look to extrinsic evidence in the form of another Hansard[16] to interpret Section 2B(1A) of the LBATA. The contents of the said Hansard prove that the intention of the Parliament in enacting Section 2B(1A) is to enable Labuan entities to continue to be subject to tax under the LBATA, as opposed to the ITA 1967.

In summary, in both applications of the literal approach and the purposive approach in statutory interpretation, it can be reasonably concluded that the Unlisted Labuan Entities remain subject to tax under the LBATA and not the ITA 1967.

The LBATA and the ITA 1967 must also be interpreted harmoniously. The harmonious approach states that if certain provisions in the

ERRATA FOR TAX GUARDIAN QUARTER 2 ISSUE YEAR 2021

ARTICLE: TAX AUDITS - OPENING PRINCIPLES AND UNDERSTANDING ENDGAMES - PAGE 25

1. There should be no "superseded" below the 4 frameworks:
   A. Tax Audit Framework
   B. Petroleum Tax Audit Framework
   C. Transfer Pricing Audit Framework
   D. Tax Audit Framework on Finance and Insurance
2. The Tax Audit Framework below "18 November 2020", should be replaced with "Tax Audit Framework on Finance and Insurance" instead of "Tax Audit Framework (Amendment 1/2015) superseded".

statute appear to be conflict with each other, these provisions should be interpreted so as to give effect a reconciliation between them so that, if possible, effect could be given to all. The rule of harmonious construction was set out in ***Wee Nai Li v Sarawak Bank Employees Union [2012] MLJU 1593***. In the harmonious interpretation of the following, it renders that the Labuan entities carrying out Labuan business activities remain to be taxed under the LBATA only. This view is fortified further by the fact that:

(a) Section 2(3) of the LBATA stipulates that the ITA 1967 shall, inter alia, apply in respect of an activity other than a Labuan business activity carried on by a Labuan entity and a Labuan business activity carried on by a Labuan entity which makes an election under Section 3A of the LBATA;

(b) Section 3 of the LBATA states that a Labuan entity carrying on a Labuan business activity shall be charged to tax in accordance with the LBATA;

(c) Section 2 of the LBATA provides that Labuan business activity is defined as *'a Labuan trading or a Labuan non-trading activity carried on in, from or through Labuan, excluding any activity which is an offence under any written law'*; and

(d) Section 3B of the ITA 1967 states that tax shall not be charged in respect of an offshore business activity carried on by an offshore company, other than those which have made an election under Section 3A of the LBATA.

C. CONCLUSION

Based on the above analysis, the authors are of the view that the questions raised earlier in relation to the fate of Unlisted Labuan Entities following the prescription of substance and expenditure requirements pursuant to Section 2B(1) of the LBATA can be answered as follows:

(a) the Unlisted Labuan Entities remain Labuan entities within the meaning of the LBATA; and

(b) the Unlisted Labuan Entities are subject to tax under the LBATA, and not the ITA 1967, at the following tax rates of 0%[17] or 3%[18] accordingly.

Thus, it can be seen that the aforementioned presumed uncertainty surrounding the status and the tax treatment of Unlisted Labuan Entities is not uncertain after all. Upon legal analysis such as that made above, it is clear as day that Unlisted Labuan Entities continue to be ruled by the LBATA, despite the absence of substance and expenditure requirements under the Regulations 2018. This meets the objective of the Malaysian Government in allowing Labuan entities to enjoy the preferential tax treatment under the LBATA tax regime. Unlisted Labuan Entities should not have to bear the burden in the form of the tax rate of 24% under Section 2B(1A), just because they were never prescribed any substance and expenditure requirement by the Minister.

[11] *National Land Finance Co-Operative Society Ltd v Director-General of Inland Revenue [1993] 4 CLJ 339; Malaysian Co-operative Insurance Society Lt dv KPHDN (2000) MSTC 3792.*

[12] *National Land Finance Co-Operative Society Ltd v Director-General of Inland Revenue [1993] 4 CLJ 339.*

[13] *Lembaga Bangunan Industri Pembinaan Malaysia v Konsortium JGC Corp & Ors [2015] 6 MLJ 612.*

[14] *Chor Phaik Har v Farlim Properties [1994] 3 MLJ 345.*

[15] *Dewan Rakyat Hansard (Ministerial reading of the Labuan Offshore Business Activity Tax Bill 1990) of the Dewan Rakyat Parlimen Ketujuh Penggal Keempat Mesyuarat Pertama, Bil 24 (22 June 1990).*

[16] *Dewan Rakyat Hansard (Ministerial reading of the Labuan Offshore Business Activity Tax Bill 2019) of the Dewan Rakyat Parlimen Keempat Belas Penggal Kedua Mesyuarat Ketiga, Bil 65 (2 December 2019).*

[17] *Section 9 of the LBATA.*

[18] *Section 4 of the LBATA.*

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THE CAMECO CORPORATION CASE "THOU SHALT NOT DISREGARD"

Venkataraman Ganesan

"Beware: open-mindedness will often say, 'Everything is permissible, except a sharp opinion'" – Criss Jami

The year 2020 represented a tumultuous year for more reasons than one. The insidious COVID-19 pandemic wreaked global havoc causing incalculable damage in terms of both physical and fiscal health. The taxation landscape, that is part of a seamless and globalized economy was also forced to adopt measures in sync with the ramifications of the pandemic. This was more so in spheres such as the definition of (and relaxation) Permanent Establishments as well as providing much needed tax breaks and incentives. The domain of Transfer Pricing saw a few landmark judgments being dished out by Courts spread across geographies. A common thread that seemed to bind such decisions was an added stress on the alignment of contractual obligations with actual conduct.

Once such case is the case involving Cameco Corporation in Canada. At the time of this article, the Supreme Court of Canada dismissed the Revenue's appeal, stemming from a decision rendered by the Federal Court of Appeal ("FCA") in favour of Cameco. The following paragraphs discuss and dissect in detail the verdict rendered by the FCA.

Note: While the common nomenclature adopted in the Canadian context for describing the Income Tax Authorities/ Canadian Revenue Agency ("CRA") is the "Crown" for the purposes of simplicity, the term "Revenue" has been employed throughout this piece.

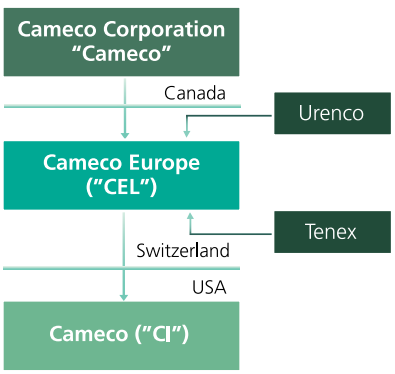
A. FACTS OF THE CASE[1]

Cameco Corporation ("Cameco"), is a large uranium producer and supplier of the services that convert one form of uranium into another form. The Canadian Corporation owned uranium mines in the region of Saskatchewan. Cameco also operated uranium refining and processing facilities in Ontario. Cameco was a Multinational conglomerate with subsidiaries in the United States.

In the year 1993, both United States and Russia mutually agreed for the former to sell uranium that was otherwise earmarked for its nuclear arsenal. Cameco, desirous of sourcing such uranium, negotiated an agreement with a consortium of companies. When the brass tacks of such a consortium agreement were finalized in the year 1999, Cameco nominated its Luxembourg subsidiary, Cameco Europe S.A. ("CESA"), to be the signatory to this agreement. The parties to the consortium agreement, commonly referred to as the HEU Feed agreement consisted of CESA, Compagnie Générale des Matières

Nucléaires (COGEMA) (a French state-owned uranium producer), Nukem, Inc. (a privately owned United States corporation trading in uranium), Nukem Nuklear GMBH and AO "Techsnabexport" (Tenex) (a Russian state-owned company). On the 9 September 1999, CESA finalized another agreement a company called Urenco Limited ("Urenco") and three of its subsidiaries. This agreement was to procure uranium that Urenco, in turn would be sourcing from Tenex.

In Financial Year 2002, CESA transferred its business to CEL, another subsidiary of Cameco incorporated in Switzerland. An Asset Purchase and Transfer of Liabilities Agreement dated 1 October 2002, was executed on 30 October 2002. Pursuant to such an agreement, CESA transferred to CEL the rights that CESA had to purchase uranium from Tenex and Urenco. Subsequent to all these reorganisations and transfer of businesses, the final organisation structure of Cameco at the time of the litigation was as illustrated herein below:



B. TRANSACTIONAL VALUE CHAIN

- Cameco sells the uranium mined by it within Canada to CEL at market determined prices;
- CEL, in addition to procuring uranium from Cameco, also sources the same from both Urenco as well as Tenex pursuant to the HEU agreement transferred to CEL by CESA;
- CEL sells all the uranium procured by it to Cameco Inc ("CI") a subsidiary of Cameco in the United States at market determined prices;
- CI sells the uranium to independent unrelated third party customers.

C. POSITION OF PROFITABILITY FOR THE YEARS UNDER AUDIT

While Cameco incurred losses in the Financial Years 2005 and in 2006, CEL derived profits of $43 million, $196 million, and $243 million for the Financial Years 2003, 2005 and 2006 respectively.

D. CONTENTION OF THE CANADIAN REVENUE AUTHORITY

The Tax authorities contended that from a commercial point of view no two third parties would have entered into any of the transactions that Cameco entered into with, first, CESA and finally CEL. The Revenue also argued that all of the profits earned by CEL for the years under audit ought to be reallocated to Cameco. The outcome of such a reallocation of profits to Cameco would be as tabulated hereinbelow:

Financial Year	Additional Income as a result of reallocation (In CAD)
2003	43,468,281
2005	96,887,068
2006	243,075,364

E. ANALYSIS OF THE FACTS AND CONTENTIONS BY THE FEDERAL COURT

The Federal Court, after considering the fact that the Revenue had already lost its appeal in the Tax Court, which had unequivocally held that the transactions entered into by Cameco with CESA and CEL were not sham transactions, reiterated a need to analyse the issues on hand by taking recourse to textual, contextual, and purposive analysis. This was in line with the tenets laid down by the Canadian Supreme Court in the case of ***Canada Trustco Mortgage Co v Canada***[2]

TEXTUAL ANALYSIS

The Federal Court demanded an explanation from the Revenue as to how the amount of taxes payable in Canada would be any different if Cameco itself had entered into the same contracts with Cameco US, instead of CEL.

Throughout the transactional value chain the prices at which the buying and selling of uranium was being transacted was reflective of an arm's length arrangement. Even the Revenue was not challenging the factual findings that the prices at which Cameco sold uranium to CEL were within the range of arm's length prices. Therefore, even adopting the Crown's alternative transactions, Cameco could have sold

[1] *Her Majesty The Queen and Cameco Corporation (2020 FCA 112)*

the same amount of uranium at the same prices to Cameco US that it had sold to CEL, which would result in Cameco US realizing the related profit from selling this uranium to third party purchasers, not Cameco.

The very essence of the case hovered on an interpretation of subparagraph 247(2)(b)(i) of the Canadian Income Tax Act. Section 247(2) provides that, *"Where a taxpayer or a partnership and a non-resident person with whom the taxpayer or the partnership, or a member of the partnership, does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in a transaction or a series of transactions.*

(a) the terms or conditions made or imposed, in respect of the transaction or series, between any of the participants in the transaction or series differ from those that would have been made between persons dealing at arm's length; or

(b) the transaction or series

(i) would not have been entered into between persons dealing at arm's length, and

(ii) can reasonably be considered not to have been entered into primarily for bona fide purposes other than to obtain a tax benefit,

any amounts that, but for this section and section 245, would be determined for the purposes of this Act in respect of the taxpayer or the partnership for a taxation year or fiscal period shall be adjusted (in this section referred to as an "adjustment") to the quantum or nature of the amounts that would have been determined if

(c) where only paragraph 247(2)(a) applies, the terms and conditions made or imposed, in respect of the transaction or series, between the participants in the transaction or series had been those that would have been made between persons dealing at arm's length, or

(d) where paragraph 247(2)(b) applies, the transaction or series entered into between the participants had been the transaction or series that would have been entered into between persons dealing at arm's length, under terms and conditions that would have been made between persons dealing at arm's length"

It is amply evident that Section 247(2) does not refer to whether the particular taxpayer would **NOT** (***emphasis supplied***) have entered into the particular transaction with the non-resident if that taxpayer had been dealing with the non-resident at arm's length or what other options may have been available to that particular taxpayer. Rather, this subparagraph raises the issue of whether the transaction or series of transactions would have been entered into between persons dealing with each other at arm's length (an objective test based on hypothetical persons) — not whether the particular taxpayer would have entered into the transaction or series of transactions in issue with an arm's length party (a subjective test). A test based on what a hypothetical person (or persons) would have done is not foreign to the law as the standard of care in a negligence case is a "hypothetical 'reasonable person'" ***Queen v. Cognos Inc***.[3]

The Federal Court also ruled that Subparagraph 247(2)(b)(i) of the Act would only find application where it can be demonstrated that two people transacting at arm's length would have entered into the transaction or the series of transactions in question, under any terms and conditions.

The Courts also made a very interesting observation in this context. They elucidated that if the intent of the Parliament was to apply the provisions of subparagraph 247(2)(b)(i) of the Act to conclude that a particular taxpayer would not have entered into the particular transaction with any arm's length person, this subparagraph should have read as follows:

"the transaction or series would not have been entered between the participants if they had been dealing at arm's length"

Hence going by the allegations, arguments and interpretations of the Revenue, any opportunity accruing

to a corporation in Canada by way of transacting business in a foreign country through a foreign subsidiary would automatically attract the condition in subparagraph 247(2)(b)(i) of the Act. This is because the corporation desires to conduct business in that foreign country either on its own or through its own subsidiary, and hence it would not divest or sell the attendant rights to carry on such business to an arm's length party.

The Court then clarified on the actual intent, purpose and scope as envisaged by Paragraph 247(2)(d) of the Act. *"The requirement is for the Court to replace the transaction or series of transactions that was entered into between the participants with the transaction or series of transactions that would have been entered into between persons dealing with each other at arm's length. It contemplates replacing the existing transaction or series of transactions with some other transaction or series of transactions. It does not contemplate replacing the existing transaction or series of transactions with nothing."* Thus coming to an assumption or even concluding that Cameco had not entered into any transactions with CEL would, tantamount to ignoring the legitimate, separate, and incorporated existence CEL. This cannot be permitted unless CEL has been effectively amalgamated with Cameco.

The Courts also dealt with a second concern espoused by the Revenue with this proposed alternative arrangement – namely that Cameco would not have used two intermediaries, when one of them adds nothing of value. *"This begs the question of whether Cameco would have added anything of value in relation to any uranium that would have been purchased under the Tenex agreements or Urenco agreements and then resold, as is, to Cameco US. This uranium was sourced outside Canada and sold to customers outside Canada. It is far from clear what would have been gained if Cameco had purchased the uranium and then sold it to Cameco US who would then have sold it to third parties, as suggested by the Crown. It would have been much simpler if Cameco US replaced CEL, purchased this uranium from Tenex and Urenco and sold it to third parties. In that scenario, however, the profits that had been realized by CEL from buying and selling this uranium would instead have been realized by Cameco US (not Cameco)."*

CONTEXTUAL AND PURPOSIVE ANALYSIS

Section 247 of the Canadian Income Tax Act embodies the: "Transfer Pricing", and subsection 247(2) of the Act, bears the heading, "Transfer Pricing Adjustment". An interpretation of these two headings would accord only an adjustment in the pricing of the relevant transactions, and not lead to an interpretation that would permit the Revenue to pierce the corporate veil of CEL and reallocate all of its profits to Cameco.

The ultimate objective of Section 247 and Section 247(2) is strictly to determine the appropriate transfer price for any goods sold or services provided by a taxpayer to a non-arm's length non-resident person, or vice versa. Since the Act imposes tax on income, the most significant term or condition of any transaction would be the amount, or the price paid for any goods that are sold or services that are provided.

The Headings and the attendant interpretation of the same are not consistent with the Revenue's contention that one of the avowed objectives of Section 247 would be to allow the Revenue to disregard the separate existence of a foreign subsidiary of a Canadian taxpayer, and include all of the income earned by that subsidiary in the income of its Canadian parent company as if the foreign subsidiary did not exist.

RELIANCE UPON THE OECD GUIDELINES

In disregarding the existence of CEL and CESA, the Revenue had taken recourse to the Organisation for Economic Co-operation and Development ("OECD") Guidelines on Transfer Pricing for Multinational Enterprises and Tax Administration. ("Guidelines").

The Courts referred to a Supreme Court Ruling in the case of *Canada v. GlaxoSmithKline Inc.*[4] to deal with the relevance and efficacy of the reliance on such Guidelines:

- The OECD Guidelines represent a commentary and also methodology pertaining to the issue of transfer pricing. However, the Guidelines are not controlling as if they were a Canadian statute and the test of any set of transactions or prices ultimately must be determined according to the domestic statutory legislation rather than any particular methodology or commentary set out in the Guidelines;
- The OECD Guidelines suggest a number of methods for determining whether transfer prices are consistent with prices determined between parties dealing at arm's length.

F. CONCLUSION

Based on a harmonious interpretation of a textual, contextual, and purposive analysis as contained within the preceding Paragraphs, the Federal Court concluded that there was no basis to conclude that parties dealing with each other at arm's length would not have bought and sold uranium or transferred between them the rights to buy uranium from Tenex or Urenco. The Courts thereby dismissed the Revenue's appeal related to paragraphs 247(2)(b) and (d) of the Act. This case thus serves as a pathbreaking and landmark decision from a Canadian perspective in so far as the interpretation of statute for Transfer Pricing purposes go.

[2] *2005 SCC 54, at para. 10, [2005] 2 S.C.R. 601)*
[3] *[1993] 1 S.C.R. 87, at page 121, 1993 CanLII 146)*
[4] *2012 SCC 52, [2012] 3 S.C.R. 3 (Glaxo)*

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InternationalNews

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

CHINA (PEOPLE'S REP.)

China Announces Various Tax Changes in Working Plan 2021

In its Working Plan 2021, released on 5 March 2021, the government announces several tax changes, including extending the preferential value added tax (VAT) treatment for small taxpayers, enhancing various incentives and simplifying the procedures for tax incentive applications.

The main tax changes announced are as follows:

- extending the preferential treatment of small VAT taxpayers;
- increasing the turnover threshold for VAT exemption for small taxpayers from CNY 100,000 to 150,000 per month;
- reducing the current income tax charge for small and low-profit enterprises and sole traders by 50% in addition to the existing tax incentives;
- reducing premiums on unemployment insurance and work-related injury insurance;

- simplifying the procedure for application and obtaining tax incentives;
- continuing the super-deduction of 75% for research and development activities and increasing the said super-deduction for manufacturing enterprises to 100%;
- refunding input VAT newly accrued by an advanced manufacturing enterprise on a monthly basis;
- adjusting import taxes to encourage imports of high-quality goods and services;
- expanding the applicable scope of the enterprise income tax incentives for environmental protection and energy-saving projects; and
- reducing taxes imposed on rental of residential properties.

The Ministry of Finance and the State Taxation Administration are expected to issue detailed regulations or circulars to implement these tax changes.

China Seeks Public Consultation on Simplified Procedure for Unilateral Advance Pricing Agreements

The State Taxation Administration (STA) has issued a draft Public Notice concerning the application of a simplified procedure for unilateral advance pricing arrangements (APAs) on the basis of which the conclusion of an APA can be completed within 6 months if the information and documents requested are submitted in time. Subject to the conditions prescribed in this Public Notice issued on 19 March 2021, enterprises applying for a unilateral APA on the basis of Public Notice [2016] No. 64 regarding the measures for improving the administration of APAs may apply a simplified procedure that consists of the following three stages: application for evaluation; negotiation and signing; and monitoring and execution.

The simplified procedure will only be available to enterprises with annual related party transactions with a total value of more than CNY40 million in the last three years prior to the year in which the Notice on Tax Matters is issued by the tax authority to notify the acceptance of the enterprise's intent for an APA. In addition, one of the following conditions must be satisfied:

- the enterprise provides the tax authority with contemporaneous documentation for the last three years in compliance with the State Taxation Administration's Public Notice [2016] No.42 not more than three months before the application for the simplified procedure. A master file must be provided if applicable;
- the enterprise had an APA in the past 10 tax years which must have been executed in line with the terms laid out in the agreement; and
- the enterprise has been subject to a special tax adjustment investigation which has been closed.
- The tax authority is authorised to deny the application if one of the following circumstances occurs:
- compared with previous years, substantial changes have taken place in the years to be covered by the APA in terms of related party transactions, business environment and functions/ risks;
- the enterprise is under special tax adjustment investigation or other tax investigations, and the case is still open;
- the enterprise fails to file the annual report form on related party dealings pursuant to the relevant regulations or the filing is incorrect;
- the enterprise fails to prepare and keep

contemporaneous documentation pursuant to the relevant regulations; and
- the information requested has not been provided or does not conform to the requirements of the tax authority and the failure is not rectified.

In addition, the simplified procedure cannot be applied to a unilateral APA where two or more than two authorities of provinces or regions are involved.

The tax authority is required to notify its decision on the acceptance of the application within 90 days from the delivery date of the Notice of Tax Matters. A successfully concluded APA applies for between three to five years.

China Extends Various Tax Incentives

China has extended various tax incentives that have expired such as a one-off deduction for fixed assets of less than CNY5 million, tax incentives for enterprises providing heating services and others. The extended tax incentives are mainly related to providing support for the development of micro enterprises, innovation in technology and relevant social developments.

The extension was jointly issued by the Ministry of Finance (MoF) and the STA stration in the Circular [2021] No.6 dated 15 March 2021 and the main extensions are set out below.

- 16 incentives, such as the one-off deduction for fixed assets with a value of less than CNY5 million (Circular [2018] No. 54) and tax incentives for enterprises providing heating (Circular [2019] No.38) have respectively been extended to 31 December 2023 and the year 2023.
- The individual income tax incentives in Ping Tan in Fujian Province (Circular [2014] No. 24) and tax incentives relating to domestic relocation in the framework of poverty reduction (Circular [2018] No. 135) have been extended to 31 December 2025.
- 6 other incentives (Circular [2016] No.114) will be continued without an expiry date.

The taxes that have been collected before the publication of Circular [2021] No.6 can be deducted against the tax payable of the taxpayer in the following months or refunded accordingly.

China Increases Super-Deduction of R&D Expenditures

Effective 1 January 2021, a manufacturing enterprise engaged in research and development (R&D) activities may, in addition to the actual expenses, claim a special (super) deduction of 100% of the actual R&D expenses (increased from 75%) in the current tax period if the R&D activities have not yet created an intangible asset. Where the R&D activities have resulted in an intangible asset, the amortisation base of that intangible will be 200% of the cost incurred (increased from 175%). This increase is provided in Circular [2021] No. 13, jointly issued by the MoF and the STA on 31 March 2021.

For the purpose of the Circular, a manufacturing enterprise is an enterprise with manufacturing activity as the main business and more than 50% of the enterprise's total revenue being derived from that main business.

In respect of the requirements and details relating to the super-deduction, taxpayers should refer to the rules contained in Circular [2015] No. 119 and Circular [2018] No. 64.

HONG KONG

Hong Kong Proposes One-off Reduction in Tax Payable and Increased Stamp Duty Rate on Stock Transfers

The Hong Kong government has proposed a 100% one-off reduction (limited to HKD 10,000) in profits tax, salaries tax and tax payable under personal assessment for the year of assessment 2020/21 and an increase in the stamp duty rate to 0.13% (from 0.1%) for share transactions.

The details were announced in the Budget for 2021/22 that was presented to the Legislative Council by the Financial Secretary on 25 February 2021. The tax measures proposed require legislative amendments before implementation. Once enacted, the amendments will apply from 1 April 2021.

The proposals are summarised below:
- a one-off 100% reduction in profits tax, salaries tax and tax payable under personal assessment for the year of assessment 2020/21, subject to a maximum of HKD10,000 per case;
- a waiver of business registration fees for 2021/22; and
- an increase in the rate of ad valorem stamp duty on Hong Kong stock transactions from 0.1% to 0.13% for both buyers and sellers.

Hong Kong to Raise Stamp Duty on Stock Transfers

On 5 March 2021, the Hong Kong government published the Revenue (Stamp Duty) Bill 2021 (the Bill) in the Gazette to give effect to the proposal to increase the rate of stamp duty on stock transfers to 0.13% (from 0.1%) as announced by the Financial Secretary in the 2021-22 Budget.

The Bill seeks to amend the Stamp Duty Ordinance to increase the rate of stamp duty payable on contract notes for the sale or purchase of Hong Kong stock and correspondingly on certain transfers of such stock with effect from 1 August 2021.

The Bill was introduced into the Legislative Council for first reading on 17 March 2021.

Hong Kong Enacts Tax Concessions for Carried Interest

On 28 April 2021, the Legislative Council passed the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021 that exempts from tax carried interest distributed by eligible private equity funds operating in Hong Kong. The Bill was passed on the third reading and will come into operation on the day it is published in the Gazette.

INDIA

Parliament Passes Amendments to Finance Bill 2021

On 1 February 2021, the Finance Minister presented the Finance Bill, 2021 in the lower house (Lok Sabha) of Parliament. On 23 March, the lower house of Parliament passed the Bill with amendments.

The key amendments are summarised as follows.

Equalisation levy

The scope of the equalisation levy is further clarified so that "consideration received or receivable from e-commerce supply or services" does not include any consideration for the sale of goods or provision of services which are owned or provided by a resident in India or by a permanent establishment (PE) in India, if the sale of such goods or the provision of such services is effectively connected with the PE.

Definition of "liable to tax" rephrased

The definition of "liable to tax" is rephrased to mean that, in relation to a person and with reference to a country, there is an income tax liability on such person under the law of that country for the time being in force and shall include a person that has subsequently been exempted from such liability under the law of that country.

Clarification of treatment of existing goodwill in a block of assets

Existing blocks of assets will be reduced by an amount equal to the actual cost of goodwill within the block of assets as reduced by:

- the amount of depreciation actually allowed to the taxpayer for such goodwill prior to assessment year (AY) 1988-89; and
- the amount of depreciation that would have been allowed to the taxpayer for such goodwill after AY 1988-89, as if the goodwill was the only asset within such a block.
- This amendment will take effect from AY 2021-22 where tax depreciation was claimed on goodwill in AY 2020-21. Further, the reduction shall not exceed the written down value of the block of assets.

Fair market value (FMV) of capital assets transferred under slump sale

The FMV of the transferred undertaking shall be deemed to be the full value of consideration in a slump sale. Further, the value of goodwill that has not been purchased by the taxpayer shall be considered as nil for the purpose of computing net worth of the undertaking.

Tax on transfer of money or property by a firm, association of persons (AOP) or body of individuals (BOI) to its partners or members

The amended bill proposed to simplify the earlier proposed version of section 45(4) of the Income Tax Act (ITA), which provided for the taxability of capital assets received by specified persons upon the dissolution of a firm, AOP or BOI representing their share in their capital account, and provided that any profits from money or capital asset received by a specified person on account of reconstitution of a specified entity shall be deemed to be the capital gains of the specified entity.

Minimum Alternate tax (MAT) relief for secondary adjustment or advance pricing agreement (APA)

As proposed earlier, a corporate taxpayer can make an application before an assessing officer to recompute the book profit of past years on account of a secondary adjustment or an APA. The provisions will apply to the AY beginning on or before 1 April 2020 only if the taxpayer does not utilise the MAT credit in any subsequent AY. No interest shall be payable on a refund arising out of this provision.

Tax on interest earned on provident fund (PF) contribution

In cases where contributions to the PF are made only by the employee, interest accruing on such contributions in excess of INR500,000 will be taxable.

Presumptive taxation scheme

The proposed presumptive taxation scheme for professionals will not apply to a Hindu Undivided Family.

No tax on income of development financial institutions

Income of institutions established for financing infrastructure and development may be tax exempt for 10 consecutive assessment years and income of developmental financing institutions licensed by the Reserve Bank of India may be tax exempt for the first 5 consecutive assessment years.

Qualified transfer of capital assets for the abovementioned institutions may also be exempted from capital gains tax.

Capital gains tax on unit linked investment plans (ULIPs)

The proposed minimum equity component of 65% or 90%, as the case may be, must be satisfied throughout the term of a ULIP in order to be eligible for the concessional long-term capital gains tax rate of 10%.

For relocation of offshore funds to international financial services centres (IFSCs), the proposed capital gains tax exemption on the transfer of shares of an Indian company acquired or relocated from an offshore fund will also apply to a specified fund.

Global depository receipts (GDRs) created in an IFSC

The scope of section 115ACA of the ITA, which deals with the taxation of income from GDRs in the hands of specified resident individuals, will include GDRs created in an IFSC.

Income from aircraft leasing

The proposed tax exemption on royalty received by a non-resident from an IFSC unit for the lease of an aircraft will also apply to interest income.

The scope of the proposed 100% deduction allowed to an IFSC unit in respect of income arising from the transfer of a leased aircraft will apply to any person (previously, to domestic companies only).

India Increases Threshold for Country-by-Country Reporting

According to Notification No. 31/2021 of 5 April 2021, the Central Board of Direct Taxes (CBDT) has increased the threshold for international groups in India required to comply with country-by-country reporting requirements from INR55 billion to INR 64 billion of consolidated group revenues effective 1 April 2021.

India Sets Thresholds for Significant Economic Presence of Non-Residents

The CBDT has specified the thresholds in determining significant economic presence (SEP) of a non-resident in India under section 9(1)(i) of the Income Tax Act (ITA) for the purpose of attributing income in India.

The thresholds, which will apply beginning 1 April 2022, are set as follows:

- payment threshold: transactions involving goods, services or property carried out by a non-resident with any person in India, including data or software downloads in India, equivalent to INR20 million or more of the prior year's total payments; or
- user threshold: systematic and continuous soliciting of business activities or engaging in interaction with 300,000 or more users in India.

Under the ITA, the SEP of a non-resident constitutes a business connection in India, which in turn determines the non-resident's taxable income in India. The thresholds are issued in Notification No. 41/2021 of 3 May 2021.

INDONESIA

Indonesia Clarifies Taxation of Foreign Citizens and Tax Exemptions Under the Law on Job Creation

The Ministry of Finance (MoF) has provided further guidance for the tax changes introduced under Law No. 11 Year 2020 on Job Creation (Law 11/2020) that include, among others, clarifications regarding the taxation of income of foreign individuals that qualify as domestic tax subjects and taxation of dividends and offshore income received by resident taxpayers.

In this regard, the MoF has issued MoF Regulation No.18/PMK.03/2021 (PMK-18) to implement Law 11/2020 and the salient features are set out below.

Taxation on income of foreign individuals

- A foreign citizen who becomes a tax resident in Indonesia is subject to tax only on the income received or sourced from Indonesia for the first four years from the date that the individual qualifies as a tax resident, provided that the individual fulfils the expertise requirement set out in Appendix II of PMK-18.
- If the said individual leaves the country and returns within the 4-year period, the 4-year period will start from the date that the individual first becomes a resident tax subject.
- Foreign citizens will require prior approval from the tax authorities before they can apply the territorial tax treatment.
- Individuals that qualify as tax residents and fulfil the expertise requirement prior to the issuance of PMK-18 may apply for territorial tax treatment as long as the 4-year period has not passed. Once the application is approved, the individual may apply the tax treatment from 2 November 2020 until the 4-year period for the individual expires.

Dividends and offshore income exempt from tax

Dividends and other income exempt

from tax are summarised below:

- domestic dividends received by corporate taxpayers; and
- other income, subject to the condition that the income is reinvested in Indonesia for a certain period as follows:
- domestic dividends received by individual taxpayers;
- offshore dividends received from a listed company by domestic taxpayers;
- offshore dividends received from a non-listed company by domestic taxpayers subject to an investment amount of at least 30% of profit after tax;
- offshore income from a permanent establishment subject to an investment amount of at least 30% of profit after tax; and
- offshore income from active businesses abroad.

The qualifying reinvestments must be placed in the financial markets or instruments outside the financial markets as specified under PMK-18.

The abovementioned investments must be:

- made at the end of the third month (individual taxpayers) or the end of the fourth month (corporate taxpayers) after the end of the fiscal year the dividends or other income are received or obtained;
- held for at least three fiscal years starting from the fiscal year when the dividends or other income are received or earned; and
- retained (i.e. not transferred), except to some other type of qualifying investment.

Foreign taxes paid on the exempted offshore dividends or offshore income are not creditable, deductible or refundable. In the event that the offshore dividends or offshore income are not fully reinvested in Indonesia, the foreign tax credit will be calculated on a proportional basis.

Surplus receipts of social and religious bodies

Surplus received or obtained by a social and/or religious body or institution registered with the relevant agency is exempted from tax provided that at least 25% of the surplus is used for the construction and procurement of social and/or religious facilities and infrastructure within 4 years from the receipt of such surplus.

PMK-18 came into effect on 17 February 2021 also includes the implementing rules regarding VAT and General Provision and Procedure on Taxes amendments made under Law 11/2020.

Indonesia Issues Implementing Regulation for Lower Withholding Tax Rate on Interest Paid to Non-Residents

Indonesia has issued implementing regulations pursuant to the tax changes introduced under Law No. 11 of 2020 on Job Creation (Law 11/2020), which include rules regarding the reduced withholding tax rate of 10% on interest paid to non-residents, domestic dividends exemption and amendments to the value added tax (VAT) rules.

Some of the salient features of Government Regulation No. 9 of Year 2021 (GR-9), one of the implementing regulations for Law 11/2020, are summarised below. GR-9 came into effect on 2 February 2021.

Withholding tax on interest paid to non-residents

Law 11/2020 stipulates that the withholding tax rate for interest paid to non-residents may be reduced under a government regulation. GR-9 has set the reduced tax rate at 10% (from the standard rate of 20%) on interest on bond income received or earned by foreign taxpayers other than permanent establishments. The reduced rate (or the applicable tax treaty rate) will come into effect after six months from the effective date of GR-9.

Domestic dividends exempt from tax

Dividends distributed by a domestic company have been exempt from tax since 2 November 2020 for the following recipients:

- resident individual taxpayers, provided that the income is reinvested in Indonesia for a specific period of time (standard rate is 10%); and
- resident corporate taxpayers (previously, the standard rate was 15%).

Resident individual taxpayers who do not fulfil the reinvestment requirement will be subject to income tax that must be paid by the individuals themselves.

Amendments to the VAT Law

- Law 11/2020 provides that the delivery of consignment goods by

a taxable entrepreneur is no longer included as a taxable delivery. GR-9, however, clarifies that the delivery of movable goods from consignor to consignee and from consignee to the actual buyer will still be subject to VAT and stipulates the timing as to when VAT is payable for these types of transfers.

- Law 11/2020 also provides that the transfer of taxable goods for capital contribution purposes in exchange for shares in the company to which the assets are transferred will not be considered taxable goods subject to VAT, provided that the transferor and the transferee are both taxable entrepreneurs. GR-9 stipulates that if the above transfer of taxable goods for capital contribution purposes does not meet the said requirements, VAT will be due when the transfer of taxable goods for capital contribution purposes is agreed or stipulated in the agreement, or when the transfer deed is signed by the notary.
- GR-9 defines a retailer as a taxable entrepreneur that delivers taxable goods/services to buyers/service recipients that are end consumers, including the delivery which is conducted via an e-commerce platform. Retailers may appoint a third party as VAT collector to conduct their VAT compliance obligations. Further provisions regarding VAT compliance procedures and the appointment of a third party will be included in a separate regulation.
- GR-9 also contains provisions regarding the General Provision and Procedure on Tax Amendments made under Law 11/2020.

Indonesia Appoints Additional VAT Collectors for Supply of Digital Goods and Services

The Directorate General of Taxation (DGT) has appointed the following companies as VAT collectors for the supply of digital goods and services from abroad to consumers in Indonesia, beginning 1 May 2021: Epic Games International S.à r.l., Bertrange, Root Branch; Expedia Lodging Partner Services S.à r.l.; Hotels.com, LP; BEX Travel Asia Pte Ltd; Travelscape, LLC; TeamViewer Germany GmbH; Scribd, Inc. and Nexway Sasu.

The DGT also appointed, at an earlier stage, the following companies as VAT collectors:

Name of companies	Effective date of appointment
Amazon.com.ca, Inc., Image Future Investment (HK) Limited, Dropbox International Unlimited Company and Freepik Company SL	1 April 2021
eBay Marketplace GmbH and NordVPN SA	1 February 2021
Etsy Ireland Unlimited Company, Proxima Beta Pte. Ltd., Tencent Mobility Limited, Tencent Mobile International Limited, Snap Group Limited and Netflix Pte. Ltd. The appointment of PT Fashion Eservices Indonesia (Zalora) from 1 December 2020 has been withdrawn.	1 January 2021

SINGAPORE

Singapore Extends Incentives for Qualifying Expenses and Extends GST to Imported Low-Value Goods in 2021 Budget

On 16 February 2021, the Ministry of Finance proposed to extend the incentives on donations to institutions of a public character (IPCs) and certain qualifying expenses, extend the imposition of goods and services tax (GST) to imported low-value goods and defer the proposed GST hike, among other measures, in the Budget for 2021. The Budget also proposes to extend relief measures introduced in previous years' budgets and provide targeted assistance to businesses and workers affected by the COVID-19 pandemic.

The key tax proposals are summarised below.

- The 250% deduction for donations made to IPCs will be extended until the end of 2023 (previously, until the end of 2021). The 250% corporate deduction for qualifying expenses under the Business and IPC Partnership Scheme (BIPS) will also be extended until the end of 2023.
- The GST rate hike will be deferred until sometime between 2022 and 2025, as previously announced in 2020 Budget. To ensure a level playing field for local businesses to compete effectively, the GST will be extended to imported low-value goods effective from 1 January 2023.
- The additional registration fee floor for electric vehicles (EVs) will be lowered from January 2022 to December 2023, and the road tax bands will be revised to encourage early adoption of EVs. Higher petrol duty will be imposed effective immediately. Road tax rebates of 15%-100% will be granted from 1 August 2021 to 31 July 2022.
- The current carbon tax level of SGD5 per tonne of greenhouse gas emissions will remain unchanged until 2023. The carbon tax level will be reviewed post-2023 accordingly.

Singapore Issues Transfer Pricing Guidance for Centralised Activities of MNEs

The Inland Revenue Authority of Singapore (IRAS) has issued a transfer pricing guidance for centralized activities of multinational enterprise (MNE) groups in Singapore to assist taxpayers in analysing such activities between related parties and identifying factors that may affect transfer prices for

these activities and the transfer pricing methods that may be appropriate.

The performance of centralised services of an entity alone does not mean that the entity should be considered a headquarters (HQ) within the MNE group. Conversely, the label HQ does not dictate the transfer pricing analysis of the entity. The facts and circumstances of each HQ must be considered in determining the role of the HQ. In line with the IRAS Transfer Pricing Guidelines, centralized activities between related parties must be at arm's length.

IRAS emphasizes the importance of delineating the actual transfer pricing activities (comparability analysis) of the MNE group and understanding them in the context of the business of the MNE group and the nature of the transaction itself.

In determining the arm's length transfer price for a related party transaction, due consideration must be given to the HQ's contribution to value creation, taking into account the assets used and the risks assumed by the HQ (functional analysis).

The general approach to analyse intra-group HQ activities does not differ from the approach used in other intra-group transactions.

The transfer pricing documentation must be prepared in line with the IRAS Transfer Pricing Guidelines. The guidelines also provide scenarios where certain transfer pricing methods may be appropriate for certain functions of a HQ.

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% income tax deduction ranging from three to five years for approved projects and existing businesses that invest in digital technology adoption, to accelerate investments and promote digitalisation.

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

- projects with investments of at least THB1 billion realised 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 five to eight 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 5 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 summarised 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 withholding tax (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.

VIETNAM

Vietnam Proposes Amendments to Advance Pricing Agreement Procedures in Draft Guideline

The Ministry of Finance (MOF) has proposed to amend the guideline implementing the advance pricing agreement (APA) mechanism, including a reduction of the validity period of APAs from five to three years and the inclusion of commercial databases for comparative analyses, among others, in a draft circular.

The draft circular is largely similar to the existing APA guideline (Circular No. 201 of 2013), except for the following provisions that will align the existing APA guideline with recently issued regulations, including the Law on Tax Administration 38/2019 (LTA), Decree No. 126/2020/ND-CP (Decree 126) and Decree No. 132/2020/ND-CP (Decree 132):

- consistent with the LTA and/or Decree 126: the definition of APA and forms of APA (unilateral, bilateral or multilateral) will follow the definitions in the LTA; the MOF is the authority competent to approve APAs; APAs must be signed by the MOF before taxpayers file their income tax returns; and the validity period of APAs will be reduced from five years to three years from the date of entry into force; and
- consistent with Decree 132: commercial databases will be accepted for comparative analyses, similar with transfer pricing analyses; and there will still be no prescribed period for the completion of an APA.

The draft circular will also consolidate the provisions for the participation of independent experts, rights and obligations of taxpayers and the tax authorities, and confidentiality of information, which will be similar with the provisions in Circular No. 201 of 2013.

Vietnam Issues Draft Circulars on Tax Administration for E-Commerce Activities

The MOF has released two draft circulars that clarify, among others, the definition of e-commerce activities and digital-based business and the income tax and value added tax (VAT) collection mechanism for taxpayers conducting e-commerce activities with overseas suppliers.

The draft circulars (see Note) supplement the provisions concerning e-commerce activities under the Law on Tax Administration of 2019 (LTA) and its implementing regulation, Decree No. 126/2020/ND-CP (Decree 126), which came into operation on 5 December 2020.

"E-commerce activities" is defined as the conduct of a part or the whole process of commercial activities through electronic means via the Internet, mobile telecommunication networks or other open networks, meanwhile "digital-based business" is the online provision of services that is essentially automated with minimal or no human intervention and cannot be done without using information technology.

The following entities are responsible for tax registration, declaration and payment for taxable e-commerce activities in Vietnam via the web portal of the General Department of Taxation (GDT):

- overseas suppliers with no fixed place of business in Vietnam but who conduct e-commerce activities or digital-based business in Vietnam;
- Vietnamese buyers from such overseas suppliers;
- tax organisations and agents operating in Vietnam that are authorised by overseas suppliers to perform the abovementioned tasks; and
- commercial banks, intermediary payment service providers (IPSPs) and other entities with rights and obligations related to the e-commerce activities or digital-based business.

The taxable revenue will be the amount received by the overseas supplier from its operations in Vietnam and will be determined based on various information, such as payment transaction information provided by commercial banks and IPSPs, tax residence status, billing, delivery and internet protocol (IP) addresses used, etc.

The names of overseas suppliers that have registered with the tax authority will be published on GDT's website. The GDT will also coordinate with concerned agencies to identify overseas suppliers that have not registered, declared and paid the tax due on its income from e-commerce activities in Vietnam and direct the concerned bank or IPSP to deduct and remit the tax on behalf of the overseas supplier.

Note: The draft circulars pertain to the implementation of the LTA and other tax matters for businesses in general, individuals and business households.

Under the LTA and Decree 126, commercial banks and IPSPs are required to coordinate with the MOF and relevant agencies to manage and supervise cross-border payments for e-commerce activities and digital-based business.

Janice Loke Ching Mun *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.*

TechnicalUpdates

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

INCOME TAX

Income tax exemption on gains or profits derived, in lieu of interest, from Sukuk Prihatin

Under the Short-term Economic Recovery Plan (PENJANA) unveiled on 5 June 2020, the Government announced that the Sukuk Prihatin would be issued in the third quarter of 2020. The Sukuk will be utilised for specific programs, e.g. to improve internet connectivity to schools, fund micro enterprises and for research grants for infectious diseases.

Following the above, the Income Tax (Exemption) (No. 2) Order 2021 [P.U.(A) 95] was gazetted on 4 March 2021. The Order provides that a qualifying person resident in Malaysia is exempted from the payment of income tax for each year of assessment (YA) on the gains or profits derived, in lieu of interest, from Sukuk Prihatin.

The Order is deemed to be effective from YA 2020.

Amendments to flexible work arrangement benefits

The following have been amended to stipulate that the Order and Rules will be effective from YA 2020 instead of for only YA 2020:

GAZETTE ORDERS	AMENDMENT ORDERS (GAZETTED ON 25 MARCH 2021)
Income Tax (Exemption) Order 2021 [P.U.(A) 30] The Order provides that in ascertaining the gross income from 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 that can be claimed for tax purposes is capped at RM5,000.	Income Tax (Deduction for Value of Benefit given to Employees) (Amendment) Rules 2021 [P.U.(A) 133]
GAZETTE ORDERS	**AMENDMENT ORDERS (GAZETTED ON 25 MARCH 2021)**
Income Tax (Deduction for Value of Benefit given to Employees) Rules 2021 [P.U.(A) 31] The Rules 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.	Income Tax (Exemption) 2021 (Amendment) Order 2021 [P.U.(A) 134]

Amendment to deduction from remuneration rules

The Income Tax (Deduction from Remuneration) Rules 1994 (Amendment) 2021 [P.U.(A) 123] were gazetted on 19 March 2021 and amend the Income Tax (Deduction from Remuneration) Rules 1994 [P.U.(A) 507].

The Income Tax (Deduction from Remuneration) Rules 1994 provide that the employer must determine and make monthly tax deductions (MTDs) from his employees' salaries based on either the MTD Schedule or the computerised calculation method. The 2021 amendments take into account the following:

1. The tax rate reduction of one percentage point, from 14% to 13%, for resident individuals with chargeable income between RM50,001 and RM70,000. This is effective from YA 2021.
2. Effective YA 2019, the "life insurance premium" component is excluded from the formula in determining the amount of monthly tax deduction.
3. The amendment rules stipulate that effective 1 January 2021, the minimum amount of monthly tax deduction based on the computerised calculation is RM10.
4. The amendment rules stipulate that the "Table of Monthly Tax Deduction" will be issued by the Inland Revenue Board (IRB) in an electronic medium. This is deemed to have come into operation on 1 March 2019.

Extension of application for tax incentive under the Returning Expert Programme

In Budget 2021, it was proposed that the application period for the Returning Expert Programme (REP) be extended for a further three years, until 31 December 2023. The REP is a programme managed by Talent Corporation Malaysia Berhad to

encourage professional Malaysian citizens working overseas to return to work in Malaysia. Approved applicants under the REP will be subject to tax on their employment income at the rate of 15%.

This proposal has now been legislated via the Income Tax (Determination of Approved Individual and Specified Year of Assessment Under the Returning Expert Programme) (Amendment) Rules 2021 [P.U.(A) 147] gazetted on 30 March 2021.

Income tax exemption on gains or profits derived, in lieu of interest, from Sukuk Wakala

The Income Tax (Exemption) (No. 3) Order 2021 [P.U.(A) 190], gazetted on 23 April 2021, provides that any person is exempted from the payment of income tax on gains or profits derived, in lieu of interest, from Sukuk Wakala. The exemption shall apply to Sukuk Wakala with a nominal value of up to USD1.3 billion, other than convertible stock, issued in accordance with the principle of Wakala by Malaysia Wakala Sukuk Berhad.

The Order stipulates that withholding tax under Section 109 of the Income Tax Act 1967 (ITA) shall not apply to the income exempted under the Order. The Order also stipulates that the exemption granted does not absolve the relevant person from any requirement to submit any return, statement of accounts or any other information as required under the ITA.

The Order is effective from YA 2021.

Income tax exemption for organizing conferences in Malaysia

The Income Tax (Exemption) (No. 4) Order 2021 [P.U.(A) 195], gazetted on 26 April 2021, provides that a qualifying person (i.e. company incorporated under the Companies Act 2016, or an association or organisation registered under the Societies Act 1966, which carries on a business or activity other than the business or activity of promoting and organising conferences) that is a Malaysian resident is exempted from the payment of income tax in respect of statutory income derived from organising conferences in Malaysia. The income tax exemption will apply only if the qualifying person brings in at least 500 foreign participants in the YA.

This exemption shall not apply to a person who has been granted an exemption under Income Tax (Exemption) (No. 53) Order 2000, which remains in force.

The Order is effective from YA 2020 to YA 2025.

Extension of tax exemption on management fee income for Sustainable and Responsible Investment (SRI) funds

The Income Tax (Exemption) (No. 5) Order 2021 [P.U.(A) 209], gazetted on 4 May 2021, provides that a company is exempted from tax on the statutory income derived from the business of providing fund management services for Sustainable and Responsible Investment (SRI) funds in Malaysia. The Order is effective from YA 2021 to YA 2023.

Double deduction on expenses incurred to conduct Professional Training and Education for Growing Entrepreneurs (PROTÉGÉ) - Ready to Work (RTW) Programme

Currently, pursuant to the Income Tax (Deduction for Training Costs under Skim Latihan 1Malaysia for Unemployed Graduates) Rules 2013 [P.U.(A) 260/2013], a qualifying company is given a double deduction in respect of expenses incurred for conducting the 1Malaysia training scheme approved by the Economic Planning Unit (EPU) under the Prime Minister's Department for a Malaysian unemployed graduate.

In September 2019, the Skim Latihan 1Malaysia was rebranded to PROTÉGÉ, short for Professional Training and Education for Growing Entrepreneurs.

Following the above, the Income Tax (Deduction for Training Costs under the Professional Training and Education for Growing Enterpreneurs (sic) (PROTÉGÉ-Ready To Work (RTW)) Programme) Rules 2021 [P.U.(A) 228/2021] were gazetted on 11 May 2021 and are deemed to have come into operation on 11 September 2019.

The Rules provide that in ascertaining a qualifying company's adjusted income from its business for a YA, a double deduction shall be given for outgoings and expenses incurred by the qualifying company during that basis period to conduct the PROTÉGÉ-Ready To Work Programme (Training Programme) approved by the Ministry of Entrepreneur Development and Cooperatives (MEDAC). The Training Programme is conducted for the trainees for eight (8) to 12 continuous months.

The double deduction is given for the following outgoings and expenses:

(a) Monthly training allowance of not less than RM1,000 paid to the trainees for a maximum period of 12 months
(b) Expenditure incurred for the provision of training
(c) Expenditure incurred for food, travelling and accommodation allowances for the trainees during the Training Programme
(d) Fees paid to the person appointed to conduct soft-skills training under the Training Programme

For items (b), (c) and (d), the total deductions allowable for each trainee shall not exceed RM5,000 for each Training Programme.

The qualifying company claiming the deduction will also be required to provide a confirmation from MEDAC specifying that:

(a) The Training Programme has been approved, and the date of approval is between 11 September 2019 and 31 December 2025, and
(b) The implementation of the Training Programme shall commence within 12 months from the date of approval of the Training Programme.

With this, P.U.(A) 260/2013 is revoked. However, any approval which has been granted under P.U.(A) 260/2013 before 11 September 2019 will remain in place and shall be deemed to be granted under P.U.(A) 228/2021. In addition, any application for deduction made before 11 September 2019 which is pending approval shall be dealt with as if P.U.(A) 260/2013 has not been revoked.

Malaysia deposits instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

On 24 January 2018, Malaysia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (MLI). Briefly, the MLI allows the Government to effectively implement the anti-BEPS tax treaty measures by modifying existing tax treaties in a synchronised, simultaneous and efficient manner, without the need to renegotiate each treaty separately.

Thereafter, to ratify the MLI under the Income Tax Act 1967 (ITA) and Petroleum (Income Tax) Act 1967, the Double Taxation Relief (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order 2020 [P.U.(A) 224] was gazetted on 4 August 2020.

Following the above, on 18 February 2021, Malaysia deposited its instrument of ratification for the MLI. The MLI will come into force on 1 June 2021. However, the effective date of the relevant provisions under the MLI will depend on the dates the treaty partner countries deposit their instruments of ratification. The extent of modification to the tax treaties will also depend on the final positions adopted by the other countries.

Further details on the signatories and parties to the MLI, along with each country's position, are available in the following link:
Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS - OECD

Updated tax collection framework

The IRBM has published an updated tax collection framework (new Framework) dated 3 February 2021. The Framework is in Bahasa Malaysia and is titled "Rangka Kerja Pungutan Cukai". This new Framework replaces the earlier 2016 framework that was effective from April 2016. The new Framework is broadly similar to the earlier framework and provides guidance to IRBM officers, taxpayers, employers and appointed tax agents on tax collection procedures, so that the process can be undertaken efficiently and effectively under the various tax legislations. The new Framework also explains the withholding tax and general tax refund procedures.

Frequently Asked Questions on special deduction on rental discounts given to tenants

In the previous Economic Stimulus Packages, it was proposed that a special deduction be given to property owners who provide at least 30% rental discounts to small and medium enterprises (SMEs) from 1 April 2020 to 31 March 2021. Under the Perlindungan Ekonomi & Rakyat Malaysia (PERMAI) Assistance Package announced on 18 January 2021, the special deduction was extended for another three months, until 30 June 2021, and was expanded to include non-SMEs.

Following the above, the IRBM has published an updated version of the Frequently Asked Questions (FAQs) document in Bahasa Malaysia, titled "Potongan Khas Kepada Pembayar Cukai Yang Memberi Pengurangan Sewa Premis Perniagaan Kepada Perusahaan Kecil Dan Sederhana (PKS) Dan Bukan PKS", dated 19 February 2021.

Some of the key changes are outlined below:

- The FAQs have been updated to take into account the expansion of scope to include rental of premises to tenants which are non-SMEs.
- The FAQs have been updated to stipulate that the special deduction is applicable for the reduction of rental given for the following periods:
  - SME tenants: April 2020 to June 2021
  - Non-SME tenants: January 2021 to June 2021

Frequently Asked Questions on tax deduction on costs for renovation and refurbishment of business premises

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 2021. To legislate the proposal, the Income Tax (Costs of Renovation and Refurbishment of Business Premise) Rules 2020 [P.U.(A) 381] were gazetted on 28 December 2020.

Following the above, the IRBM has published a Frequently Asked Questions (FAQs) document in Bahasa Malaysia, titled "Soalan Lazim Potongan Cukai Bagi Kos Pengubahsuaian Dan Pembaharuan (R&R) Premis Perniagaan Di Bawah P.U.(A) 381/2020" dated 11 March 2021, to provide clarification on the Rules.

Guidelines and procedures for the application of special investment tax allowance (ITA) for the Electrical and Electronics (E&E) sector

In Budget 2020, to further promote high value-added activities in the Electrical and Electronics (E&E) sector and to help the sector transition to Industry 4.0 and a 5G digital economy, it was proposed that companies in the E&E sector, whose reinvestment allowance (RA) period has expired, be eligible to apply for a special investment tax allowance (ITA). Applications for the incentive must be received by the Malaysian Investment Development Authority (MIDA) between 1 January 2020 and 31 December 2021.

Following the above proposal, MIDA has published on its website, the "Guidelines and procedures for the application of special investment tax allowance for the E&E sector" (E&E Guidelines) dated 26 March 2021. The E&E Guidelines stipulate that eligible companies will be able to apply for a special ITA of 50% on qualifying capital expenditure for a period of five years, to be set off against 50% of statutory income, commencing from the date of the approval letter. This incentive will be legislated by way of an exemption order which will be issued in due course.

Guidelines on income tax exemption for religious institutions or organizations pursuant to Income Tax (Exemption) Order 2020 [P.U.(A) 139/2020]

The Income Tax (Exemption) Order 2020 [P.U.(A) 139] was gazetted on 4 May 2020 to provide 100% income tax exemption on all sources of income of a religious institution or organization registered as a company limited by guarantee and incorporated under the Companies Act 2016. The Order took effect from YA 2020.

Following the above, the IRBM has published technical guidelines dated 25 March 2021, in Bahasa Malaysia, titled "Garis Panduan Berhubung Permohonan Pengecualian Cukai Pendapatan Kepada Institusi Atau Organisasi Keagamaan Yang Layak Di Bawah Perintah Cukai Pendapatan (Pengecualian) 2020 [P.U.(A) 139/2020]".

The guidelines were released to explain the meaning of a religious institution or organization within the context of the Exemption Order, as well as the application procedure for the above-mentioned income tax exemption.

Relaxation of incentive conditions for manufacturing and services projects approved by MIDA

On 6 April 2021, it was announced that the government has agreed to provide certain relaxation of conditions imposed on manufacturing and services companies that have been granted incentives by MIDA. With this relaxation, relevant companies may now be given some leeway to achieve the required thresholds or meet the implementation timelines of the approved projects, subject to compliance with certain criteria set by the government. The relaxation of the conditions will apply for the period between 2020 and 2021. However, the proposed relaxation is not automatic. Companies seeking to apply for the relaxation are required to submit their requests to MIDA as soon as possible, along with the relevant supporting justification and documentation.

Guidelines on application for approval under Section 44(6) of the Income Tax Act 1967 (ITA) in relation to funds established for the construction of school buildings, contributions to schools and acquisition of buildings for religious schools

The IRBM has published the following

technical guidelines dated 28 April 2021:

- Garis Panduan Permohonan Untuk Kelulusan Ketua Pengarah Hasil Dalam Negeri Di Bawah Subseksyen 44(6) Akta Cukai Pendapatan 1967 Bagi Tabung Pembinaan Sekolah
- Garis Panduan Permohonan Untuk Kelulusan Ketua Pengarah Hasil Dalam Negeri Di Bawah Subseksyen 44(6) Akta Cukai Pendapatan 1967 Bagi Tabung Sumbangan Wang Awam Sekolah
- Garis Panduan Permohonan Untuk Kelulusan Ketua Pengarah Hasil Dalam Negeri Malaysia Di Bawah Subseksyen 44(6) Akta Cukai Pendapatan 1967 Bagi Tabung Pembelian Sekolah Agama

These Guidelines replace the earlier guidance provided in relation to school building funds, as outlined in the "Guidelines for application of approval under Subsection 44(6) of the ITA" issued in April 2005 (which were replaced by the latest "Guidelines for approval of Director General of Inland Revenue under Subsection 44(6) of the ITA" dated 30 January 2020, which do not discuss applications related to schools), and the "Garis Panduan Permohonan Untuk Kelulusan Di Bawah Subseksyen 44(6) Akta Cukai Pendapatan 1967 Bagi Tabung Sumbangan Wang Awam Sekolah" dated 16 July 2012.

These guidelines provide explanations on the eligibility criteria, procedures for application and conditions of approval.

Practice Note No. 1/2021: Tax treatment on deduction of tax as final tax

The IRBM has recently issued a Practice Note No. 1/2021 (PN) dated 3 May 2021, titled "Layanan Cukai Ke Atas Cukai Muktamad". The PN provides guidance on the tax treatment of monthly tax deductions (MTDs) as final tax for employment income received by employees. Pursuant to Section 77C of the ITA, effective YA 2014, taxpayers with only employment income and MTDs deducted throughout the year may opt not to submit annual income tax returns. In such cases, the total amount of MTDs will be treated as the final tax paid.

The PN explains and provides examples to demonstrate the conditions for taxpayers to be eligible to elect not to furnish their tax returns (i.e. to treat the MTDs paid as final tax) for YA 2014, YA 2015 and YA 2016 onwards.

Amended guidelines on deductions for secretarial fees and tax filing fees

The IRBM has published on its website amended guidelines dated 11 May 2021 on tax deductions for secretarial and tax filing fees. The new Guidelines replace the earlier guidelines dated 18 September 2020. The new Guidelines are broadly similar to the earlier guidelines. The Guidelines have been amended, however, to provide additional examples to demonstrate the methodology of ascertaining the total tax deduction for secretarial and tax filing fees for a specific year of assessment (YA) based on the application of both Rules outlined

below:

- Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2014 [P.U.(A) 336/2014] which provide that expenses incurred on secretarial and tax filing fees are given a tax deduction of up to RM5,000 and RM10,000 respectively for each YA.
- Income Tax (Deduction for Expenses in relation to Secretarial Fee and Tax Filing Fee) Rules 2020 [P.U.(A) 162/2020] which provide that expenses incurred on secretarial and tax filing fees are given a tax deduction of up to RM15,000 per YA (i.e. the tax deduction limit for both secretarial and tax filing fees are combined). These Rules revoke P.U.(A) 336/2014 and are effective from YA 2020.

Malaysia's double tax agreement (DTA) with Ukraine

On 4 August 2016, Malaysia signed a new double tax agreement (DTA) with Ukraine for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. On 7 May 2021, pursuant to Section 132(1) of the ITA and Section 65A(1) of the Petroleum (Income Tax) Act 1967, the Double Taxation Relief (The Government of Ukraine) Order 2021 [P.U.(A) 223] was gazetted. The new DTA will come into force in the tax year following the calendar year in which the relevant ratification procedures are completed.

STAMP DUTY

Stamp duty exemption for small and medium enterprises on any instrument executed for mergers or acquisitions

The Stamp Duty (Exemption) (No. 3) Order 2021 [P.U.(A) 73], gazetted on 25 February 2021, provides stamp duty exemption on qualifying instruments executed by SMEs for mergers and acquisitions.

The exemption will apply to instruments executed between 1 July 2020 and 31 December 2021. However, the exemption is also subject to the condition that the merger or acquisition is approved by the Ministry of Entrepreneur Development and Cooperatives between 1 July 2020 and 30 June 2021.

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

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2021

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) Order 2021 [P.U.(A) 71] was gazetted on 24 February 2021. The Order provides that any tax payable under the Income Tax Act 1967 (ITA) and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

(a) Islamic Medium-Term Notes issued by MKD Kencana Sdn Bhd pursuant to the Islamic Medium-Term Notes Programme (Sukuk Murabahah Programme) in nominal values of up to RM1 billion.
(b) Guarantee provided by the Government of Malaysia relating to the Sukuk Murabahah Programme.

The Order came into operation on 25 February 2021.

LABUAN

Extension of time for submission of tax returns under the Labuan Business Activity Tax Act 1990 (LBATA) for YA 2021

The IRBM has issued a letter dated 11 March 2021 to the Association of Labuan Trust Companies (ALTC) to confirm that Labuan entities would be granted an automatic extension of time until 31 August 2021 to submit their tax returns for YA 2021 (based on the financial year ended in 2020). The extension will only apply to Labuan entities which are up to date with their tax filings (i.e. until YA 2020) and payments.

INDIRECT TAX

CUSTOMS DUTIES

Customs Duties (Amendment) Order 2021

The Customs Duties (Amendment) Order 2021 [P.U.(A) 122] was gazetted on 19 March 2021 and came into operation on 25 March 2021. This Order provides for amendments in relation to subheadings "7204.10", "7204.29", "7204.30", "7204.41" and "7204.49" under the First Schedule of the Customs Duties Order 2017 [P.U.(A) 5/2017].

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CASE 1

EMSB V KETUA PENGARAH HASIL DALAM NEGERI

Recently, the High Court granted a taxpayer leave to commence judicial review proceedings to set aside the tax assessments raised by the Director General of Inland Revenue (DGIR). The High Court also directed that the payment of the disputed taxes be stayed until the matter was heard and determined by the court.

FACTS

The principal activity of the taxpayer is to act as the Area Agent of its intermediate holding company for the sale of four-digit number forecast betting tickets and its variation games. As an Area Agent, the role of the taxpayer includes appointing Selling Agents to assist in carrying out the business and to procure equipment and materials deemed necessary for the business. In return, the taxpayer receives a commission from its intermediate holding company, based on a certain percentage of the sale proceeds.

Upon appointing a Selling Agent, the taxpayer will enter into a Selling Agency Arrangement with the Selling Agent. The role of the Selling Agent includes obtaining suitable premises for a Number Forecast Operator outlet and hiring staff to sell tickets to assist the Area Agent to carry out its business. The taxpayer is thus mainly obligated to provide all necessary equipment, materials and services to allow the Selling Agent to carry out its business. The role of the Selling Agent is limited, and most of the business-specific expenses are incurred by the taxpayer.

Notwithstanding this, the DGIR conducted a tax audit on the taxpayer and decided that the expenses incurred by the taxpayer on, among others, tickets and materials and advertisement are not deductible under Section 33(1) of the Income Tax Act 1967 (ITA). The DGIR also disallowed the taxpayer's capital allowance claim on the purchase cost of CISCO 1921 Routers.

HIGH COURT'S RULING

The High Court allowed the taxpayer's application for leave for judicial review. The taxpayer's counsel advanced the following legal arguments on behalf of the taxpayer:

- At the leave stage, the court is only required to examine the taxpayer's application based on the threshold of whether it is frivolous or vexatious. The court should not go into the merits of the case at the leave stage for judicial review;
- Even in tax cases where an alternative remedy of a Section 99 ITA appeal exists, judicial review remains available so long as exceptional circumstances exist in the form of a clear lack of jurisdiction, a blatant failure to perform some statutory duty or a serious breach of the principles of natural justice;
- A public authority such as the DGIR has no jurisdiction to commit an error of law, and that such an error would give rise to a clear lack of jurisdiction such that the decision would be susceptible to judicial review;
- If a taxpayer in judicial review proceedings can demonstrate illegality or unlawful treatment, it would be wrong to insist that he exhaust his statutory right of appeal;
- In the present matter, the DGIR had erroneously disallowed the taxpayer to deduct the expenses incurred as our superior courts have decided that business promotional expenses are deductible for tax purposes; and
- Paragraphs 10 and 15 of Schedule 3 of the ITA clearly provide that capital expenditure incurred on plant and machinery used for the purposes of the taxpayer's business and owned by the taxpayer is eligible for capital allowance.

COMMENTARY

This recent decision by the High Court affirms the legal position that even in tax cases where there is an alternative remedy of appeal, judicial review remains available so long as special circumstances exist. Moreo-

ver, this decision recognises that in cases where a taxpayer can demonstrate an error of law by the decision maker, judicial review rather than appeal would be the appropriate route as it is a quicker and more convenient remedy.

CASE 2

KETUA PENGARAH HASIL DALAM NEGERI V RAINFOREST HEIGHTS SDN BHD

FACTS

This is an appeal by the DGIR against the decision of the SCIT that was in favour of the Respondent. There was a Shareholders' Agreement whereby 8 units of a project would be sold to each of the partners at a price that was 10% less than the market price at the material time.

The DGIR had conducted a tax audit on the Respondent and found that the sale of the eight condominium units to their shareholders were not at market value and the DGIR thus invoked Section 140(1) of the ITA. Consequently, the DGIR raised a notice of additional assessment against the taxpayer. The DGIR contended that:

- the selling price of the units sold to the directors/shareholders were not in accordance with the market price;
- the selling price is to be adjusted for the sale to the directors/shareholders as equivalent to the lower price sold to a third party; and
- the difference in price will be added back to the Respondent's tax computation as under-reported sales.
- The High Court dismissed the DGIR's appeal and supported the decision of the SCIT for the following reasons:
  - (i) the provision of sub-section 140(5) is clear that particulars of the adjustment shall be given with the notice of additional assessment, and it is thus mandatory to furnish the particulars together with the notice of the additional assessment to the taxpayer. As this is plain and clear, the Court must give its literal meaning and especially when it involves a taxing statute.
  - (ii) the failure by the Appellant to furnish the particulars of the adjustments together with the notice of additional assessment has rendered the notice null and void and thus, the SCIT's decision is in accordance with the law.
  - (iii) the SCIT had made its findings of facts that the said transaction was at arm's length under sub-section 140(6) and as such, the Appellant had no legal basis to invoke sub-section 140(1).
  - (iv) consequently, it is clear that, there were no incorrect returns of income by the Respondent in this case, and thus, the issue of penalty does not arise.

DECISION

The Court of Appeal upheld the High Court and the SCIT's decision in quashing the DGIR's notice of additional assessment and accepted the following arguments:

A. **Failure to specify the sub-paragraph of Section 140(1) of the ITA renders the impugned notice of additional assessment null and void;**
   It is trite law that the DGIR, to invoke Section 140, must specify which of the limbs that it seeks to rely on.

B. **Failure to specify 'reason to believe' as required by the law renders the impugned notice of additional assessment null and void;**
   The DGIR must have reason to believe that the transaction is a tax avoidance scheme according to Section 140(1) ITA. However, the DGIR failed to state the sub-paragraph under Section 140(1) that it was relying upon to invoke the said section and failed to state its reasons to believe as such.

C. **The DGIR's failure to issue the particulars of the adjustment together with the impugned notice of additional assessment in accordance with Section 140(5) of the ITA rendered the said impugned notice of additional assessment null and void;**
   The word "shall" in Section 140(5) deems is mandatory for the DGIR to provide the particulars of adjustments along with the notice of additional assessment.

D. **The DGIR has no legal basis to invoke Section 140(1) of the ITA and to vary the transaction price from RM380 psf to RM550 psf;** and
   The SCIT had made its findings of the facts that the said transaction was already at arm's length under Section 140(6) of the ITA, and it must be noted that primary facts found by the SCIT are unassailable and cannot be overruled nor supplemented.

E. **Section 140(6) is irrelevant and unapplicable. The DGIR still has the duty to demonstrate "reason to believe" as required under Section 140(1) of the ITA still remains because Section 140(6) is a "deeming" provision.**
   Section 140(6) is a deeming provision that can only be applied if the DGIR is satisfied that there were transactions which have not been made on terms which might fairly be expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm's length. However, Section 140(6) does not empower the DGIR to make any adjustment to the transaction, unlike Section 140(1). The DGIR must first

demonstrate the "reason to believe". As the DGIR had not adduced any evidence to show that the transaction price was not at arm's length, this cannot be applied.

COMMENTARY

There is a clear need for the DGIR to specify the limb to Section 140(1) of the ITA when intending to vary a taxpayer's transaction. The rationale behind this is purely on the basis of equity and justice. Taxpayers should be accorded reasons as to the DGIR's action to allow a taxpayer to effectively respond to the allegations of the DGIR. The Court of Appeal had correctly decided in favour of the Taxpayer. This recent decision is significant and inviting as it fortifies the position that the DGIR cannot act on its own accord and that the Courts are prepared to protect taxpayers against such abuse of power. This case further demonstrates that public authority cannot act arbitrarily by committing an error of law or acting beyond its legislative authority by not giving effect to a prescribed law.

TAXPAYER'S COUNSEL:
DATUK D.P. NABAN, S. SARAVANA KUMAR & NUR AMIRA BINTI AHMAD AZHAR ROSLI DAHLAN SARAVANA PARTNERSHIP (RDS)

CASE 3

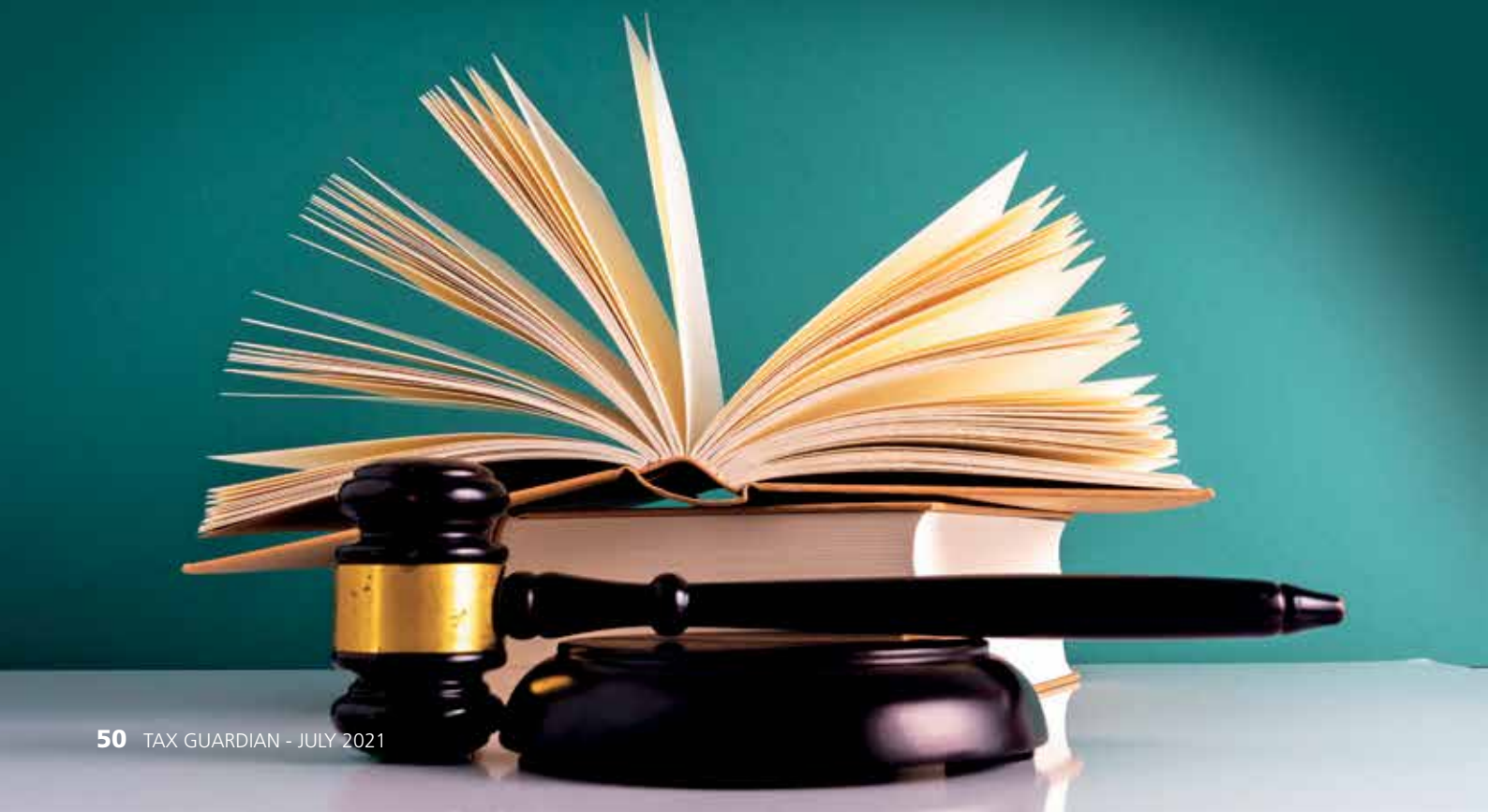
PHMSB V MINISTER OF FINANCE

Recently, the High Court granted leave to the taxpayer in ***PHMSB v Minister of Finance*** ("PHMSB Case") to initiate a judicial review against the Minister of Finance ("MOF") for failing to exercise its powers under Section 62 of the Goods and Services Tax Act 2014 ("GST Act").

FACTS

The taxpayer in this case is a subsidiary of a major Japanese multinational electronics company. The dispute is in relation to the taxpayer's submission for its GST return for the last taxable period. Following the submission of GST return, the Royal Malaysian Customs Department ("Customs") had conducted a GST Refund Verification and subsequently made a refund of about RM 300,000.00. However, 6 months later, the Customs suddenly and without any justification, issued a Bill of Demand for underpaid Goods and Services Tax ("GST") and further imposed a late payment penalty on the taxpayer. This had created a total liability of over RM 1.1million.

The taxpayer had on multiple occasion engaged and written to the Customs to explain their position but to no avail. The Customs merely informed them that the Bill of Demand was raised because the earlier refund was made erroneously. Aggrieved by this, the taxpayer wrote to the MOF to explain their predicament and appeal against the Bill of Demand by way of a remission application pursuant to Section 62(1) of the GST Act. Unfortunately, the office of the MOF had responded to the taxpayer and informed that the application for remission was rejected. No reason was provided for this decision.



The taxpayer maintains that it had correctly submitted the GST returns and there had not been any procedural or substantive errors in the forms. Dissatisfied by the MOF's decision, the taxpayer proceeded to file an application for leave to file judicial review against the MOF for its refusal and/or failure to exercise its statutory powers for remission.

APPLICATION FOR REMISSION BY THE MOF

The taxpayer's application for remission of the Bill of Demand issued by the Customs was made pursuant to Section 62 of the GST Act and read together with Section 4(1) of the Goods and Services Tax (Repeal) Act 2018 ("**GST Repeal Act**").

The Court of Appeal in ***Everise Sprint (M) Sdn Bhd v Minister of Finance Malaysia & Anor*** **[2015] 7 CLJ 309** decided on a judicial review application filed by the taxpayer therein against the Respondent's decision to reject a remission application under Section 14A of the Customs Act 1967 ("**CA**"). The Court of Appeal ruled that the Respondent's decision was invalid and null and void. The Court of Appeal further held that when the First Respondent is conferred with a discretion under Section 14A of the CA, such discretion must be exercised upon objective appreciation of the evidence before him. However, a decision premised on wrong appreciation of facts and the failure to consider relevant facts must stand to be quashed.

ERROR OF LAW

At the hearing of the PHMSB Case, it was submitted that the MOF had committed an error of law and exceeded its jurisdiction for failing to take into account the relevant facts and legal principles in making its decision to reject the remission application, namely that:

i. Customs had conducted regular audits on the taxpayer but did not find any error or breach of the law;
ii. No issues were ever raised by the Customs on any procedural error or substantive error in the GST forms submitted by the taxpayer;
iii. Customs had accepted the GST returns submitted by the taxpayer and accordingly proceeded to process the refund due to the taxpayer;
iv. The sum that was claimed by the Customs via the Bill of Demand has been duly paid by the taxpayer to the Customs as input tax throughout the taxation period; and
v. Customs' action is akin to taxing the company twice (double taxation) in issuing the Bill of Demand after having accepted and processed the taxpayer's GST returns.

The taxpayer further submitted that there is an issue of breach of natural justice whereby the taxpayer has a legitimate expectation that the Customs had correctly assessed the GST returns submitted by the taxpayers in processing the refund. The Court of Appeal in the case of ***Hotel Sentral (JB) Sdn Bhd v Pengarah Tanah dan Galian Negeri Johor, Malaysia & Ors [2017] 6 CLJ 161*** held that legitimate expectation as a concept is now a term of art capable of being enforced in law and that it is incumbent upon the Court to protect the interests of parties whose expectations have been created by the very conduct of public decision-making bodies when such expectations face an onslaught by virtue of changes and/or reversals in decisions that had been acted upon by such parties.

COMMENTARY

The granting of leave for judicial review against the MOF for its refusal and/or failure to exercise its statutory powers is in accordance with settled law that every exercise of statutory power cannot be arbitrary. Not only that, in various other cases, the Courts have also recognised that failure of a public authority to give reasons for its decision is a sufficient ground in itself for a decision to be liable to be quashed as being bad.

TAXPAYER'S COUNSEL

S. SARAVANA KUMAR & AMIRA RAFIE ROSLI DAHLAN SARAVANA PARTNERSHIP (RDS)

S. Saravana Kumar *is a tax lawyer and the Head of Tax, SST & Customs with the law firm Rosli Dahlan Saravana Partnership (RDS). He has appeared in benchmark litigations with a sizeable volume of wins in tax disputes and has been named one of the 100 leading lawyers in Malaysia by Asian Business Legal Journal. He can be contacted at sara@rdslawpartners.com.*

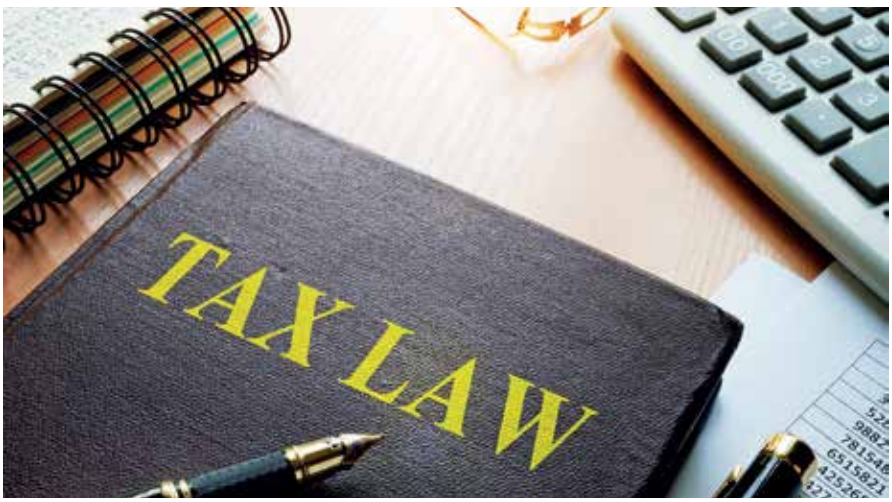
Amira Rafie *read law at the University of Warwick and is a tax lawyer with the law firm Rosli Dahlan Saravana Partnership (RDS). She can be contacted at amirarafie@rdslawpartners.com*

CASE 4

IGSB V DIRECTOR GENERAL OF INLAND REVENUE (2021) (HIGH COURT)

FACTS

The taxpayer is a company incorporated in Malaysia since 2004, and has been engaged in the development and manufacturing of pharmaceutical products since its inception. In 2014, the taxpayer sold intellectual property rights ("IP Rights") to a third party, its major customer.



The Director General of Inland Revenue ("DG") later determined that the gains arising from the disposal of the IP Rights are revenue in nature and subject to income tax under Section 4(f) of the Income Tax Act 1967 ("ITA").

The taxpayer filed a judicial review application and applied for a stay of the DG's assessments pending the final determination of the judicial review. The matter was heard at the leave stage.

TAXPAYER'S ARGUMENTS

The taxpayer argued that there are exceptional circumstances justifying leave for judicial review, notwithstanding the existence of an alternative route of appeal:

(i) Illegality: the sale of the IP Rights is a clear-cut capital disposal not chargeable to tax. The taxpayer was never in the business of selling IP Rights. The IP Rights were a part of the taxpayer's capital assets used to generate its income i.e., manufacturing goods for sale. The IP Rights satisfied all counts of the badges of trade test to be considered capital in nature.

(ii) Breach of natural justice: the DG had applied Section 4(f) ITA as a catch-all taxing provision, by merely citing the provision without providing a legal basis.

Further, Section 103B ITA does not oust the High Court's jurisdiction under Schedule 1 of the Courts of Judicature Act 1964 to grant a stay. The grant of a stay is not in conflict with the statutory language in Section 103B; a stay does not "relieve" the taxpayer from the "liability for the payment of any tax". The stay merely delays payment temporarily until the judicial review application is decided.

DG'S ARGUMENTS

The DG argued that there was no "outright sale" of the IP Rights as the sale was only in connection with the IP Rights in specific territories. The DG further argued the existence of the internal appeal process under Section 99 of the ITA prevents leave from being granted, and that the taxpayer's stay application contravenes Section 103B 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 as:

(i) The DG did not proffer its basis for invoking Section 4(f) ITA. If no reason needs to be given, the legislation must expressly say so; and

(ii) The nature of the IP Rights, interpretation of "outright sale" and the application of Section 4(f) ITA warrant further investigation at the substantive stage.

The High Court granted a stay, and agreed with the taxpayer that Section 103B of the ITA is not a barrier to a stay application.

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

COUNSEL FOR THE DG
AISYAF FALINA BINTI ABDULLAH, NORMAREZA BINTI MAT REJAB AND SYAZANA BINTI ROZMAN

DECISION DATE
1 MARCH 2021

CASE 5

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

FACTS

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

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

The taxpayer was previously subjected to a tax audit, which progressed to litigation pursuant to the issuance of notices of additional assessment on 10.4.2013 for the years of assessment ("YAs") 2006 to 2008 by the Director General of Inland Revenue ("DG") on the basis that the taxpayer and Labuan Co were associated persons and the transactions were not at arm's length. In 2013, the taxpayer argued before the High Court 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 assessments were quashed.

In 2020, following another tax audit, the DG issued another set of additional assessments for the YAs 2012 to 2017. The DG argued that the very same Leasing Transactions were between associated persons and were not at arm's length pursuant to Section 140A of the ITA. Consequently, the DG sought to impose a 5% mark-up on the leasing charges paid to Labuan Co. This is despite the fact that the taxpayer's structure had remained the same since 2013.

The taxpayer obtained leave for judicial review to quash the DG's decision, and the case was heard at the substantive stage.

TAXPAYER'S ARGUMENTS

At the substantive stage, the taxpayer argued that the leave for judicial review was rightly allowed and that the DG's decisions ought to be quashed for, amongst others, the following reasons:

(i) the DG acted in excess of its jurisdiction when it blatantly disregarded the earlier binding decision of the High Court in 2013, which was approved by the Court of Appeal;

(ii) the DG illegally invoked Section 140A ITA when the requirement that there be an "associated person" was not satisfied;

(iii) the DG failed to provide its reasons/transfer pricing analysis for invoking Section 140A ITA;

(iv) the DG's assessment for YA 2012 is time-barred as the DG failed to show why the time-bar under Section 91(3) ITA should be lifted.

DG'S ARGUMENTS

The DG contended that the earlier decisions of the Courts are not binding as they concern the application of a different provision i.e., Section 140(6) ITA. The DG argued that it had provided reasons for its transfer pricing adjustments by way of its audit finding letters.

HIGH COURT'S DECISION

The High Court held that the DG's decision is illegal, unreasonable and made in excess of the DG's jurisdiction as:

(i) The issues raised in the DG's assessment have been determined substantively by the earlier High Court and Court of Appeal decisions in 2014. The earlier judgments are binding on the present High Court, as there is no change to the entities or facts. Therefore, the High

Court held that the DG had unlawfully invoked Section 140A ITA.

(ii) The DG failed to discharge its duty to provide reasons or analysis for the transfer pricing adjustments made.

(iii) The DG's failure to particularise the basis for lifting the time-bar for YA 2012 under Section 91(3) ITA is fatal. The assessment for YA 2012 is time-barred.

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

COUNSEL FOR THE DG
AHMAD ISYAK BIN MOHD HASSAN AND MOHAMMAD DANIAL AHMAD

DECISION DATE
3 MAY 2021

CASE 6

LEE KOY ENG V PEMUNGUT DUTI SETEM AND ANOTHER APPEAL [2021] 7 MLJ 481 (HIGH COURT)

FACTS

The deceased ("Deceased") died intestate. Pursuant to Section 6(1)(e) of the Distribution Act 1958 ("Distribution Act"), his estates were to be divided equally between his wife ("Appellant") and two children. In a Deed of Family Arrangement, the two children renounced their entitlements to the Deceased's interest in five pieces of land ("Interest"). The High Court granted a vesting order to vest the Interest onto the Appellant. Five Forms 14A were then executed to transfer the Interest to the Appellant.

The Collector of Stamp Duties ("Collector") imposed ad valorem stamp duty on the five Forms 14A on the grounds that the Forms 14A concerned the "release or renunciation by way of a gift" under Item 66(c) in the First Schedule to the Stamp Act 1949 ("Stamp Act").

The Appellant objected to the assessment on the basis that stamp duty should be RM10 for each Form 14A under Item 32(i) in the First Schedule to the Stamp Act, the Forms 14A being instruments which are "not otherwise specially charged with duty".

The Appellant appealed to the High Court after her appeal to the Collector was dismissed.

TAXPAYER'S ARGUMENTS

The two children had not accepted their entitlements to the Interest. The Interest had never been passed to them and remained part of the estate of the Deceased. They did not have any right or title in the Interest, and therefore, could not make a gift to the Appellant. The Interest was devolved onto the remaining beneficiary, i.e., the Appellant, by operation of law under the Distribution Act.

COLLECTOR'S ARGUMENTS

The two children's renunciation of their rights for no consideration amounted to a gift to the Appellant.

HIGH COURT'S DECISION

The High Court clarified the position which was previously unclear due to conflicting High Court decisions on this issue.

The High Court found that the true nature of the Forms 14A is solely to give effect to the renunciation by the two children. A beneficiary has no interest or property in the deceased's estate until the administration and distribution is complete under the Distribution Act 1958. As the two children renounced their entitlement before distribution, no beneficial or legal right was vested in them. Therefore, they did not have sufficient interest in the properties to make a gift.

The High Court held that the ad valorem stamp duty under Item 66(c) in the First Schedule to the Stamp Act did not apply, and applied the nominal duty of RM10 under Item 32(i).

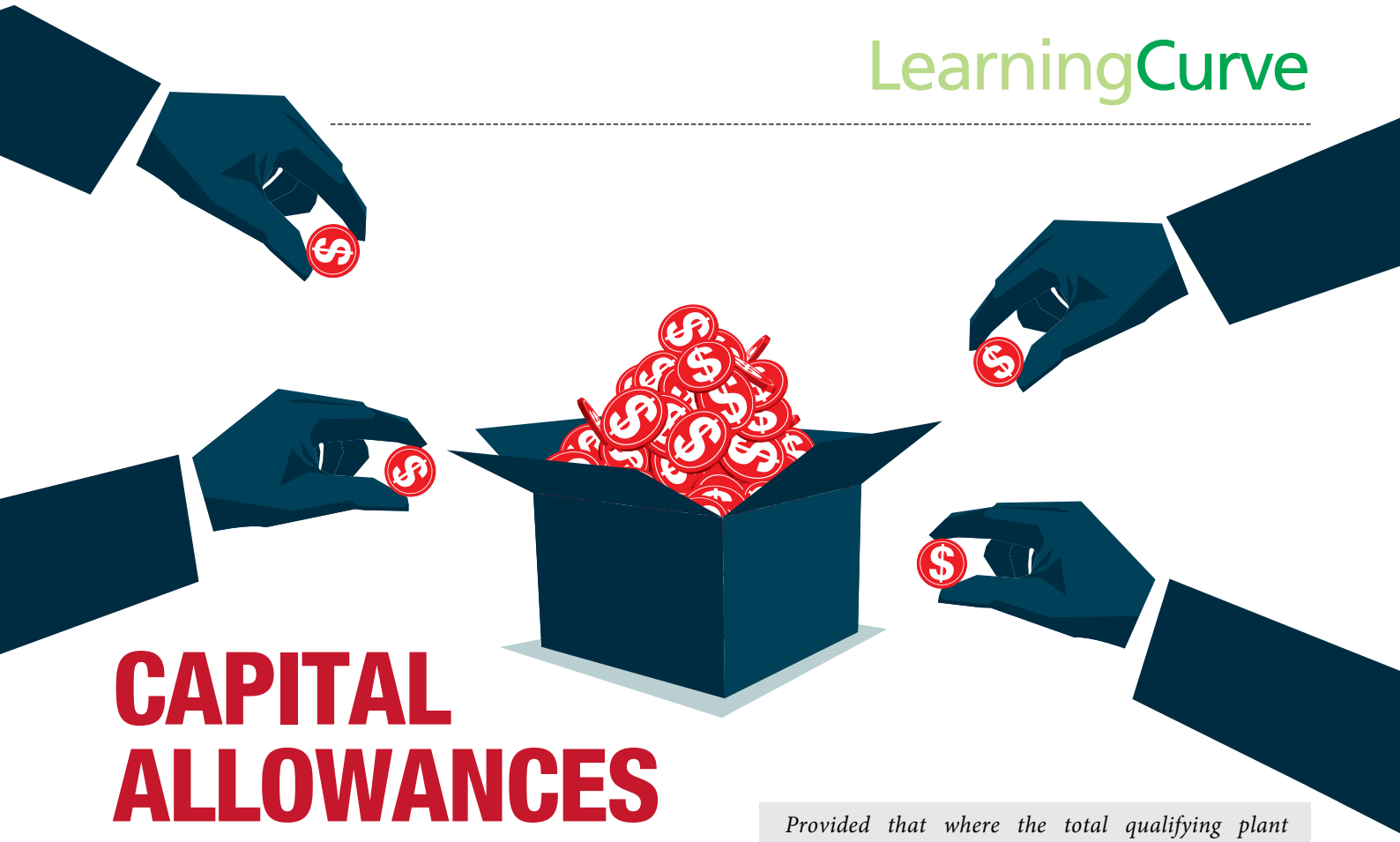
The High Court allowed the appeal, and ordered a refund of the excess stamp duty.

COUNSEL FOR THE TAXPAYER
TEAW ZHEN YANG (CHAMBERS OF JASON CHEW)

COUNSEL FOR THE DG
MARVIANNA ZAINOL

DECISION DATE
17 AUGUST 2020

***Adeline Wong, Jason Liang, Kellie Allison Yap**, and **Jeff Sum** (Wong & Partners)*



CAPITAL ALLOWANCES
SMALL VALUE ASSETS

This article will look at small value assets; the tax treatment of which entails certain specific rules which deviate slightly from the standard tax treatment accorded to fixed assets and this is being discussed here.

Siva Subramanian Nair

SMALL VALUE ASSETS

The Income Tax Act 1967 in Paragraph 19A of Schedule 3 addresses this issue of special allowances for small value assets and the wording in sub-paragraph (1) is reproduced below.

> *"Where in the basis period for a year of assessment a person for the purposes of a business of his incurred qualifying plant expenditure in relation to an asset or assets, the value of each asset being not more than two thousand ringgit, and at the end of the basis period he was the owner of the asset and it was in use for the purposes of the business, there shall be made in lieu of the amount of the allowance which would otherwise fall to be made to him under paragraph 10 or 15, an allowance equal to the amount of that expenditure for that year of assessment:*
>
> *Provided that where the total qualifying plant expenditure in respect of such asset for each year of assessment exceeds the amount of twenty thousand ringgit, the total allowance that shall be made in respect of that expenditure under this paragraph shall be equal to such amount."*

Basically what is being stated here is that a small value asset is an asset which has the following features:

1. It must fulfill all the eligibility conditions for claiming capital allowances i.e.
   a) it must be a plant or machinery (obviously it does not include assets that have an expected life span of not more than two years).
   b) qualifying plant expenditure must be incurred.
   c) the claimant must be the owner of the asset at the end of the basis period.
   d) he must have a business source.
   e) the asset must be used in that business at the end of the basis period.
2. The qualifying expenditure of each asset does not exceed RM2,000.
3. The total capital allowances claim on such assets for the year of assessment of acquisition is 100% i.e. no separate initial and annual allowances.[IA & AA]

The proviso continues to explain that where the qualifying plant expenditure in respect of such asset for each year of assessment exceeds the amount of RM20,000, the taxpayer

should identify and exclude these specific assets from the list of small value assets so as to ensure that the total qualifying plant expenditure does not exceed RM20,000. In consequence these assets will qualify for the relevant IA and AA rates of allowances applicable to such assets.

In sub–paragraph (2), the legislation reads:

> *Allowance under paragraph 10 [i.e. IA] or 15 [i.e. AA] in respect of the qualifying plant expenditure referred to in subparagraph (1)—*
> *(a) shall be made a person if that person has not made a claim in respect of that expenditure under that subparagraph; or*
> *(b) shall not be made to that person in respect of that expenditure which has been given allowance under that subparagraph*

Therefore a person is given an option to either make a claim for special allowances (i.e. a 100% claim) for small value assets or to claim normal capital allowances (i.e. IA and AA). However, once an election has been made to claim the normal capital allowances, then the person has to consistently apply these rates until the total qualifying plant expenditure is fully deducted.

EXAMPLE 1

A Sdn Bhd [year ended 31 July] purchased 10 chairs costing RM1,800 each on 9 September 2020. For year of assessment 2021, the company chose to claim special allowances on these chairs since individually they do not cost more than RM2,000 each.

As the total expenditure incurred on the chairs DOES NOT exceed RM20,000 [i.e.RM18,000], the capital allowances claim for the company for YA 2021 on these assets is the whole RM18,000.

EXAMPLE 2

Assuming in Example 1, A Sdn Bhd purchased 15 chairs. Now the aggregate costs of all chairs amounts to RM27,000 [15 chairs X RM1,800] which exceeds RM20,000. Therefore not all the assets will qualify for a 100% capital allowances claim. The computation for capital allowances will be split into two categories as detailed below:

11 chairs	RM	RM
Qualifying expenditure [RM 1,800 X 11]	19,800	
Capital allowances claim @ 100%		19,800
4 chairs		
Qualifying expenditure [RM 1,800 X 4]	7,200	
IA [20%]		1,440
AA [10%]		720
Total capital allowances claim		21,960

Sub–paragraph (3), in providing an exception, states:

> *The proviso to subparagraph (1) shall not apply to a company resident and incorporated in Malaysia which has a paid up capital in respect of ordinary shares of two million and five hundred thousand ringgit and less at the beginning of the basis period for a year of assessment and gross income from source or sources consisting of a business not exceeding fifty million ringgit for the basis period for that year of assessment.*

This indicates that the proviso in (1) [i.e. maximum aggregate cost of the assets of RM20,000] does not apply to a small and medium sized company [SME] with certain conditions attached. Firstly, a small and medium sized company itself is by definition: [itemised here for ease of studying for exams]

- company incorporated and resident in Malaysia.
- whose paid-up ordinary share capital at the beginning of the basis period is NOT in excess of RM2.5 million.

Secondly, its gross business income should NOT be in excess of RM50 million for a basis period. The Revenue has clarified the following through its PRACTICE NOTE NO. 4/2020 issued on 21 December 2020 that companies with no business source [for example an unlisted investment holding company] will not qualify for this exception.

However, a company carrying on a business but does not have gross income from business sources due to current year business losses arising from EITHER not receiving any gross business income during the year OR caused by temporary closure of business operation will be eligible to qualify for this exception since its business income will be deemed to be Nil.

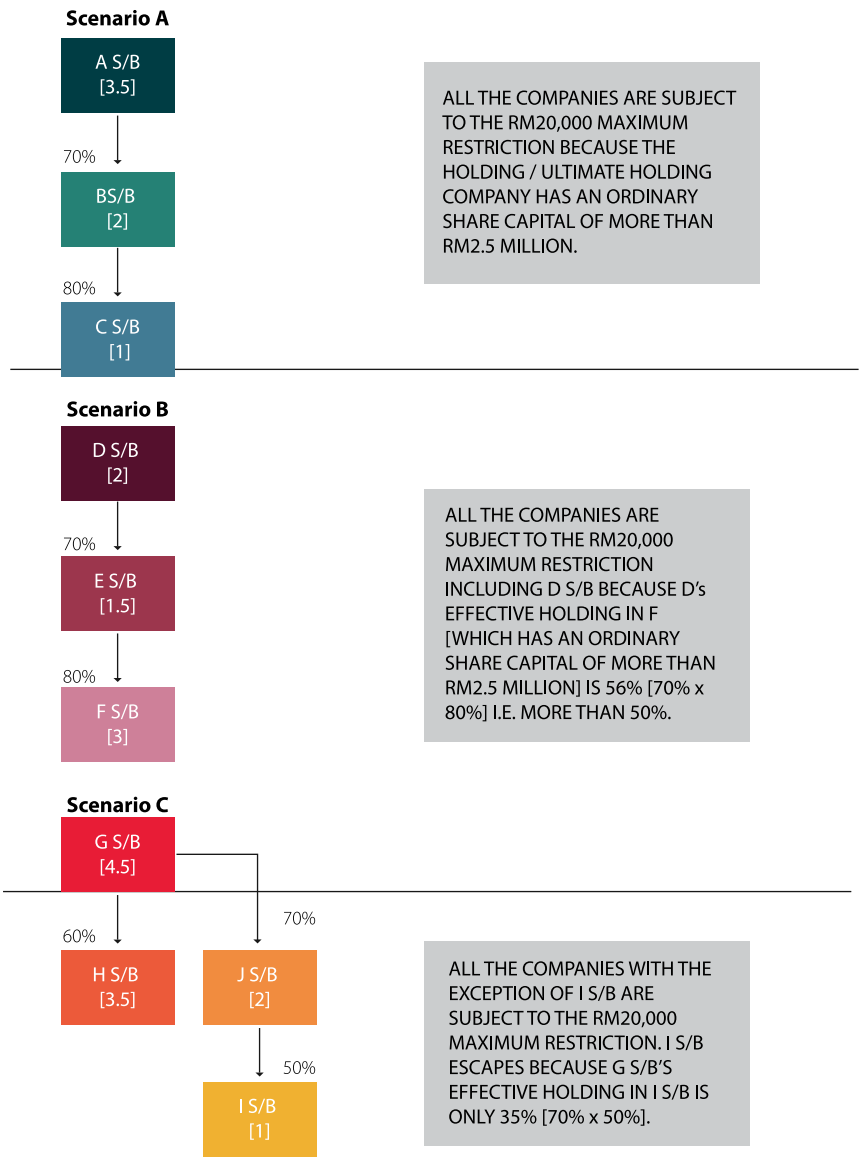
Thirdly, there is a further restriction under sub-paragraph (4) i.e.

> *A company referred to in subparagraph (3) shall not include a company where more than—*
>
> *(a) fifty per cent of the paid up capital in respect of ordinary shares of the second mentioned company is directly or indirectly owned by a related company;*
>
> *(b) fifty per cent of the paid up capital in respect of ordinary shares of the related company is directly or indirectly owned by the second mentioned company; or*
>
> *(c) fifty per cent of the paid up capital in respect of ordinary shares of the second mentioned company and the related company is directly or indirectly owned by another company.*

with a clarification in sub-paragraph (5) that:

> *"related company" means a company which has a paid up capital in respect of ordinary shares of more than two million and five hundred thousand ringgit at the beginning of the basis period for a year of assessment*

So in essence, "the whole corporate family" i.e. holding company, subsidiary and fellow subsidiaries must be SMEs. Public Ruling No. 10/2014 provides examples of this restriction which are reproduced here as a simplified version for examination revision purposes. The ordinary share capital of share capital [in RM million] of each company is shown within brackets.



Candidates should note that these special allowances DO NOT APPLY for small value assets acquired on hire purchase i.e. normal capital allowance claim should be made.

On subsequent disposal of small value assets which have enjoyed this special allowances, the tax treatment will be the same as normal assets on which capital allowances are claimed i.e. in relation to computation of balancing adjustments.

A LOOK AT PAST YEAR QUESTIONS

DEC 11 TAXATION II Q3(A)(III)

The question involved computation for capital allowances in respect of a sum of

RM11,200 incurred in March 2011 on small value assets each costing not more than RM1,000 for year of assessment 2011 for a SME company. [Note that the law at that time provided for a maximum restriction of RM10,000]

Solution
Since X Sdn Bhd is a SME company, it has no restriction on total value of small value assets.
QPE = RM11,200
Special allowance 100% x RM11,200 = RM11,200
Of course under current law even if the company was a non-SME it would have qualified for 100% allowances on all the assets since the restriction has been increased to RM20,000.

JUNE 2013 BUSINESS TAXATION Q3(A)(I)

Candidates were provided the following details for a non-SME company with a 30 November year end. I have amended the question slightly to reflect the current law.

The sum of RM20,400 was incurred in June 2021 on small value assets each costing not more than RM2,000. Included in the list of assets is the cost of a calculator amounting to RM400. Compute the capital allowances … for the year of assessment 2021 in respect of the above assets.

Small value asset	RM
Total value	20,400
Calculator	(400)
QPE	20,000
100% special allowance	(20,000)
RE	NIL
Calculator:	
QPE	400
IA 20%	80
AA 10%	40
RE	280

DECEMBER 2014 BUSINESS TAXATION Q2(C) (AMENDED TO REFLECT CURRENT LAW)

Ocean Sdn Bhd, which has a paid up capital of RM2.6 million, bought the following assets for year ended 30 September 2021, to be used in the business.

22 units of small value assets (each costs RM960) RM21,120.

Required:
Compute the capital allowances due to Ocean Sdn Bhd for year of assessment 2021.

Solution		
Small Value Assets:		*RM*
Total Cost of Assets		*21,120*
(-) 2 units @ 960		*(1,920)*
QPE		*19,200*
100% Special Allowance		*(19,200)*
RE		*NIL*
2 Units		
		RM
QPE (2 x 960)		*1,920*
IA 20%	*384*	
AA 10%	*192*	*576*
RE		*1,384*

That concludes our discussion on small value assets.

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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: JULY - SEPTEMBER 2021

Month /Event	Details				Registration Fee (RM) (excluding SST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
JULY 2021								
Workshop: Malaysian Taxation Course 2021 (Special re-run on advanced tax topics) (JV with MAICSA)	8 July	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 JV/005
Sales Tax Issues for Manufacturers and Importers	9 July	9 a.m. - 11 a.m.	Webinar	Raja Kumaran, Ng Sue Lynn & Nicholas Lee	50	-	80	2 WE/009
Workshop: Selected Latest Public Rulings	12 July	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 WS/019
Workshop: The Taxation of Property Transaction in Malaysia	16 July	9 a.m. - 5 p.m.	Webinar	Yong Mei Sim	300	330	400	8 WS/018
National Tax Conference 2021	27 & 28 July	9 a.m. - 5 p.m.	Fully Virtual	Various Speaker	896.23	990.57	1084.91	20 NTC/2021
Public Holiday ***(Hari Raya Haji: 20 Jul)***								
AUGUST 2021								
Workshop: Investment and Other Incentives	4 Aug	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 WS/020
Webinar: Achieving Tax-Aligned Mergers & Acquisitions (M&A)	6 Aug	2 p.m. - 5 p.m.	Webinar	Tan Hooi Beng, Choi Mei Teng, Chong Yen Hau, Shiranee Niles & Lee Boon Siew	135	-	180	3 WE/010
Seminar: Analysis of Recent Tax Cases 2020/2021	18 Aug	9 a.m. - 5 p.m.	Webinar	Various Speaker	350	400	450	8 SE/004
Workshop: The Decision to Litigate: Tax Appeals and Choice of Forum	20 Aug	9 a.m. - 5 p.m.	Webinar	John Ung Soon Hock	300	330	400	8 WS/025
Workshop: Transfer Pricing and Contemporaneous Documentation	25 Aug	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 WS/021
Public Holiday ***(Awal Muharam: 10 Aug, Merdeka Day: 31 Aug)***								
SEPTEMBER 2021								
Workshop: Practical Preparation for Tax Audits & Investigations	2 Sept	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 WS/022
Workshop: Tax Issues and Law Relating Developers, JMB/ MC and Investors	7 Sept	9 a.m. - 5 p.m.	Webinar	Dr Tan Thai Soon	300	330	400	8 WS/023
Workshop: Tax Compliance and IRB's Perspective	10 Sept	9 a.m. - 5 p.m.	Webinar	Yong Mei Sim	300	330	400	8 WS/026
Workshop: Real Property Gains Tax (RPGT)	21 Sept	9 a.m. - 5 p.m.	Webinar	Ho Yi Hui	300	330	400	8 WS/024
Public Holiday ***(Malaysia Day: 16 Sep)***								

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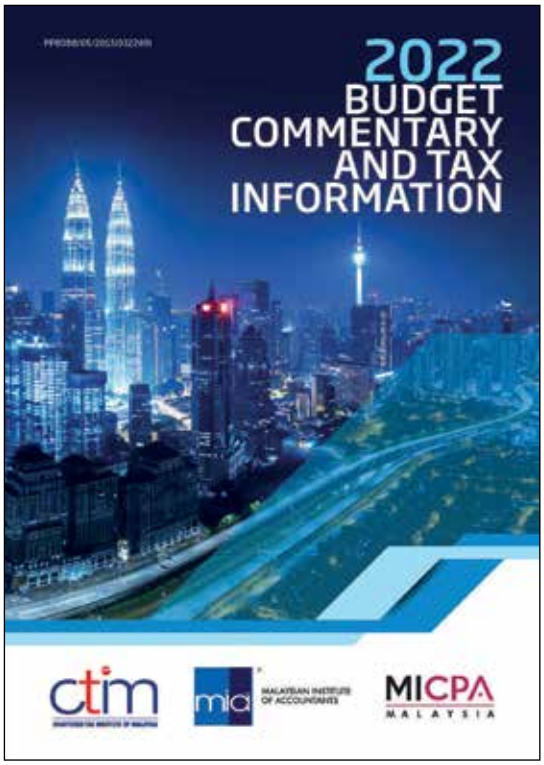
ENQUIRIES: Please contact the CPD Secretariat i.e Ms Yus, Ms Zaimah and Ms Jaslina at 03-2162 8989 ext 108, 107 and 131 respectively or email to **cpd@ctim.org.my** for more information.



The Economic Scenario

The unprecedented economic contraction arising from the Covid-19 pandemic continues unabated for another year and the Government is likely to focus on structural issues in Budget 2022 to accelerate business recovery and continuity in the mid-term and long term. The upcoming 12th Malaysian Plan for the 2021-2025 period, and Budget 2022 are expected to address issues including human capital policies and the United Nation's Sustainable Development Goals (SDGs). The continued measures in addressing the pandemic and recovery of impacted business sectors are causing a severe dent in the country's revenues, and at the same time rising corporate and household debt raises concerns. Targeted tax measures are likely to be introduced while providing relief and incentivising sectors that are severely impacted may be the focus.

All these developments should translate into further plans and changes in the coming Budget 2022 to be presented by the Finance Minister in Quarter 4 this year. To bring some insights and perspectives to our fellow professionals, **The Malaysian Institute of Certified Public Accountants (MICPA) together with the Chartered Tax Institute of Malaysia (CTIM) and the Malaysian Institute of Accountants (MIA)**, will once again jointly publish the 2022 annual Budget Commentary and Tax Information booklet for our members.

Order the 2022 Budget Commentary and Tax Information

Do not miss this opportunity to get your hands on this highly sought-after booklet! Not only is this booklet an excellent source of information on the 2022 Budget proposals, it is an outstanding repository of tax facts which every practitioner can access within a page away.

A complimentary copy of the booklet will be given to all members of CTIM, MIA and MICPA but members are encouraged to purchase additional copies of the booklet for their staff and for distribution to their clients and business associates. For a fee, interested firms may personalise the booklet by overprinting the firm's name in a space on the first page of the booklet.

Members who wish to purchase additional copies of the **2022 Budget Commentary and Tax Information** are requested to complete the Order Form below and return it with the appropriate remittance to the **CTIM Secretariat** (publication@ctim.org.my) by **October 1, 2021**.

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- *The budget booklet will be available about 1 week after the date that the Finance Bill pertaining to the Budget changes is released by the Ministry of Finance.*

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