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TAXATION: ACHIEVING ECONOMIC RESILIENCE AND SUPPORTING BUSINESS CONTINUITY

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Examining The Scope Of Section 140A Of The ITA 1967

The "Pay First, Dispute Later" Approach in Tax Collections

Capital Allowances – Short Life Span Assets & Disposals

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.

INSTITUTE ADDRESS

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

THE SECRETARIAT

Executive Director : Margaret Kok
Administration & IT : Ally Yusop
CPD : Nursalmi Haslina Mohd Rusli
Corporate Support Services : Christine Jennifer Sanda
Examination & Education : Irene Chen Mui Yoon
Technical & Editorial : Thong Vee Kean

PUBLISHING CONSULTANT

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

PRINTER

Kuan Press Sdn Bhd
No.1, Jalan Perindustrian PP7,
Taman Perindustrian Putra Permai,
43300, Seri Kembangan, Selangor DE.
Tel: +6012-3188378
e-mail: jetpss@gmail.com

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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.

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

FARAH ROSLEY

RESILIENCE PAVING THE WAY FOR INFINITE POSSIBILITIES

When I took the role of steering the Institute once again as the President, the climate in which members were operating could be described as ''storms easing to showers, with the promise of better weather just around the corner''.

It has been challenging for members since the government imposed a lockdown in June 2021 which forced tax practitioners to work from home. We are now starting to see the light at the end of the tunnel with the government gradually lifting restrictions. I am extremely pleased that the tireless efforts of all involved have paid off with the Ministry of Finance (MOF) granting the Institute's request for S153 licensed tax agents to operate physically from September 2021. Furthermore, the Inland Revenue Board of Malaysia (IRBM) has been giving its support to businesses and members by granting our requests to extend tax filing deadlines and payment due dates time and again.

I would like to express my thanks to MOF and IRBM for their kind support during this difficult period.

The Institute's flagship event, the National Tax Conference (NTC) 2021 with the theme of 'Taxation: Achieving Economic Resilience and Supporting Business Continuity' was held in collaboration with the IRBM for the 21st consecutive year on 27 and 28 July 2021.

Unlike previous NTCs, the NTC 2021 was held fully virtually for the first time. The Institute was proud to have the Minister of Finance, YB Senator Tengku Datuk Seri Utama Zafrul bin Tengku Abdul Aziz deliver the Keynote Address and launch the NTC 2021. The NTC 2021 also had the privilege of having YBhg. Dato' Sri Dr. Sabin Samitah, Chief Executive Officer of IRBM deliver the Opening Address and speak on the Strategies and Challenges of IRBM in one of the sessions. I was heartened that many members, tax practitioners and the business community attended the NTC 2021 in force on both days with the number exceeding two thousand. The seamless virtual platform made it possible for the NTC 2021 to broadcast featured presentations from leaders in the economic, industrial, financial, legal and taxation sectors on widely acclaimed topics in each of the seven sessions. I would like to thank IRBM for our long-standing collaboration and for embracing the unprecedented changes together which ultimately led to the success of this event.

Besides the above, I am pleased to highlight the Institute's engagements with the authorities and events that took place in the third quarter of 2021 below:

Submissions to authorities

Inland Revenue Board of Malaysia

- Feedback/Comments on income tax treatment of hybrid instruments.
- Request for additional grace period for tax filings and payments.
- Profiling issues.
- CTIM members issues arising from gazette orders and special reinvestment allowance.

Royal Malaysian Customs Department

- Custom's policy issues for deliberation at the forthcoming Customs-Private Sector Consultative Panel Meeting.

Ministry of Finance

- Request for licensed tax agents to operate from Phase 1 of the National Recovery Plan.
- Comments on issues arising from tax treatment of charter hire fees paid to non-resident shipping companies.
- 2022 Budget Proposals.
- Feedback to the questions in the

MOF's Public Consultation Document on the Study of Tax Incentives.
- Comments on Strategies to Increase Tax Revenue and Strengthen the Tax System in the 2022 Pre-Budget Statement.
- Issues arising from the Income Tax Rules on Special Deduction for Reduction of Rental and Deduction for Cost of Personal Protective Equipment.

Meetings with the authorities
- Virtual meeting with the Deputy Chief Executive Officer (Policy) of IRBM and other senior IRBM officers to deliberate further on IRBM's responses to tax technical issues raised by CTIM.
- Virtual meeting with MOF to present and discuss on CTIM's 2022 Budget Proposals.
- Meeting with the Royal Malaysian Customs Department to discuss on special voluntary disclosure programme on indirect tax.

Highlights of CPD events in the third quarter of 2021

In the third quarter, the Institute organised thirteen tax CPD events which were all conducted online and attracted 777 attendees. The Institute's primary focus and activity has remained on providing high-quality tax CPD events. This is achieved through the efforts of speakers from among members, tax practitioners and the Council, all with strong background and knowledge in the various areas of taxation. The Institute continues to seek new resources and the most current and contemporary taxation topics to provide the relevant technical updates and practical guidance to members.

> **"The seamless virtual platform made it possible for the NTC 2021 to broadcast featured presentations from leaders in the economic, industrial, financial, legal and taxation sectors on widely acclaimed topics in each of the seven sessions. I would like to thank IRBM for our long-standing collaboration and for embracing the unprecedented changes together which ultimately led to the success of this event."**

One of the CPD event highlights is the "Achieving Tax-Aligned Mergers & Acquisitions (M&A)" webinar held on 6th August 2021 and moderated by CTIM Council Member, Mr Tan Hooi Beng. The webinar discussed on M&A transaction lifecycle, tax due diligence, transaction structure and tax considerations. I am very pleased to note here that the participants gained informative and practical insights from the webinar.

Appointment of new Sabah Branch Chairman

I would like to take this opportunity to welcome Mr. Chu Vun Henn on board as our new Sabah Branch Chairman. Mr Chu has 25 years of extensive experience in taxation. The Institute looks forward to working together with Mr Chu in serving the members in Sabah.

A big thank you and my heartfelt appreciation to YBhg Datuk Alexandra Chin, the out-going Sabah Branch Chairman, for her immense support and contribution and I wish her all the very best in her future undertaking.

Upcoming 2022 Budget Seminars

The 2022 Malaysian Budget Proposals will be announced and tabled in Parliament on 29 October 2021 by the Minister of Finance. I am pleased to announce that CTIM, in keeping up with its tradition, will be holding the 2022 Budget Seminars

CTIM's 2022 Budget Seminars will provide participants with a practical understanding of the key tax changes in the 2022 Budget Proposals and their impact on businesses. Invited guests from MOF and IRBM will engage in discussions and provide clarification on the intricacies of the proposed key tax changes. You are warmly invited to join the 2022 Budget Seminars which are now opened for registration. This is an event that is not to be missed.

Thank you and well wishes

I wish to thank everyone for being part of this Institute and it is my privilege to continue the journey with you as we strive for the growth and development of the tax profession. As this will be the last issue of the Tax Guardian for 2021, my sincere wishes for a rosy and bright year end of 2021 to everyone. Stay healthy & safe and take care always.

Editor's Note

ALAN CHUNG CH'UNG YIT

This edition of *Tax Guardian* is my debut after assuming the role as Editor from Ms Yeo Eng Ping, who has done a stellar job at the helm since 2016. On behalf of the Institute and the Council, I wish to express our heart-felt thanks to her and wish her all the best in her endeavours. I have big shoes to fill following her legacy and I will strive to do my utmost to steer our premier publication for members of the Institute even further.

2021 has been a challenging year thus far in more ways than we could count, and as I write this, we are emerging from an extended lockdown and looking forward to reviving the economy and well-being of all those affected. Central to this revival would be Budget 2022 which is scheduled to be tabled in Parliament on 29 October 2021. Many of us would be waiting eagerly for what's in store to boost the economy, especially when there have been an unprecedented number of stimulus packages announced since the tabling of Budget 2021.

It is also unprecedented for Budget 2022, when the Honourable Minister of Finance issued a pre-budget statement, as well as a series of Public Consultation Papers. The pre-budget statement has provided a sneak peek at Budget 2022 and amongst the more interesting points mooted are the mention of a Special Voluntary Disclosure Program (SVDP) for indirect taxes administered by the Royal Malaysian Customs Department and the Tax Identification Number (TIN). While neither are new, it would be interesting to see what will be proposed for the indirect tax SVDP, whether it will be similar to the SVDP available a few years ago - when SVDP was introduced in 2019 for income taxes, a similar programme was also available for indirect taxes.

Nonetheless the SVDP for indirect taxes was far less notable, perhaps underscored by the fact that sales tax and service tax had only been recently reintroduced at that point. Are we looking at a similar programme now, a little more than two years later after the first SVDP? Wishfully thinking, it is hoped that it is more than the previous one-off voluntary disclosure. The Institute and its Technical Committee – Indirect Taxation (TC-IT) have been advocating for a more permanent voluntary disclosure regime instead of a one-off voluntary disclosure, akin to the reduced penalty scheme available for income taxes. Such a regime would be a welcomed relief to many taxpayers and would contribute to enhancing voluntary compliance.

The release of Public Consultation Papers is also an interesting step taken by the country's new administration. Of the four Public Consultation Papers, the review on tax incentives is certainly the most relevant to the tax fraternity and the Institute intends to be the voice of members on this. The time is nigh for us to have a holistic review of not just our tax incentives to stay ahead in the region, but the entire Malaysian tax ecosystem, lest we fall behind to attract foreign direct investments. It is a step towards the right direction and we shall see what is in the cards following these consultations.

We bring to you in this edition of *Tax Guardian*, a detailed write-up on the recent 2021 National Tax Conference. Attendees of this year's Conference would have immersed themselves for a fully virtual experience and the article will summarise the presentations in the Conference. Apart from the report on the Conference, there are various reports on the latest developments and updates on various tax matters. Needless to say, we also included a repertoire of technical articles ranging from the principles of taxation to the approaches in settling tax disputes.

The fourth quarter also brings to a close to the year that has been. As we approach the end of the year, let's count our blessings instead of our sorrows and look forward to a new year with renewed hope.

CPD EVENTS (4 June - 31 August 2021)

The following CPD events were successfully conducted virtually:

Topic	Date	Speaker/(s)
Workshop: The Changing Tax Landscape and Recent Tax Developments in Malaysia	4 June 2021	Ms Yong Mei Sim
Workshop: Learn to Develop, Build Upon and/or Appreciate the Importance of the Capital Statement in Tax Audits (Re-Run)	10 June 2021	Ms Karen Koh
Indirect Tax Webinar Series: Managing Customs Audits	18 June 2021	Mr Jalbir Singh Riar, Mr Saravana Kumar & Mr Huang Shi Yang
Workshop: Corporate Tax Strategy (Re-Run)	24 June 2021	Mr Harvindar Singh
Workshop: Malaysian Taxation Course 2021 (Special re-run on advanced tax topics) - In collaboration with MAICSA	8 July 2021	Mr Vincent Josef
Indirect Tax Webinar: Sales Tax Issues for Manufacturers and Importers	9 July 2021	Mr Raja Kumaran, Ms Ng Sue Lynn & Mr Nicholas Lee
Workshop: Selected Latest Public Rulings	12 July 2021	Mr Vincent Josef
Workshop: The Taxation of Property Transaction in Malaysia	16 July 2021	Ms Yong Mei Sim
National Tax Conference 2021	27 & 28 July 2021	Various Speakers
Workshop: Investment and Other Incentives	4 August 2021	Mr Vincent Josef
Webinar: Achieving Tax-Aligned Mergers & Acquisitions (M&A)	6 August 2021	Mr Tan Hooi Beng, Ms Choy Mei Teng, Ms Shiranee Niles, Mr Chong Yen Hau & Mr Lee Boon Siew
Workshop: The Decision to Litigate: Tax Appeals and Choice of Forum	20 August 2021	Mr John Ung Soon Hock
Workshop: Transfer Pricing and Contemporaneous Documentation	25 August 2021	Mr Vincent Josef

December 2021 Examination Timetable

SUBJECTS	Details	
	Date	Time
Company & Business Law	20 December 2021	9.00 a.m. – 12.15 p.m.
Personal Taxation	20 December 2021	2.00 p.m. – 5.15 p.m.
Revenue Law	21 December 2021	9.00 a.m. – 12.15 p.m.
Business Taxation	21 December 2021	2.00 p.m. – 5.15 p.m.
Advanced Taxation 1	22 December 2021	9.00 a.m. – 12.15 p.m.
Financial Accounting	22 December 2021	2.00 p.m. – 5.15 p.m.
Advanced Taxation 2	23 December 2021	9.00 a.m. – 12.15 p.m.
Economics	23 December 2021	2.00 p.m. – 5.15 p.m.

DISCLAIMER: The above timetable is correct and accurate at the time of printing. CTIM reserves the right to re-schedule the examination session if there is any disruption due to unforeseen circumstances.

TAXATION

ACHIEVING ECONOMIC RESILIENCE

AND SUPPORTING BUSINESS CONTINUITY

Majella Gomes

For the first time ever, the National Tax Conference – its 21st Edition – was held fully virtual. This flagship event of CTIM and the Inland Revenue Board of Malaysia (LHDNM) was attended by more than 2,000 participants. The Covid-19 Pandemic and its repercussions still took centre stage, although the focus was one of coming to grips with its aftermath with concrete plans rather than discussing the implications of the New Normal with trepidation. The emphasis was on the need for continued professionalism and collaboration to support businesses through troubled times.

DR. YEAH KIM LENG

PROFESSOR OF ECONOMICS AND DIRECTOR OF ECONOMIC STUDIES PROGRAMME JEFFREY CHEAH INSTITUTE, SOUTHEAST ASIA, SUNWAY UNIVERSITY

TOPIC 1 STATE OF THE MALAYSIAN ECONOMY – INSIGHTS AND EXPECTATIONS

Moderated by Prof Dr Yeah Kim Leng, Professor of Economics and Director of the Economic Studies Programme of the Jeffrey Cheah Institute Southeast Asia at Sunway University, this session's three panel members comprised of Dr Jomo Kwame Sundaram, Fellow, Academy of Science Malaysia; Dr Juita Mohamad, Fellow, Economics, Trade & Regional Integration, Institute of Strategic & International Studies; and Dr Mohd Afzanizam Abdul Rashid, Chief Economist, Bank Islam Malaysia.

There was currently a triple threat of uncertainty, said Dr Yeah: the pandemic situation and the race to vaccinate amid fast-evolving, more virulent variants of the Covid-19 virus; the transition to the different stages of the different economic recovery plans; and the unstable political situation in the country. However, according to the International Monetary

DR. MOHD AFZANIZAM ABDUL RASHID

CHIEF ECONOMIST BANK ISLAM MALAYSIA BERHAD

Fund (IMF), there are hopeful signs in the global economy, despite a contraction of -3.3%, the worst since the Second World War (as a comparison, the global economy contracted by -0.1% in 2009, after the Global Financial Crisis). The IMF sees a rebound of 6% in 2021, and 3% from 2023 onwards.

Dr Afzanizam remarked that he was often asked if the stimulus was enough but "there's no straight answer to that," he said, adding that there was a lot of cash (i.e., M1 – the money supply, money aggregates, currency in circulation and deposits) in the system at the moment. "It's growing at a double-digit pace. Next year, if herd immunity is achieved, this is what you will see in the system." However, income inequality still exists, and the macro economy has to be considered. While qualitative measures were definitely needed, he cautioned nevertheless against being fixated on numbers, adding that this will cause more policy mistakes.

There may be greater gross domestic product (GDP) growth in 2022 but domestic recovery is still a mixed bag, and there will be a lot of speed bumps along the say. Nurturing entrepreneurship is critical; government incentives such as micro-enterprise financing have shown some success in elevating the B40 sector. The reality is that regardless of Covid-19, the business landscape will continue to be challenging.

External trade performed well in the second half of 2020, with the gradual recovery of global demand. "Exports

"There may be greater gross domestic product (GDP) growth in 2022 but domestic recovery is still a mixed bag, and there will be a lot of speed bumps along the say. Nurturing entrepreneurship is critical; government incentives such as micro-enterprise financing have shown some success in elevating the B40 sector. The reality is that regardless of Covid-19, the business landscape will continue to be challenging."

to China recorded a new high, as did exports to the US," Dr Juita said. "Total trade grew to RM106 billion in Q1 2021, compared to the same period last year. There were higher shipments of iron, chemicals and machine parts." Trade agreements that Malaysia has signed, particularly the Regional Comprehensive Economic Partnership (RCEP), will come into force in the near future, and are expected to have significant impact as they make up the largest trade bloc in the world, worth an estimated US$26 trillion, or about 30% of global GDP.

Total China-ASEAN trade rose in 2020, and is projected to increase in 2021. Amid rising protectionism, the signing of the RCEP is seen as an effort to offset inward-looking policies of many countries, in the wake of the pandemic. Signing on with the RCEP eradicates trade barriers, and will spur ASEAN to intensify digital trade. "If Malaysia ratifies the RCEP, there will be a need to update legislation on digital trade," she added. Onboarding of small and medium enterprises (SMEs) on digital platforms is therefore crucial.

The "biggest elephant in the room" still remains the Covid-19 pandemic. "We have to recognise that Covid-19 is becoming endemic, and we will have to make adjustments to live with this danger," said Dr Jomo. "Choosing between lives and livelihoods is a fake choice. Talk of herd immunity can also be misleading. Some countries have achieved a high level of vaccinations – about 60% of the population – but this is still not (and assurance of) security because of variants. Malaysia did not learn enough from the East Asian countries."

DR. JOMO KWAME SUNDARAM

FELLOW ACADEMY OF SCIENCE, MALAYSIA

He said that it was easy to blame the authorities, but the right methods were difficult to ascertain in times like these. "All East Asian countries adopted a full government approach," he said. "Korea, for example, involved all ministries. Malaysia was slow in doing the same." There was also a lack of, or incompetently-applied, information.

The lack of information was also affecting the understanding of forex reserves and fiscal resources. "There is confusion over what reserves Bank Negara has access to," he said. "The annual debt of the Japanese government, for instance, is 250% of its GDP." There is a lot of liquidity in the system but it is not being utilised properly. "The situation even before the pandemic wasn't that great; now we should review how to do things better."

Tax reform was needed; in the short term, a windfall tax was in order, to redistribute wealth. Together with a change in policy, he said that there should be short- and medium-term reforms, as well as taxes that will not harm the economy. Dr Afzanizam said that banks were already collaborating with the public sector to address the problem of restructuring businesses to address the economic shock of the pandemic. There was also alternative funding that complemented banks' efforts.

The economic effect of the pandemic has impacted all levels of society, particularly the B40 group, the most vulnerable. Healthcare and childcare have been significantly affected as well, for the M40 strata. In line with these findings, Dr Juita recommended thinking about a sustainable social safety net that the population can access. "Cash transfers are vital to those in need but these have to be sustainable," she said. "Careful data collection and research is important." Uneven impact on vulnerable groups such as women, youth and the disabled will require more government spending, Dr Yeah pointed out. But where will these larger allocations come from, and how should the country move forward?

DR. JUITA MOHAMAD

FELLOW, ECONOMICS, TRADE AND REGIONAL INTEGRATION INSTITUTE OF STRATEGIC AND INTERNATIONAL STUDIES

Dr Jomo emphasised a whole-of-society approach, and stressed that the way the current situation was being dealt with was insufficient. "Situations need to be explained and understood," he said. "The bottom 70% of households have very little in savings. People are not even making ends meet. The average household debt is over 80% of income. Over half of the labour force is not even in the formal sector. Much more can be done with relief. Liquidity can help sustain demand but what happens if the liquidity cannot be sustained?" He advocated relying more on the experiences of Eastern countries than Western wisdom, and being sensitive to what was happening on the ground.

In response to Dr Yeah's question of when Malaysia will return to normalcy, Dr Afzanizam admitted to being "really in the dark" particularly as it was still unknown how the virus will mutate. Dr Juita conceded that the future was still uncertain, although the vaccination programme will be of help when fully rolled out. "It will boost business sentiment," she said. "The unemployment rate will go down, and the economy will improve – but not before Q1 2022."

"The economy is intimately tied to governance in this case," Dr Jomo said. "We have relied too much on old ways of thinking, and not had enough public consultation. Misleading information has been worsened by the influence of social media. (What we have now) is a fragmented society with no inclusivity." Malaysia still depends on external investment, although internal investment leads, and external investment follows. "We need more investment-friendly policies with an emphasis on domestic investment," he said.

On Malaysia's subsequent development plans, Dr Juita stated that there were plans and working groups in the pipeline. To a question on whether there should be concern over multinational corporations (MNCs) threatening to exit the country, Dr Jomo said that they could not be faulted for becoming frustrated as confusion currently abounds, but there should be more concern about domestic investors. "There has been no serious planning since the 1980s."

Dr Afzanizam said that GDP for 2022 was projected to increase by 4.2%. He also mentioned that despite public dissatisfaction over banks' apparent reluctance to waive accrued interest, banks were still open to negotiation with customers on loan restructuring. Asked on what businesses should look at, Dr Juita recommended concerted digitalisation efforts as this would enable easier access to grants from different agencies without overlapping or duplication.

Dr Yeah's final question was on how SMEs should cope with uncertainties. Dr Jomo responded with, "There are things which are known, things which are unknown, and things which are confused. There should be more clarity and truth – and less misleading information."

YEO ENG PING

CO-ORGANISING CHAIRMAN OF NTC 2021, CHARTERED TAX INSTITUTE OF MALAYSIA

TOPIC 2 STRATEGIES AND CHALLENGES OF LHDNM

With the upheaval wrought by the pandemic, session moderator Yeoh Eng Ping of CTIM asked if there has been pressure on LHDNM to collect more taxes? Dato' Sri Dr Sabin Samitah, CEO, LHDNM, said the growth outlook for 2021 had to be revisited, and will be announced later in the year. "Revised growth projections will have an effect on the collection of revenue," he explained.

He said that governments the world over were grappling with the problems thrown up by the virus, and taxes need to be viewed as a community asset. "Malaysian tax to GDP ratio is low – 9.2%," he said. "There is a need to increase it so that it can fund programmes. Out of the 1.35 million companies registered with the Companies Commission of Malaysia (SSM), only 16% pay tax. We have a workforce of 15.5 million, but only

"The government is currently studying the tax structure, and that there was a need to review incentives to align them with the tax framework. LHDNM audits are conducted to ascertain compliance with regulations; LHDNM can recommend to the granting agency if the incentive needs to be reviewed if the company is not meeting the requirements. If the company cannot meet conditions, it should go back to (discuss with) the granting agency before it is audited. LHDNM auditors are not looking for what is wrong; they are looking for consistent use of incentives according to conditions set by the granting agencies."

16.12% are paying tax. This is a very small taxpayer base. In addition, the volatility in petroleum prices is affecting our income stream. We have to reduce dependency on this."

Currently, only income accrued in Malaysia can be taxed in Malaysia. "The government needs to be able to collect at least 20% in taxes, in proportion to its economy," he continued. "It is timely to review measures for taxation, but there have been no proposals for new taxes so far." Yeoh suggested that policy makers could look into the current 24% corporate rate, and review the tax incentive regime for effectiveness.

Dato' Sri Dr Sabin said that the government is currently studying the tax structure, and that there is a need to review incentives to align them with the tax framework. LHDNM audits are conducted to ascertain compliance with regulations; LHDNM can recommend to the granting agency if the incentive needs to be reviewed if the company is not meeting the requirements. If the company cannot meet conditions, it should go back to (discuss with) the

DATO' SRI DR. SABIN SAMITAH

CHIEF EXECUTIVE OFFICER LEMBAGA HASIL DALAM NEGERI MALAYSIA

granting agency before it is audited. LHDNM auditors are not looking for what is wrong; they are looking for consistent use of incentives according to conditions set by the granting agencies.

Commenting on LHDNM's increasingly sophisticated and refined tax audits, she asked if businesses which have thrived in the pandemic will get more attention from LHDNM. Dato' Sri Dr Sabin replied that LHDNM has red-flagged specific cases, especially those which have profited during the movement control order (MCO) period, and was also chasing down non-compliant taxpayers, collaborating with other agencies to identify tax evaders.

The pandemic has not stopped tax audits although some adjustments have had to be made. Field audits are undertaken only where necessary. Examination of records and reviews are done at the LHDNM offices. Despite many of its officers working from home, they were all reachable, and queries could be forwarded through several channels.

Commenting on base erosion and profit shifting (BEPS), he said that with BEPS Pillar 1, Malaysia will get taxing rights; BEPS Pillar 2 will set a minimum corporate tax rate. This may see countries raising their tax rates to reach the minimum 15% set by BEPS, creating an impact on companies' decision-making and investments. "We offer many incentives," he said.

"This will affect a lot of international companies which are headquartered in Malaysia." LHDNM was beefing up internal capacity and training, to manage the situation. In response to Yeoh's question on what can be expected from LHDNM going forward, he said LHDNM was focusing on improving flexibility of compliance activities through the Hasil Integrated Tax System (HITS) which will allow better data management and data analytics. The use of tools to manage tax laws, collection and administration was also being benchmarked against international standards. In conclusion, he said that the current health crisis has made society more vulnerable and the income redistribution mechanism has become more important so taxes should be paid on time, and correctly.

THENESH KANNAA

*COUNCIL MEMBER
CHARTERED TAX
INSTITUTE OF MALAYSIA*

TOPIC 3 OECD – PILLAR 1 AND PILLAR 2 – BEPS

Thenesh Kannaa of CTIM moderated this session, with speaker Dr Esther A P Koisin, Director, Department of International Taxation, LHDNM. Panel members were Sim Kwang Gek, Country Tax Leader of Deloitte Malaysia, and CTIM Council Member Anil Kumar Puri. Thenesh remarked that the two-pillar approach was ambitious but indicative of increasing sophistication and complexity in governments' understanding of the way big businesses were carrying out their activities cross-border, online and in digitised forms, and profiting from it.

**DR. ESTHER
A.P KOISIN**

*DIRECTOR, DEPARTMENT
OF INTERNATIONAL
TAXATION LEMBAGA
HASIL DALAM NEGERI
MALAYSIA*

Dr Esther shed light on the current situation. "The Organisation for Economic Co-operation and Development (OECD) Pillar 1 and Pillar 2 address BEPS challenges which have arisen due to the digitalisation of economies," she said. "They aim to ensure that taxes are correctly levied where economic activities are undertaken. The blueprint for this was published in October 2020, and 132 of the 139 OECD member countries have agreed to the rules. Companies must pay tax where they operate. Details are yet to be finalised but they will be, by October 2021."

The changes were undertaken because with the development of global trade, the current system was no longer fit for 21st century purposes. Dr Esther presented a comprehensive overview of BEPS Pillar 1 and Pillar 2, noting that it was not compulsory for countries to apply global rules under Pillar 2, and that tax will be calculated on a jurisdictional basis. "Pillar 2 will apply on jurisdictional, not global rate," she stated. Billions are generated in additional tax revenues in countries where multinational enterprises (MNEs) have their headquarters. With the application of Pillar 1 and Pillar 2, MNEs will stop their profit-shifting activities; 0.3%-0.5% of about RM250 billion could end up in government coffers, in Malaysia.

This means that about 1,763 MNEs based in Malaysia will have to pay top-up tax. "Will they leave Malaysia if they have to pay more tax?" queried Sim. "Will the 15% tax impact foreign direct investments (FDI) that come into Malaysia? We need to start thinking about how to develop policy to protect our fiscal revenue in the future." Thenesh added that tax incentives may become less relevant if companies end up paying tax wherever they operate, regardless.

Some countries are building on other non-incentive elements, like the ease of doing business in their respective countries. Dr Esther clarified that the global rules apply to companies making €750 million annually. "Countries have to dedicate themselves to improving their investment climates," she said. "Look into the advantages that they already have, and not be preoccupied with providing incentives for businesses. It is better to leverage on their existing advantages."

Thenesh pointed out that should Pillar 2 be passed, Malaysia will have to relook at its incentive regime. "But what other advantages can be offered?" he queried. "If incentives are withdrawn, how can we retain other advantages like investor companies providing jobs for the local workforce, or purchasing a certain percentage of raw materials from local suppliers?" Sim suggested providing good infrastructure, political stability and control of the pandemic as examples of non-tax incentives. Commenting on how Pillar 2 will affect SMEs that fall below the threshold, Anil said that SMEs were not a BEPS target, although smaller firms could experience some fallout.

Sim pointed out that compliance costs may increase, as the complicated nature of BEPS could require human resources

SIM KWANG GEK

*COUNTRY TAX LEADER
DELOITTE MALAYSIA*

with appropriate skills to manage the processes, information and technology that will come with implementation. "At the end of the day, it is a lot of common sense," Thenesh opined. "It is a complete reimagination of the tax system." Dr Esther acknowledged the complications that come with BEPS, conceding that it will require capacity-building of the tax authorities, to ensure they could look into disputes. "Dedicated people are needed to look into Pillar 2 matters," she said.

To Thenesh's query whether BEPS will solve current problems, Sim said that Pillar 1 addresses the challenges of collecting taxes in a borderless world while Pillar 2 was looking at "preventing countries from racing to the bottom. It's not a perfect system," she agreed. "It's not able to provide solutions for everything." In a dynamic world, as businesses change, tax systems have to change in tandem. For instance, as an international offshore financial centre, Labuan will be impacted if BEPS is applied, confirmed Anil.

ANIL KUMAR PURI

COUNCIL MEMBER CHARTERED TAX INSTITUTE OF MALAYSIA

There was therefore a need to reposition, pivot and accommodate changes. "Now is the time to move for change," Anil said. "We need to relook at structures and realign them." He stressed that the extent of the economic impact needed to be understood so that practical measures could be put in place. It was also imperative to understand the business viewpoint, and a holistic view of the tax system should be taken.

SOH LIAN SENG

COUNCIL MEMBER CHARTERED TAX INSTITUTE OF MALAYSIA

TOPIC 4 ISSUES RELATING TO COVID-19 (DOMESTIC AND INTERNATIONAL ISSUES)

CTIM Council Member Soh Lian Seng moderated this session, while CTIM Council Member Steve Chia was the speaker. Panel members were Abu Tariq Jamaluddin, Deputy CEO of LHDNM, and Siobhan Das, CEO of the American Malaysian Chamber of Commerce. Describing the session as a chance to air views, express wish lists and give professional perspectives, in his presentation, Chia said that some industries have been lucky but many have been severely impacted, and businesses have been disrupted.

"Cash is king," Chia said. "Cash flow is critical but we cannot go back to the old ways of doing things. Businesses are operating at reduced capacity, and production is down. In some cases, manufacturers may have to pay compensation. Bad debts abound, and are not recoverable. Companies are experiencing losses – but businesses still have to follow all rules and regulations while pandemic conditions still exist."

STEVE CHIA

COUNCIL MEMBER CHARTERED TAX INSTITUTE OF MALAYSIA

Retrenchment payments, tax transaction costs, internal restructuring exercises – all these implied new tax approaches

> **"Dr Esther shed light on the current situation. "The Organisation for Economic Co-operation and Development (OECD) Pillar 1 and Pillar 2 address BEPS challenges which have arisen due to the digitalisation of economies," she said. "They aim to ensure that taxes are correctly levied where economic activities are undertaken. The blueprint for this was published in October 2020, and 132 of the 139 OECD member countries have agreed to the rules. Companies must pay tax where they operate. Details are yet to be finalised but they will be, by October 2021."**"

but the pandemic was an opportunity to reset the economy. "Pivot to manage," advised Chia. "Tax incentives are a lever to investments. Be innovative when using them. There is no playbook to follow. We are in unprecedented times." Soh added that many companies were looking at restructuring, particularly operational and debt restructuring. Das added that MNCs in Malaysia too had experienced disruption because they were completely integrated into the global supply chain.

"Businesses have had to reimagine the way they work," Das said. "They have had to digitise, automate and implement many other measures to continue working." The main concern, with the costs involved and tax implications, was how to adjust and restructure while connected to the supply chain. "It's about how to support the weakest links," she emphasised. Soh queried the perspective of tax authorities when making assessments.

Abu Tariq acknowledged that debt restructuring was one of the main concerns of companies. About 1.9 million borrowers benefitted from the recent six-month moratorium. "Tax payment will depend on whether there is a new date on the payment of interest," he said. "It depends on the facts of the case, and if it is integral to the company's operations. The general rule is to look at when it is due and payable. The taxpayer can review the tax payable and revise the estimate."

With extensive job loss, how can workplace disruption be managed? "Standard operating procedures (SOPs) keep changing, and employers need to be proactive to manage staff anxiety, as this is linked to their mental wellbeing," Das responded. "Employers need to be mindful of the staff's actual situation." She added that employees may need to reskill or upskill. "Upskilling could add more than US$3 trillion to world GDP," she said. "More revenue will be generated; more taxes can be collected. With flexible working arrangements, there will be alternative employment models. What happens to how these people pay their taxes? Reporting income will change."

On the government's initiatives with individual employees and employers, Abu Tariq mentioned the wage subsidy programme and other payments to help people adapt to the New Normal. Employers were also incentivised to work in new ways. "SMEs, especially, have a lot of incentives so that they can continue operating," he explained.

ABU TARIQ JAMALUDDIN

DEPUTY CHIEF EXECUTIVE OFFICER (POLICY) LEMBAGA HASIL DALAM NEGERI MALAYSIA

These include rescheduling payments to reduce the cost of doing business; financial help with renovation and refurbishment; stamp duty exemption for mergers and acquisitions.

SIOBHAN DAS

CHIEF EXECUTIVE OFFICER AMERICAN MALAYSIAN CHAMBER OF COMMERCE

Das acknowledged that a lot of effort had been put into the treatment of packages so far but more could be done. "Look at job creation and tax treatment of SMEs," she said. "Look at the tax base in conjunction with SMEs – can they benefit? Look at the conditions that qualify them. All businesses look for clarity, certainty and stability which encourage them to stay and create jobs. This feeds the job creation pipeline. Malaysia will lose out in the long run if there is no technology transfer. There is a need to upskill to produce better workers and higher wages, to contribute more to the economy."

Further industry engagement was needed to discuss if measures put in place have been effective, what the impact has been on tax, and how to support companies. Soh brought up the matter of navigating tax disputes during the pandemic, and when discussing tax audits. Das confirmed that tax audits had been ongoing during the pandemic; some companies have had a hard time especially with being physically present for audits, and providing the necessary documents required by LHDNM because of restricted access to buildings due to pandemic SOPs.

Urging LHDNM to be flexible in these cases, she noted that LHDNM offices were also working with reduced manpower. "LHDNM needs to take a holistic view," she said. "In a pandemic, anxiety levels are high; trying to fulfil requests adds to the stress. Companies shouldn't be penalised when they are really trying." However, LHDNM has generally been empathetic and open to extending time to comply.

Abu Tariq's response was that LHDNM usually accepted the taxpayers' submissions, and gave due consideration to requests as it was aware of the need to balance engagement with compliance. "Audits are based on risk assessments," he said. "There are different kinds of audits, but multiple audits only happen when the taxpayer is exposed to many risks. Officers adhere to regulations (although additional tax usually arises from an audit). The additional sum can be deferred to 2022, and the penalty can be reviewed."

TOPIC 5 SUPPORTING SMES – RECENT MEASURES AND THE WAY FORWARD

Session moderator Dr Gunasegaran Muthusamy, Director of LHDNM's Tax Research Department stated, "If the economy is not opened by October 2021, seven million will be unemployed and 49% of businesses will close permanently." SMEs and micro-SMEs contribute 38.9% of the country's GDP, and employ 48.4 % of the workforce. The impact of Covid-19 has been serious, and the top five factors affecting business operations, said speaker Koong Lin Loong of CTIM, were high operating costs; declining business; the political climate; low domestic demand; and unclear communication and inconsistent interpretation of SOPs.

DR. GUNASEGARAN MUTHUSAMY

DIRECTOR, TAX RESEARCH DEPARTMENT LEMBAGA HASIL DALAM NEGERI MALAYSIA

"Since 18th March 2020, it has not been business as usual," Koong said. "There's no business but salaries still have to be paid. There are no customers, but businesses still have to pay bills like rent." Most businesses are unable to do business online but some of them have done in the last 12 months what would normally take seven years to do, he acknowledged.

KOONG LIN LOONG

COUNCIL MEMBER CHARTERED TAX INSTITUTE OF MALAYSIA

What is needed is to restore confidence in investors and maintain Malaysia's position as the 12th-easiest place to do business in the world. "Making profits is not a priority right now," he continued. "Maintaining cash flow is." He delivered a comprehensive overview of programmes available which included tax deductions, incentives, stimulus packages and various other means of government support. He also suggested digitalisation as a concrete recovery method.

EZLEEZAN OTHMAN

HEAD OF SECTION, TAX DIVISION MINISTRY OF FINANCE MALAYSIA

Detailing the assistance that has so far been instituted to support the economy, Ezleezan Othman of the Tax Division of the Ministry of Finance, said that eight stimulus packages – Prihatin, PrihatinPKS+, Penjana, KitaPrihatin, Permai, Pemerkasa, Pemerkasa+ and Pemulih – worth RM500 billion will be utilised over the 2020-2021 period. "Seven packages worth RM380 billion have benefitted more than 20 million people, and 2.4 million businesses," he said. "The remainder will be utilised in the second half 2021." These measures include loan moratoriums, wage subsidy programmes and funds to support SME rehabilitation in sectors such as Tourism. Income tax instalments have also been deferred for entertainment operators.

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The next Malaysia Plan, RMK12, which will focus on recovery, resilience and reform, will carry on rehabilitation of industry sectors and support digital onboarding of SMEs. Remarking that 75.4% of Malaysia's 1.51 million SMEs are actually micro enterprises, CEO of SME Corporation Rizal Nainy said that RM155.8 billion has been allocated to SMEs to weather the pandemic. "The response to these measures has been overwhelming," he said. "Additionally, RM450 million has been allocated for companies which have had difficulty in securing financing before."

Koong advised firms to apply during the relevant phases of recovery, and to be aware of which industries qualify. Rizal asserted that SMEs needed to move concertedly into digitalisation to be effective. "They have the equipment but both front and back ends of their businesses need to be digitalised. SMEs which have not been receiving government aid may still refer to the Bank Negara portal for help.

RIZAL NAINY

CHIEF EXECUTIVE OFFICER SME CORPORATION OFFICER

Rizal said that businesses will start up when herd immunity is achieved. He said, "An assessment can be done then. But the Budget allocates funds for SMEs every year because of their importance to the economy – regardless of whether there is a pandemic or not." Ezleezan observed that the most important thing was to have national economic reform.

TOPIC 6 UPDATES OF TAX CASES

This session was moderated by CTIM Council Member K Sandra Segaran, with Goh Kah Im, Director of Labuan Financial Services Authority,

K. SANDRA SEGARAN

GENERAL MANAGER (GROUP TAX) PETRONAS

> **"This matter was significant because the Court of Appeal's ruling has ended the contentious issue of the application of paragraph 34A Schedule 2 of RPGTA 1976. The Court of Appeal affirmed that paragraph 34A Schedule 2 of RPGTA 1976 was clear and unambiguous, and would be applicable so long as the disposal of shares is the disposal in a company that falls within the definition of Real Property Company (RPC)."**

as the panel member. Updates this year were presented by Dr Hazlina Hussain, Director of LHDNM's Legal Department. It covered nine areas: Judicial Review; Stay Order; Overrule; Stamp Duty; Director's Personal Liability; Income Tax v Real Property Gains Tax (RPGT); Rate of Duty; Client's Account; and Time Bar. She noted that the number of cases for Judicial Review saw a 421.88% increase over the past year, going from 32 cases in 2020 to 167 in 2021. Out of the Leave Applications filed for Judicial Review, 25 were granted; 34 were not granted.

- **Recent Development of Court Decision on Judicial Review**
  Two cases were covered in this area: Bintulu Lumber Development Sdn Bhd v DGIR; and Berjaya Times Square Sdn Bhd v DGIR.

  In the case of Bintulu Lumber, the taxpayer filed for Judicial Review because of dissatisfaction over the assessment raised by the Director General of Inland Revenue (DGIR). The High Court, Court of Appeal and Federal Court dismissed the taxpayer's appeal. In its dismissal, with costs, the Federal Court stated that in its view the case was not a matter of public importance that would give rise to exceptional circumstances which would justify granting of judicial review.

  In the case of Berjaya Times Square, the taxpayer had filed for Judicial Review and also appealed under Section 99 of the Income Tax Act (ITA) 1967, being dissatisfied with the assessment raised. The High Court dismissed the taxpayer's appeal; the Court of Appeal affirmed the High Court's decision. The Court of Appeal was of the opinion that the matter was best reserved for argument before the Special Commissioners of Income Tax (SCIT), not in Judicial Review proceedings.

DR. HAZLINA HUSSAIN
DIRECTOR, LEGAL DEPARTMENT LEMBAGA HASIL DALAM NEGERI MALAYSIA

- **Stay – the Effectiveness of Section 103B of the ITA 1967**
  The Finance Act 2020 has been amended with the insertion of Section 103B: "The institution of any proceedings under any other written law against the Government or the Director General shall not relieve any person from liability for the payment of any tax, debt or other sum for which he is or may be liable to pay under this Part."

  The Court dismissed four applications for Stay of Proceedings in Wira Muda (M) Sdn Bhd v DGIR; Dell Global Business Centre Sdn Bhd v DGIR; Standard Chartered Global Business Services Sdn Bhd v DGIR; and Katana Development Sdn Bhd v DGIR.

- **Overruled**
  In the case of Continental Choice Sdn Bhd & CB Ventures Sdn Bhd v DGIR, the issue was whether the disposal of shares in a developer company would attract tax under paragraph 34A Schedule 2 of the Real Property Gains Tax Act (RPGTA) 1976, when the property had been held by that company as stock in trade. The Court of Appeal dismissed the taxpayer's appeal.

  This matter was significant because the Court of Appeal's ruling has ended the contentious issue of the application of paragraph 34A Schedule 2 of RPGTA 1976. The Court of Appeal affirmed that paragraph 34A Schedule 2 of RPGTA 1976 was clear and unambiguous, and would be applicable so long as the disposal of shares is the disposal in a company that falls within the definition of Real Property Company (RPC).

- **Stamp Duty Appeal to the Federal Court**
  In this landmark case, the issue was whether the High Court had used original or appellate jurisdiction in hearing the Respondent's appeal under Section 39 of the Stamp Act 1949. The High Court allowed the duty payer's appeal; the Court of Appeal dismissed the Collector of Stamp Duty's appeal; the Federal Court allowed the Collector of Stamp Duty's leave to appeal.

- **Director's Personal Liability under Section 75A of the ITA 1967**

Four cases were included in this category: Kerajaan Malaysia v Mohamed Ilyas Bin Pakeer Mohameed dan satu lagi; Kerajaan Malaysia v BGOG Holdings Sdn Bhd & Ors; Kerajaan Malaysia v Mahawira Sdn Bhd & Teh Li Li; and Kerajaan Malaysia v International Marketing & 3 lagi (unreported). Dr Hazlina detailed three of the four cases: Mohamed Ilyas, BGOG Holdings and Mahawira & Teh Li Li.

In the Mohamed Ilyas case, the issue was whether the Defendants were jointly and severally liable according to Section 75A of the ITA 1967. The High Court ruled that the action taken by the Plaintiff was lawful as the first and second defendants who were the directors of the firm, were each holding more than 20% of the firm's share capital. Each was jointly and severally liable according to Section 75A of ITA 1967.

There were two issues in the BGOG Holdings case: whether the third defendant was a director within the meaning of Section 2, Section 75A and Section 139 of the ITA 1967; and if the third defendant was liable for the overall sum, or only liable limited to the shares he held in the company. The High Court found that the third defendant was concerned in the management of the company, and as such, his liability was not limited to the shares held by him, but was applicable to the entire shareholding in the company.

In Mahawira & Teh Li Li, IRB claimed outstanding tax jointly and severally against the first and second Respondents involving the year of assessment (YA) 2001-2004. The High Court ruled that the second Respondent, who became a director of the first Respondent only on 19th December 2003, was liable only for YA 2004, and could not be liable for the balance sum of RM1,887,799.73 for YA 2001-2003 as the second Respondent was not yet a director of the first Respondent. The Court of Appeal affirmed the High Court's decision; DGIR has filed leave to appeal to the Federal Court.

- **Income Tax v Real Property Gains Tax**
  The issue with Natasri Sdn Bhd v DGIR concerns the taxpayer's gains from the disposal of land, which was taxed under para 4(a) of the ITA as business income. The SCIT dismissed the taxpayer's appeal but the Court of Appeal allowed it.

- **Effective Date of Amendment on the Rate of Duty**
  In the case of MW Park Sdn Bhd v Pemungut Duti Setem, LHDNM, the issue was how the *ad valorem* Notice of Assessment for the transfer of property should be based – whether in 2018 at 3% or in 2019 at 4%. The sale and purchase agreement (SPA) was dated 21st August 2018; the memorandum of transfer (MOT) was executed on 24th December 2018 but the applicant applied online for adjudication of stamp duty for the MOT only on 2nd January 2019. The High Court ruled that the ad valorem duty should be based on when the MOT was submitted to the Collector for adjudication, i.e., 2nd January 2019. This case is pending in the Court of Appeal.

"There may be greater gross domestic product (GDP) growth in 2022 but domestic recovery is still a mixed bag, and there will be a lot of speed bumps along the say. Nurturing entrepreneurship is critical; government incentives such as micro-enterprise financing have shown some success in elevating the B40 sector. The reality is that regardless of Covid-19, the business landscape will continue to be challenging."

- **Client's Account – Is It A Privilege?**
  In DGIR v Bar Malaysia, members of the Malaysian Bar had complained to the plaintiff that LHDNM officers had, in the course of their audits, carried out raids on law firms where they had requested for clients' accounting books and records, possibly in breach of solicitor-client privilege. The High Court allowed the taxpayer's application; the Court of Appeal affirmed this decision, and dismissed LHDNM's appeal. LHDNM has filed Notice of Motion for leave to appeal to the Federal Court.

- **Time Bar – Burden of Proof**
  In Opus International (M) Bhd v DGIR, the issue was whether the DGIR had successfully discharged the burden of proof as required under Section 91(3) of the ITA 1967; and if so, whether the Respondent had any legal basis to bring the payment for project management fee of RM19,473,324.13 to income

tax in the year 1999. The SCIT found that the DGIR had discharged its burden of proof that the Appellant had committed negligence. The Court of Appeal agreed with the SCIT's conclusion that the DGIR's action in raising the tax after the period of six years, was valid.

Commenting on the presentation, moderator Sandra Segaran remarked that taxpayers kept filing cases of appeal because of exceptional circumstances. Goh added that some cases were of more significance than others even where the decision had not been in the taxpayer's favour, because it shows that "the Tax Authorities can be reviewed – there is no immunity." But taxpayers still need to show "exceptional circumstances."

On cases which involved Section 103B of the ITA 1967, she said where cases were unreported, there was no way of telling what was behind the court ruling. She pointed out the matter of interpreting the ruling in the Continental Choice case, where the taxpayer relied on the explanative statement but the ruling was based on the applicable section of the Act instead. On the landmark Collector of Stamp Duty v Lee Koy Eng case, she emphasised the need for a written decision for better clarity of what was decided. She also opined that LHDNM is likely to apply the outcome of the Mahawira case to other such cases in the future.

"To deal with this, LHDNM has updated the frequently asked questions (FAQs) on its website, together with general information about counter service operations and e-filing matters. The focus has been primarily on issues like extensions of time for submissions."

In the Mahawira case, the director Teh Li Li was not a director of the company when the tax became due but the liability to pay becomes effective when letters are issued. "We have to look at the definition at the time when Teh Li Li was director," Goh said. "We cannot apply facts retrospectively. Notices of assessment were not served; they should be served on the director as well as the company." Acknowledging the difficulties of applying the authorities' decisions, she said that different cases have had different conclusions from the court, adding, "Hopefully written decisions will be released for clarity."

GOH KA IM

DIRECTOR
LABUAN FINANCIAL SERVICES AUTHORITY

TOPIC 7 ROUNDTABLE DISCUSSION ON CURRENT ISSUES AND CONCERNS

CTIM Council Member Leow Mui Lee was the moderator for this session; panel members were Datuk Mohd Nizom Sairi, Deputy CEO (Tax Operation), LHDNM; and CTIM President Farah Rosley. Leow's list of issues to discuss included tax audits, current issues, what to expect in the future, Covid-related matters, disruptions to lives and livelihoods, and key LHDNM activities from the operations perspective, among other challenges. Conceding that LHDNM was also facing challenges, Datuk Nizom said that the MCO had severely disrupted businesses, leading to an increase in queries from the public. To deal with this, LHDNM has updated the frequently asked questions (FAQs) on its website, together with general information about counter service operations and e-filing matters. The focus has been primarily on issues like extensions of time for submissions. He advised tax professionals to use the website to track changes and official announcements. The process of making refunds was ongoing. "Taxpayers expect prompt refunds," he confirmed. "But we have to balance revenue collections and outgoing payments. The challenge at the moment is managing cash flow, not administrative matters."

Farah asked how tax administration will be impacted, what will trigger policy reforms, and what more can be done for taxpayers. Automatic deferment of payments and allowing instalment payments of the balance of tax will help cash flow, she added. "Blanket extensions of time are good," she said. "And stamp duty exemption will help companies. Increase in deductions on homes will be good too." Remarking that deductions can be offered to businesses that hire the unemployed, she noted that upskilling of employees will need to be considered.

"We will need skilled people to help the country recover," she said. "The wellbeing of employees, especially their mental health, will be of concern." Another area of concern for employers will be the cost of vaccines, and related expenses. Lauding LHDNM's move to refund first and audit later, Leow urged LHDNM to consider deferment of tax for companies which were not in critical or affected industries as well. But Datuk Nizom said that this will be considered

LEOW MUI LEE

COUNCIL MEMBER
CHARTERED TAX INSTITUTE OF MALAYSIA

“This matter was significant because the Court of Appeal’s ruling has ended the contentious issue of the application of paragraph 34A Schedule 2 of RPGTA 1976. The Court of Appeal affirmed that paragraph 34A Schedule 2 of RPGTA 1976 was clear and unambiguous, and would be applicable so long as the disposal of shares is the disposal in a company that falls within the definition of Real Property Company (RPC).”

on a case-to-case basis. LHDNM was aware that some companies that were not in the affected sectors were suffering as well.

Leow queried how companies were managing their tax audits. Farah said that there was a lot of confusion initially but people got used to remote audits. Recent audits have also involved multiple entities within the same group being simultaneously audited, giving rise to difficulties in obtaining documents during MCOs. However, LHDNM has been accommodating, and discussions online are rapidly becoming the norm.

The pressure to expedite cases can be challenging when assessments involve large amounts, and the timeframe for appeal is short. Leow brought up the issue of multiple audits for similar years of assessments. Datuk Nizom explained that LHDNM’s system flags anomalies for investigation in the course of auditing, sometimes in the earliest stages of the exercise, without the taxpayer even being aware that they were being audited. “The taxpayer may be investigated for various reasons which may not be related,” he said. “Audit is not as serious as investigation; audit usually stops to allow investigation to continue.”

DATUK MOHD NIZOM SAIRI

DEPUTY CHIEF EXECUTIVE OFFICER (TAX OPERATION) LEMBAGA HASIL DALAM NEGERI MALAYSIA

Despite difficulties, LHDNM has had to continue its work because of the need to collect revenue. “Cases picked up will be from 2019 or earlier,” he said. “It also depends on the information requested from companies. LHDNM staff are also required to follow SOPs/pandemic procedures regarding movement restrictions.” He confirmed that more audits were undertaken in 2019 because of the government’s Special Voluntary Disclosure Programme. No particular industry was being targeted, he stressed. LHDNM auditors were generally sympathetic as many industries were not allowed to operate.

Farah commented that since a single Commission has been established, hearings of cases were now being speeded up, but the MCOs have caused hearings to be retimed. Datuk Nizom’s response was that most of the postponements were at taxpayers’ request. “LHDNM will not ask for postponement,” he stated. Leow expressed taxpayers’ concern about making mistakes when filing because of complex regulations, but Datuk Nizom said that corrections can be filed if mistakes have been made through the appropriate form (“Borang Nyata Terpinda”). “Corrections must be filed within six months of filing the first form,” he advised, adding that voluntary disclosure was still encouraged.

Farah remarked that despite taxpayers’ best efforts, unintended errors still happen and genuine mistakes may be made – but taxpayers still have to pay penalties. “People should be encouraged to be honest if they make mistakes,” she said. “The penalty for mistakes should be lower than the fine for audit.” Datuk Nizom said that LHDNM was currently undergoing digital transformation, with expected completion in three years but most of its services were already online, under “MyTax”.

FARAH ROSLEY

PRESIDENT CHARTERED TAX INSTITUTE OF MALAYSIA

Asked what was on the tax professionals’ wish list for Budget 2022, Farah cited more taxes on unwanted activities, but cautioned that a windfall tax may have repercussions. A stable, reliable tax system was needed, for investors and local support, she said. “Taxes need to be easy to implement and manage.” Datuk Nizom confirmed that many proposals to improve systems and stem leakages have been forwarded.

Concluding that the government was, however, unlikely to raise taxes, given the current situation, Farah said that the emphasis may be on stronger enforcement instead, and reiterated hopes for a simple, transparent, effective tax system.

EXAMINING THE SCOPE OF SECTION 140A OF THE ITA 1967

S. Saravana Kumar and Sophia Choy

Section 140A of the Income Tax Act 1967 ("ITA"), commonly known as the transfer pricing provision, allows the Director General Of Inland Revenue ("DGIR") to substitute the price of a transaction where he "has reason to believe that (the transaction) … *is either less than or greater than the price which it might have been expected to fetch if the parties to the transaction had been independent persons dealing at arm's length*". In other words, where the DGIR has a basis to believe that the price of a transaction between related persons is not the price that would be adopted by independent and unrelated persons, the DGIR may substitute the price by one that is deemed to be reflective of an arm's length transaction.

The Finance Act 2020 amended Section 140A, inter alia, by adding the following:

> *"(3A) The Director General may disregard any structure adopted by a person in entering into a transaction if-*

(a) the economic substance of that transaction differs from its form; or

(b) the form and substance of that transaction are the same, but the arrangement made in relation to the transaction, viewed in totality, differs from those which would have been adopted by independent persons behaving in a commercially rational manner and the actual structure impedes the Director General from determining an appropriate transfer price.

> *(3B) Where the Director General disregards any structure adopted by a person entering into a transaction under subsection (3A), the Director General shall make adjustments to the structure of that transaction as he thinks fit to reflect the structure that would have been adopted by an independent person dealing at arm's length having regard to the economic and commercial reality."*

In essence, Sections 140A(3A) and (3B) are the replication of Rule 8 of the Transfer Pricing Rules 2012. Vide this amendment, the DGIR is empowered to make adjustments in the form of conditions and character had the transaction been structured in accordance with the economic and commercial reality of parties transacting at arm's length.

The Implications of Sections 140A(3A) and (3B)

Although the Sections 140A(3A) and (3B) exist in our laws vide the Transfer Pricing Rules 2012, the transposition into the ITA affirms the powers of the DGIR to make any adjustment and recharacterize the nature of an agreement if the DGIR is of the view that it *"would have been adopted by independent persons behaving in a commercially rational manner"* and its *"structure impedes the*

Director General from determining an appropriate transfer price".

The application of Section 140A was illustrated in the case of *SPSA Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (unreported) where the IRB invoked Section 140A in alleging that the contract entered between the parties was not a Cost Contribution Agreement ("CCA") but an Intragroup Services Agreement. The IRB imposed a mark-up on the costs recovered by the taxpayer for services provided under the CCA. Aggrieved by the conduct of the IRB, the taxpayer pursued judicial review proceedings whereby leave to commence judicial review and interim stay order against the payment of the disputed tax was granted by the Court of Appeal.

The OECD Transfer Pricing Guidelines

Under the most recent OECD Transfer Pricing Guidelines 2017, the recharacterization rule under the heading *"Recognition of accurately delineated transaction"*, it is stated that every effort should be made to determine the pricing for the actual transaction as accurately delineated under the arm's length principles. It also highlights the fact that the transaction may not be seen between independent parties does not mean that it should not be recognised.

The OECD Transfer Pricing Guidelines 2017 provides that a transaction may be disregarded where the arrangements in relation to the transaction, viewed in their totality, differ from those which would have been adopted by independent enterprises behaving in a commercially rational manner in comparable circumstances,

thereby preventing determination of a price acceptable to both parties and options realistically available to both at the time of entering the contract. The key factor is whether the transaction in question possesses the commercial rationality that would be agreed between unrelated parties **and not** whether the same transaction can be observed between independent parties.

There are two examples given whereby a transaction may not be recognised. The first is where Company A engages in manufacturing activities and owns commercial property in an area prone to flooding. There is no active market for the insurance of the property due to significant uncertainty over the exposure to large claims. An associated enterprise, Company B, provides the insurance to company A at an annual premium representing 80% of the inventory, property and contents paid by Company A. Since there is no active market for the insurance, and either relocation or not insuring may be a more realistic alternative, the transaction is not commercially rational and should not be recognised. Therefore, Company A is treated as not purchasing the insurance and the profits are not reduced by the payment and Company B is not issuing the insurance and therefore not being liable for any claim.

The second example is where Company A agrees to transfer unlimited rights to all future intangibles which may arise from Company A's works over a period of 20 years for a single lump sum payment. The transaction is not considered to be commercially rational since neither parties have the means to determine whether the lump sum payment is a reflective valuation since the range of development activities by Company A is uncertain and the potential outcomes are speculative. The transaction would then be replaced with one that takes into consideration the functions performed, assets used, and risks assumed. The transaction may be recast as provision of financing by Company B or provision of research services by Company A.

The interpretation of "recharacterization" in Canada

The Canadian Federal Court of Appeal had recently in *Her Majesty the Queen v Cameco Corporation* 2020 FCA 112 addressed the recharacterization rule under paragraphs 247(2)(b) and 247(2)(d) of the Income Tax Act 1985. The Tax Court of Canada held in favour of the taxpayer and after further appeals, the matter came to an end when the Supreme Court of Canada dismissed the Crown's leave to appeal against the said decision.

Briefly, Cameco and its subsidiaries are producers of uranium and covert uranium from one form to another. In 1993, Cameco negotiated agreements for the purchase of uranium from Russia and designated a Luxembourg subsidiary, Cameco Europe S.A. ("CESA") as the signatory to the agreement in 1999. CESA then entered into agreements with Urenco Limited, a uranium enricher, to purchase uranium from Urenco.

Thereafter, Cameco formed a subsidiary in Switzerland, called Cameco Europe AG ("CEL"). CESA transferred its business, including the right to purchase uranium from Urenco to CEL. The profits in issue arose from the sale of uranium from CEL to Cameco. It is worth pointing out that when CEL purchased uranium from Urenco, the price of the uranium was low. The price of uranium then increased substantially and CEL made a huge sum of profit.

During the course of an audit , The Minister at the first instance, sought to reassess Cameco on profits made by CEL and CESA and tax the profits in Canada on two grounds:

a) CESA and CEL were shams to avoid incidence of tax; and
b) Paragraphs 247(2)(b) and 247(2)(d) permitted the minister to reallocate the profits from the subsidiaries of Cameco back to the parent company which was Cameco, Canada.

Paragraphs 247(2)(b) and 247(2)(d) allow for transfer pricing adjustments to be made where a non-arm's length transaction or series of transactions:

(i) would not have been entered into between persons dealing at arm's length, and
(ii) it can reasonably be considered not to have been entered into primarily for bona fide purposes other than to obtain a tax benefit.

If one of the aforementioned situations are satisfied, the Minister is empowered to substitute the transaction or series with one that would have been entered into between persons dealing at arm's length.

The Tax Court of Canada found in favour of Cameco in finding that Paragraph 247(2)(b) does not apply to the series of transactions as there was no sham and that the transactions between Cameco and its subsidiaries were at arm's length. Upon appeal, the minister abandoned the "sham" argument and focused on the broader view of paragraphs 247(2)(b) and 247(2)(d) by arguing that Cameco would not have entered into any of the transactions that it did with CESA and CEL with any arm's length person.

Cameco's interpretation was different in the sense that paragraph 247(2)(b) applies only where no arm's-length persons would have entered into the same transactions that occurred between Cameco and its subsidiaries.

The Canadian Federal Court of Appeal ("FCA") held in favour of the taxpayer in adopting the taxpayer's interpretation. The FCA concluded that paragraph 247(2)(b) is an objective test and only applies where no hypothetical arm's-length person would have entered into the transactions, and not rather whether the taxpayer would have entered into the transaction. At paragraph 45, the FCA held as follows:

"[45] If Parliament had intended that subparagraph 247(2)(b)(i) of the Act would apply if the particular taxpayer would not have entered into the particular transaction with any arm's length person, this subparagraph could have provided:

(b) the transaction or series

(i) would not have been entered between the participants if they had been dealing at arm's length

[46] If the Crown's interpretation is correct, then whenever a corporation in Canada wants to carry on business in a foreign country through a foreign subsidiary, the condition in subparagraph 247(2)(b)(i) of the Act would be satisfied. Because the company wants to carry on business in that foreign country either on its own or through its own subsidiary, it would not sell its rights to carry on such business to an arm's length party."

The FCA found that the Minister's ability to reconstruct prices do not apply if a taxpayer is able to demonstrate that a transaction can be reasonably priced at an arm's length rate and that unrelated parties would have entered into a similar transaction under similar circumstances.

The FCA further noted that vide a plain reading of the heading of Paragraph 247, it supports the position that paragraph 247(2) would result in an adjustment in the price of a transaction rather than allowing the Minister to pierce the corporate veil of CEL and reallocate profits to Cameco. The purview of paragraphs 247(2)(b) and 247(2)(d) could not extend to ignore the separate existence of the subsidiaries and the legal identity of each entity is to be respected.

The FCA also considered the OECD Transfer Pricing Guidelines issued in 1995 and 2010 and held that Cameco does not fall within the ambit of either examples stated in paragraph 1.37 of the 1995 publication or paragraph 1.65 of the 2010 publication, relating to disregarding an existing structure or recharacterizing a transaction, because it was not adverted that the structure impeded the determination of an appropriate arm's length transfer price and the form and substance of the transactions were consistent. The Minister did not pursue on this point hence the FCA took the view that the transactions could be reasonably determined.

The Supreme Court of Canada also denied the Minister's application for leave to appeal against the decision of the FCA.

Conclusion

Although the OECD Guidelines do not have the force of law in Malaysia, the case of *Damco Logistic Malaysia Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2011)* MSTC 30-033 had held that the Commentary of the OECD model has been used to determine the construction of the treaty and that in the event there is a conflict between a treaty and the ITA, the treaty shall prevail. The case of *MM Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2013) MSTC 10-046, which has the distinction of being the first transfer pricing decision in Malaysia, further held that the DGIR's transfer pricing guidelines are mirrored after the OECD Guidelines and it should be minded that it nevertheless confers persuasive authority on our Courts in deliberating upon transfer pricing disputes. Perhaps, it would be good if the DGIR considers the OECD Guidelines' interpretation and approach on the matters contained therein. The post-amendment of Section 140A does not materially change the nature of Section 140A as the new provision can only be invoked where the transaction is impeding the determination of arm's length price.

***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*

***Sophia Choy** is an associate with the Tax, SST & Customs practice of **Rosli Dahlan Saravana** Partnership (RDS), mainly focusing on transfer pricing and income tax matters. She read law at the London School of Economics and has appeared alongside S. Saravana Kumar in leading tax disputes.*

THE "PAY FIRST, DISPUTE LATER"

APPROACH IN TAX COLLECTIONS

Adeline Wong, Jason Liang, Kellie Allison Yap & Jeff Sum

INTRODUCTION

The much-maligned maxim in the tax circle, "pay first, talk later" stems from the general rule in Section 103 of the Income Tax Act 1967 ("**ITA**") that taxes, including additional taxes, assessed by the Inland Revenue Board ("**IRB**") are due and payable to the Government of Malaysia ("Government"), notwithstanding any appeal lodged against the IRB's assessment (whether in the form of a Notice of Assessment, Notice of Additional Assessment and/or Notice of Reduced Assessments ("**Assessment**")).

The maxim has equally polarized the opinions of taxpayers and the IRB since Section 103 ITA was first legislated in the original ITA in 1967. On one hand, the IRB argues that public interests require that taxes due, whether disputed or not, be paid first for the continued development and sustainability of the nation. On the other hand, taxpayers are at times left without any means to sustain themselves as going concerns, when compelled to pay first regardless of the merits of the IRB's assessment - unless an order for a stay of the payment is successfully obtained before the courts.

In a pandemic-driven economic downturn where the Government's main priority is to restore or improve revenue streams, this has led to a surge in tax audits against taxpayers. In turn, taxpayers who deem the assessments to be issued without basis in law have sought refuge from the Courts in the form of an order for stay against upfront payment of the taxes. In response, the IRB has sought to rely on the newly-introduced Section 103B ITA in its attempts to prevent taxpayers from obtaining such orders for stay, and to effectively speed up the tax collection process.

Recent high-profile cases where a stay was denied such as ***Government of Malaysia v Mohd Najib bin Hj Abd Razak*** **[2020] 9 MLJ 618** ("**Mohd Najib**"), despite concerning recovery proceedings under Section 106 ITA, continue to be cited by the IRB in a wholesale manner to oppose stay applications by taxpayers in judicial review proceedings. What are the options available to taxpayers? Can a taxpayer obtain an order for stay during (i) an appeal to the Special Commissioners of Income Tax ("**Special Commissioners**"); (ii) a judicial review application seeking to quash an Assessment; and (iii) a civil suit brought by the Government of Malaysia ("**Government**") under Section 106 ITA ("**Section 106 civil suit**")?

We will discuss taxpayers' legal rights to a stay of payments, the implications of the newly-legislated Section 103B ITA on the grant of an order for stay, and the effects of the grant of stay orders against the imposition of penalties.

AVENUES OF APPEAL AND TAXPAYERS' RIGHT TO A STAY ORDER

When issued with an Assessment, there are two parallel avenues of appeal available to taxpayers. The primary avenue is the statutorily-prescribed appeal to the Special Commissioners which is available as of right; and the

> **"What are the options available to taxpayers? Can a taxpayer obtain an order for stay during (i) an appeal to the Special Commissioners of Income Tax ("Special Commissioners"); (ii) a judicial review application seeking to quash an Assessment; and (iii) a civil suit brought by the Government of Malaysia ("Government") under Section 106 ITA ("Section 106 civil suit")?"**

alternative is a judicial review action before the High Court, where leave (i.e., permission) must first be obtained.

Appeal before the Special Commissioners

The first forum of appeal is with the Special Commissioners, who are specifically appointed to hear appeals against Assessments issued by the IRB. An appeal to the Special Commissioners typically involves disputes of fact where evidence is to be tendered and witnesses examined by way of trial before the Special Commissioners.

Unlike the High Court, the Special Commissioners have no powers and jurisdiction under law to grant a stay order pending appeal proceedings. Therefore, taxpayers generally either pay the taxes under dispute upfront or through a negotiated instalment plan pending the disposal of the appeal to avoid the consequences of accumulated penalties as well as civil proceedings under Section 106 ITA being instituted against them. If additional taxes and penalties remain unpaid, taxpayers will be open to the risk of the Assessment being enforced by the IRB in the midst of the appeal proceedings.

Judicial review at the High Court

An alternative remedy for taxpayers would be to initiate judicial review proceedings against the IRB at the High Court to quash the relevant Assessments - which may run in parallel to an appeal filed with the Special Commissioners. However, this is a discretionary remedy which is available only in exceptional circumstances where there is a clear lack of jurisdiction, breach of natural justice or failure to perform statutory duty by the IRB.[1] In other words, judicial review applications are primarily concerned with the legality of the decision-making process by the tax authority, where facts are typically undisputed.

Unlike the Special Commissioners, the High Court has the discretionary power to grant taxpayers a stay orders, pending a final determination of the judicial review. To obtain an order for a stay, taxpayers have to satisfy the court that there are special circumstances on the facts of the case which warrant a stay.[2]

The list of factors as to what constitute special circumstances is not exhaustive; but the most oft-cited special circumstance is whether a successful judicial review would be rendered nugatory or academic if a stay is not granted. When the assessed sums are astronomical, a taxpayer may be able to show that its judicial review will be rendered nugatory if a stay is not granted, by demonstrating that it would cease to be of going concern if compelled to pay the Assessments upfront. To establish the nugatory element, taxpayers may attempt to demonstrate that they would be unable to enjoy the proceeds of their litigation, even if they ultimately succeed in litigation.[3]

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1 *Government of Malaysia v Jagdis Singh [1987] 2 MLJ 185.*

2 *Kosma Palm Oil Mill Sdn Bhd v. Koperasi Serbausaha Makmur Bhd [2003] 4 CLJ 1.*

3 *Kerajaan Malaysia v Jasanusa Sdn Bhd [1995] 2 MLJ 105*

Public policy considerations have also been considered by the courts to constitute special circumstances for granting a stay.[4] Taxpayers who are able to demonstrate potential disruptions to their business operations, which involve a public element i.e., determination of an ongoing industry-wide issue, a supply of public utilities or development of public infrastructure and amenities, have been granted stay by the courts.[5]

NEWLY-INTRODUCED SECTION 103B ITA: WILL IT BAR A STAY ORDER IN A JUDICIAL REVIEW APPLICATION?

Section 103B ITA states that: *"The institution of any proceedings under any other written law against the Government or the Director General shall not relieve any person from liability for the payment of any tax, debt or other sum for which he is or may be liable to pay under this Part"*.

Lastly, it will be crucial for taxpayers to be able to demonstrate that the balance of justice lies with their case i.e., that there will be more prejudice if a stay is not granted than if it is granted. This will be balanced against the monetary grievance suffered by the IRB, which can be argued to be compensable by costs. In cases when taxpayers' judicial review applications are dismissed, stay orders have also been granted by the High Court pending full and final disposal of the taxpayers' appeals on the judicial review application to the Court of Appeal.[6]

In the current judicial climate, the enactment of Section 103B ITA will undoubtedly increase the difficulty for taxpayers to obtain a stay of payment. Taxpayers have since faced considerable objection from the IRB at the judicial review leave application stage; the IRB has argued that the grant of a stay expressly contravenes Section 103B ITA.

Against such opposition, taxpayers[7] have successfully argued at the High Court that:

(i) Section 103B ITA does not, and cannot possibly oust the High Court's wide jurisdiction under Schedule 1 of the Courts of Judicature Act 1964 and inherent powers to grant a stay in judicial review applications. The Supreme Court in ***Kerajaan Malaysia v Jasanusa*** [1995] 2 MLJ 05 had previously held that the Court has the inherent powers to grant a stay notwithstanding the fact that the taxes assessed were due and payable under Section 103 or Section 106 ITA;

(ii) the granting of a stay does not, in accordance with the statutory language in Section 103B ITA, *"relieve the Applicant from the liability from the payment of the tax"* assessed but is merely a stay on the enforcement until the decision of the judicial review has been reached. In many ways, Section 103B ITA may be construed as a provision which slightly extends the scope of Section 103 ITA, that a taxpayer's liability to pay taxes due and payable remains, notwithstanding any appeal (current Section 103 ITA) or institution of proceedings under written law (new Section 103B ITA); and

(iii) where rights are intended to be taken away by legislation, this should be expressly legislated by Parliament in clear and explicit terms[8] - which is not the case here for Section 103B ITA.

In the absence of an explicit ouster clause within the ITA which limits the courts' inherent powers to grant a stay, it remains open for taxpayers to obtain a stay in judicial review applications as long as they have demonstrated special circumstances. The above notwithstanding, the IRB has since instituted multiple appeals against the grant of stay, and it remains to be seen if the Court of Appeal and/or the Federal Court would sustain the High

"It typically takes 6 months to 1 year from the filing of the civil suit for the Government to obtain a summary judgment. Upon obtaining judgment, the Government may then enforce the judgment against the taxpayer and its directors by way of a writ of seizure and sale, garnishee proceedings, charging order, insolvency proceedings and/or bankruptcy action."

Court's present position on stay in view of Section 103B ITA.

THE IRB'S RECOVERY PROCEEDINGS BY WAY OF A SECTION 106 ITA CIVIL SUIT: IS IT TOO LATE FOR A STAY ORDER?

Section 106 ITA allows the Government to commence a civil suit against taxpayers and their directors to recover taxes due and payable as a debt due to the Government. A Section 106 civil suit is the most common enforcement action taken by the Government, which may lead to taxpayers and their directors being subject to restrictions in dealing with their assets. It may be commenced by the Government against taxpayers as soon as the taxes become due and payable i.e., on the service of the Assessments.

Section 106 civil suits are typically clear-cut cases as:

(i) Section 106 ITA expressly sets out that the courts shall not entertain any plea that the amount of tax and penalties sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased;

(ii) Section 103 ITA provides that tax payable under an assessment for a year of assessment shall be due and payable on the due date whether or not that person appeals against the assessment; and

(iii) The introduction of Section 103B ITA further cements the clear-cut nature of the taxpayer's liability to pay taxes assessed. It expressly provides that the institution of any proceedings under any other written law against the Government or the IRB shall not relieve any person from liability for the payment of any tax.

Typically, the Government will institute a Section 106 civil suit against taxpayers by way of a summary judgment application. This is a procedure to obtain judgment against taxpayers without trial, when it is a clear-cut case with no disputes as to fact or law. All that has to be shown is that there is a sum assessed, which the taxpayer has not paid.

In a Section 106 civil suit, the merits of the Assessment will not be scrutinized. The production of a certificate signed by the Director General under Section 142 ITA stating the amount of tax due from taxpayers is sufficient evidence and authority for the court to give a summary judgment for that amount.

Given the clear-cut nature of taxpayers' indebtedness under Section 106 ITA, it appears unlikely that taxpayers would be able to obtain an order for a stay of payment in a Section 106 civil suit. Most recently, the High Court in the case of ***Mohd Najib*** denied the taxpayer's application for stay in a Section 106 civil suit on the ground that "the stay would, if granted defeat the whole substratum of tax recovery legislation as manifested in Section 106 ITA".

However, it must be stressed that the case of ***Mohd Najib*** was decided in the context of a Section 106 civil suit, and not in the context of a judicial review application - hence the option for a stay in the latter case remains to be open to taxpayers.

It typically takes 6 months to 1 year from the filing of the civil suit for the Government to obtain a summary judgment. Upon obtaining judgment, the Government may then enforce the judgment against the taxpayer and its directors by way of a writ of seizure and sale, garnishee proceedings, charging order, insolvency proceedings and/or bankruptcy action. This will immediately impede and restrict the taxpayer and its directors from dealing with the particular assets sought to be enforced by the Government.

Additionally, there exists statutory claw back mechanisms which may be invoked against the taxpayer company under insolvency proceedings. Under the Insolvency Act 1957 (read together with the Companies Act 2016), the Director General of Insolvency is empowered to void the taxpayer company's dealings with transferees up to a maximum of two years prior to the presentation of the winding-up petition, if the dealings were made without good faith and valuable consideration.[9]

EFFECTS OF THE GRANT OF STAY ORDERS AGAINST THE IMPOSITION OF LATE PAYMENT PENALTIES

Where any of the taxes and penalties due and payable under an Assessment has not been paid within 30 days after service of the Assessment, they will be automatically increased by a sum equal to 10% of the unpaid taxes and penalties. This is known as the late payment penalty. This is where

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4 *Mohd Afrizan bin Husain v Bursa Malaysia Securities Berhad [2020] MLJU 1588*

5 *AB v KPHDN (2020) (High Court)*

6 *CAA Capital Management Berhad v KPHDN (WA-25-371-08/2019) (High Court)*

7 *IDSB v KPHDN (2021) (High Court); IGSB v KPHDN (2021) (High Court)*

8 *Kerajaan Malaysia & Ors v Nasharuddin Nasir [2004] 1 CLJ 81*

9 *Section 528 of the CA 2016; Sections 52 and 54 of the Insolvency Act 1957.*

an order for stay becomes relevant and crucial.

Where an order for stay has been obtained by taxpayers before the late payment penalties set in, the imposition of such penalties will be halted. Conversely, where there is no order for stay obtained by the taxpayer, the late payment penalties will continue to accrue despite the taxpayer's appeal or judicial review, unless the taxpayer makes good on the payment of the sums assessed before the penalties set in.

CONCLUSION

In cases where judicial review proceedings have been initiated, recent High Court decisions have shown that the path to obtain a stay order, although challenging, remains open to taxpayers notwithstanding the introduction of the newly-legislated Section 103B ITA by Parliament. That said, in cases where the IRB has commenced recovery proceedings by way of a Section 106 ITA civil suit, taxpayers are unlikely to obtain an order for stay given the clear-cut nature of taxpayers' indebtedness under Section 106 ITA.

With the prevalence of the "pay first, talk later" practice in enforcing Assessments, it becomes increasingly crucial for taxpayers to exercise recourse to mitigate the risk of a potential Section 106 suit. Negotiations with the IRB remain open to taxpayers pursuing an appeal to the Special Commissioners and an order for a stay can still be obtained by taxpayers pursuing a judicial review action, as long as they can demonstrate special circumstances.

However, where there is no stay or any form of settlement reached with the IRB, taxpayers are subject to an imminent threat of a Section 106 suit brought by the Government, which may impede taxpayers' and their directors' dealings with their assets.

Therefore, it would be prudent for taxpayers that are presently subject to audits or Assessments to proactively examine their legal positions and communications with the IRB, and take the necessary steps to ensure that they are adequately safeguarded from enforcement risks. This will also be crucial for preserving the taxpayer's right to challenge the Assessment, whether by appeal or judicial review.

Where court proceedings have been initiated, settlement negotiations with the IRB may still continue and a settlement can be reached at any stage of proceedings, be it for instalment payments or full and final settlement of the whole matter. The settlement route will always be available to taxpayers notwithstanding their failure in obtaining an order for a stay.

All in all, the pre-emptive measures adopted by taxpayers today to protect themselves will contribute significantly in building a defensible position against future Assessments.

***Adeline Wong** is a partner and heads the Tax, Trade, and Wealth Management Practice Group of Wong & Partners, a member firm of Baker McKenzie International in Malaysia. She focuses on corporate tax planning and advisory, tax audits, tax controversies, indirect tax and customs, foreign trade and WTO matters, and wealth and trust management, for both local and international clients.*

***Jason Liang** is a tax litigation partner in the Tax, Trade, and Wealth Management Practice Group of Wong & Partners, a member firm of Baker McKenzie International in Malaysia. He focuses on all aspects of direct and indirect tax disputes and controversies and regularly represents clients at all levels of courts in Malaysia.*

***Kellie Allison Yap** is a senior associate in the Tax, Trade and Wealth Management Practice Group of Wong & Partners, a member firm of Baker McKenzie International in Malaysia. She specialises in tax audits and litigation including transfer pricing related matters before the national courts.*

***Jeff Sum** is an associate in the Tax, Trade and Wealth Management Practice Group of Wong & Partners, a member firm of Baker McKenzie International in Malaysia. He focuses on tax dispute, audits and investigations, drawing from his combined experience in civil litigation.*

TAX, WITH A PINCH OF SALT

Dr Nakha Ratnam Somasundaram

INTRODUCTION

Emperors and Kings even before Jesus Christ had been taxing their subjects fairly (or not fairly), whether in ancient Mesopotamia, Egypt, China, India or in fragmented medieval Europe.

The most famous decree to tax at about the time of the birth of Jesus Christ was recorded in the Holy Bible (Luke 2:1)(KJV):

> *'And it came to pass in those days, that there went out a decree from Caesar Augustus, that all the world should be taxed'*

And by some strange coincidence that decree has transcended more than 2,000 years and people around the world over are taxed, even to this day, in some form or the other.

Tax is no push over matter, for it was much instrumental in the fall and rise of governments and even nations. For example, the demands of King John (remember good old Robin Hood of the Sherwood forest?) for tax (known as scutage in early England) precipitated a crisis leading to the signing of the Magna Carta in 1215, the precursor of today's parliament, which among other matters, laid down the principle that even kings are not above the law.

In the 17th century, Charles I of England needed more money and in the resulting civil war over tax, he was executed.

The imposition of tax on salt in France led to the French Revolution and the beheading of its king, Louis XVI.

The imposition of British tax on tea imported into America led to the American War of Independence and England lost the Americas (part of the present day United States).

And again, when the British made the mistake of imposing tax on salt in British India, Mahatma Gandhi started the Salt Satyagraha ('The Great Salt March') that was the beginning of the end of British rule in India - India became independent in 1947 after more than 200 years of the British Raj – and all it took was a pinch of salt.[1]

While there were certainly other reasons and factors for these historical (and often bloody) turmoil, it is significant to note that it was tax on some mundane everyday things like tea or salt that precipitated the fall of kings and empires.

Even when kings are not losing their heads, or empires collapsing on account of tax, it nevertheless, has in modern time a profound effect on the economy through changes in the price, output, and income – thereby affecting everyone.

Tax is therefore a subject that one must tread most carefully, especially by people in power.

WHY DO YOU NEED TO TAX?

Given that economic resources are limited, a government's resources (i.e. money for spending), are obtained through taxation. Taxation is therefore a mechanism that transfers the resources from the private to the public.

Governments could also obtain more money by printing them (instead of taxing the citizens), but this is not a very clever idea as it has its own disadvantage – it debases the currency, increases inflation and makes purchases much more expensive – leading to 'inflation tax'.[2]

Alternatively, governments can charge for the goods and services provided for the benefit of the citizens. But this can be done only up to a point. For example, citizens can pay to use the roads built by the government (e.g. toll charges), or to use their cars on the road by charging a road tax for the vehicle - but how do you charge them for the peace and security enjoyed through enforcement of the law and order using the police and the army, navy and the air force?

Governments can also borrow from their citizens or from other governments or bodies outside the county but this too poses some restrictions and challenges – for one, there is a limit to such borrowing, and then issues of credibility, if there is a default on the payment – and can even backfire on governments in extreme cases (for example loss of sovereignty).

Taxation therefore largely alleviates the restrictions and difficulties of the other methods of securing funds for national expenditure. In addition, taxation enables governments to overcome the inefficiencies of the market system in the allocation of resources, distribution of income and wealth and finally to smoothening out cyclical fluctuations in the economy with a view to maintaining full employment (or near full employment) and price stability – important elements in a good government.

TAX AND MARKET EFFICIENCY

Market mechanism should supply goods and services most efficiently by balancing supply with demand at the optimum price. But this can apply only to certain goods and in limited circumstances - for example, it must be a good that consumers can be excluded from if they do not pay for it, there are no external effects, and the market is perfectly competitive – but in most cases, these are not possible.

Economists look at other circumstances where the market may not work most efficiently – particularly in relation to public goods, merit goods, externalities, and imperfect competition. The existence of public goods was noted in the early 18th century by Adam Smith[3] when he noted that:

> *'…the duty of erecting and maintaining certain public works and certain public institutions which it can never be for the interest of any individual or small number of individuals to erect and maintain…because the profit could never repay the expense to any individual or small number of individuals…'*

Thus, individuals cannot be excluded from enjoying public goods or service such as peace from national defense even if they do not pay for it. This service, if left to the market forces, may have to be left to a firm, and the firm may find it difficult to charge the individuals who enjoy such benefits; it may even under produce the public goods as not all are paying for its enjoyment.

In addition, the consumption by one more additional person would not prevent the consumption of those goods by others. For example, a child born today into this world would immediately enjoy the public goods or service (peace for example) and this would not in any way deprive the others from their enjoyment of that peace, either.

On the other hand, excluding them would be wasteful especially if the limit is not reached. Economists usually give the example of a bridge where given a capacity of a thousand people crossing in one hour, and if only 800 are using it, then preventing the other balance of 200 people from crossing is wasteful. This is in stark contrast to a meal at a restaurant, for example, where an additional person enjoying it would have to make an additional payment.

As a result, with the market forces being inefficient or incapable of providing the public goods, it falls on the government to provide those goods and find the money to provide them – and tax comes in.

On the other hand, certain goods may not merit its production as it is deemed undesirable and accordingly discouraged by the government – such goods would include alcohol, tobacco and certain drugs. And in such instances, imposition of taxes on such goods comes in handy, notwithstanding the arguments as to whether such policies are paternalistic.[4]

External effects provide a role for government and taxation in the context of external benefits and external costs. If external benefits are associated with the production of a particular goods, the private sector is likely to produce too little as the benefit to others beside the paying customers are not taken into account – resulting in too little being produced; and on the other hand, with external cost, overproduction may result. As such, the role of tax would be to subsidise the production of those goods with large external benefits (rice production for example) and to impose a curbing tax on those goods with high external cost (green tax on the polluting industries for example).[5]

DISTRIBUTION

If distribution of income and wealth is left solely to the fancy of the market forces, it may not result in a distribution that is socially acceptable. For example, a person without any of the factors of production (land, money etc.) may be left out as a destitute.

A tax system would, on the other hand, be able to take care of these destitute by establishing poor houses or welfare homes.

STABILISATION

There is a lot of literature on the role of the government in stabilising the country's economy, and by extension, the life of the people - by maintaining full or near full employment and stabilising output and prices. Mercantile approaches favour a major state intervention while the opposite view is taken by the laissez-faire doctrine which prefers the economic wealth be produced by self-interested individuals directed by the free will of the operators and the 'invisible hand' of the market.[6]

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A powerful weapon used in this endeavor of course is taxation.

DEFINITIONS AND CLASSIFICATIONS

Tax by its very nature, is a compulsory levy by the government for which nothing is received directly by the citizens in return. Taxes can exclude loan transactions and direct payments for publicly produced goods and services.

But the lines between taxes and payment for goods and services can be sometimes blurred – for example contributions to the National Insurance in England (which is a payment for future services), is a tax as the contribution has elements of compulsion, and no connection or only a remote connection, with the nature of the services that may be finally consumed. Others include government charges such as fees charged for a passport or a driving license.

In general, taxes are noted for the element of compulsion (and the reason for the rebellion!).

Classification of taxes can be grouped into tax on goods and services, income (as in employment and profits from business), capital gains (sale of assets like land), and even on net wealth (estate duty or inheritance tax for example).[7]

However classifying taxes by their characteristics is more useful e.g. direct or indirect.

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1 *It was said that Gandhi, at the end of his salt march, took a pinch of salt from the sea and declared that 'This is Indian salt and it belongs to India'. When the Governor-General of India heard of this, he asked incredulously of his advisors (who warned him of the grave consequences of the salt march), 'You mean to say Gandhi plans to bring down the British rule with a pinch of salt?'*

2 *Johnson, H.G. (1971) Macroeconomics and Monetary Theory, Gray-Mills, p 152; Friedman, M. and Friedman, R. (1980) Free to Choose, Secker and Warburg, pp 267-70.*

3 *Smith, A. (1776) The Wealth of Nations, Cannan Ed, Methuen, 1950.*

4 *Musgrave, R. A. and Musgrave, P.B. (1989) Public Finance in Theory and Practice, 5th Ed, McGraw-Hill International Ed.*

5 *Pigou, A.C. (1932) The Economics of Welfare, 4th Ed. MacMillan.*

6 *Smith, A. (1776) The Wealth of Nations, Cannan Ed, Methuen, 1950.*

7 *For a comprehensive classification of taxes, see OECD (1976) Revenue Statistics, Paris, Part II.*

DIRECT TAXES AND INDIRECT TAXES

Taxes were originally classified as direct or indirect based on the early industrial development of the economy.

Direct taxes were thought to be borne fully by the taxpayer i.e. it is not shifted to another entity (e.g. tax on employment income). Indirect taxes can be shifted completely to the final consumer (e.g. sales tax). Each has its own characteristics, too.

In the case of direct tax on employment income for example, the payer would be held accountable and the burden of the tax could be related to his particular circumstances – as in benefiting from a higher or larger relief for family circumstances, and government manipulation is possible to a considerable degree.

In Malaysia, one could note the continuing changes to the personal relief over the last several years – for example relief for purchase of computers (to encourage the use of information technology), reading materials, and increased allowances for children's education at the tertiary level and even adult education.

TAX BASE

Tax classification can be based on something - as in capital tax - or on the flow of something as in current tax. Value added tax, excise duties and goods and services tax, on the other hand, are taxes on expenditure.

However, as is common in taxation, plenty of confusion and blurring can occur. Inheritance tax for example is a capital tax but it occurs only when wealth moves from one entity to another.

Further division is possible by sources of income - a good example being the classification of income in section 4 of the Malaysian Income Tax Act 1967 (as amended) – but even then there is sufficient confusion as reflected by the case of American Leaf Blending where rent can transcend into business income, or the

"In Malaysia, one could note the continuing changes to the personal relief over the last several years – for example relief for purchase of computers (to encourage the use of information technology), reading materials, and increased allowances for children's education at the tertiary level and even adult education."

confusion between royalty and business income as in *Euromedical Industries Sdn Bhd,*[8] resulting in the need to introduce special classes of income under section 4A, to an already existing classification of income.[9]

SPECIFIC RATES AND AD VALOREM TAXES

Economists also divide taxes on the basis of the relationship of the tax to the size of the tax base. In cases where the tax as imposed bears no relationship to the tax base, except the existence of the taxpayer himself, is called a 'poll tax'. For example, if every citizen in Malaysia is charged a tax in the sum of RM100 per head, it would be a 'poll tax'. And such a tax could be dangerous, too, as it reportedly brought down the government of Margaret Thatcher, the first female Prime Minister of England.

If the tax is based on the weight or size of the tax base, it would be a unit tax or specific tax -for example, an excise duty of RM300 per ton of tobacco harvested.

Ad valorem on the other hand is value based. Stamp duty can be ad valorem - for example, stamp duty on an instrument of a conveyance, transfer, or absolute bill of sale bill of sale.[10]

TAX RATE STRUCTURE

Tax liability on individuals can be varied with deductions for relief thus arriving at a reduced chargeable income, and further arrange for the marginal and average rates to change according to the size of the individual's tax base – for example, it can be progressive (as illustrated in Table 1) or proportional or even regressive.

EVASION, AVOIDANCE, AND TAX PLANNING

This is a huge area, but things will be kept as simple as possible in this paragraph. First the meaning of the relevant terms:

TABLE 1

A progressive tax system				
	RM	RM	RM	RM
Total income	1,200	1,800	2,200	2,800
Less: Relief	1,000	1,000	1,000	1,000
Chargeable income	200	800	1,200	1,800
Tax at 30% (say) on sum not exceeding RM1,000	60	240	300	300
Tax at 50% (say) on sums exceeding RM1,000	0	0	100	400
Total tax	60	240	400	700
Average tax rate: [Total tax / Total income] x100	5.00	13.33	18.18	25.00
Marginal tax rate: %	30	30	50	50

Evasion: this is simply an outright manipulation, usually illegal, of one's financial affairs to not pay tax.

Avoidance: this is also an outright manipulation of one's financial affairs to avoid tax, but one that is apparently within the context of the law.

Tax planning: this is also a manipulation of one's financial affairs to avoid tax but this one takes advantage of the prevailing laws and rules available to maximise post tax returns (for example pioneer status and special deductions or allowances).

In some instances, the so called 'planning' can be strictly legal but so contorted and artificial that the courts tend to 'look behind' the planning as in the case of W. T. Ramsay Ltd v IRC [(1981) STC 174].

HOW GOOD IS THE TAX SYSTEM?

A tax system is evaluated based on certain criteria and is generally attributed to Adam Smith's four cannons of taxation: (a) equity (b) certainty (c) convenience relates to the ease of compliance for the taxpayers, making the administrative and legal process for filing and paying the taxes simple and clear; and (d) efficiency or in some instances, macroeconomic considerations.

Equity deals with fairness of the tax and the incidence of the tax. While 'fairness' is sometimes only a perception, the second one, certainty (or incidence of tax) is more serious and would affect everything in the economy including price and interest and its direct and indirect impact on consumers and producers.

Efficiency concerns distortion of price mechanism which in turn affects consumers and producers. A good example is taxation on pollution (or green tax). Efficiency considerations also include administrative costs and compliance cost (as in the self-assessment system or the good and services tax) – both major factors in determining whether the tax as imposed is efficient.

Tax being an additional cost, can give rise to disincentive like willingness to work, saving and investing as well as acceptance of risk associated with economic enterprise.

Macroeconomic considerations include the impact of taxation on employment and production.

CONCLUSION

Taxation raises revenue for governments and in doing so, also imposes a burden on society by affecting the price mechanism and spending power of the consumers and with the additional burden of compliance and administrative cost, the net effect can be considerable.

Tax policy, therefore needs to take cognisance of these far-reaching effects on the taxable entities and on the economy, both in the short term and the long term.

And as history has shown on many occasions, it would be wise to administer tax, with a pinch of salt.

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[7] *For a comprehensive classification of taxes, see OECD (1976) Revenue Statistics, Paris, Part II.*

[8] *See Director General of Inland Revenue v Euromedical Industries Sdn Bhd [1983] 2 MLJ 57-59.*

[9] *See Dr Nakha Ratnam Somasundaram, 'Special Income and Special Laws – Section 4A Confusion', Tax Guardian, Vol. 7/No. 3/2014/Q3 pp 8-13.*

[10] *Item 32(a) of the First Schedule of the Stamp Act 1949 (as amended).*

[11] *The opinions expressed in this article are those of the writer's.*

The author is a retired Tax Specialist [Multimedia University], Senior Lecturer in Taxation [University Tun Abdul Razak], State Director of the Inland Revenue Board and Tax Consultant of Chua and Chu, Kota Baru.

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2022 Budget Seminar

18 November 2021, Thursday

8 CPD points

(For purposes of Section 153, ITA 1967)

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The 2022 Malaysian Budget Proposals will be announced and tabled in Parliament on Friday, 29 October 2021 by the Minister of Finance. The theme for this year's Budget Proposals is in line with the Government's focus on strengthening the country's economy. Join us at this year's CTIM Budget Seminars which will provide participants with a practical understanding of the key tax changes presented in 2022 Budget Proposals.

Benefits to participants:

- Obtain information and clarification from the Ministry of Finance (MOF) and Inland Revenue Board of Malaysia (IRBM) on the latest changes and impact to taxpayers with regard to the 2022 Budget Proposals.
- Get to know the key issues arising from the major Budget changes in 2022 and their impact on your business.
- Receive 8 CPD points recognised by MOF as one of the mandatory Budget Seminars for the purposes of Section 153, Income Tax Act 1967.

Who should attend:

- Chief Executive Officers
- Chief Financial Officers
- Financial Planners & Controllers
- Tax Agents
- Tax Advisors and Consultants
- Corporate Accountants
- Corporate Tax Managers/Executives
- Public Accountants
- Business Consultants

"SPECIAL SESSION ON HIGHLIGHTS OF 2022 BUDGET"

Special Guest:

YBhg Datuk Mohd Nizom Sairi
Chief Executive Officer
Inland Revenue Board of Malaysia

Moderator:

Ms Farah Rosley
President
Chartered Tax Institute of Malaysia

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PROGRAMME

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8.30 am	Registration & Log In Time	1.00 pm	Q&A Session
9.00 am	Session 1	1.15 pm	Lunch Break
10.45 am	Q&A Session	2.30 pm	Session 3
11.00 am	Morning Break	4.30 pm	Q&A Session
11.30 am	Session 2	4.45 pm	End of Seminar

EVENT CODE	DATE	Session 1	Session 2	Session 3
21BS/002	24 November 2021 (Wednesday)	**SESSION 1 Roundtable Discussion on Key 2022 Budget Proposals – Its Changes and Impact to Taxpayers** Moderator: Mr Steve Chia *CTIM Council Member* Panel Members: • Mr Chong Mun Yew *CTIM Council Member* • Mr Anil Kumar Puri *CTIM Council Member*	**SESSION 2 Latest Public Rulings** Moderator: Mr Alan Chung *CTIM Council Member* Speakers: • Mr Harvindar Singh *CTIM Council Member* • Mr Vincent Josef *Principal, Vincent Josef Tax Services*	**SESSION 3 Recent Gazette Orders and Tax Incentives Post Covid-19** Moderator: Mr Koong Lin Loong *CTIM Council Member* Speakers: • Mr Chow Chee Yen *CTIM Deputy President* • Ms Lau Chin Chin *Tax Partner, Avics Tax Consultants Sdn bhd*
21BS/003	30 November 2021 (Tuesday)	**SESSION 1 Roundtable Discussion on Key 2022 Budget Proposals – Its Changes and Impact to Taxpayers** Moderator: Ms Farah Rosley *CTIM President* Panel Members: • Mr Tan Hooi Beng *CTIM Council Member* • Mr Surin Segar *Senior Executive Vice President/Group Head - Tax, Maybank*	**SESSION 2 Forum Discussion on Tax Audit and Investigation** Moderator: Mr Soh Lian Seng *CTIM Council Member* Panel Members: • Mr Vijayen A/L Nagalingham, *Deputy Director I, Large Tax Payer Branch, IRBM* • Tn Haji Abd Halim Bin Husin *President, Malay Chamber of Commerce Malaysia*	**SESSION 3 Recent Tax Cases** Moderator: Mr Zen Chow *CTIM Council Member* Speakers: • Mr S Saravana Kumar *Partner, Rosli Dahlan Saravana Partnership* • Mr Vijey M Krishnan *Partner, Raja, Darryl & Loh*
21BS/004	9 December 2021 (Thursday)	**SESSION 1 Roundtable Discussion on Key 2022 Budget Proposals – Its Changes and Impact to Taxpayers** Moderator: Mr David Lai *CTIM Council Member* Panel Members: • Mr Soh Lian Seng *CTIM Council Member* • Mr K Sandra Segaran *General Manager, Group Tax, Petronas*	**SESSION 2 Forum Discussion on New Revised TP Guidelines and Framework** Moderator: Ms Leow Mui Lee *CTIM Council Member* Panel Members: • Mr Thenesh Kannaa *CTIM Council Member* • Ms Anushia Soosaipillai *Partner, Tax-Transfer Pricing, PWC*	**SESSION 3 Forum Discussion on BEPs Action Plan 2.0 and Its Implication to Malaysian Tax System** Moderator: Mr Harvindar Singh *CTIM Council Member* Panel Members: • Mr Tan Hooi Beng *CTIM Council Member* • Mr Anil Kumar Puri *CTIM Council Member*

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8 CPD points

(For purposes of Section 153, ITA 1967)

International News

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

CHINA (PEOPLE'S REP.)

Tax Authority to Collect Non-Tax Fees and State Income

From 1 July 2021, the responsibility to collect fees for vacant land, waste disposal levy and certain state income will be transferred to the tax authority.

The liability for the payment of fees for vacant land and the waste disposal levy will be determined by the natural resources and housing-urban/rural construction departments, respectively. The tax authority will be merely responsible for the collection of the said payments (Circular of the State Taxation Administration, the Ministry of Finance, the Ministry of Natural Resources and the Ministry of Housing and Urban/Rural Construction [2021] No. 12).

Furthermore, in certain provinces and cities including Anhui, Zhejiang and Shanghai, the tax authority will take over from the natural resources department the responsibility of collecting four types of state income, namely income from alienation of state-owned land-use right, specified income from mining resources, charges for the use of sea areas and charges for the use of uninhabited islands (Decree of the Ministry of Finance [2021] No. 19).

Tax Authority Clarifies Several Enterprise Income Tax Issues

The State Taxation Administration (SAT) has clarified the tax treatment of auxiliary expenses related to donations in kind, interest from convertible bonds and foreign hybrid investments, assets after a change in tax assessment method, cultural relics and art works, and the timing of recognition of

government payments. These clarifications are laid down in SAT Public Notice [2021] No. 17 and will apply from the tax year 2021 onwards.

Deductibility of auxiliary expenses related to donations in kind
Transportation, insurance and employee expenses incurred in relation to a donation in kind are deductible.

Tax treatment of conversion of debt to equity
Interest derived from convertible bonds is taxable income of the holder (purchaser) of such bonds and must be included in the enterprise income tax return. When the purchaser converts the bonds plus any unreceived interest into equity, the interest is taxable regardless of whether or not it is recorded as income. All the taxed interest and associated expenses will be treated as the purchase cost in the calculation of the acquisition price of the shares after the conversion.

Tax treatment of cross-border hybrid investments
Foreign investors who make hybrid investments in China and have satisfied the requirements in SAT Public Notice [2013] No. 41 may be treated according to the provisions of the notice. This means that the interest paid by the invested enterprise must be recognized on the due date of the interest (including guaranteed minimum interest, fixed profit or fixed dividends) and included in the taxable income of the investing enterprise. The same interest is deductible by the paying enterprise. However, this rule does not apply if the foreign investor and the invested enterprise in China are related; and the residence state of the foreign investor treats the income as equity income and does not tax such income.

Tax treatment of assets after a change in tax assessment method
Assets may, after a change in the tax assessment method from a deemed profit basis to an actual basis, be depreciated according to the amount stated in the invoice or, in the absence of an invoice, on the basis of the amount mentioned in the purchase contract, evidence of payment or other records. Furthermore, the assets must be depreciated according to the depreciation period and method prescribed by the laws and regulations, after deduction of the years that the assets have been put in use.

Tax treatment of cultural relics and art works
Cultural relics and art works purchased for the purposes of collection, exhibition or investment are not allowed to be depreciated for tax purposes during the holding period.

Timing of recognition of payments from government

Payments (wholly or partly) received from the government for goods and services supplied by an enterprise according to the supplied quantity and the market price must be recognized on an accrual basis. However, other payments such as subsidies, allowances, compensation or tax refunds must be recognized at the time that the payments are received (on a cash basis).

China Implements Simplified Filing Requirements for Outbound Payments

The SAT and State Administration of Foreign Exchange (SAFE) have implemented the simplified filing requirements for persons making outbound payments in foreign currency via the Supplemental Public Notice on Issues Concerning Tax Filings for Outbound Payments for Trading and Service Projects (SAT and SAFE Notice [2021] No. 19). The notice applies as from the issuance date of 29 June 2021.

China Implements Simplified Procedure for Unilateral Advance Pricing Agreements

On 26 July 2021, the SAT issued SAT Public Notice [2021] No. 24 implementing the simplified application procedure for unilateral advance pricing agreements (APAs) from 1 September 2021. The draft notice was published for public consultation earlier this year.

The circumstances under which the competent tax authority may deny an application are slightly different from the draft version and are restated below.

- The enterprise is under special tax adjustment investigation or other tax investigations, and the case is still open.
- The enterprise has failed to file the annual report form on related-party dealings pursuant to the relevant regulations and has not corrected the failure in a timely fashion.
- The enterprise fails to prepare, maintain and provide contemporaneous documentation pursuant to the relevant regulations.
- The information requested has not been provided or does not conform to the requirements of the competent tax authority and the failure is not rectified.
- The enterprise does not cooperate with the competent tax authority in an on-site evaluation of functions and risks.

The information and documents that an applicant is required to provide are mostly the same as the requirements under the normal procedure prescribed under SAT Public Notice [2016] No. 64. An enterprise intending to use the simplified method must submit an application form and a report containing the following information:

- related parties and related-party transactions to be covered by the APA;
- years to be covered by the APA;
- whether the agreement retroactively applies to previous years (rollback);
- organizational and management structure of the enterprise and the group it belongs to;
- information about the enterprise, including business operations, financial statements, audit reports and contemporaneous documentation, from the most recent 3 to 5 years;
- explanation of functions and risks of each related party covered by the APA, including function and risk allocation keys such as facilities, personnel, expenses, assets, etc.;
- transfer pricing principles and methods used in the APA and the underlying functional risk analysis, comparability analysis and assumptions;
- value chain or supply chain analysis and considerations of location-specific advantages such as cost savings and market premiums;
- market conditions, including industry developments and trends, competitive environment, etc.;
- forecast of business volume and profitability and business strategies for the years to which the APA applies;
- domestic and foreign laws and regulations concerning the industry that may affect the APA;
- information demonstrating that the requirements for the simplified method as prescribed in article 3 of this notice have been satisfied; and
- other information that may be requested by the competent tax authority.

HONG KONG

Hong Kong Codifies Tax Treatment of Qualifying Amalgamations and Transfers or Successions of Specified Assets

On 2 June 2021, the Legislative Council passed the Inland Revenue (Amendment) (Miscellaneous Provisions) Bill 2021. The Bill implements four areas of amendments to the Inland Revenue Ordinance, namely the tax treatment of amalgamations of companies under court-free procedures as provided for under the Companies Ordinance; the tax treatment of transfers or successions of specified assets under certain circumstances; changes refining the statutory framework for the furnishing of tax returns; and changes enhancing the foreign tax deduction regime.

The Ordinance will be gazetted and come into operation on 11 June 2021. Amendments in relation to foreign tax deductions will take effect from the year of assessment 2021/22.

Hong Kong Raises Stamp Duty on Stock Transfers

On 11 June 2021, the government gazetted the Revenue (Stamp Duty) Ordinance 2021 that raises the stamp duty rate on stock transfers to 0.13% (from 0.1%), as announced in the 2021-22 Budget. The new rate will come into effect on 1 August 2021.

IRD Outlines Approach in Handling Tax Issues Arising from COVID-19 Pandemic

On 29 July 2021, the Inland Revenue Department (IRD) of Hong Kong set up a webpage to provide general guidance on the IRD's approach in handling tax issues arising from the COVID-19 pandemic, including issues on the tax residence status of companies and individuals, permanent establishments, employment income of cross-border employees and transfer pricing. The IRD stresses that the treatment of each case will be determined based on its facts and circumstances.

It should also be noted that the IRD's approach in relation to these tax issues is generally in line with the OECD's Updated Guidance on Tax Treaties and the Impact of the COVID-19 Pandemic and Guidance on the Transfer Pricing Implications of the COVID-19 Pandemic of January 2021 and December 2020, respectively, to which further references may be made.

INDIA

India Introduces Compliance Check Functionality for Tax Deducted or Collected from Specified Persons

The Central Board of Direct Taxes (CBDT) has issued a new functionality feature to ease the compliance burden on taxpayers required to deduct or collect tax at source at higher rates from certain non-filers of income tax returns i.e. specified persons under the new sections 206AB and 206CCA of the Income Tax Act.

Under these sections, a payor is required to deduct or collect tax at the higher of twice the prescribed rates or 5% from specified persons effective 1 July 2021. The 'Compliance Check for Section 206AB and 206CCA' functionality can assist payors determine if a payee is a specified person through a permanent account number (PAN) search.

The CBDT will prepare a list of specified persons at the start of financial year 2021/22 and for each subsequent financial year. During the year, no new names will be added to the list, but persons who no longer meet the definition of a specified person may be delisted. Thus, a payor will not have to recheck the list during the year for payees who were cleared at the start of the year.

To access the functionality feature, taxpayers need to register as deductors or collectors on the Reporting Portal of the Income-tax Department.

India Proposes to Withdraw Retrospective Application of Indirect Transfer of Indian Assets

The government has proposed to withdraw the retrospective application of the taxability of gains arising from the transfer of assets located in India through the transfer of the shares of a foreign company (indirect transfer of Indian assets). The retrospective application of the indirect transfer of Indian assets provision in Section 9 of the Income Tax Act, 1961 (ITA) was originally introduced in the Finance Bill 2012.

To change the 2012 amendment to now apply prospectively, the Finance Minister introduced the Taxation Laws (Amendment) Bill, 2021 (the Bill) in the Lower House of Parliament on 5 August 2021.

The Bill proposes to amend the ITA to provide that no tax demand shall be raised in future on the basis of the said retrospective amendment for any indirect transfer of Indian assets if the transaction was undertaken before 28 May 2012 (i.e. the date on which the Finance Bill 2012 received the assent of the President). It is also proposed that any tax demand for indirect transfer of Indian assets made before 28 May 2012 shall be nullified on fulfilment of specified conditions such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc., shall be filed.

It is further proposed to refund the amount paid in these cases without any interest thereon. The Bill proposes to amend the Finance Act 2012 to provide that the validation of demand, etc., under section 119 of the Finance Act 2012 shall cease to apply on fulfilment of specified conditions such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking that no claim for cost, damages, interest, etc., shall be filed.

INDONESIA

Indonesia Intends To Impose Tax on Cryptocurrencies

The government is considering imposing tax on cryptocurrency transactions. It has been reported that the Directorate General of Taxation is currently reviewing the features of cryptocurrency transactions in order to determine the appropriate type of tax to be imposed on cryptocurrency transactions.

Currently, cryptocurrencies may be traded as commodities, but not used as a mode of payment, in Indonesia.

Indonesia Extends VAT Incentive for New Residential Properties

The Ministry of Finance (MoF) has extended the value added tax (VAT) incentive for new residential properties until December 2021 under MoF Regulation No. 103/PMK.010/21.

The incentive pertains to VAT that is borne by the government for the delivery of new landed houses and new apartment units, subject to conditions.

An individual may only claim the incentive for the acquisition of one landed house or one apartment unit. The VAT to be borne by the government is in the following amounts: 100% of the VAT payable if the selling price of the property is not more than IDR 2 billion; and 50% if the selling price is more than IDR 2 billion but not more than IDR 5 billion.

The incentive was initially granted for the tax periods March 2021 to August 2021 under MoF Regulation No. 21/PMK.010/21. The extension until year end aims to stimulate spending, particularly in the housing sector, as part of the government's National Economic Recovery program.

SINGAPORE

Singapore Opens Public Consultation on Proposed Amendments to Income Tax Act

On 11 June 2021, the Ministry of Finance (MoF) proposed a number of amendments to the Income Tax Act (ITA), including amendments to give effect to measures that were previously announced in the 2021 Budget Statement and other non-Budget changes to the ITA. The proposed amendments set out in the draft Income Tax (Amendment) Bill 2021 (the Amendment Bill) relate to COVID-19-related support measures and other measures targeted at sustaining Singapore's long-term value proposition and competitiveness and enhancing tax administration.

The consultation exercise was undertaken from 11 June to 2 July 2021 to provide members of the public with the opportunity to weigh in and provide feedback on the proposed amendments. The following COVID-19-related support amendments were proposed:

- extension by 1 year for the following measures to support businesses affected by the COVID-19 pandemic:
  - enhanced carry-back relief scheme to the year of assessment (YA) 2021;
  - option to accelerate the write-off of the cost of acquiring plant and machinery in YA 2022 (i.e. financial year 2021) over a 2-year period; and
  - option to accelerate the deduction of renovation and refurbishment expenses incurred in YA 2022;
- expansion of the scope of the Double Tax Deduction for the Internationalisation (DTDI) scheme. From 17 February 2021, the list of activities that do not require prior governmental approval for claiming the tax deduction has been expanded to include: product or service certification; overseas advertising and promotional campaign; design of packaging for overseas markets; advertising in approved local trade publications; and participation in approved virtual fairs.
- The scope of the DTDI scheme will also be enhanced to cover specified expenses incurred to participate in approved virtual trade fairs.

The following amendments targeted at long-term sustainability and competitiveness and enhancing tax administration were proposed:

- extension of the enhanced tax deduction for donations made to Institutions of Public Character (IPCs) incurred on or before 31 December 2023;
- extension of the Double Tax Deduction (DTD) scheme from 18 May 2021 to 31 December 2026;
- extension of the interest withholding tax (WHT) exemption for the financial sector from 31 May 2021 to 31 December 2026;
- extension of the WHT exemption on payments made for structured products from 31 March 2021 to 31 December 2026;
- extension of the Not-for-Profit Organization (NPO) tax incentive from 31 March 2022 to 31 December 2027;
- allowing persons authorized by the Inland Revenue Authority of Singapore (IRAS) to be granted access to legislatively-protected data for the purpose

of auditing the administration of prescribed public schemes;

- clarifying the valuation of a trading stock that is appropriated on a permanent basis for capital purposes and a capital asset that becomes a trading stock. Under the Amendment Bill, the market value of a trading stock on the date of its appropriation for capital purposes will be treated as taxable income. On the other hand, in ascertaining the gains arising from the sale of a trading stock that was previously a capital asset, the market value as at the date it becomes a trading stock is treated as the cost of the trading stock;
- introducing a new section 104A in the ITA to protect informers by prohibiting the disclosure of information that may lead to the discovery of their identities;
- extension of the time limit for claiming foreign tax credits (FTCs) from 2 years to 4 years; and
- lifting of the statutory time limit of 4 years for the IRAS to raise additional assessments to implement the agreed outcomes from concluded Advance Pricing Arrangement (APA) agreements.

Singapore Opens Public Consultation for Proposed GST Amendments

The MoF has proposed a number of amendments to the Goods and Services Tax Act (GSTA), including amendments giving effect to measures previously announced in the 2021 Budget Statement and other non-Budget changes aimed at levelling the playing field for local and overseas suppliers and strengthen tax administration in the digital economy. The proposed amendments are set out in the draft Goods and Services Tax (Amendment) Bill 2021 (the Amendment Bill).

The consultation exercise was undertaken from 6 to 27 July 2021 to provide members of the public with the opportunity to weigh in and provide feedback on the proposed amendments.

The key measures of the Amendment Bill, which will take effect from 1 January 2022, unless stated otherwise, are summarized as follows.

Introduction of GST on low-value goods imported via air or post from 1 January 2023

Low-value goods of SGD 400 or less that are imported via air or post currently qualify for GST import relief, i.e. the importer does not have to pay import GST on such goods. With effect from 1 January 2023, the Amendment Bill will expand the scope of the overseas vendor registration (OVR) and reverse charge (RC) regimes to cover low-value goods imported via air or post. Consequently, GST will be collected on all imported goods, irrespective of the value of the imported goods. By leveraging on the existing OVR and RC regimes to collect GST on low-value imports, the amendment seeks to achieve a level playing field for both local and overseas goods (which have been the subject of increasing competitive distortion due to the growth of the digital economy and have resulted in significant increase in the volume of cross-border sale of low-value goods) without creating excessive compliance difficulties for consumers and their suppliers.

Introduction of GST on B2C imported non-digital services from 1 January 2023

Business-to-consumer (B2C) imported non-digital services (such as live interaction with overseas providers of educational learning, fitness training and telemedicine) are currently not subject to GST. With effect from 1 January 2023, the Amendment Bill will expand the scope of the OVR regime to cover B2C imported non-digital services. Accordingly, GST will be collected on B2C imported non-digital services, thereby aligning the GST treatment for B2C imported non-digital services with that for B2C imported digital services and business-to-business (B2B) imported services.

Updating the GST treatment for supplies of media sales

The Amendment Bill seeks to change the basis for determining whether zero-rating ought to apply to a supply of media sales based on the location of the contractual customer and the direct beneficiary of the service, instead of the location of circulation of the advertisement. With effect from 1 January 2022, where a contractual customer belongs outside Singapore and the direct beneficiary either belongs outside Singapore or is GST-registered in Singapore, the supply of media sales will be treated as a zero-rated supply of services. On the other hand, where a customer belongs in Singapore, the supply of media sales will be treated as a standard-rated supply of services.

Making changes to the OVR and RC systems

The Amendment Bill proposes to make the following changes to the OVR and RC regimes to mitigate revenue risks, provide tax certainty and ease compliance burden for businesses:

- in cases where the contracting party for a supply is not the person who directly benefits from that supply, the Amendment Bill will set out who the customer will be for GST purposes. In particular, a supply will be regarded as made to the person who directly benefits from that supply to the extent that consideration was paid by that person for the supply. As an exception, a supplier under the OVR regime (but not the RC regime) may treat the supply as being made to the contracting party if the supplier is unaware that the supply directly benefits another person;
- the Comptroller of GST will be empowered to alter the time at which a supply of imported services by a Pay-Only OVR vendor is treated as taking place to a time later than would otherwise apply under the normal time of supply rules (but no later than one GST accounting period from the time that would otherwise apply under the normal time of supply rules). For GSTA purposes, a Pay-Only OVR vendor is a person that can file simplified GST returns but will not be allowed to claim the input GST it has incurred; and
- the Comptroller of GST will be allowed to amend the time of supply rules for RC businesses in cases of employee reimbursement (i.e. where an employee purchases imported services on behalf of the RC business and seeks a reimbursement from that RC business). The time during which the RC business will be treated as having paid the consideration will be postponed to the time when the RC business has reimbursed its employee, instead of the time when the employee has made the payment to the supplier.

THAILAND

Thailand Gazettes Extension of Tax Reduction for E-Withholding

The Ministry of Finance has gazetted the extension of the withholding tax (WHT) reduction for certain domestic payments until 31 December 2022 as announced earlier.

The WHT reduction applies from 1 October 2020 to 31 December 2022 (previously, 31 December 2021) to the following payments provided that the payments are made via the Revenue Department's e-withholding system:

- paid to resident corporate entities:
  - service fees under Section 40(2) of the Revenue Code;
  - goodwill, copyright and other rights under Section 40(3);
- paid to resident individuals and corporate entities:
  - income from property rental under Section 40(5)(a);
  - professional income under Section 40(6); and
  - income from hire of work or service under Section 40(7) and 40(8), including payments to public entertainers, prizes, discounts and other benefits given in sales promotion, but excluding service fees paid to restaurants and hotels, and life insurance premiums.

Revenue Department Issues Guideline on VAT Administration for Foreign Digital Services Supplied to Non-VAT Buyers

The Revenue Department (RD) has issued a guideline for non-resident suppliers and non-resident electronic platforms that supply electronic or digital services to non-VAT registered buyers in Thailand. The value added tax (VAT) on electronic services supplied to non-VAT registered buyers will come into effect on 1 September 2021.

A non-resident electronic service provider must register for VAT if the following criteria are met:

- the electronic service is provided from abroad;
- such service is used in Thailand by a non-VAT registered buyer; and
- the non-resident electronic service provider has income from such services of more than THB 1.8 million in a calendar year (sole proprietor/non-juristic partnership) or accounting period (company/juristic partnership).

On the other hand, a non-resident electronic platform must register for VAT if:

- it performs a continuous process on behalf of the non-resident electronic service provider, from offering the service to receiving payment for and delivering the service;
- such service is used in Thailand by a non-VAT registered buyer; and
- the non-resident electronic service provider has income from such services of more than THB 1.8 million in a calendar year (sole proprietor/non-juristic partnership) or accounting period (company/juristic partnership).

Voluntary registration is also possible even if the income from such services does not exceed the VAT registration threshold via the simplified VAT registration system for e-service (SVE) on the RD's website.

By default, non-resident service providers and electronic platforms can treat the buyer as non-VAT registered unless the former has information that the buyer is VAT-registered or if the buyer has provided such information. They are not required to verify the validity of the buyer's VAT registration or tax identification number.

Moreover, as this guideline only applies to supplies of electronic services to non-VAT buyers, non-resident electronic service providers and electronic platforms are not required to pay VAT from services provided to VAT-registered buyers.

VIETNAM

Vietnam Issues Circular on E-Commerce Activities and Other Tax Administration Requirements for Individuals and Business Households

Pursuant to the Ministry of Finance (MOF) Circular No. 40/2021/TT-BTC of 1 June 2021, among other provisions, the definition of e-commerce activities and digital-based business and the related income tax and VAT collection mechanism for individuals and business households are clarified.

Notably, the circular provides guidance to organizations (e.g. owners of e-commerce trading platforms) and individuals who are required to deduct and declare taxes on e-commerce transactions conducted in Vietnam; or if it is not possible for these entities to declare such taxes, to provide information related to these transactions upon request of the tax authority.

Vietnam Amends Advance Pricing Agreement Guidelines

The MOF has amended the guidelines that implement the advance pricing agreement (APA) mechanism. The amended guidelines align existing rules with recent issuances, including the Law on Tax Administration 38/2019, Decree No. 126/2020/ND-CP and Decree No. 132/2020/ND-CP.

A signed APA under the new guidelines is valid up to 3 years (previously, 5 years).

Full details are available in MOF Circular 45/2021/TT-BTC (Circular 45) of 18 June 2021. Circular 45 replaces MOF Circular 201/2013 and will come into effect on 3 August 2021. Pending APA applications submitted before this date will be processed according to Circular 45.

Vietnam Proposes Income Tax and VAT Payable Reduction and Other Incentives for 2021

The MoF has proposed, in a draft resolution, additional tax measures, including income tax and value added tax (VAT) reduction in 2021, to continue supporting businesses and individuals during the pandemic.

The key measures in the draft resolution include:

- a 30% corporate income tax payable reduction for the 2021 tax year;
- a 50% income tax payable reduction for the last 2 quarters of 2021 for business households and individuals;
- a 30% VAT reduction for enterprises and organizations operating in certain service sectors; and
- exemption from late payment interest arising in 2020 and 2021 for enterprises that have incurred continuous losses in 2018, 2019 and 2020 due to the COVID-19 pandemic.

A 30% corporate income tax reduction was previously approved for the 2020 tax year.

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.

The technical updates published here are summarised from selected government gazette notifications published between 17 May 2021 and 16 August 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 medical tourism

A company that provides private healthcare services to health travelers (as defined) is eligible for a tax exemption on its income. The exemption is equivalent to an investment tax allowance of 100% on the qualifying capital expenditure incurred for a period of five years. Pursuant to Income Tax (Exemption) (No. 2) Order 2020, the incentive applied to applications received by the Malaysian Investment Development Authority (MIDA) between 1 January 2018 and 31 December 2020, and was given to new private healthcare facilities as well as existing ones engaged in expansion, modernization or refurbishment, subject to conditions.

Following the above, to continue promoting the export of private healthcare services in Malaysia, the Income Tax (Exemption) (No. 2) 2020 (Amendment) Order 2021 [P.U.(A) 245/2021] was gazetted on 31 May 2021 to provide that the incentive would now apply to applications received by MIDA until 31 December 2022.

Extension of tax exemption for management fee income for Shariah-compliant funds

In Budget 2020, the Government proposed to extend the tax exemption for fund management companies managing Shariah-compliant funds for another three years (i.e. until YA 2023).

To legislate this, the following Exemption Orders were gazetted on 29 June 2021 and are effective from YA 2021 to YA 2023:

- Income Tax (Exemption) (No. 6) Order 2021 [P.U.(A) 282/2021]
  The Order provides that a company is exempted from tax on the statutory income derived from the business of providing fund management services to business trusts or real estate investment trusts (REIT) in Malaysia. The exemption is on condition that the company obtains an annual certification from the Securities Commission Malaysia (SC) that certain specific conditions have been fulfilled.

- Income Tax (Exemption) (No. 7) Order 2021 [P.U.(A) 283/2021]
  The Order provides that a company is exempted from tax on the statutory income derived from the business of providing fund management services to local investors in Malaysia. The exemption is on condition that the company obtains an annual certification from the Securities Commission Malaysia (SC) that certain specific conditions have been fulfilled.
- Income Tax (Exemption) (No. 6) Order 2021 [P.U.(A) 284/2021]
  The Order provides that a company is exempted from tax on the statutory income derived from the business of providing fund management services to foreign investors in Malaysia. The exemption is on condition that the company obtains an annual certification from the Securities Commission Malaysia (SC) that certain specific conditions have been fulfilled.

Tax deduction on cost of personal protective equipment (PPE)

The Income Tax (Deduction for Expenses in relation to the Cost of Personal Protective Equipment) Rules 2021 [P.U.(A) 269/2021], gazetted on 15 June 2021, provide that in ascertaining the adjusted income of an employer from his business in a basis period for a YA, a deduction shall be allowed for the cost of PPE for the purpose of his business from 1 March 2020. The "cost of PPE" has been defined in the Rules to mean expenditure incurred by the employer for the purpose of prevention and protection of its workers from COVID-19. The Rules came into operation in YA 2020.

Accelerated capital allowance (ACA) for the purchase of machinery and equipment

The Income Tax (Accelerated Capital Allowance) (Machinery and Equipment including Information and Communication Technology Equipment) Rules 2021 [P.U.(A) 268/2021], gazetted on 15 June 2021, provide that a person will be given ACA (20% initial allowance and 40% annual allowance) in respect of qualifying plant expenditure incurred between 1 March 2020 and 31 December 2021 for the purpose of his business. The Rules are effective from the year of assessment (YA) 2020.

Accelerated capital allowance (ACA) for the purchase of new locally assembled excursion buses

The Income Tax (Accelerated Capital Allowance) (Excursion Bus) Rules 2021 [P.U.(A) 291/2021], gazetted on 1 July 2021, provide that a licensed tour operator will be given ACA (20% initial allowance and 40% annual allowance) in respect of capital expenditure incurred on the purchase of excursion buses. The Rules are effective from YA 2020 until YA 2021.

Extension of tax incentive for Industry4WRD

The Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) Rules 2020 were gazetted on 21 September 2020. The Rules provide that in ascertaining the adjusted income of a qualifying company (as defined) from its business for a YA, there shall be allowed a deduction equivalent to the fee expenditure amount (capped at RM27,000) incurred by the qualifying company on the Industry4WRD Readiness Assessment program, subject to conditions. The Rules are effective from YA 2019 to YA 2021.

Following the above, the Income Tax (Deduction for Expenditure on Industry4WRD Readiness Assessment) (Amendment) Rules 2021 [P.U.(A) 325/2021] were gazetted on 2 August 2021 to extend the incentive for five years, until YA 2026.

The conditions to qualify for the deduction have also been amended as follows:

(a) The fee expenditure on the Industry4WRD Readiness Assessment program must be incurred between 2 January 2019 and 31 December 2025 (previously 31 December 2020).

(b) The application for deduction is to be made to the Minister through the Malaysia Productivity Corporation between 2 January 2019 and 31 December 2026 (previously 31 December 2021).

Updated guidelines on compensation for late refund of overpayment of tax

The Inland Revenue Board (IRB) has published on its website Operational Guidelines No. 2/2021 (Operational Guidelines) dated 21 May 2021. This new Operational Guidelines replace the earlier Operational Guidelines No. 1/2014 dated 15 May 2014.

The new Guidelines are broadly similar to the earlier guidelines and provide clarification on the compensation for overpayment of taxes under Section 111D of the ITA, where taxpayers who file their tax return for a YA by the due date will be eligible for a compensation of 2% per annum on any tax overpaid (to be computed on a daily basis after 90 days from the due date for e-Filing and after 120 days from the due date for manual tax filing).

One of the key changes is the new Guidelines stipulate that taxpayers who file their tax return for a YA within the grace period provided under the respective years' Return Form Filing Programme are eligible for the compensation. An example is also provided in the new Guidelines to demonstrate the methodology of computing the compensation amount in such cases.

Updated guidelines on dispute resolution proceedings (DRP)

The IRB has published the Guidelines on Dispute Resolution Proceedings (DRP) (DRP Guidelines) dated 15 June 2021. The new eight-page DRP Guidelines replace the earlier DRP Guidelines issued in March 2019. The new DRP Guidelines are broadly similar to the earlier guidelines, and have been issued to:

- Provide information regarding DRP as a mechanism to resolve disputes arising from an appeal or application for relief filed by a taxpayer
- Promote awareness of a taxpayer's rights and responsibilities in relation to the DRP

The DRP Guidelines were updated to additionally include the following categories of appeal and/or application for relief which would also fall within the purview of a DRP:

(a) Appeal

(a) Section 44A(9)(b) of the ITA – appeal against penalties imposed on a surrendering company in the case of a group relief

(ii) Section 68(3) of the ITA – appeal against one's appointment as an agent

(iii) Section 111(1) of the ITA – appeal for a refund of overpayment due to the dissatisfaction of amount refunded

(b) Application for relief

(i) Section 97A(5) of the ITA – relief for non-chargeability cases

(ii) Section 66A of the Petroleum (Income Tax) Act 1967 – relief other than in respect of error or mistake

Updated guidelines on the application for a tax clearance letter (TCL) for a company, limited liability partnership (LLP) and Labuan entities

The IRB published Operational Guidelines No. 3/2021, titled 'Permohonan Surat Penyelesaian Cukai Bagi Syarikat, Perkongsian Liabiliti Terhad Dan Entiti Labuan' (Operational Guidelines). The Operational Guidelines are dated 30 June 2021 and replace Operational Guidelines No. 2/2019 dated 12 November 2019.

Similar to the earlier guidelines, the new Operational Guidelines explain the procedures for the application of tax clearance letters (TCLs) and provide guidance on the documents which need to be submitted together with the application for companies, limited liability partnerships (LLPs) and Labuan entities.

Some of the key changes are outlined below:

- The new Operational Guidelines stipulate that in line with the IRB Client Charter, TCLs will be issued within 14 working days from the date the relevant application forms (together with complete documents and information) are received, subject to conditions.
- The new Operational Guidelines have been updated to reflect the legislative change to Section 77A(1A) of the ITA with effect from YA 2021, where the Form PT for LLPs is to be furnished to the IRB in an electronic medium or by way of electronic transmission only.
- The new Operational Guidelines stipulate that TCLs will only be issued after the completion of audits. This was not stipulated in the earlier guidelines.

Public Ruling No. 1/2021 – Taxation of Unit Holders of Real Estate Investment Trusts / Property Trust Funds

The IRB has issued PR No. 1/2021: Taxation of Unit Holders of Real Estate Investment Trusts / Property Trust Funds, dated 25 May 2021. The PR explains the tax treatment of distribution of income from real estate investment trusts (REITs) / property trust funds (PTFs) in Malaysia to unit holders. This new PR replaces PR No. 9/2018, which was published on 12 October 2018.

The contents of the new PR are broadly similar to the earlier PR. Some of the key changes are as follows:

(a) The definition of "person" has been updated to stipulate that it includes a company, a body of persons, a limited liability partnership, a corporation sole and a partnership. In the earlier PR, the definition of "person" included a company, a co-operative society, a club, an association, a Hindu Joint Family, a trust, an estate under administration, an individual and a partnership.

(b) As outlined in the earlier PR, selected investors receiving profit distributions from REITs listed on Bursa Malaysia are taxed based on the following reduced withholding tax rates:

TYPE OF INVESTORS	WITHHOLDING TAX RATE
Foreign institutional investors	10%
Non-corporate investors (including resident and non-resident individuals)	10%

The new PR has been updated to reflect the extension of the reduced withholding tax rate until YA 2025, as per Budget 2020.

Public Ruling No. 2/2021 – Tax Deduction for Sponsoring Arts, Cultural and Heritage Activities

The IRB has issued PR No. 2/2021: Tax Deduction for Sponsoring Arts, Cultural and Heritage Activities, dated 8 July 2021. The PR explains the tax deduction available to companies that sponsor any approved local or foreign arts, cultural and heritage activities in Malaysia under Section 34(6)(k) of the ITA. More details are also available in the Guidelines on Tax Deduction on Sponsorship of Arts, Cultural and Heritage Activities under Subsection 34(6)(k) of the ITA, which are available in the following link: Sponsorship Tax Deduction Incentives - Ministry of Tourism, Arts and Culture Malaysia Official Portal (motac.gov.my).

Public Ruling No. 3/2021 – Special Allowances for Small Value Assets

The IRB has issued PR No. 3/2021: Special Allowances for Small Value Assets, dated 21 July 2021. This new PR replaces PR No. 10/2014, which was issued on 31 December 2014 and subsequently amended on 11 May 2016. The contents of the new PR are broadly similar to the earlier PR. The PR has been updated to explain and provide examples to reflect the following legislative changes which were enacted via the Finance Act 2019:

(a) Effective from YA 2020, taxpayers are eligible for a special capital allowance claim of 100% on assets valued at RM2,000 (previously RM1,300) or less per asset. This is subject to a maximum claim of RM20,000 (previously RM13,000) for each YA. However, the RM20,000 restriction is not applicable to small and medium enterprises (SMEs).

(b) Effective from YA 2020, only SMEs having gross income from a source or sources consisting of a business of not more than RM50 million for the relevant YA are eligible for the unlimited special capital allowance claims on small value assets.

Further guidance on this requirement is provided in Practice Note No. 4/2020.

Amendment to Public Ruling No. 10/2020 – Reinvestment Allowance Part I – Manufacturing Activity

The IRB has issued an updated PR No. 10/2020: Reinvestment Allowance Part I – Manufacturing Activity, which provides Malaysian resident companies engaged in manufacturing activities with guidance in determining their eligibility to claim reinvestment allowance (RA). The PR was updated mainly to reflect an amendment to Example 47, as outlined below:

> *Company MM which closes its accounts on 31 December has been granted pioneer status for product A for a period of 5 years and the pioneer period ended on* ***30 March 2017****. The company has unabsorbed losses of RM150,000 during the pioneer period. In the year 2018, the company incurred capital expenditure of RM500,000 for a qualifying project for RA and achieved the level of productivity prescribed by the Minister. The company is eligible to deduct RA of up to 100% of the statutory income for the YA 2018.*

The words in bold were stated as "30 March 2018" in the previous PR. With this amendment, the example would be in line with Paragraph 7(a) of Schedule 7A of the ITA, which states that a company is only eligible to claim RA in the YA after the end of the last YA of the company's pioneer status period.

Public Ruling No. 4/2021 – Taxation of Income Arising from Settlements

The IRB has issued PR No. 4/2021: Taxation of Income Arising from Settlements, dated 13 August 2021. Broadly, the PR explains the taxation of income arising from a settlement created by a person for the benefit of another person.

Frequently Asked Questions on Tax Matters during the National Recovery Plan (NRP)

The IRB has published "Frequently Asked Questions on Tax Matters during the National Recovery Plan" (FAQs). The FAQs clarify that the concessions that applied during the Movement Control Order (MCO) 3.0 period will now apply within phase one of the NRP period too. The FAQs provide clarification on the IRB services that will continue to be available to taxpayers, the due dates for submission of income tax returns, forms and/or documents, as well as the due dates for the payment of taxes and/or penalties. The FAQs also provide guidance to facilitate the process of managing certain tax matters during the NRP, including the procedures for applications for extensions of time (EOTs), application of individual PIN numbers, registration of income tax numbers and applications for tax clearance letters.

Frequently Asked Questions on the Deferment of Payment of Estimated Tax Payable (CP204) and Instalment Scheme (CP500) from 1 April 2021 to 31 December 2021

In the Strategic Programme to Empower the People and Economy (PEMERKASA) which was announced on 17 March 2021, it was proposed that to ease the burden on and support the recovery of the tourism and other affected sectors, companies in the tourism industry and selected industries (e.g. cinemas and spas) would be allowed to defer their monthly tax instalment payments which are due between 1 April and 31 December 2021.

Following the above, the IRB has published on its website a document titled "Frequently Asked Questions on Deferment of Payment of Estimated Tax Payable (CP204) and Instalment Scheme (CP500) from 1 April 2021 to 31 December 2021 under 'Program Strategik Memperkasa Rakyat Dan Ekonomi' (PEMERKASA)" (FAQs on the Deferment of Payments). Taxpayers who do not fall under the specific business codes, but whose businesses are affected, may also apply for the deferment of instalment payments by providing supporting documents.

Supplementary Strategic Programme to Empower the People and Economy (PEMERKASA Plus)

On 31 May 2021, the Prime Minister unveiled the RM40 billion Supplementary Strategic Programme to Empower the People and Economy (PEMERKASA Plus). PEMERKASA Plus comprises 12 initiatives to help enhance the public health capacity, continue the Prihatin Rakyat agenda and support business continuity. Some of the key tax proposals from the PEMERKASA Plus are as follows:

- The IRB 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. The IRB has also further clarified this matter in a media release dated 3 June 2021. The IRB reiterated that the relaxations would only apply to taxpayers whose incomes have been affected by the COVID-19 pandemic and the MCO. These taxpayers may contact the IRB branch office that handles their income tax files if they wish to apply for the said relaxations.
- A number of key tax measures announced in the earlier stimulus packages have been extended as well:

INCENTIVES BEFORE PEMERKASA PLUS	PEMERKASA PLUS
1. Special deduction on rental discounts given to tenants A special tax deduction is given to property owners who provide at least 30% rental discounts to tenants. The qualifying period is as follows: • Tenant (SME): 1 April 2020 to 30 June 2021 • Tenant (Non-SME): 1 January 2021 to 30 June 2021	The special deduction will be extended until 31 December 2021.
2. Stamp duty exemption on the purchase of residential property under the National Home Ownership Campaign 2020 / 2021 As part of the Home Ownership Campaign (HOC), stamp duty exemption is provided for the purchase of residential property where the sales and purchase agreement (SPA) is executed between 1 June 2020 and 31 May 2021. The stamp duty exemptions are given for: a) Any loan agreement to finance the purchase of a residential property valued from RM300,001 to RM2.5 million under the HOC 2020 / 2021 b) All instruments of transfer for the purchase of a residential property valued from RM300,001 to RM2.5 million (based on market value) under the HOC 2020 / 2021. However, the stamp duty exemption is limited to the stamp duty on the first RM1 million of the market value of the residential property. Note: Further explanation is discussed under the "Stamp Duty" section.	The stamp duty exemption will be extended until 31 December 2021.
3. Sales tax exemption on passenger cars A sales tax exemption is provided on the sale of locally assembled passenger cars and the importation of passenger cars into Malaysia until 30 June 2021, as follows: • 100% sales tax exemption on the sale of locally assembled passenger cars; and • 50% sales tax exemption on imported passenger cars	The sales tax exemption will be extended to 31 December 2021.

National People's Well-Being and Economic Recovery Package (PEMULIH)

On 28 June 2021, the Prime Minister unveiled the RM150 billion National People's Well-Being and Economic Recovery Package (PEMULIH). This follows the announcement of previous COVID-19 related economic stimulus packages. PEMULIH aims to provide comprehensive support to the rakyat by continuing to focus on the Prihatin Rakyat agenda, supporting businesses and increasing vaccination rates.

Certain tax measures were reiterated in the announcement, such as the deferment of tax instalments for certain companies and extension of tax incentives or exemptions until 31 December 2021 (i.e. the special tax deduction given to property owners who provide rental discounts to tenants and service tax and tourism tax exemption on accommodation premises).

Tax deduction for expenditure incurred in relation to vaccination facilities

In addition to the above, employers are given a tax deduction for costs incurred on equipment and services for vaccination centers (PPV) under the Public-Private Partnership COVID-19 Industry Immunisation Programme (PIKAS). PIKAS is a public-private partnership program that will provide worksites as PPVs. Under PIKAS, the Government will provide free vaccines and participating companies will be fully responsible for the administration cost of establishing and running on-site PPVs, including the services of medical practitioners, administration staff and security personnel.

The scope of allowable tax deduction for contributions to approved COVID-19 related community and charitable projects has also been expanded to include contributions to the PPVs.

Guidelines on incentive for intellectual property (IP) development

In Budget 2020, the Government proposed that qualifying intellectual property (IP)-generated income derived from the development of patents and copyright software be given 100% income tax exemption for a period of up to 10 years. The income which qualifies for the exemption will be calculated based on the Modified Nexus Approach (MNA). This is an Organisation for Economic Co-operation and Development (OECD)-compliant incentive, where the actual research and development (R&D) activities leading to the development, improvement, modification or creation of the qualifying IP asset would generally need to be undertaken in Malaysia in order to benefit from the incentive.

Following the above proposal, MIDA has recently issued the Guidelines on Incentive for Intellectual Property (IP) Development, dated 1 January 2020. The Guidelines stipulate that 100% income tax exemption will be given on qualifying IP income for a period of up to 10 years. The exemption will only apply to income derived from IP developed in Malaysia, subject to the Gazette Order on MNA (the Gazette Order has yet to be released).

The Guidelines explain who would qualify for the incentive, the types of qualifying IP asset, the types of qualifying IP income, the criteria to qualify for the incentive, what constitutes qualifying R&D expenditure, the determination of the exemption period, situations where the incentive will be withdrawn and the application procedure.

Updated guidelines on application for tax deduction under Section 34(6)(h) of the ITA for the purpose of income tax computation

The IRB has issued updated Guidelines, titled "Garis Panduan Memohon Potongan Di Bawah Seksyen 34(6)(h) Akta Cukai Pendapatan 1967 Bagi Maksud Pengiraan Cukai Pendapatan" (Guidelines) on 8 June 2021. Like the earlier guidelines, the new Guidelines explain the criteria and procedures to apply for a tax deduction under Section 34(6)(h) of the ITA. The key changes in the guidelines were to include expenditures incurred on the provision of services, public amenities and contributions to a charity or community project pertaining to conservation or preservation of environment, enhancement of income of the poor, infrastructure, information and communication technology or maintenance of a building designated as a heritage site by the Commissioner of Heritage under the National Heritage Act 2005.

STAMP DUTY

Stamp duty exemption on the purchase of residential property under the National Home Ownership Campaign 2021

Under the PEMERKASA Plus, the Government proposed to extend the waiver of stamp duty on the instruments of transfer and loan agreements for the purchase of residential property priced from RM300,001 to RM2.5 million as part of the Home Ownership Campaign (HOC). The stamp duty exemption will be extended to 31 December 2021 (previously 31 May 2021). To legislate this proposal, the following Exemption Orders were gazetted on 12 July 2021:

- <u>Stamp Duty (Exemption) (No. 4) Order 2021 [P.U.(A) 301]</u>
  The Order provides that any loan agreement to finance the purchase of a residential property valued from RM300,001 to RM2.5 million under the HOC 2021, will be exempted from stamp duty.
- <u>Stamp Duty (Exemption) (No. 5) Order 2021 [P.U.(A) 302]</u>
  The Order provides that all instruments of transfer for the purchase of a residential property valued from RM300,001 to RM2.5 million (based on market value) under the HOC 2021, will be exempted from stamp duty in respect of up to RM1 million of the market value of the residential property. Stamp duty of 3% is to be charged on the value of the residential property in excess of RM1 million.

The Exemption Orders are deemed to have come into operation on 1 June 2021.

Stamp duty exemptions for the PENJANA Tourism Financing (PTF) Facility

Under the Short-term Economic Recovery Plan (PENJANA), the Government announced that RM1 billion will be allocated to the PENJANA Tourism Financing (PTF) Facility to finance transformation initiatives by SMEs in the tourism sector.

Following the above, the Exemption Orders outlined below were gazetted on 4 August 2021 to provide stamp duty exemptions on the instruments of loan or financing agreements for the PTF Facility.

- <u>Stamp Duty (Exemption) (No. 6) Order 2021 [P.U.(A) 328/2021]</u>
  The Order provides a stamp duty exemption on the instrument of loan or financing agreement for the PTF Facility approved under the Bank Negara Malaysia (BNM) Fund, executed between a participating financial institution (FI) (as defined) and an SME (as defined under SME Corporation Malaysia).

The Order is deemed to have come into operation on 30 July 2020.

- <u>Stamp Duty (Exemption) (No. 7) Order 2021 [P.U.(A) 329/2021]</u>
  The Order provides a stamp duty exemption on the instrument of

loan or financing agreement for the PTF Facility approved under the BNM Fund, executed between BNM and the participating FI (as defined) between 1 September 2020 and 31 December 2021.

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

Remission of tax and stamp duty

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (No. 2) Order 2021 [P.U.(A) 322/2021] was gazetted on 30 July 2021. The Order provides that any tax payable under the ITA and any stamp duty payable under the Stamp Act 1949 in relation to the following shall be remitted in full:

(a) Islamic Commercial Papers and Islamic Medium-Term Notes issued or to be issued by Syarikat Prasarana Malaysia Berhad pursuant to the Sukuk Murabahah Programme, in nominal values of up to RM17 billion, provided that the combined aggregate of the outstanding nominal value of the Sukuk Murabahah and the outstanding principal amount under the Syndicated Revolving Credit-i Facility (RC-i Facility, see (b) below) shall not exceed RM17 billion

(b) RC-i Facility obtained or to be obtained by Syarikat Prasarana Malaysia Berhad with the aggregate outstanding principal amount not exceeding RM4 billion, subject to the combined aggregate referred to in (a) above

(c) Guarantee provided by the Government of Malaysia in relation to the Sukuk Murabahah and RC-i Facility referred to in (a) and (b) above

The Order came into operation on 31 July 2021.

Stamp duty exemption on the instrument of loan or financing agreement executed between an SME and a financial institution

The Stamp Duty (Exemption) (No. 8) Order 2021 [P.U.(A) 333/2021] was gazetted on 12 August 2021 to provide a stamp duty exemption on the instrument of loan or financing agreement relating to the loan or financing facility (as defined) executed between an SME and a financial institution. This exemption is not automatic and must be applied for.

The exemption shall apply to relevant instruments executed pursuant to a letter of offer issued by the financial institution between 2 February 2021 and 31 December 2021. The application for the exemption will have to be accompanied by the letter of offer, stipulating the approval of the loan or financing facility.

The Order is deemed to have come into operation on 2 February 2021.

INDIRECT TAX

CUSTOMS

CUSTOMS DUTIES ORDERS

Customs Duties (Exemption) 2017 (Amendment) Order 2021

The Customs Duties (Exemption) 2017 (Amendment) Order 2021 [P.U.(A) 280/2021] was gazetted on 28 June 2021 and came into operation on 1 July 2021. This Order provides for amendments to Item 10, Item 10A and Item 11, Columns (3) and (4) in Part I of the Schedule under the Customs Duties (Exemption) Order 2017 [P.U.(A) 445/2017].

Customs Duties (Amendment) (No. 2) Order 2021

The Customs Duties (Amendment) (No. 2) Order 2021 [P.U.(A) 314/2021] was gazetted on 23 July 2021 and came into operation on 1 August 2021. This Order provides for amendments in relation to Chapters 35, 39, 84, 90 and 95 under the First Schedule of the Customs Duties Order 2017 [P.U.(A) 5/2017].

Customs Duties (Exemption) 2017 (Amendment) (No. 2) Order 2021

The Customs Duties (Exemption) 2017 (Amendment) (No. 2) Order 2021 [P.U.(A) 335/2021] was gazetted on 12 August 2021 and came into operation on 13 August 2021. This Order provides for an amendment to Column (2) of Item 67 in Part I of the Schedule under the Customs Duties (Exemption) Order 2017 [P.U.(A) 445/2017].

CUSTOMS ANTI-DUMPING DUTIES ORDERS

Customs (Anti-Dumping Duties) (Administrative Review) Order 2019 (Amendment) 2021

The Customs (Anti-Dumping Duties) (Administrative Review) Order 2019 (Amendment) 2021 [P.U.(A) 231/2021] was gazetted on 23 May 2021. This Order provides for an amendment by deleting items relating to Socialist Republic of Viet Nam in Column (3) and the particulars relating to it in Columns (4) and (5) under the Schedule under the Customs (Anti-Dumping Duties) (Administrative Review) Order 2019 [P.U.(A) 127/2019].

Customs (Anti-Dumping Duties) (Administrative Review) (Extension) Order 2021

The Customs (Anti-Dumping Duties) (Administrative Review) (Extension) Order 2021 [P.U.(A) 232/2021] was gazetted on 23 May 2021. This Order provides for an extension to the Customs (Anti-Dumping Duties) (Administrative Review) Order 2019 [P.U.(A) 127/2019] from 24 May 2021 to 9 October 2021.

Customs (Anti-Dumping Duties) (Administrative Review) (Extension) (No. 2) Order 2021

The Customs (Anti-Dumping Duties)

(Administrative Review) (Extension) (No. 2) Order 2021 [P.U.(A) 233/2021] was gazetted on 23 May 2021. This Order provides for an extension to the Customs (Anti-Dumping Duties) (Administrative Review) Order 2021 [P.U.(A) 25/2021] from 24 May 2021 to 9 October 2021.

Customs (Anti-Dumping Duties) (Expedited Review) Order 2021

The Customs (Anti-Dumping Duties) (Expedited Review) Order 2021 [P.U.(A) 254/2021] was gazetted on 3 June 2021 and came into operation from 7 June 2021 to 21 January 2025. This Order provides for anti-dumping duties to be levied on and paid by the importers in respect of goods specified in Columns (1) and (2) of the Schedule exported from the country specified in Column (3) by the producer or exporter specified in Column (4) into Malaysia at the rates specified in Column (5).

Customs (Anti-Dumping Duties) (Administrative Review) (No. 2) Order 2021

The Customs (Anti-Dumping Duties) (Administrative Review) (No. 2) Order 2021 [P.U.(A) 312/2021] was gazetted on 16 July 2021 and has effect for the period of five years from 20 July 2021 to 19 July 2026. This Order provides for anti-dumping duties to be levied on and paid by the importers in respect of goods specified in Columns (1) and (2) of the Schedule exported from the country specified in Column (3) by the producer or exporter specified in Column (4) into Malaysia at the rates specified in Column (5).

EXCISE DUTIES

EXCISE DUTIES ORDERS

Excise Duties (Exemption) (Amendment) Order 2021

The Excise Duties (Exemption) (Amendment) Order 2021 [P.U.(A) 285/2021] was gazetted on 29 June 2021 and came into operation on 1 July 2021. This Order provides for amendments in relation to Items 36, 36A and 37 in Part I of the Schedule of the Excise Duties (Exemption) Order 2017 [P.U.(A) 444/2017].

Excise Duties (Exemption) (Amendment) Order 2021

The Excise Duties (Exemption) (Amendment) (No. 2) Order 2021 [P.U.(A) 286/2021] was gazetted on 29 June 2021 and came into operation on 1 July 2021. This Order provides for amendments in relation to Item 37 in Part I of the Schedule of the Excise Duties (Exemption) Order 2017 [P.U.(A) 444/2017].

SALES TAX

SALES TAX ORDERS

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2021

The Sales Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2021 [P.U.(A) 267/2021] was gazetted on 14 June 2021 and came into operation on 15 June 2021. This Order provides for amendments in relation to Items 58 and 60, and by inserting Item 58A under Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [P.U.(A) 210/2018].

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2021

The Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2021 [P.U.(A) 281/2021] was gazetted on 28 June 2021 and came into operation on 1 July 2021. This Order provides for amendments in relation to Items 16 and 17, and by inserting Item 16A under Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [P.U.(A) 210/2018].

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 3) Order 2021

The Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 3) Order 2021 [P.U.(A) 330/2021] was gazetted on 5 August 2021 and came into operation on 6 August 2021. This Order provides for amendments in relation to Item 3, Columns 3, 4 and

5, under Schedule B of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [P.U.(A) 210/2018].

SALES TAX GUIDES

Guide on Refund, Drawback and Appeal for Sales Tax

The Guide on Refund, Drawback and Appeal for Sales Tax dated 21 April 2021, was uploaded to the Royal Malaysian Customs Department (RMCD) website on 31 May 2021. This Guide provides guidance to help businesses understand the sales tax refund, drawback and appeal application process.

Guide for Sales Tax Exemption under Item 5A, Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018

The Guide for Sales Tax Exemption under Item 5A, Schedule A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 dated 13 July 2021, was uploaded to the RMCD website on 21 July 2021. This Guide provides guidance to franchise holders, distributors or dealers of locally manufactured motor vehicles including motorcycles, approved by the Minister of Finance, in understanding the sales tax exemption application process and conditions.

SERVICE TAX

SERVICE TAX POLICIES

Service Tax Policy No. 1/2021

The Service Tax Policy No. 1/2021 dated 27 May 2021, was uploaded to the RMCD website on 31 May 2021. This Policy, which came into effect from 1 May 2021, provides for the conditions exempting companies operating in the Joint Development Area (JDA) from paying service tax on taxable services provided within the JDA by any company in the Principal Customs Area (PCA).

Service Tax Policy No. 2/2021

The Service Tax Policy No. 2/2021 dated 1 July 2021, was uploaded to the RMCD website on 31 May 2021. This Policy, which came into effect from 1 July 2021, provides that only the provision of accommodation premises, being a taxable service prescribed under item (a), Column (2), Group A: Accommodation, First Schedule of the Service Tax Regulations 2018 [P.U. (A) 214/2018], is exempted from service tax until 31 December 2021.

Service Tax Policy No. 10/2020 (Amendment No. 1)

The Service Tax Policy No. 10/2020 (Amendment No. 1) dated 9 August 2021, was uploaded to the RMCD website on 11 August 2021. This Policy provides for amendments to the Service Tax Policy No. 10/2020 dated 17 April 2020 with respect to service tax exemption on digital services related to banking/financial services provided by local service providers.

SERVICE TAX GUIDES

General Guide on Service Tax (3rd Version)

The General Guide on Service Tax (3rd Version) dated 4 August 2021, was uploaded to the RMCD website on 4 August 2021. This Guide, which replaces the previous Guide dated 6 October 2020, provides guidance to help businesses prepare for the implementation of the imposition of service tax in Malaysia.

Industry Guide on Management Services

The Industry Guide on Management Services dated 4 August 2021, was uploaded to the RMCD website on 4 August 2021. This Guide, which replaces the previous Guide dated 15 January 2021, provides clarification on the service tax treatment on maintenance services and requires both the service provider and the recipient of the taxable service to be registered persons under the Business to Business exemption.

Industry Guide on Delivery and Distribution of Electricity Services

The Industry Guide on Delivery and Distribution of Electricity Services dated 4 August 2021, was uploaded to the RMCD website on 4 August 2021. This Guide, which replaces the previous Guide dated 15 January 2021, provides clarification that the service tax exemption on the first 600kWh of electricity usage is only granted to a billing cycle that is not less than 28 days.

Industry Guide on Club Services (Group C, D and E) (2nd Version)

The Industry Guide on Club Services (Group C, D and E) (2nd Version) dated 4 August 2021, was uploaded to the RMCD website on 4 August 2021. This Guide, which replaces the previous Guide dated 9 March 2021, provides clarification that rehabilitation services, including physiotherapy and occupational therapist services, are subject to service tax.

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

LANDMARK GST REFUND RULING – TAXPAYER ENTITLED TO INPUT TAX CREDIT

CASE 1

LDMSB V KETUA PENGARAH KASTAM & ANOR (2021)

On 17 June 2021, the High Court allowed the taxpayer's judicial review application to challenge the decision of the Director General of Customs (DGC) in rejecting the taxpayer's application for input tax credit refund (ITC refund). The taxpayer's application was premised pursuant to Section 57 of the Goods and Services Act 2014 (GST Act 2014) read together with Sections 4(1)(b) and 8(2) of the Goods and Services Tax (Repeal) Act 2018 (GST Repeal Act 2018).

The taxpayer was successfully represented by the firm's Tax, SST & Customs partner, S. Saravana Kumar together with associate, Nur Hanina binti Mohd Azham.

This alert summarises the arguments advanced by both parties in this landmark matter, which is regarded as the first case of its kind in Malaysia.

FACTS

The taxpayer is in the business of project management and development management. In 2018, the taxpayer had incorrectly accounted for Goods and Services Tax (GST) to the DGC in the GST returns filed by them. The taxpayer had inadvertently not taken into account two tax invoices amounting to approximately RM 1.7 million for the expatriate staff labour cost which was incurred in the course of the taxpayer's business. As a result of this, the taxpayer had over accounted for GST by not offsetting the input tax against the output tax.

On 26 June 2020, the taxpayer made an application to the DGC, via a letter, to claim for the ITC refund. Together with the application, the taxpayer also submitted the relevant documentations including the proof of payment being incurred for the expatriate staff labour cost. However, the taxpayer's application for ITC refund was rejected by the DGC via a letter dated 7 August 2020 (DGC's Decision). The DGC's reason for rejecting the taxpayer's application for ITC refund is on the basis that the application was made out of time whereby the DGC took the view that a taxpayer must submit their application for ITC refund within 120 days from the appointed date.

Dissatisfied by the DGC's Decision, the taxpayer wrote to the DGC to review its decision in rejecting the taxpayer's ITC refund application. Subsequently, in October 2020, the DGC rejected that taxpayer's review application on the premise that the taxpayer has applied for a review on the same issue and that a decision has been issued. Being aggrieved by the DGC's decision, the taxpayer, on 5 November 2020, filed an application for judicial review to challenge the said decision. On 16 December 2020, the High Court granted leave to the taxpayer to commence judicial review proceedings against the decision of the DGC.

THE TAXPAYER'S SUBMISSION

The arguments for the taxpayer can be summarised as follows:

- Had the GST Act 2014 had not been repealed, the taxpayer would be entitled to claim for refund if the input tax amount exceeds that of the output tax pursuant to Section 38(3) of the GST Act 2014.
- The taxpayer is entitled to claim for ITC refund pursuant to Section 57 of the GST Act 2014, Sections 4(1)(b) and 8(2) of the GST Repeal Act 2018 and regulation 38 Goods and Services Tax Regulations 2014.
- Section 57 of the GST Act 2014 and regulation 38 of the Goods and Services Tax Regulations 2014 clearly stipulate that a claim for refund of tax that has been overpaid or erroneously paid and a claim for input tax can be made within 6 years.
- Section 4(1)(b) of the GST Repeal Act 2018 allows for claims for refund of tax that has been overpaid or erroneously paid to

be made as if the GST Act 2014 had not been repealed.

- Section 4(1)(b) and Section 8(2) of the GST Repeal Act 2018 must be read together with the principle that the repeal of a written law in whole or in part shall not affect any right accrued or incurred under the repealed law.
- Thus, the taxpayer is clearly within time to make the claim for ITC refund notwithstanding the DGC's position that an application for ITC refund must be made within 120 days from the appointed date.
- The DGC's contention that the taxpayer's letter dated 26 June 2020 is not an application for ITC refund is without basis as it is clearly stated in the taxpayer's letter that they are making an application for ITC refund.
- Furthermore, the DGC's letter dated 7 August 2020 constitutes as a decision made by the DGC. The DGC's act of disallowing the claim for ITC refund had deprived the taxpayer of their right to claim for input tax credit and thus, the taxpayer has been adversely affected.

THE CUSTOM'S RESPONSE

The DGC's main argument in objecting to the taxpayer's judicial review application is on the basis that the DGC's letter dated 7 August 2020 is not a decision that is amenable to judicial review. The said letter was merely in reply to the taxpayer's letter to the DGC that was issued in June 2020. In addition, the DGC was also of the view that the taxpayer's application for ITC refund was not a proper application but was just a letter seeking for confirmation from the DGC on whether the taxpayer is entitled to ITC refund.

Besides that, the DGC also submitted that Section 8(1) of the GST Repeal Act 2018 stipulates that any claim for input tax must be made within 120 days from the appointed date and thus, the taxpayer was out of time to make the claim for ITC refund.

THE HIGH COURT'S DECISION

Upon hearing the submissions by both parties, the High Court allowed the taxpayer's application for judicial review. The High Court ruled that the DGC had erroneously rejected the taxpayer's claim for ITC refund and thus, the taxpayer is entitled to the ITC refund. Further, the taxpayer was also awarded interest at the rate of 8% per annum on the ITC refund sum from the date the refund was due to the taxpayer. million.

It is notable that this is the first case of its kind in Malaysia where the scope of Section 4(1)(b) and Section 8 of the GST Repeal Act 2018 in relation to input tax refund was examined by the High Court. This decision also reminds us that the repeal of the GST Act 2014 does not leave an aggrieved taxpayer without any recourse. A taxpayer is entitled to claim for any GST that has been overpaid or erroneously paid so long as it is within the stipulated time period of 6 years.

__S. Saravana Kumar__ is a tax lawyer and the head of Tax, SST & Customs with the law firm Rosli Dahlan Saravana Partnership (RDS).

__Amira Rafie__ is an associate from the Tax, SST and Customs practice. She read law at The University of Warwick.

CASE 2

KETUA PENGARAH KASTAM V AIMSB (2021) (HIGH COURT)

FACTS

The taxpayer was a GST-registered Malaysian company providing call centre services to its related party in Singapore. These services were eligible for zero-rating GST under Item 12 of the Second Schedule of the Goods and Services Tax (Zero Rated Supplies) Order 2014 ("**Item 12**").

Following a GST audit, the Director General of Customs and Excise ("**DG**") concluded that Item 12 was not applicable to the taxpayer's supply of services. The taxpayer succeeded in its appeal to the Customs Appeal Tribunal ("**Tribunal**") and the DG was ordered to refund the GST amount to the taxpayer.

The DG appealed to the High Court against the Tribunal's decision by filing its Originating Summons (akin to a "**Notice of Appeal**"). However, the DG failed to serve the Notice of Appeal on the taxpayer within the 30 days' time limit prescribed under the Rules of Court 2012. The delay in service was 1 month and 9 days.

To compound its error, the DG failed to name the Tribunal as a respondent in its appeal to the High Court.

DG'S ARGUMENTS

The DG argued that it had made all reasonable efforts to effect service of the Notice of Appeal. The DG stated that lockdown restrictions under the Conditional Movement Control Order and the closure of the taxpayer's office prevented it from effecting service. Further, the DG contended that the failure to name the Tribunal as a respondent in the appeal was due to an accidental omission or oversight.

The DG requested the High Court to exercise its inherent jurisdiction to remedy the non-compliance, which it contended was merely technical in nature.

TAXPAYER'S ARGUMENTS

The taxpayer argued that the appeal was improperly brought and ought to be struck out for the following reasons:

(i) Tax authorities stand on the same footing as taxpayers so far as compliance of the law is concerned.

(ii) The DG failed to provide any cogent explanation for its delay. Also, the DG failed to explain why it did not serve the Notice of Appeal on the taxpayer's solicitors on record whom it had knowledge of.

(iii) The DG did not take any active steps to regularize its late service by filing an application for extension of time, until notified by the taxpayer. Hence, the DG's application was an afterthought.

(iv) The failure to name the Tribunal as a respondent to the appeal is fatal to the DG's appeal. The DG's "oversight" is not a reasonable explanation for its significant delay in rectifying its error.

(v) The DG substantially delayed the disposal of the appeal and deprived the taxpayer from enjoying the fruits of its litigation.

HIGH COURT'S DECISION

The High Court found that the DG's blatant non-compliance of the procedural rules is fatal to its appeal and struck out the DG's appeal. This decision serves as a reminder that tax authorities and taxpayers are equally bound by the procedural rules. In instances where tax authorities blatantly disregard such rules, procedural objections remain a valid tool in the taxpayers' arsenal to dismiss the tax authority's case at the outset.

COUNSEL FOR THE TAXPAYER
JASON LIANG AND JEFF SUM (WONG & PARTNERS).

COUNSEL FOR THE DG
PAVANI KASI AND ABIRAMI SHANMUGAM.

DECISION DATE
27 JULY 2021

Wong & Partners

CAPITAL ALLOWANCES

SHORT LIFE SPAN ASSETS & DISPOSALS

A brief look at assets with a life span of less than two years and a discussion on the disposal of assets qualifying for allowances will be the objective of this article. All references to schedules and paragraphs are in relation to Income Tax Act 1967 (as amended)

Siva Subramanian Nair

Public Ruling 06/2019 states that "[e]xpenditure incurred on the replacement, repairs and renewal of implements, utensils or articles used in the production of income is allowed as a deduction against gross income on a replacement basis. Candidates will remember this from the article on Repairs & Renewals – Part II in the Tax Guardian Vol.4/No.1/2011/Q1.

As this topic has already been discussed in that article, a summary of the pertinent points to remember for examination purposes is presented here:

- Expenditure on such assets include amongst others bedding & linen, crockery & glassware, cutlery & cooking utensils (dishes, spoons, forks, knives and pots other than stainless steel or silver), loose tools & accessories.
- The cost of asset is irrelevant but its life span should not exceed 2 years The determination of life span of an asset will be based on the facts of each case and a person who wishes to claim deduction on the asset is responsible for determining its life span [Public Ruling 06/2015]
- the original cost or cost of purchase for the first time of the asset is not allowable as a tax deduction (as it is capital expenditure) nor will it qualify for capital allowances
- BUT the cost of replacing such assets is a deductible expenditure under s33(1)(c)
- on subsequent disposal of such assets, any recoveries will form part of the gross income of the business.

Numerous CTIM Tax II past year questions have dealt with this issue in its Question 1; December 2002 claimed on spare parts and replacement parts for machines and small loose tools for production use of RM72,500, December 2004 procured a deduction for spare parts and replacement parts for machines of RM12,000 and December 2006 allowed an expenditure on replacement of pantry crockery and cutlery of RM800

Question 1 in Tax II of December 2007, discussed the deductibility of spare parts & replacement of machines of RM2,600 and in Question 4B candidates were asked to discuss the tax treatment of assets with life span not exceeding two years for 2 marks. The solution for the latter was basically what was discussed above.

A different approach was adopted in December 2010 Tax II Question 1 whereby candidates were informed that the company spent RM12,000 for the purchase of new tools of which RM7,000 was to replace existing tools. Each tool does not cost more than RM1,000 and does not last more than two years.

Therefore candidates had to recognise that the difference between RM12,000 and RM7,000 of RM5,000 would constitute purchase of new tools and accordingly were to add back that figure to the profit before tax in ascertaining the adjusted income of the company.

A final point to note is that any estimated provision provided to replace implements, utensils or articles used in the production of income is not allowed since the expenditure is not incurred [Public Ruling 06/2019].

DISPOSAL OF ASSET

We shall now look at the consequences of disposing an asset on which capital allowances have been claimed. The vast interpretation of the word disposal is detailed in Paragraph 61 of Schedule 3 as as follows:

> *Any plant or machinery which is used for the purposes of a business and in respect of which qualifying expenditure has been incurred is disposed of within the meaning of this Schedule if it is sold, discarded or destroyed or if it ceases to be used for the purposes of that business.*

Therefore aside from sold, an asset is deemed disposed once it is discarded, destroyed or ceases to be used in that business. The date of disposal is simple i.e. the date any of these events occurs. The complications arise in determining the disposal value. The different scenarios are detailed in Paragraph 62 of schedule 3 and illustrated in Public Ruling 7/2017.

GENERAL RULE

The law provides that for a sale, transfer or assignment of an asset, the higher of market value or the selling price is taken to be its disposal value.

Obviously candidates will be aware that market value is effectively determined as the price that transpires between two independent parties transacting at arm's length. Therefore for a sale between unrelated parties the market value probably equates the selling price of the asset. However, for situations where the disposal is between related parties whereby the selling price might have been purposely abated, then the market value will be imputed as the disposal value.

There are some exceptions to this rule as stated below.

CIRCUMSTANCES IN WHICH INSURANCE OR COMPENSATION MONEYS ARE RECEIVED FOR THE LOSS OF AN ASSET

The Act provides that disposal value shall be taken to be an amount equal to its market value at the date of its disposal or those moneys, whichever is the greater.

DISPOSAL OF NON-COMMERCIAL VEHICLE WHERE THE QE WAS RESTRICTED

Since for non-commercial vehicles the QE is restricted [Tax Guardian Vol.13/No.2/2020/Q2], to be fair, the disposal value has to apportioned in line with the earlier restriction and this is achieved through the following formula:

$$\frac{\text{Qualifying Expenditure}}{\text{Cost of the vehicle}} \times \text{Selling price}$$

Numerous past year questions have examined this point so I shall use an example from June 2014 Business Taxation paper Question 3(b), the details (all in RM '000) of which are summarised as follows:

Scenario	Purchase price	Restricted QE	Selling Price	Restricted Disposal value
A	125	100	90	100 / 125 X 90 = 72
B	350	50	280	50 / 350 X 280 = 40

[WHERE] PURSUANT TO AN AGREEMENT WITH THE GOVERNMENT, STATE GOVERNMENT OR A LOCAL AUTHORITY IN RESPECT OF A PRIVATISATION PROJECT, AN ASSET USED IN THE PRIVATISATION PROJECT, IS DISPOSED OF TO THE GOVERNMENT, STATE GOVERNMENT OR LOCAL AUTHORITY, ITS DISPOSAL VALUE SHALL BE TAKEN TO BE AN AMOUNT EQUAL TO THE NET PROCEEDS OF THE DISPOSAL.

This was to circumvent a situation where the sales proceed received from the Government, State Government or local authority is below the market value of the asset and because of that the disposer suffers a balancing charge.

WHERE AN ASSET IN RELATION TO WHICH THE PERSON HAS INCURRED QUALIFYING PLANT EXPENDITURE FOR THE PURPOSES OF A BUSINESS OF HIS IS DISPOSED OF BY WAY OF GIFT, ITS DISPOSAL VALUE SHALL BE DEEMED TO BE ZERO IF THE GIFT IS MADE TO

(a) a technical or vocational training institute established and maintained by the government or a statutory body;
(b) a technical or vocational training institute as approved by the Minister; or
(c) an approved research institute.

This is to ensure that the donor of the asset will never suffer a balancing charge on its disposal. A theoretical question on this can be seen in December 2017 Business Taxation paper in Question 3(d)(ii). which requested the candidates to "[d]iscuss on the impact on capital allowance…[i]f an asset is given as a gift.

The solution was:

If the asset is given as a gift:

- *A gift can be deemed to be a 'disposal' of an asset and if so the disposal value is the market value.*
- *the disposal value of the asset which had been used by the donor for the purposes of a business would be deemed to be zero, if such an asset was donated to:*
  1. *a technical or vocational training institute established and maintained by the Government or a statutory body;*
  2. *a technical or vocational training institute approved by the Minister of Finance; and*
  3. *an approved research institute as defined in S.34B.*

  Therefore, the disposal value would be treated as zero instead of the market value of the asset as at the date of the gift. As such, the residual expenditure of the asset would be given as a balancing allowance to the donor

Paragraph 53 Schedule 3 talks about where the "…. disposal, purchase, transfer or transmission of any asset …[is]…together with any other asset, … so much of the disposal value or the purchase price, as the case may be, of those assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, … be deemed to be the disposal value or the purchase price, as the case may be, of that first-mentioned asset." It continues " … notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate disposals, purchases, transfers or transmissions…."

This is basically to capture situations where many assets of a business or the whole business itself are disposed for a global value. The value to be assigned to any particular asset is based on a just apportionment. I have not seen this being examined before but in the event it is, I trust the Examiner will provide candidates with the basis for apportionment i.e. it could be market value, cost, net book value, residual expenditure etc.

ASSETS HELD FOR SALE (AHFS)

Paragraph 61A of Schedule 3 states that "an asset [which] …is classified as asset held for sale …shall be deemed to have ceased to be used for the [business];" and in consequence deemed to be disposed.

It addresses the issue of disposal value for such assets as follows:

(a) where the asset is sold in the basis period [BP] that the asset is classified as asset held for sale, the disposal value of the asset shall be an amount equal to its market value at the date it was classified as asset held for sale or the net proceeds of the sale, whichever is greater.

> Classified as AFHS & sold in the same BP - higher of sale price or market value @ classification date

(b) where the asset is sold in the following basis period, an amount equal to its market value at the end of the basis period such asset is held for sale or the net proceeds of the sale, whichever is greater;

> Classified as AFHS in BP1 & sold in BP2 - higher of sale price or market value at end of BP1

(c) where the asset is not sold after the end of the following basis period, the asset is deemed to be sold in the following basis period and the disposal value of the asset shall be an amount equal to the market value of the asset at the end of that following basis period.

> Asset not sold even after the end of the following BP - the asset is deemed sold in the following BP - @ market value at end of following BP

ASSET THAT IS WRITTEN OFF

Where an asset is written off due to it being obsolete or damaged and the asset cannot be repaired or sold, its market value is considered to be zero i.e. a balancing charge will not arise.

DISPOSALS SUBJECT TO CONTROL – CONTROLLED SALES

In these cases the disposal is deemed to equate the residual expenditure of the disposer and therefore, no balancing adjustments will arise. This will be discussed in detail in a later article.

With that we lower the curtains on our discussion on short life span assets and disposals. For candidates attempting the December 2021 examinations; all the best and God bless!

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

FURTHER READING

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CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: OCTOBER – DECEMBER 2021

Month /Event	Details				Registration Fee (RM) (excluding SST)			CPD Points/ Event Code
	Date	Time	Venue	Speaker	Member	Member's Firm Staff	Non - Member	
OCTOBER 2021								
Workshop: Taxation Benefit on Specialised Industries	13 Oct	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 WS/027
Workshop: Preparation of Transfer Pricing Documentation for Financial Assistance	21 Oct	9 a.m. - 1 p.m.	Webinar	Ho Yi Hui	180	210	240	4 WS/030
Workshop: Withholding Taxes and Other Related Issues	28 Oct	9 a.m. - 5 p.m.	Webinar	Yong Mei Sim	300	330	400	8 WS/028
Public Holiday ***(The Prophet Muhammad's Birthday: 19 Oct)***								
NOVEMBER 2021								
Workshop: Transfer Pricing and Contemporaneous Documentation (Re-Run Session)	9 Nov	9 a.m. - 5 p.m.	Webinar	Vincent Josef	300	330	400	8 WS/029
2022 Budget Seminar	18 Nov	9 a.m. - 5 p.m.	Webinar	Various Speaker	300	300	450	8 BS/001
2022 Budget Seminar	24 Nov	9 a.m. - 5 p.m.	Webinar	Various Speaker	300	300	450	8 BS/002
2022 Budget Seminar	30 Nov	9 a.m. - 5 p.m.	Webinar	Various Speaker	300	300	450	8 BS/003
Public Holiday ***(Diwali/Deepavali: 4 Nov)***								
DECEMBER 2021								
Workshop: Preparation of Capital Statement, Skilful Tax Negotiation and Recent Tax Cases	3 Dec	9 a.m. - 5 p.m.	Webinar	Yong Mei Sim & John Ung	300	330	400	8 WS/031
2022 Budget Seminar	9 Dec	9 a.m. - 5 p.m.	Webinar	Various Speaker	300	300	450	8 BS/004
Workshop: Malaysian Property Tax, Estate and Trust	14 Dec	9 a.m. - 5 p.m.	Webinar	Dr Tan Thai Soon	300	330	400	8 WS/032
Workshop: Tax Incentive	16 Dec	9 a.m. - 5 p.m.	Webinar	Ho Yi Hui	300	330	400	8 WS/033
Public Holiday ***(Christmas Day: 25 Dec)***								

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

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

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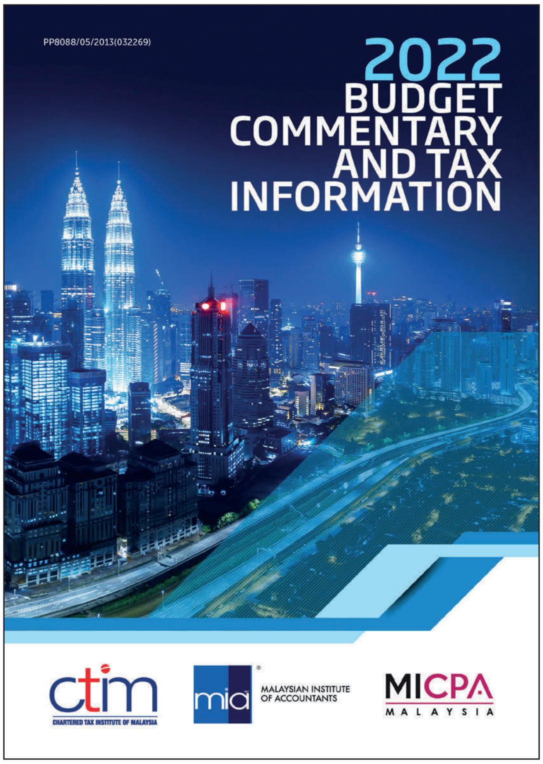

The Economic Scenario

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.

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CHARTERED TAX INSTITUTE OF MALAYSIA
B-13-1, Megan Avenue II
No. 12 Jalan Yap Kwan Seng, 50450 Kuala Lumpur
Tel: 03-2162 8989 Fax: 03-2162 8990
Email: publication@ctim.org.my Website: www.ctim.org.my