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BUDGET 2024: BUILDING BLOCKS TO DRIVE GROWTH AND REFORMS

Malaysia's Tax Advantage: Boosting Manufacturing Relocation Opportunities

Business Sale Agreement is Subject to Nominal Stamp Duty: An Analysis of the Havi Logistic (M) Sdn Bhd Case

Tax Reforms for Malaysia: Sense & Sensibility

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

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INVITATION TO WRITE

The Institute welcomes original contributions which are of interest to tax professionals, lawyers, academicians and students. They may cover local or international tax developments. Article contributions should be written in UK English. All articles should be between 2,500 to 3,500 words submitted in a typed single spaced format using font size 10 in Microsoft Word via email. Contributions intended for publication must include the author's name, contact details and a short profile of not more than 60 words (limited to 3 in the case of a team of authors), The Editorial Committee reserves the right to edit all contributions based on clarity and accuracy of contents and expressions, as may be required.

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CHOW CHEE YEN

REVAMPING THE ECONOMIC STRUCTURE, RAISING THE STANDARD OF LIVING

Happy New Year 2024!

I hope everyone has taken some time off to recharge and reenergise for a new beginning in 2024.

Budget 2024 announced in Parliament on 13 October 2023 set the nation's pace for the coming year. With an allocation of RM393.8 billion, Budget 2024 themed "Economic Reform, Empowering People" is the second budget presented by the Finance Minister, YAB Dato' Seri Anwar Ibrahim who is also the Prime Minister.

Budget 2024 is a continuation of the Madani Economy; an economic framework for policies and focuses on three areas i.e., Good Governance for Service Agility, Restructuring of the Economy to Boost Growth and Raising the Rakyat's Standard of Living. Amidst the global economic challenges, this Budget strives to revamp the country's economic structure and to elevate the Rakyat's standard of living.

With these focus areas in sight, Budget 2024 contained some significant measures to broaden Malaysia's revenue base. Among others, the measures include the introduction of Capital Gains Tax and High Value Goods Tax, an increase of the Service Tax rate, implementation of e-Invoicing and Global Minimum Tax. You can find out more on this in the article on "Budget 2024: Building Blocks to Drive Growth and Reforms" in this first issue of the Tax Guardian for 2024.

Besides the above, I would like to share with you the significant engagements and events that the Institute undertook in the previous quarter (October 2023 to December 2023).

Submissions to the authorities

The following are the key submissions to the authorities from October 2023 to December 2023:

Inland Revenue Board of Malaysia (HASiL)

- Comments on draft Practice Note: Tax Treatment on Copyright and Software Payments by a Distributor and a Reseller to a Non-resident.
- Joint Memorandum on Issues arising from the 2024 Budget Speech and Finance (No. 2) Bill 2023.
- Feedback/comments on Tax Agent e-Filing (TAeF) 2.0.
- Memorandum on Compliance & Operational Issues for Dialog DESIRE Bil. 1/2023.
- Feedback/comments on the draft updated Malaysian Transfer Pricing Guidelines (MTPGL) - Comparability Analysis (Chapter 4).
- Further comments on HASiL's response on the draft updated MTPGL (extract of Chapter 1).
- CTIM Members' Issues Arising From Guidelines On Tax Treatment In Relation To Income Received From Abroad.

Royal Malaysian Customs Department (RMCD)

- Sales Tax and Service Tax technical issues for deliberation at the Mesyuarat Jawatankuasa Teknikal Isu Pelaksanaan Cukai Jualan dan Cukai Perkhidmatan Bil. 2/2023.
- CTIM Memorandum on Indirect Tax Issues Arising From 2024 Budget Speech, Appendices & Finance (No. 2) Bill 2023.

Ministry of Finance (MoF)

- Joint Memorandum on Issues arising from the 2024 Budget Speech and Finance (No. 2) Bill 2023.

- CTIM Memorandum on Indirect Tax Issues Arising From 2024 Budget Speech, Appendices & Finance (No. 2) Bill 2023.

Meeting with the authorities

- Technical Working Group on Taxation (TWGT) - Strategic Workshop on World Bank's B-Ready Framework on Taxation (Series 2) - Developing Baseline & Strategy for Reform on 8 & 9 November 2023.
- TWGT - eKKB 2/2023 & SAR 4/2023 Meeting on 5 December 2023.
- Mesyuarat Jawatankuasa Teknikal Isu Pelaksanaan Cukai Jualan dan Cukai Perkhidmatan Bil. 2/2023 on 8 December 2023.
- TWGT Meeting No. 5/2023 on 12 December 2023.
- DESIRE Dialogue No.1/2023 on 15 November 2023.
- RMCD Meeting No. 4/2023 on 16 November 2023.
- Meeting with Hotel Associations and RMCD to further discuss the issue of import duty exemption for hotel operators on 22 December 2023.

CTIM 2024 Budget Seminars

Following the announcement of Budget 2024, CTIM 2024 Budget Seminars were held in the Klang Valley on 25 October 2023 at Berjaya Times Square Hotel and on 16 November 2023 at Saujana Hotel. Due to popular demand, additional CTIM 2024 Budget Seminars were held on 21 November 2023 at the Kuala Lumpur Convention Centre as well as online on 18 December 2023. A series of CTIM Budget 2024 seminars were also held in several other states in Malaysia in October and November 2023. The Budget Seminars which brought together leading tax experts sharing their insights and best practices attracted more than 1,500 participants. On behalf of CTIM, I would like to express our gratitude to the moderators, speakers and panelists from CTIM, MoF, HASiL and the industry for making the seminars a success.

December 2023 Examinations

The December 2023 Examinations were successfully held from 18 to 21 December 2023. A total of 161 students registered for 221 papers over 8 subjects. My best wishes to the students who sat for the examinations and I hope they have gained the knowledge to help them advance in their tax career.

Congratulations and Thank You

On behalf of CTIM, I would like to take this opportunity to congratulate Datuk Dr. Abu Tariq Jamaluddin on his appointment as the new Chief Executive Officer (CEO) of HASiL replacing Dato' Sri Dr. Mohd Nizom Sairi. CTIM would also like to express our gratitude and appreciation to Dato' Sri Dr. Mohd Nizom for all the support in the collaboration between HASiL and CTIM. We wish Dato' Sri Dr. Mohd Nizom the best of luck in his future endeavours.

Best Wishes

A brand-new year brings new hope and opportunity. I hope everyone will have a successful year ahead and to members celebrating the upcoming Chinese New Year wishing you "Gong Xi Fa Cai"!

Editor'sNote

CHONG MUN YEW

Happy New Year to all our readers! Just like every year, a new year is all about making new resolutions, charting a new beginning and another year of ups and downs, but there is something more special about this year. 2024 is a leap year which gives us an extra day as we never seem to have enough time to get to everything we need to do!

We usher in the year 2024 with a new Chief Executive Officer at the helm of the Inland Revenue Board of Malaysia (HASiL), Datuk Dr. Abu Tariq Jamaluddin who took office on 17 December 2023. This is surely an exciting year from a tax perspective as both HASiL and the Royal Malaysian Customs Department (RMCD) made impressive tax collections of RM183 billion and RM55 billion respectively in the year 2023 and surpassed their targets. For comparison, in year 2022, HASiL collected RM176 billion, whilst the RMCD collected RM53.54 billion.

Reflecting on the year 2023, we saw a unity government being formed amidst rising costs of living and economic slowdown. The year also saw the weakened Malaysian ringgit which adversely affected households and substantially reduced the purchasing power of Malaysians. The year ended with the unity government announcing the country's largest budget to date, as part of its efforts to boost the nation's economy and improving the welfare of the Rakyat.

With the enactment of the Finance (No. 2) Act 2023, several significant amendments were made to the tax legislation which came to effect from 1 January 2024. The article entitled Budget 2024: Building Blocks to Drive Growth and Reforms brings us through the salient changes. A few interesting observations include:

- Capital Gains Tax – the introduction of a new capital gains tax on gains from the disposal of shares in unlisted companies incorporated in Malaysia and gains from disposal of capital assets situated outside Malaysia which is remitted into Malaysia. Exemptions to Capital Gains Tax for the disposal of shares for the purposes of internal group restructuring, initial public offerings on Bursa Malaysia and venture capital investments had been announced in the Malaysian Budget 2024 but were not provided for in the Finance (No. 2) Act 2023. It is hoped that the exemptions and any further guidance to interpret some of the provisions in the Finance (No. 2) Act 2023 will be separately spelled out via subsidiary legislations issued by the Ministry of Finance. On 16 January 2024, the Finance Minister II announced that exemptions will be given to unit trusts in respect of Capital Gains Tax and income tax on remittance of foreign sourced income. However, this exemption only applies for a specified period, i.e., 1 January 2024 to 31 December 2028 for Capital Gains Tax and 1 January 2024 to 31 December 2026 for foreign sourced income of unit trusts.
- E-invoicing – the deferment of the implementation date from 1 June 2024 to 1 August 2024 reaffirms the government's commitment to ensuring e-invoicing implementation in the year 2024. HASiL has issued the Software Development Kit on 9 February 2024 to facilitate system integration.
- Low Value Goods Tax – a 10% Sales Tax will be imposed on low value goods which are sold at a price not exceeding RM500 and are brought into Malaysia by land, sea or air.
- Service tax – Service Tax will be increased from 6% to 8%, except for certain essential services such as food and beverages, and telecommunications and expansion of its scope to include logistics, brokerage, underwriting and karaoke. The effective date of the

new Service Tax rate is proposed to be on 1 March 2024. However, the transitional rules for the proposed increase in Service Tax rate has yet to be issued by the RMCD.

- High-Value Goods Tax – the application of rates ranging from 5% to 10% to specific types of luxury goods such as jewellery and watches, subject to value thresholds and implementation mechanisms which are yet to be determined.
- Global Minimum Tax (GMT) – the implementation is expected to be deferred to 2025. It is well noted that some jurisdictions in Asia Pacific will proceed with the implementation of GMT effective from the year 2024 whereas, others have opted for a deferment to the year 2025.

With the introduction of new taxes such as the Capital Gains Tax, High-Value Goods Tax and Low Value Goods Tax, taxpayers as well as the tax authorities will need to keep track of their tax obligations. New taxes are always not welcomed by taxpayers but our government should be applauded for taking bold steps in widening the tax net in the hope of creating a more sustainable taxation system.

In line with the implementation of e-invoicing, taxpayers should take advantage of the SVDP 2.0 programme which runs until 31 May 2024 to voluntarily disclose with 100% waiver on penalty/surcharge. It is believed that when the e-invoicing system comes into force, all these unreported incomes will surface.

This issue of the *Tax Guardian* also has several other articles which include an interesting take on tax reforms for Malaysia. We also have an article which covers a stamp duty case, Havi Logistic (M) Sdn Bhd in some detail. Another article in the journal is on the rules and guidelines in relation to the special tax incentives for new and existing manufacturing companies relocated to Malaysia and for non-citizen individuals who hold C-suite positions in the manufacturing companies. With the above and the regular columns in place, this edition should be an interesting read.

Considering the prevailing economic challenges both externally and locally, we anticipate a dynamic and exciting tax year in 2024. It is our hope that policymakers collaborate with tax practitioners and professional institutions, particularly CTIM, to formulate well-considered initiatives and adopt reasonable tax positions. May the coming year be another exceptional period of progress for the tax profession!

INAUGURAL CTIM-MAICSA JOINT WORKING COMMITTEE MEETING

CTIM and MAICSA have set-up a Joint Working Committee (JWC) to focus on Tax Governance and training programmes relating to taxation for members of both Institutes. The Co-Chairpersons of the JWC for CTIM and MAICSA are Mr. Alan Chung and Ms. Nandita Choudhury respectively. The other CTIM members of the JWC are Ms. Agnes Wong, Mr. Chong Mun Yew and Mr. Zen Chow. The inaugural JWC meeting was held via Microsoft Teams on 22 December 2023 to introduce the JWC members and to discuss and finalise the terms of reference of the JWC.

CTIM PROFESSIONAL EXAMINATION SCHEDULE

There is a change of CTIM Professional Examination schedule. With effect from 2024, the examination will be held in March and September instead of June and December.

DECEMBER 2023 EXAMINATION

The December 2023 Examination was held from 18 to 21 December 2023. A total of 161 students registered for 221 papers over eight subjects.

March 2024 Examination Timetable

SUBJECTS	Details	
	Date	Time
Company & Business Law	18 March 2024	9.00 a.m. – 12.15 p.m.
Personal Taxation	18 March 2024	2.00 p.m. – 5.15 p.m.
Revenue Law	19 March 2024	9.00 a.m. – 12.15 p.m.
Business Taxation	19 March 2024	2.00 p.m. – 5.15 p.m.
Advanced Taxation 1	20 March 2024	9.00 a.m. – 12.15 p.m.
Financial Accounting and Reporting	20 March 2024	2.00 p.m. – 5.15 p.m.
Advanced Taxation 2	21 March 2024	9.00 a.m. – 12.15 p.m.
Economics	21 March 2024	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.

Info-sharing session on CTIM Professional Qualification

The Education Committee of CTIM conducted info-sharing sessions targeted at 2 student groups to promote the importance of obtaining CTIM Professional Qualification. Details as follows:

No	University/Centre	Targeted group	Date	No. of Attendees
1	System & Skills Training Concept Sdn Bhd	Association of Accounting Technicians (AAT) students	13 October 2023	46
2	International Islamic University Malaysia (IIUM)	Bachelor of Accounting students	4 December 2023	112

CPD Events (1 October – 31 December 2023)

The following CPD events were successfully conducted:

Topic	Date	Speaker/(s)
Members' Dialogue (Central)	3 Oct 2023	Mr. Zen Chow, Ms Sharon Yong & Mr. Jalbir Singh
Workshop: Essential Tax Updates in 2023	4 Oct 2023	Mr. Chow Chee Yen
Webinar: Tax Agent Licence & Mycukai System	9 Oct 2023	Mr. Zen Chow & Mr. Jaffar Tukiran (HASiL)
Workshop: Tax Audits and Investigations (Re-Run)	10 Oct 2023	Mr. Harvindar Singh
Transfer Pricing Conference 2023	11 Oct 2023	Various Speakers
Workshop: E-invoicing: Is your business ready for new regulations?	16 Oct 2023	Ms. Yong Mei Sim
2024 Budget Seminar (Kuala Lumpur)	25 Oct 2023	Various Speakers
2024 Budget Seminar (Penang)	30 Oct 2023	Various Speakers
2024 Budget Seminar (Melaka)	31 Oct 2023	Various Speakers
2024 Budget Seminar (Ipoh)	1 Nov 2023	Various Speakers
2024 Budget Seminar (Johor Bahru)	2 Nov 2023	Various Speakers
2024 Budget Seminar (Kota Kinabalu)	9 Nov 2023	Various Speakers
2024 Budget Seminar (Kuching)	10 Nov 2023	Various Speakers
Workshop: The Tax Appeal Process	14 Nov 2023	Mr. Harvindar Singh
2024 Budget Seminar (Subang)	16 Nov 2023	Various Speakers
2024 Budget Seminar (Kuala Lumpur)	21 Nov 2023	Various Speakers
Workshop: Interest Income, Interest Expenses and Remittance of Foreign Interest Income	30 Nov 2023	Ms. Ho Yi Hui
Workshop: Tax Investigation And Enforcement Procedures	4 Dec 2023	Ms. Yong Mei Sim
Workshop: E-invoicing: Is your business ready for new regulations? (Re-Run Session)	15 Dec 2023	Ms. Yong Mei Sim
2024 Budget Seminar (Webinar)	18 Dec 2023	Various Speakers
Workshop: Update of Malaysian Transfer Pricing Rules 2023	20 Dec 2023	Ms. Ho Yi Hui
Capital Gains Tax - Understanding the Technicalities	21 Dec 2023	Mr. Thenesh Kannaa & Mr. Anil Kumar Puri

BUDGET 2024:
BUILDING BLOCKS TO DRIVE GROWTH AND REFORMS

Kelvin Lim Hoe Peng & Ashley Teh Pui Yi

Budget 2024 was unveiled with 3 focuses: Good Governance for Service Agility, Restructuring of the Economy to Boost Growth, and Raising the Rakyat's Standard of Living. The spending package is RM393.8 billion, the largest-ever budget while targeting a lower budget deficit of 4.3% of the gross domestic product (GDP) without measures to significantly increase government revenue. However, the government has set in motion a combination of the following plans in 2024: subsidy rationalisation, implementation of e-invoicing, introduction of Capital Gains Tax (CGT) and High Value Goods Tax, and an increase in the Service Tax rate to 8%. On the international front, Malaysia has announced the implementation of Global Minimum Tax (GMT) in 2025.

Subsidy Rationalisation

With subsidy spending expected to reach RM81 billion, the announced phasing out of diesel subsidies signals a measured start of a wider subsidy reform.

e-Invoicing

Initially, implementation for the first phase (for taxpayers with annual sales in excess of RM100 million) was scheduled to commence on 1 June 2024 whereas the last phase (for taxpayers with annual sales threshold in excess of RM25 million and up to RM50 million) was scheduled to only commence from 1 January 2027. However, the timeline has been revised under Budget 2024 as shown in Table 1.

Businesses with annual sales in excess of RM100 million get an additional 2 months to prepare for the implementation. However, for the rest of the cohort, the collective timeline has been preponed by up to 18 months. By 1 July 2025, which is just 20 months away from the Budget announcement, all categories of taxpayers must be on board and time is of the essence.

e-Invoicing is part of a wider initiative for Malaysia to be a digitally-driven, high-income nation and regional leader in the digital economy.

TABLE 1

<table>
<tr><th rowspan="2">CATEGORY OF TAXPAYERS</th><th colspan="2">IMPLEMENTATION TIMELINE</th></tr>
<tr><th>INITIAL INDICATION (SUPERSEDED)</th><th>NEW TIMELINE BASED ON BUDGET 2024</th></tr>
<tr><td>Taxpayers with annual sales threshold in excess of RM100 million</td><td>1 June 2024</td><td>1 August 2024</td></tr>
<tr><td>Taxpayers with annual sales threshold in excess of RM50 million and up to RM100 million</td><td>1 January 2025</td><td rowspan="2">1 January 2025</td></tr>
<tr><td>Taxpayers with annual sales threshold in excess of RM25 million and up to RM50 million</td><td>1 January 2026</td></tr>
<tr><td>Other categories of taxpayers</td><td>1 January 2027</td><td>1 July 2025</td></tr>
</table>

At the same time, it is an important game changer in the enhancement of tax administration by bringing efficiencies and helping to reign in the country's shadow economy. According to the Ministry of Finance (MoF), the estimated size of the shadow economy for the period from 2010 to 2019 was 21.2% of GDP.

The Inland Revenue Board of Malaysia (HASiL) has taken the lead in issuing guidelines to help businesses prepare for the implementation. Post Budget announcement, Parliament is giving e-invoice the force of law it requires by putting in place the enabling legislation via the Finance (No. 2) Bill 2023 ("Finance Bill"). The Finance Bill sets out the legal provisions regulating e-Invoice under the Income Tax Act 1967 (ITA 1967), the Petroleum (Income Tax) Act 1967 (PITA 1967) and the Labuan Business Activity Tax Act 1990 (LBATA 1990). The draft legislation also includes a new provision to empower the Director General of Inland Revenue (DGIR) to issue guidelines to determine the specifications of e-invoices.

The draft legislation also includes provisions for the Director General of Customs and Excise (DGC) and/or officers of the Royal Malaysian Customs Department ("RMCD officers") to be given access to e-invoices to the extent as is necessary for the proper exercise of the functions of the DGC. For this purpose, the DGC and RMCD officers shall observe the same duty of confidentiality as the DGIR and HASiL officers with respect to the information obtained. As the e-Invoice adopts the Tax Identification Number (TIN), the sharing of information with RMCD represents an

important step towards adopting TIN as a holistic single tax identifier.

HASiL has developed 2 distinct e-Invoice transmission mechanisms i.e., MyInvois Portal and Application Programming Interface (API). Micro, small and medium enterprises that need to issue e-invoices but do not have API connection can benefit from leveraging on MyInvois Portal hosted by HASiL.

Taxpayers would need to assess and determine their respective business and system requirements as the implementation is not a "plug and play" exercise. A suitable model to transmit e-invoices to HASiL, taking into account future system changes that are expected due to refinements to the e-Invoicing requirements has to be determined, whether via a direct integration to the MyInvois Portal or via API, etc.

Implementation of e-Invoice is set to be on the priority list on each business' agenda list for the next 20 months.

Capital Gains Tax

In the retabled Budget 2023, it was announced that a study will be made to introduce CGT on disposal of unlisted shares by companies. After gathering feedback from a series of engagements with stakeholders, the government has announced in Budget 2024 that with effect from 1 March 2024 ("implementation date"), CGT will be imposed on gain from disposal of capital assets by companies, limited liability partnerships (LLPs), co-operatives and trust bodies at the following rates:

- 10% on the net gain from the disposal of shares in unlisted companies incorporated in Malaysia. An option to be taxed at 2% on the gross sales value is available if the capital assets were acquired before the implementation date.
- Prevailing income tax rate of the taxpayer on gains from disposal of all types of capital assets situated outside Malaysia, remitted into Malaysia.

The Finance Bill also introduced a new S. 15C under the ITA 1967 to treat the disposal of shares in a foreign incorporated company which derives value from real property in Malaysia as a gain that is deemed to be derived from Malaysia and similarly subject to CGT ("S. 15C shares"). The provision operates to capture CGT from indirect transfers of shares in land-rich Malaysian companies via a foreign incorporated intermediary holding company.

To ensure capital funding for businesses and start-ups are not impacted, the government is looking at providing exemption from CGT on disposal of shares in relation to approved Initial Public Offering under Bursa Malaysia and venture capital companies. Exemption for transfers of shares in relation to internal restructurings is also proposed.

Although commonly referred to as "CGT", gains from the disposal of capital assets will be treated as "income" from a legislation standpoint. The government has opted to administer the tax under the ITA 1967. A new class of income described as "gains or profits from the disposal of capital assets" will be introduced under a new S. 4(aa) of the ITA 1967. For this purpose, "capital asset" is broadly defined to mean "moveable or immovable property including any rights or interest thereof". Although widely defined, upon introduction, exemptions will be given such that only capital assets from shares in unlisted companies incorporated in Malaysia, all types of capital assets from outside Malaysia and S. 15C shares will be taxable. The broadly-defined capital asset signals an aspiration for future expansion of the scope of taxable capital assets.

Shares which are subject to CGT also include shares in a real property company under the Real Property Gains Tax Act 1976 ("RPC shares"). Companies, LLPs, co-operatives and trust bodies will be subject to CGT instead of real property gains tax (RPGT) on gains from the disposal of RPC shares from the implementation date. Disposal of RPC shares by individuals will continue to be subject to RPGT.

Although the government has announced 1 March 2024 as the implementation date during the announcement of Budget 2024, the Finance Bill subsequently indicates an earlier implementation date of 1 January 2024. This is widely understood as a change that is required to meet the commencement date required by the EU Code of Conduct Group (Business Taxation) in relation to foreign-sourced capital gains for all applicable jurisdictions from 1 January 2024. For example, Hong Kong SAR and Singapore are adopting the same commencement date. With respect to capital gains on unlisted shares in companies incorporated in Malaysia, we should wait for guidance from the authorities on whether there would be any mechanism that will be introduced to maintain the 1 March 2024 commencement date.

High Value Goods Tax

Initially described as "Luxury Goods Tax" under the retabled Budget 2023 proposal, the proposed tax is now named as High Value Goods Tax with indicative rates of 5% to 10%. This is touted as a progressive tax as it targets high value items such as jewellery and watches based on the threshold value of the goods. To ensure the vibrancy of the tourism sector is not impacted, it was proposed that tourists will be able to claim tax refunds before their departure from the country.

Service Tax

To improve government revenue, the scope of prescribed taxable services will be expanded to include:

- Karaoke centre services
- Delivery of goods (except for delivery of food and beverage)
- Brokerage and underwriting services related to non-financial related services. Examples given include brokerage for ship and aircraft space, commodity and real estate
- Logistic services.

The government also seeks to improve revenue collection with the increase in service tax rate from 6% to 8% for all prescribed taxable services. However, the following services will remain at 6%:

- Food & beverage services
- Telecommunication services
- Parking services
- Logistics services (new taxable service).

The above measures will take effect from 1 March 2024.

Global Minimum Tax

As a member of the Organisation for Economic Co-operation and Development (OECD)'s Inclusive Framework on Base Erosion and Profit Shifting, Malaysia has committed to introduce the global minimum effective tax rate as recommended under Pillar 2. Under Budget 2024, it was announced that the government expects to implement the GMT in 2025 and will continue to observe the international development of GMT.

Malaysia's commitment will be translated into legislation ahead of time as the Finance Bill will incorporate the legislative provisions of the Global Anti-Base Erosion Rules including the Qualified Domestic Top-Up Tax (QDT) rules into the Malaysian tax legislations, namely, the ITA 1967, PITA 1967 and LBATA 1990. The draft provisions which are closely aligned with the OECD Model Rules include:

- The Multinational Top-up Tax under the Income Inclusion Rule and QDT on in-scope multinational enterprises (MNEs).
- A substance-based income exclusion amount for all top-up taxes.
- A minimum tax rate at 15%.

The GMT Rules will come into effect from financial years commencing on or after 1 January 2025. It is applicable to Constituent Entities of an MNE group which has at least one entity or permanent establishment that is not located in the same jurisdiction as its ultimate parent entity (UPE), and the UPE's consolidated financial statement revenue is EUR750 million or more in at least 2 of the 4 financial years immediately preceding the tested financial year.

To elevate Malaysia's competitive edge, Budget 2024 introduced a number of measures to enhance ease of doing business and encourage investment, particularly in high-growth and high-value areas.

Reinvestment Tax Incentive

A tiered outcome-based tax incentive in the form of an investment tax allowance (ITA) will be granted to qualifying companies to increase capacity and investment in high-value activities under the New Industrial Master Plan 2030:

- Tier 1: ITA on 100% of qualifying capital expenditure set-off against 100% of statutory income.
- Tier 2: ITA on 60% of qualifying capital expenditure set-off against 70% of statutory income.

The incentive is for companies which have exhausted their existing reinvestment allowance eligibility period. Applications are to be submitted to the Malaysian Investment Development Authority (MIDA) from 1 January 2024 until 31 December 2028. Further information is required on the types of KPIs to achieve for each tier of the incentive, whether these would include increase in sales, exports, productivity, adoption of IR 4.0, etc.

Global Services Hub

To maintain Malaysia as a preferred hub for global services, an outcome-based Global Services Hub tax incentive will be offered to eligible companies that undertake qualifying services as follows:

	NEW COMPANY		EXISTING COMPANY	
	TIER 1	TIER 2	TIER 1	TIER 2
Exemption Years	5 + 5		5	
Tax Incentive	Tax rate 5%	Tax rate 10%	Tax rate at 5% on value-added income	Tax rate at 10% on value-added income
Types of Income Exempted	(i) Services income; or (ii) Services and trading income.			
Qualifying Services & Additional Services	Undertake the following activities: (i) Regional P&L/Business Management Unit; (ii) Strategic business planning; (iii) Corporate development; AND (iv) Any 2 qualifying activities under the services category as follows: (a) Strategic services; (b) Business services; (c) Shared services; or (d) Other services.			
Conditions (Outcome-based)	(i) Annual operating expenditure; (ii) High value full-time employees; (iii) C-suite with a minimum monthly salary of RM35,000; (iv) Local ancillary services; (v) Collaboration with higher education institution/TVET; (vi) Training for Malaysian students/citizens; (vii) ESG elements; or (viii) Other conditions as determined by MOF.			

In addition, non-citizen individuals holding key/C-Suite positions with a monthly salary of at least RM35,000 appointed by a new company approved with the Global Services Hub tax incentive (limited to 3 persons) may enjoy a reduced income tax rate of 15% for a period of 3 consecutive Y/As.

Applications are to be submitted to MIDA from 14 October 2023 until 31 December 2027.

Equity Crowdfunding

To encourage investment in start-ups, the existing incentive (i.e., tax exemption on aggregate income equivalent to 50% of the amount invested) for individual investors who invest in equity crowdfunding is expanded to include investment made by individual investors through LLP nominee companies and the investment period is extended for a period of 3 years. This is effective for investment made from 1 January 2024 to 31 December 2026.

Capital Allowance (CA) on ICT Equipment and Computer Software

To assist companies to be digitally up to date, the period for claiming CA for ICT equipment and computer software is proposed to be reduced from 4 Y/As to 3 Y/As from Y/A 2024 as follows:

- Initial allowance: 40% (currently 20%)
- Annual allowance: 20% (currently 20%).

With the recent launch of the National Energy Transition Roadmap, Budget 2024 continues to focus on strengthening the Environmental, Social and Governance (ESG) agenda with the following measures:

Green Technology Tax Incentive

The government has reviewed the current tax incentives in relation to green activities. Amongst these incentives include a proposal for a Green Income Tax Exemption on 70% of statutory income from solar leasing for a period of 5 years (up to 10MW) or 10 years (>10 MW to 30MW). This is effective for applications received by MIDA from 1 January 2024 until 31 December 2026.

Tax Relief on Electric Vehicle (EV) Charging Facilities

Personal tax relief of up to RM2,500 per Y/A on cost of installation, rental, purchasing, including hire-purchase of equipment, or subscription for use of EV charging facility is to be extended for another 4 years, until Y/A 2027.

On the social front, the government responded to issues that are relevant to institutions which carry on charitable activities.

Review of Conditions for Approved Institutions, Organisations or Funds

S. 44(6) of the ITA 1967 provides income tax exemption to institutions, organisations or funds (collectively, “institutions”) that carry out charitable activities and operate not solely for profits, subject to the adherence of the approval conditions stipulated in the guidelines set by the DGIR. Approved institutions that have been granted approval are eligible for income tax exemption on all income received. Donors to the said institutions are eligible for a tax deduction up to 10% of their aggregate income.

To ensure that the income of approved institutions continue to be sustainable and able to align welfare initiatives envisaged by the government and non-governmental organisation, the conditions under S. 44(6) is proposed to be reviewed as follows:

	EXISTING CONDITIONS STATED IN HASiL’S GUIDELINES	AS PROPOSED IN BUDGET 2024
Utilisation of accumulated funds for business activities	Up to 25%	• Option 1 - Up to 25% • Option 2 - Over 25% and up to 35%
Threshold of charitable activity expenditure	At least 50% of income earned in previous year	• Option 1 - at least 50% of income earned in previous year • Option 2 - at least 60% of income earned in previous year
Breach of conditions	• Approval under S. 44(6) of ITA 1967 is withdrawn. • Institutions will not be eligible for tax exemption and HASiL will raise tax assessment. • Donors will not be eligible for tax deduction.	• Approval under S. 44(6) of ITA 1967 which has been granted for the approval period will not be withdrawn. • However, tax assessment will be raised on all income received by the institutions in the Y/A the breach of conditions occurred. • Donors will remain to be eligible for tax deductions on contribution made to the institution throughout the approval period.

Tax Relief for Upskilling or Self-enhancement

To encourage the Rakyat to improve their skills and explore new areas of employment, tax relief of up to RM2,000 per Y/A for fees paid for attending up-skilling or self-enhancement courses recognised by the Department of Skills Development, Ministry of Human Resources will be extended until Y/A 2026.

Transfer of Inheritance Property

In line with the Malaysia MADANI pillars which prioritise the prosperity of the Rakyat and nurture compassion values, effective from 1 January 2024, instruments of transfer of property in which the eligible beneficiary renunciates his/her right to another eligible beneficiary in accordance with a will/*faraid* or the Distribution Act 1958 will only be subject to a stamp duty of RM10. This is a welcomed move and is especially helpful in situations where the renunciation is made in favour of beneficiaries who are economically less viable from being exposed to imposition of ad-valorem stamp duty at the rate of 1 to 4%.

Other key tax proposals provided in the Finance Bill include:

A Third Revision of Estimate of Tax Payable (CP204A)

With effect from Y/A 2024, companies, LLPs, co-operatives and trust bodies are

given an extra, a third chance to submit CP204A for a Y/A in the 11th month of that Y/A, in addition to the first 2 revisions in the 6th month and/or the 9th month. The 11th month revision allows companies to adjust their estimate of tax payable closer to the end of the basis period, thereby minimising the risk of penalties for underestimation and delay of tax refund for overpayment of tax. This will improve confidence in tax administration which is key to increase tax compliance.

Electronic Submission by Employee

A new provision is proposed to allow directors or other individuals who are jointly responsible for doing all acts and things required under the ITA 1967 for a company, to appoint employees to complete and submit the prescribed forms (including tax returns) that are required to be submitted via electronic medium on his or her behalf.

Self Assessment for Real Property Gains Tax (RPGT)

Similar to self assessment (SAS) for income tax, SAS will be implemented for RPGT with effect from 1 January 2025. Key features are:

- The disposer is required to calculate the RPGT payable for each disposal in the prescribed RPGT return.
- The submitted RPGT return furnished by the disposer is deemed to be an assessment made by the DGIR.
- The tax or additional tax payable under the deemed assessment shall be due and payable within 60 days from the date of disposal.
- The deemed assessment can be amended by submitting an amended RPGT return within 6 months from the due date for submission of the RPGT return and the amendment can only be made once.
- The DGIR may raise an additional assessment for any RPGT understatement within 5 years after the end of that Y/A. The time limit does not apply in cases of fraud, wilful default or negligence.
- Documents for ascertaining chargeable gain and RPGT payable must be kept for a period of 7 years from the end of the Y/A in which the deemed assessment was raised.

The Finance Bill does not propose any provisions to remove the current acquirer's duty to retain a sum from the purchase price for remittance to HASiL as advance tax on behalf of the disposer ("retention sum"). Under the proposed SAS, the disposer would have already been required to account and pay RPGT in full within 60 days from the date of disposal. Unless the retention sum can be refunded to the disposer quickly, it will result in a duplication of tax payment in respect of the same assessment. This mechanism needs to be reviewed lest disposers be disadvantaged from a cash flow point of view. Fortunately, the SAS is set to commence from 1 January 2025 and there is time for this to be reviewed.

Conclusion

Budget 2024 aspires to reform Malaysia's economic structure and raise the Rakyat's standard of living. With the constraints on government revenue, it plans to deliver on a strategy by commencing subsidy rationalisation, tackling the shadow economy via e-invoicing, introducing targeted taxes such as CGT on unlisted shares disposed by companies and High Value Goods Tax, and increase in Service Tax rate. Confidence in tax administrations is proven to improve compliance which in turn increases tax collection. The 11th month revision enhances that confidence.

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The views expressed here are the writers' personal views.

TAX REFORMS FOR MALAYSIA: SENSE & SENSIBILITY

Dr. Veerinderjeet Singh

START OF A JOURNEY

Given the years of ad-hoc changes to some parts of the Malaysian tax legislation without an overarching focus on the broad tax policy envisaged for a country planning to become a developed nation, there is a general view that a holistic review of the tax system (which would include indirect taxes such as Sales Tax, Service Tax or Goods and Services Tax or GST, if applicable) is needed to prepare the nation for the developed nation status that it aspires to reach. Such a review will outline the various steps/ changes that would need to be made over time so that the tax system is progressive, fair, robust and generates the tax revenue needed to fund the nation.

The Malaysian tax system has not really been through a major revamp. What has been done all this while has been in the form of ad-hoc tinkering of the system. Is Malaysia ahead of the curve or is it languishing in the doldrums? What are the areas where reform is needed?

More needs to be done and the question

that needs to be asked is what type of a future tax system do we need which can of course involve green taxes, a carbon tax, a possible wealth tax, a wider form of a capital gains tax, lower corporate tax rates, lower personal tax rates, a rollback of tax incentives, a comprehensive consumption tax, wider coverage of stamp duty, etc.

The 2024 Budget is an important one as it has started to announce/introduce unpopular yet necessary reform measures to rebuild fiscal buffers for a sustainable economy. Revenue limitations, rising costs and subsidies are severe constraints.

The subsidy rationalisation (especially fuel subsidies) has to be done and will have a significant impact on government finances, with the volatility in global crude oil prices. Malaysia needs time to move to a full pricing mechanism due to our current low-wage structure. With a progressive wage model, in time, Malaysia will sell fuel based on an acceptable market price like in most countries in the region.

The mere mention of any new taxes is met by negativity, as many believe that these are not welcome when corruption and leakages within the government are rampant and large. Thus, the continued focus on this aspect by the government is a necessary one.

TAX REVENUE

The tax revenue to GDP ratio is unsustainable and the government needs to come out with cleverly structured and sequenced tax reforms. The buoyancy of the tax system must be improved and the tax authorities MUST be held accountable for achieving higher targets - growth in tax revenue should be in line with GDP growth, at the very least! Wastages and leakages are unacceptable. Tax administrations must enhance the use of shared data and data analytics and outcomes must be clearly measured.

We should look at extracting what we can from the existing taxes we have. Have the tax authorities done enough to generate the optimum tax revenue? There are leakages and administrative deficiencies in any system. Have we looked at all this and taken steps to fix the issues? We must look at managing government expenditure -- have we done enough to reduce unnecessary expenditure? There is a lot that can be done including reviewing what Parliamentarians are paid and the various non-taxable benefits/ exemptions that Ministers enjoy, etc.

GST is an efficient tax as it attempts to cover the whole trade cycle and it has a better audit capacity via the issuance of a tax invoice BUT it does not mean that all tax evasion will end with a GST. A GST needs better planning, better structure, very wide coverage, very minimal exemptions, a reasonable rate of tax (5% and above) and an efficient tax authority. We need to manage the inflation levels, the cost of living and the constrained supply chains as well as move to develop self-sufficiency in many areas in addition to increasing the average wage levels. Once the structural aspects are managed, we can then introduce a wide-ranging GST which is efficiently managed PLUS returning part of the GST to the section of the population that requires assistance.

For now, we must widen the scope of existing taxes such as the Sales Tax and Service Tax (SST) and look at ways in which these can be made more efficient

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before moving into a GST. We can improve the SST's efficiency, cut out the cascading of taxes, add in certain attributes of GST, harmonise the SST rates, make it more effective and easier to administer. The Ministry of Finance is looking into this as noted in the 2024 Budget.

However, whatever taxes that are being planned should not impact the competitiveness of Malaysia as an investment destination and should not be an impediment to growth.

Therefore, the government MUST outline a 5-to-10-year fiscal consolidation roadmap, outlining timeline/milestones to broaden revenue and control expenditure.

DEDUCTIONS/INCENTIVES

The government needs to remove some of the tax reliefs/special deductions that are given to both individuals as well as corporate taxpayers. It must combine various personal tax reliefs and make it easier to administer. We must stop using personal tax reliefs as a tool as only a small percentage of the population benefits from this. There is a need to review the various double deductions that exist and start evaluating their effectiveness with a view of limiting the deductions or removing them altogether.

The removal of certain incentives and the restriction of certain incentives will need to be balanced and countered with various simplification measures and alignment of tax treatment with accounting treatment. There is a need to remove or modify certain incentives like pioneer status and investment tax allowance. Malaysia should only offer customised incentives which stipulate clear investment/employment targets, etc. Incentive offerings have to be more flexible and agile as they will need to be tailored to the needs of the individual investor. Stop incentivising sectors which already have good growth. Focus should be on incentives tied to productivity, automation and technology usage.

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Tax incentives are being reviewed and some amendments/suggestions were presented in the 2024 Budget. Outcome based and tiered incentives should be the way and is a progressive step but its execution is the key challenge. What exactly are the outcomes we will be looking at? Previous incentives also had various conditions attached. Poor monitoring may well be the culprit and granting of time extensions to allow investors to comply with the relevant conditions imposed cannot be the solution.

All expenses connected with corporate governance (including the expenses related to tax compliance, corporate secretarial fees, etc) should be deductible as corporate governance is a key policy initiative of the government and we want a compliant society. As such, allowing deductions for legitimate business-related expenses is a logical way of encouraging corporate governance. The trend that has been set by the tax authorities (and condoned by the Ministry of Finance) is to set deduction limits to the amount of expenditure incurred for meeting such corporate governance requirements including transfer pricing reports, sustainability reporting, etc. This is an unacceptable approach as all legitimate costs incurred are deductible as these would be wholly and exclusively incurred in the production of business income. The approach being expounded by the tax authorities goes against the fundamental deductibility provision in the Income Tax

Act 1967 (ITA 1967). This cannot be the way forward.

The cost of compliance can be lowered if the various tax adjustments under the ITA 1967 can be cut down. One practical approach would be to align tax treatment with the accounting treatment specified under the international accounting standards. Of course, there could be compelling reasons why some specific tax treatment may need to be different from the accounting treatment BUT such exceptions should be kept to a minimal. One immediate recommendation is that instead of working out capital allowances for each fixed asset used by a business, we should just accept the accounting depreciation computed in line with the accounting standards. Subsequently, other ways of aligning tax treatment to accounting treatment must be explored. This approach will be a step forward in the simplification of tax computations. A reform minded tax agency should be taking this matter seriously!

TAX COMPLIANCE

We need to focus on making tax compliance a way of life and a national duty. Some suggestions include the following:

- We need to have a tax identification number (TIN) allocated to all persons irrespective of the tax status of a person. This TIN initiative has been started but it must be pushed more aggressively.
- We need to widen the scope of withholding taxes to cover all payments among residents and exempting such withholding only if a TIN is disclosed to the payer. All agreements/contracts should stipulate the TIN of both parties and if the intended recipient does not have a TIN, then there should be a withholding tax deducted by the other party.
- We need effective consultation with all stakeholders and not just hold meetings for the sake of being seen as being inclusive and courteous. There is a need for an explicit ethical framework that should apply to all participants in the tax consultation process as many attend meetings and use the information gleaned from such meetings for their own advantage instead of thinking of robust measures and suggestions for the good of the nation.
- We need knowledge and access to information through well-developed information sharing mechanisms and touchpoints.
- Focus on the educational role to disseminate tax information including using the website effectively which includes listing all tax case law decisions, etc as the public needs to know it all in the self assessment world.
- Collect what is due and penalise intentional non-compliance quickly. Attempt to avoid arrears and avoid chasing for collection of tax liabilities years after these have been assessed.
- Carry out tax audits and tax investigations in a professional manner and not look at a tax revenue target as a starting point. The tax agency should not be focused on the tax refund amount being claimed but on adhering to principles and timelines that have been set.
- Introduce an effective human resource policy so that technical capabilities are enhanced i.e., get the right personnel. Outsource certain aspects, for example the research into a highly technical area which may be the subject of an advance ruling so that there is an effective understanding of the specific issue and the industry.
- Train officers of the tax authorities by getting contributions from even the private sector so that we develop staff with a broader mindset and greater business knowledge.
- Utilise technology effectively to provide services to taxpayers, to assist staff to respond on a timely basis and

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> **An important element in any successful administrative reform is simplicity. It is important to simplify procedures for taxpayers, for example, by eliminating demands for superfluous information in tax returns. Tax administration requires facilitating compliance, monitoring compliance and dealing with non-compliance. Facilitating compliance involves improving services to taxpayers by providing clear instructions, understandable forms, and assistance and information as necessary. Timeliness is crucial.**

to collect taxes quickly. We must use technology in a holistic manner and not in a piecemeal manner so that systems are integrated effectively.

- Enhance and protect taxpayers' rights by improving and monitoring the Taxpayer's/ Client Charter. Perhaps, the Auditor-General's Office should monitor the effectiveness of the Charter.
- To assist in making compliance easier, there should be a general convergence between accounting profits and taxable profits, as outlined earlier.

TAX ADMINISTRATION

One of the key thrusts of the government has been to strengthen the nation's institutional and implementation capacity. The government has stated its commitment to improve the efficiency and effectiveness of the public sector service delivery system so as to provide quality service and create an enabling environment for business. It has, over the years, taken various steps to improve service delivery. Although these initiatives have yielded commendable results in some aspects, the government needs to step up its effort to further improve the public service delivery system in order to enhance Malaysia's competitiveness and attraction to investors. The tax system is one such area and a key enabler to energising investment activity.

An efficient tax system requires an effective tax administration structure. A well-designed tax which is poorly administered can become an instrument of injustice. An income tax system is based on the willingness of citizens/ persons to pay their taxes voluntarily. This requires the tax agency to adopt a philosophy of having outreach and education programmes to promote voluntary compliance.

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Tax agencies must be transformed into truly service-oriented entities which use information technology effectively and efficiently. Existing systems and procedures need to be redesigned and streamlined with the latest technology. We must move along this path but it requires a holistic approach, that is, the whole agency must be wired, trained and have a service-oriented mindset. A proper and systematic approach towards implementing technology and efficient and well-trained staff will lead to a more effective tax agency. This will lead to the registration of more taxpayers, effective recovery action and thus greater tax revenue.

In addition, there is a need for the tax authorities to be more forthcoming with the issuance of clear guidelines on a timely basis to ensure transparency in the tax system. Speedier and more efficient processing of tax returns and of refunds of overpaid taxes would promote greater confidence in the system. Hence, a holistic technological transformation is absolutely essential. With the transformation, it is hoped that the tax authorities will be more proactive/responsive in issuing timely clarifications on relevant areas which will assist taxpayers in making their financial decisions.

INFORMAL SECTOR

The small business sector / informal sector must be brought into the tax net-- a low presumptive tax should be introduced that will make it simpler and easier to file tax returns so that compliance costs will be low. Such a tax can be imposed on total sales made in a year so that full accounting records are not needed. To address the shadow economy, the government should look into encouraging e-payments and reduce cash usage for transactions above a certain limit. The e-invoicing initiative is welcomed but the business community needs sufficient lead time for its implementation.

Presumptive tax regimes (also known as simplified tax regimes) aim at encouraging tax compliance and business formalisation by reducing tax compliance costs and by levying lower tax rates as compared to the standard tax system. These regimes usually target micro and small businesses and levy tax on a presumed tax base that intends to approximate taxable income by indirect means. Hence, they can be particularly relevant where actual taxable income is difficult to assess accurately. These regimes are present in many tax systems and differ widely in their design dimensions. The OECD Taxation Working Paper No. 59 (2023) presents an analytical framework that allows for the systematic characterisation of presumptive regimes. The paper also mentions some of the key design questions worthy of receiving closer attention in the future and concludes with a series of best practices for the design and administration of presumptive tax regimes.

As a step to further reduce the size of the underground economy, a communication strategy needs to be formulated to remind all that receipts must be issued for all payments and must be serially numbered and the need for a TIN will also further assist in curtailing tax leakages. This should dovetail with the fact that the tax agencies are more approachable and business friendly as well as the fact that a public communication strategy must be in place to show how the tax revenue of the nation is utilised for the people's benefit. We want the citizens to appreciate that tax revenue is well-spent and there will be accountability by all ministries in their spending to ensure that the benefits filter down to the citizens. The e-invoicing initiative is a solid start to push compliance and with that, the tax agencies can collect what is due.

TAX LAW/ REGIONAL VOICE

The tax authorities should look at broad-based changes to the tax legislative environment as well as the tax administrative structure to ensure relevancy and effectiveness. It should also focus on removing anomalies in the tax framework so that the system is simplified and easier to comply with. There is a need to benchmark our revenue laws with other progressive and modern nations so that our tax laws achieve the stated Tax Policy goals of Equity, Efficiency, Certainty, Transparency, Simplicity and Revenue Adequacy.

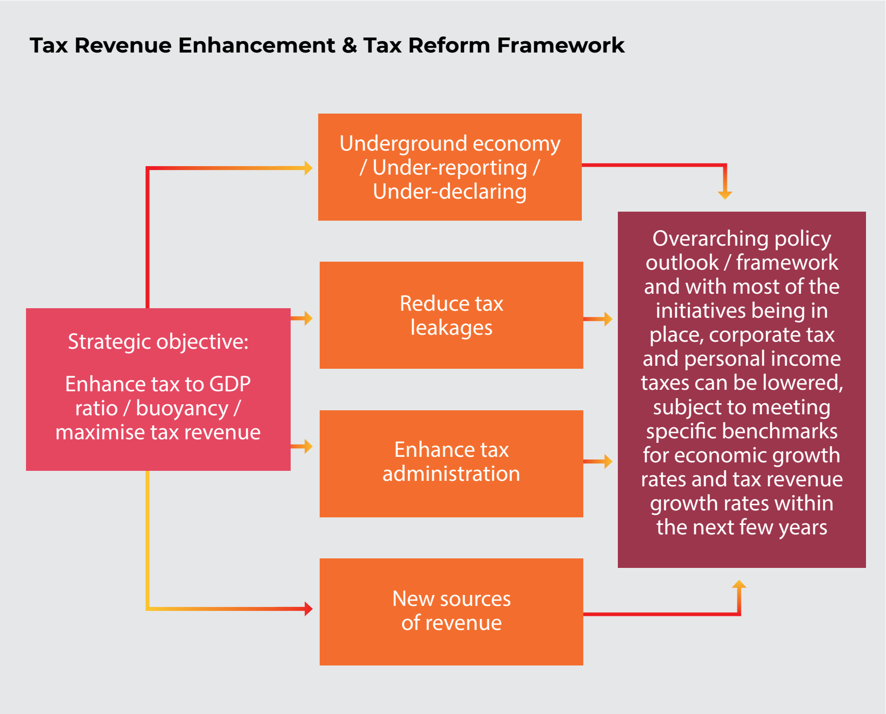
Malaysia thus needs to:

- introduce a strategic plan on the direction forward in respect of developing and improving the sources of tax revenue especially since oil reserves will dwindle in the near future. This should involve a public review of the overall tax system.
- review the legislative framework holistically to simplify current provisions and to remove archaic ones. In doing this, the private sector must be consulted to provide its input and assistance. We should do this with an open mind to get the best suggestions and not set specific parameters that actually shackles effective consultation.
- keep tabs on improvements in the tax legislation in the region and other parts of the world. Make proactive suggestions to reform and enhance the current structure so that we are in step with worldwide developments.

Perhaps the Base Erosion & Profit Shifting (BEPS) initiative of the OECD is the most significant international tax reform we have seen so far including the current Pillar 1 and Pillar 2 developments BUT are our Ministry officials really on top of things?

Is it not time that ASEAN should drive tax policy developments for the region and speak with one voice instead of accepting whatever international tax changes are being drummed home to the world? This brings to mind the recent United Nations resolution to work towards an effective international Tax Framework that would balance the views of the developing and developed nations. Whither the ASEAN voice?

DIAGRAM 1



THE WAY FORWARD

With the various changes stated above being implemented, a clear statement must be issued that the government is committed to a reduction, among others, of the corporate tax rate from the current 24% to an ultimate rate of 20% within the next 4 to 5 years on condition that there is a steady annual growth in the economy as well as an increase in the tax revenue collection attributed to increased compliance behaviour among Malaysians.

Given what has been stated in the article, a Tax Revenue Enhancement & Tax Reform Framework (as shown in Diagram 1) would be a proper visualisation of the process that has been stated. The key will be in terms of listing out all potential/possible changes and improvements that can be made under the 4 pillars outlined in the framework and then executing it in a sequenced manner with the Ministry of Finance providing an annual progress report on its execution.

CONCLUSION

While tax policy is a powerful tool to motivate behaviour, it cannot be considered in isolation. A holistic tax reform carried out with necessary benchmarking done with progressive and modern regimes could overcome the various challenges. Prudent government spending, accountability and stronger public institutions that deliver quality services and value are equally crucial. These factors are crucial to strengthening tax morale among Malaysians, which will bolster investor confidence and trust in the country.

We have been introducing ad hoc measures all these years. We need a 5-to-10-year roadmap outlining possible tax changes along the way with relevant milestones and these need to tie in with the industrial plan outlined for the country. The civil service is the one which should be developing such a roadmap and it should not rely on Ministers to give the go-ahead to prepare such a roadmap. We should look at things objectively based on the needs of the nation and the economic circumstances we are facing and open the discourse to all relevant stakeholders to provide input. This then provides us with a solid platform to finalise a suitable tax reform roadmap for the nation. We have to bite the bullet and endure some pain so that our resilience and ability to respond is up to the mark!

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The views expressed are his own gleaned from 43 years in government service, academia, the private sector and non-governmental organisations.

MALAYSIA'S TAX ADVANTAGE: BOOSTING MANUFACTURING RELOCATION OPPORTUNITIES

Chong Mun Yew & Eric Lai Chai Huat

INTRODUCTION

The Malaysian Government offers a range of special tax incentives to companies in various industries in order to combat the effects of the volatile economy during the global Covid-19 pandemic.

One of the most attractive special tax incentives is for new and existing companies to relocate their manufacturing businesses to Malaysia. This special tax incentive is also extended to certain non-citizen individuals who hold C-suite positions in the manufacturing companies in Malaysia.

This special tax incentive may encourage manufacturing businesses in overseas to relocate their manufacturing operations to Malaysia for capacity expansion or tap into

Malaysia's highly skilled workforce to enhance their business operations.

Through this special tax incentive, the Malaysian Government seeks to enhance Malaysia's competitiveness as an investment destination and to stimulate job creation opportunities and overall industrial development.

In this article, we shall discuss the rules and guidelines in relation to the special tax incentives for relocation of new and existing manufacturing companies to Malaysia and for non-citizen individuals who hold C-suite positions in the manufacturing companies.

The special tax incentive (STI) for relocating manufacturing businesses into Malaysia was announced by the government through the announcement of Pelan Jana Semula Ekonomi Negara (PENJANA) on 5 June 2020 which aims to address the economic challenges of Covid-19. The STI is intended to promote high-quality investments that align with the following investment priorities:

1. Vendor Development Programs [i.e., to develop Small and Medium Enterprises (SME) entrepreneurs to become competitive suppliers and manufacturers of component / services at domestic and global markets];
2. Fostering job creation;
3. Business operating expenditures, including local auxiliary services;
4. Facilitating internship opportunities for Malaysian graduates;
5. Encouraging collaboration with local universities in relevant fields.

Companies interested in applying for the STI should consider sharing and discussing their commitment level in Malaysia with the Malaysian Investment Development Authority (MIDA) during the application phase. Specific conditions related to the agenda shall be imposed upon the incentive approval.

However, in order for a company to enjoy the STI, the relevant application has to be approved by the National Committee of Investment (NCI) and subsidiary legislation under the Malaysian Income Tax Act 1967 (ITA 1967) has to be gazetted.

In view of this, the subsidiary legislation or the Pemberitahu Undangan (PU) Order, needs to be gazetted as part of the STI mechanism. On 15 August 2023, the relevant PU Orders have been published by the Attorney General's Chambers as follows:

- PU(A) 240/2023 – Income Tax (Exemption) Order 2023 (For existing manufacturing companies)
- PU(A) 241/2023 – Income Tax (Relocation of Manufacturing Business Incentive Scheme) Rules 2023 (For new manufacturing companies)

The MIDA has also published an updated guideline on the STI dated 11 December 2023 – Guidelines and Procedures for the Application of STI (Relocation) for the Manufacturing Sector (MIDA Guideline).

We have summarised the salient points of the PU(A) 240/2023 and PU(A) 241/2023 for ease of reference.

REFERENCE	PU(A) 240/2023	PU(A) 241/2023
Type of Company	Existing Company	New Company
Qualifying Company (QC)	An existing company which qualifies for exemption (i.e., fulfilling all the conditions imposed by the Minister). An existing company means a company that: • is incorporated under the Companies Act 2016 and a resident in Malaysia; • has an existing manufacturing operation in Malaysia; and • relocates its manufacturing operations to Malaysia for a new business where the product from the new business is not an expansion project for the existing product.	Refers to a new company: • which fulfils all the conditions imposed by the Minister; • is incorporated under Companies Act 2016 and a resident in Malaysia; • that does not have existing manufacturing operations in Malaysia; • that relocates a manufacturing facility for a QA into Malaysia / establishes new operations to carry on QA in Malaysia.
Qualifying Activity (QA)	A new manufacturing activity (not an expansion of existing project of existing product) undertaken by a QC but does not include any activity specified in Appendix A.	A manufacturing activity undertaken by the QC but does not include any activity specified in Appendix A.
Qualifying Capital Expenditure (QCE)	QCE refers to factory (excluding any building used as living accommodation), machinery or plant (excluding any machinery or plant provided wholly or partly for the use of a director, management / administration of the company or clerical staff) used in Malaysia. The date of first QCE made by the QC shall not be earlier than 1 July 2020. QCE may be withdrawn in the basis period of disposal, if the QCE is disposed of at any time within the period of five (5) years from the date of acquisition.	The Order did not specify the meaning of QCE.
Conditions	Including but not limited to the following: • Incurs a minimum amount of investment in fixed asset excluding land of more than RM300,000,000 within three (3) years from the date of the first QCE. • Employs at least 80% full-time Malaysian employees on or before the third year from the date of the first invoice in relation to the QA issued by the QC until exemption period ends.	Including but not limited to the following: • Incurs a minimum amount of investment in fixed assets excluding land of RM300,000,000 to RM500,000,000 within three (3) years from the date of the first QCE. • Incurs investment in fixed assets excluding land of more than RM500,000,000 within three (3) years from the date of the first QCE. • Employs at least 80% full-time Malaysian employees on or before the third year from the date of the first invoice in relation to the QA issued by the QC until the end of specified years of assessment (Y/As) (i.e., 10 or 15 Y/As).
Tax Exemption	QCE incurred in the year used to offset against the statutory income derived from the QA. Unutilised QCE incurred can be carried forward to the next Y/A until it is fully utilised.	0% tax rate on chargeable income

REFERENCE	PU(A) 240/2023	PU(A) 241/2023
Exemption Period	A period of five (5) consecutive years	• 10 Y/As (i.e., for QCE incurred amounting to RM300,000,000 to RM500,000,000) • 15 Y/As (i.e., for QCE incurred more than RM500,000,000)
Withdrawal of Tax Exemption	The Minister may withdraw the tax exemption if the QC fails to comply with any condition imposed in relation to the tax exemption in any Y/A within the exemption period.	The Order did not specify the withdrawal provision. Nonetheless, the Minister may withdraw the tax exemption if the QC fails to comply with any condition imposed in relation to the tax exemption in any Y/A within the exemption period.
Non-application	Tax exemption should not apply to a QC which in the basis period of a Y/A: • Has made a claim for reinvestment or investment allowance; • Has been granted any incentive under the Promotion of Investments Act 1986 (PIA 1986) in respect of the same QA; or • Has been granted an exemption / incentive scheme approved by the Minister.	Tax exemption should not apply to a QC which in the specified Y/As: • Has made a claim for reinvestment or investment allowance; • Has been granted any incentive under the PIA 1986; or • Has been granted an exemption / incentive scheme approved by the Minister.
Method of Application	Application for both the STI shall be made in writing by the applicants and received by the Minister through MIDA on or before 1 July 2020 but not later than 31 December 2024.	

APPENDIX A – NON-QUALIFYING ACTIVITIES

NO.	INDUSTRY	NON-QUALIFYING ACTIVITY
1	Iron and steel	All products for iron and steel considered sensitive except products listed in the promoted activities or promoted products under the PIA 1986 under the category of manufacture of iron and steel, and manufacture of non-ferrous metal and their products
2	Machinery and equipment	Weapons and ammunitions
3	Electrical	Electrical products supplied to generate power for consumption of Tenaga Nasional Berhad and Petronas such as general cables, wire harness, distribution boards, control panels, switching apparatus, transformers
4	Beverages and tobacco	a) Liquor and alcoholic beverages b) Tobacco and tobacco products including cigarette c) Beverages
5	Palm oil	Palm oil milling and refining
6	Food manufacturing	a) Production of food products that only involve mixing, blending and cooking such as sauces, paste, premix food products b) Sugar c) Pineapple canning
7	Paper, printing and publishing	a) Paper-based packaging materials from wastepaper except for coated duplex board b) Printing and publishing

NO.	INDUSTRY	NON-QUALIFYING ACTIVITY
8	Wood and wood products	Wood-based products including furniture, plywood, sawn timber and others
9	Automotive or motor vehicles	a) Remanufacturing or reconditioning or reassembly of motor vehicles and related components b) Non-energy efficient vehicles
10	Aerospace for military or defense application	Drones and rocket aerospace related products for military or defense application (Non-commercial segment)
11	Petroleum	Refinery of crude petroleum oil
12	Rubber	Passenger car tires
13	Plastic	General plastic products such as plastic bags, bottles
14	Construction	Manufacturing of construction materials except for the following products: a) Industrial Building System b) Panels c) Boards d) Tiles
15	Textile	Textile products except for the following activities: a) Natural or man-made fibres b) Yarn of natural or man-made fibres c) Woven fabrics d) Knitted fabrics e) Non-woven fabrics f) Finishing of fabrics such as bleaching, dyeing and printing g) Specialised apparel h) Technical textiles or functional textiles and textile products
16	All	a) Recycling of any types of waste b) Gloves

OTHER CRITERIA STATED IN THE MIDA GUIDELINE

DESCRIPTION	EXISTING COMPANY	NEW COMPANY
QCE	First QCE can be backdated up to three (3) years but shall not be earlier than 1 July 2020	Not applicable
Paid up capital requirement	RM2.5 million and above	RM2.5 million and above
Determination of incentive effective date	Based on the first QCE incurred for the approved products / activities which can be backdated three (3) years but shall not be earlier than 1 July 2020.	Based on the Y/A the company commences the operations for the approved products / activities. The commencement of operations is defined as the first sales invoice issued by the company.
Dateline to submit the application for incentive effective date	Within 24 months from the date of the approval letter. Application to be submitted to the MIDA's Investment Compliance Division via Invest Malaysia portal online.	Within 36 months from the date of the approval letter. Application to be submitted to the MIDA's Investment Compliance Division via Invest Malaysia portal online.

DESCRIPTION	EXISTING COMPANY	NEW COMPANY
Annual compliance of incentive	Where an approved company has been granted the determination of incentive effective date, the approved company must provide the annual compliance of incentive within 6 months from the approved company's Y/A ended. Annual compliance of incentive is to be submitted to the MIDA's Investment Compliance Division via Invest Malaysia portal online.	Where an approved company has been granted the determination of incentive effective date, the approved company must provide the annual compliance of incentive within 6 months from the approved company's Y/A ended. Annual compliance of incentive is to be submitted to the MIDA's Investment Compliance Division via Invest Malaysia portal online.
Failure to comply with stipulated conditions	An approved company must comply with the stipulated conditions throughout the incentive period. In the event that the approved company fails to comply with the stipulated conditions in any Y/A during the STI period, the approved company is not entitled to offset the QCE incurred against the statutory income or enjoy the special income tax rate derived from the approved products / activities for that particular Y/A.	
Eligible activities	The eligible activities may also be subjected to the discretion of both the Minister of Finance (MOF) and Minister of Investment, Trade and Industry (MITI).	
Method of application of STI	The STI application should be submitted online at https://investmalaysia.mida.gov.my.	

THE SPECIAL INCOME TAX TREATMENT FOR NON-CITIZEN INDIVIDUALS HOLDING C-SUITE POSITIONS IN AN APPROVED COMPANY

The special income tax treatment (SITT) for non-citizen individuals holding C-Suite positions in an approved company was announced by the government under Budget 2021. The non-citizen individuals may be able to enjoy a flat rate income tax treatment at 15% for a period of five (5) consecutive years (i.e., subject to the fulfilment of certain conditions) for application received by MIDA until 31 December 2021. Subsequently, the SITT incentive was extended to applications received by MIDA until 31 December 2022 in Budget 2022.

Further, the SITT incentive was extended again to applications received by MIDA until 31 December 2024 through Budget 2023. The level of commitment by the Malaysian Government is shown by the series of extensions given to the SITT incentive.

Similarly, in order for the non-citizen individuals to enjoy the SITT incentive, the relevant applications have to be approved by the NCI and subsidiary legislation under the ITA 1967 has to be gazetted.

On 15 August 2023, the following PU Order has been published by the Attorney General's Chambers:

- PU(A) 242/2023 – Income Tax (For An Individual Resident Who Is Not A Citizen And Holds C Suite Position In An Approved Company) Rules 2023.

The MIDA has also published an updated guideline on the SITT incentive dated 11 December 2023 (MIDA Guideline).

We have also summarised the salient points of the PU(A) 242/2023 for ease of reference.

TAX INCENTIVE FOR QUALIFYING NON-CITIZEN SENIOR EXECUTIVES IN APPROVED COMPANIES

NO	QUESTIONS	ANSWERS
1	**Who are eligible for the tax incentive?**	A qualifying individual (QI) who is a resident and not a citizen employed by an approved company (AC) and holding a C-Suite position in the specific Y/A.
2	**What is an AC?**	AC refers to a company that has been granted: a) A tax exemption under Income Tax (Exemption) Order 2023 [referring to page 3, PU(A) 240/2023]; b) The Income Tax (Relocation of Manufacturing Business Incentive Scheme) Rules 2023 [referring to page 3, PU(A) 241/2023]; or c) The Income Tax (Relocation of Provision of Services Business Incentive Scheme) Rules 2022 [referring to PU(A) 398/2022]

NO	QUESTIONS	ANSWERS
3	**What are the conditions for tax incentive?**	a) Holds the C-Suite position such as top senior executives who rely on functional know-how and technical skills [i.e., Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operating Officer (COO) and Chief Information Officer (CIO)] in the specific Y/As; b) Receives minimum basic salary of RM25,000 per month from an employment with an AC in the specific Y/As; c) Is a tax resident in Malaysia in the specific Y/As.
4	**How to apply?**	The application shall be made in writing by the AC and received by the Minister through MIDA on or after 7 November 2020 but not later than 31 December 2024. The QI included in the application must never been granted the same tax incentive previously.
5	**What is the tax incentive?**	Income tax rate will be 15% of the chargeable income of a QI in relation to the employment income derived from an AC.
6	**What is the duration of specific Y/As?**	The specific Y/As refer to a period of five (5) consecutive Y/As, commencing from the Y/A as determined by the Minister in the approval letter.
7	**What if the QI ceases to be employed by the AC during the specific Y/As?**	The tax incentive of 15% flat rate shall cease to apply to the QI from the Y/A in which the QI ceases to be employed by the AC.
8	**Any limitation to the AC?**	The number of QI for every AC is limited to five (5) only.
9	**Any withdrawal provision?**	The Minister may withdraw the tax incentive if the QI fails to comply with the conditions imposed by the Minister specified in the approval letter.
10	**What is the definition of C- Suite position in MIDA Guideline?**	Top senior executives responsible in setting the business strategy, making decisions for the business operations and having the functional know-how or technical skills. The C-Suite person may include the CEO, CFO, COO, Chief Marketing Officer and CIO.

SUMMARY

The Malaysian Government is taking proactive steps to introduce a STI aimed at enticing businesses looking to relocate their manufacturing operations to Malaysia in response to the global economic crisis and geopolitical uncertainties, both of which have caused significant disruptions in global supply chains.

The Malaysian Government's primary objective is to attract more foreign investment in the manufacturing sector by introducing this STI. This strategy is crucial for stimulating economic growth and creating job opportunities. Through the provision of the STI, the government aims to attract multinational corporations and domestic companies to establish or expand their manufacturing operations in Malaysia.

The relocation of manufacturing operations often involves the transfer of valuable technology and expertise. By attracting companies with advanced technologies and processes, the Malaysian Government aims to foster innovation and skills development among the local workforce. Additionally, this can lead to infrastructure development, including improvements in transportation, logistics, roads, ports, and utility services. These improvements benefit both the relocated companies and the local communities.

The Malaysian Government is well-positioned to elevate Malaysia's status as a regional manufacturing hub by attracting companies with advanced technologies and expertise. By incentivising the relocation of high-tech manufacturing, the government aims to strengthen Malaysia's manufacturing capabilities and enhance its global competitiveness in the manufacturing sector. This strategic move will position Malaysia as a leading manufacturing hub in the region and beyond.

The relocation of manufacturing businesses to Malaysia can further strengthen regional economic cooperation within ASEAN. By establishing a manufacturing hub, Malaysia can attract companies from neighbouring countries, thereby promoting trade and investment within the region. Both new and existing companies looking to relocate their manufacturing operations can benefit from the STI. These benefits may include reduced corporate income tax rates and other tax exemptions, significantly lowering their operating costs and increasing profitability.

The relocation of manufacturing businesses to Malaysia will lead to the establishment or expansion of manufacturing facilities and the creation of new employment opportunities for Malaysians, particularly in skilled and semi-skilled positions. This translates into substantial savings in labour expenditures because Malaysia offers skilled and semi-skilled workers at notably more competitive wage rates than many Western counterparts. Consequently, this will lead to reduced unemployment rates and improved economic prospects for residents, enhancing their quality of life through increased wages and household incomes.

The overall Malaysian economy will benefit from the growth of the manufacturing sector. Many manufacturing companies in Malaysia are expected to boost the country's exports, resulting in increased foreign exchange earnings and improvements in the trade balance, contributing to economic growth and stability.

While companies benefit from these tax incentives, the Malaysian Government will also benefit from increased tax revenue generated by the expanded manufacturing sector. This additional revenue can be utilised to fund infrastructure development, invest in education and healthcare, and support social welfare programmes.

The presence of companies relocating their manufacturing businesses to Malaysia can contribute to diversifying Malaysia's industrial base, making the country's economy more resilient and less dependent on a single industry. It will also stimulate the local economy by increasing demand for goods and services, benefitting local businesses and communities.

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BUSINESS SALE AGREEMENT IS SUBJECT TO NOMINAL STAMP DUTY:
AN ANALYSIS OF THE HAVI LOGISTIC (M) SDN BHD CASE

S. Saravana Kumar & Nur Hanina Mohd Azham

In this stamp duty appeal to the High Court of *Havi Logistic (M) Sdn Bhd v Pemungut Duti Setem* [2023] 8 MLJ 1, Havi Logistic (M) Sdn Bhd ("duty payer") was dissatisfied with the decision of the Collector of Stamp Duties ("Collector") to subject the duty payer's business sale agreement to ad valorem duty. On 25 May 2022, the High Court ruled in favour of the duty payer where it was held that a business sale agreement is to be stamped at the nominal rate of RM10.

BACKGROUND FACTS

On 6 February 2020, a business sale agreement ("the Agreement") was executed between Martin-Brower Malaysia Co Sdn Bhd ("MB Malaysia") and the duty payer. Under this Agreement, the duty payer agreed to acquire the business assets and liabilities of MB Malaysia. Among others, the assets and liabilities acquired were MB Malaysia's fixed assets such as computer software, computer hardware, fittings, renovation, plant, machinery and equipment as well as liabilities under business contracts. The list of excluded assets was set out in Schedule 2 of the Agreement. Among others, the assets excluded in the transaction is the goodwill of the Malaysian business of MB Malaysia.

The duty payer made an application for adjudication of the Agreement on 5 March 2020. Subsequently, on 15 March 2020, the Collector adjudicated that the consideration paid by the duty payer to MB Malaysia pursuant to the Agreement is the consideration for the purchase of the goodwill of MB Malaysia and raised a stamp duty assessment ("the Assessment") based on *ad valorem* rate with the view that the Agreement falls within the ambit of S. 21(1) and Item 32 of the First Sch of the Stamp Act 1949 (SA 1949). However, the Collector did not state which sub-limb of Item 32 of the First Sch the Collector relied upon to determine the *ad valorem* rate.

The duty payer disagreed with the Collector's stance to raise the assessment based on ad valorem rate. On 11 April 2020, the duty payer paid the stamp duty under protest and made an application ("Notice of Objection") to appeal against the assessment pursuant to S. 38A(1) of the SA 1949, with the view that the agreement should be assessed based on Item 4 of the First Sch of the SA 1949. On 13 April 2020, the Collector rejected the duty payer's appeal and provided no reasons for the rejection. Being aggrieved by the Assessment, the duty payer filed an appeal to the High Court pursuant to S. 39(1) of the SA 1949.

ISSUES

Having conceded by the Collector that the goodwill of MB Malaysia's business in Malaysia is excluded from the transaction, the main issue to be determined was whether the Agreement is to be assessed under Item 4 or Item 32 of the First Sch of the SA 1949. The Collector's main contention was that the agreement involves conveyance on the interest on property of MB Malaysia to the duty payer, and therefore falls under S. 21 and Item 32 of the First Sch. However, the duty payer argued that S. 21 of the SA 1949 was inapplicable as there was no conveyance, assignment, transfer or sale of property or interest on property under the agreement that warrants the application of Item 32 of the First Sch. The duty payer contends that the Agreement should be assessed under Item 4 of the First Sch of the SA 1949 and thus, the stamp duty on the agreement should be assessed at the nominal rate of RM10.

Another issue to be determined was whether the duty payer was entitled to be given reasons as to the imposition of the tax. The Collector submitted that the Collector does not have a duty to give reasons for its decision. However, since the Collector not only failed to specify the sub-limb of Item 32 of the First Sch of the SA 1949 that it is relying upon but also failed to provide any basis as to why the agreement should be assessed under Item 32, the duty payer argued that the failure to provide reasons leads to the inference that there are no good reasons for the decisions made by the Collector – especially when the duty payer in their Notice of Objection have provided detailed grounds of objection.

THE RELEVANT PROVISIONS

The relevant provisions to be examined in this case are Items 4 and 32 of the First Sch of the SA 1949. Items 4 and 32 of the First Sch are set out as follows:

FIRST SCHEDULE
INSTRUMENTS CHARGEABLE WITH STAMP DUTY
"4 AGREEMENT OR MEMORANDUM OF AGREEMENT
made under hand only, and not otherwise specially charged with any duty, whether the same is only evidence of a contract or obligatory on the parties from its being a written instrument."

"32 CONVEYANCE, ASSIGNMENT, TRANSFER OR ABSOLUTE BILL OF SALE:
a. On sale of any property (except stock, shares, marketable securities and accounts receivables or book debts of the kind mentioned in paragraph (c))
b. On sale of any stock, shares or marketable securities, to be computed on the price or value thereof on the date of transfer, whichever is the greater-
For every RM1,000 or fractional part of RM1,000
c. On the absolute sale of any accounts receivables or book debts to a bank, merchant bank, or finance company licensed under the Banking and Financial Institutions Act 1989 or under the Islamic Banking Act 1983 or a scheduled institution as defined under section 2 of the Banking and Financial Institutions Act 1989 or any statutory body, agency of the Government or of the State Government, or any company in which the Government or the State Government has interest, which provides financing to a small and medium enterprise, pursuant to a factoring agreement
d. Of any property by way of security or any security other than a marketable security
e. Of any property as above where the transaction is between trustees and where—
i. the beneficial interest in the property passes
ii. the beneficial interest in the property does not pass
f. Of any property, for the purpose of effectuating the appointment of a new trustee or the retirement of a trustee although no new trustee is appointed
g. Of any property by way of settlement
h. Of any property by way of gift (whether by way of voluntary disposition or otherwise)
i. Of any kind not otherwise specially charged with duty"

Furthermore, it is also necessary to examine S. 21 of the SA 1949 which reads as follows:

"Certain contracts to be chargeable as conveyances on sale
21. (1) Any contract or agreement made in Malaysia under seal or under hand only, for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except lands, tenements, hereditaments, or heritages, or property locally situate out of Malaysia, or goods, wares or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share or property of or in any ship or vessel, shall be charged with the same ad valorem duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to be sold.

(2) Where the purchaser has paid the said ad valorem duty and, before having obtained conveyance or transfer of the property, enters into a contract or agreement for the sale of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the ad valorem duty payable in respect of such excess consideration, and in any other case with the fixed duty of ten ringgit.

(3) Where duty has been duly paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and the Collector, upon application, either shall denote the payment of the ad valorem duty upon the conveyance or transfer or shall transfer the ad valorem duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped."

SECTION 21 AND ITEM 32 OF THE FIRST SCH OF THE SA 1949: TRANSFER OF PROPERTY OR INTEREST LEGALLY OR EQUITABLY

The High Court ruled in favour of the duty payer and held that the Agreement does not involve transfer of properties or interest legally or equitably between the two parties. As such, the Agreement cannot be said to be an instrument which falls within the ambit of S. 21 and Item 32 of the First Sch of the SA 1949.

Ad valorem duty can only be imposed when there is a transfer of property legally or equitably or a sale of interest in the property. The High Court took guidance from the "Malaysian Stamp Duty Handbook" Sixth Edition by Dr Arjunan Subramaniam:

> *"[4.03] Where a property is legally or equitably transferred by an instrument the stamp duty is ad valorem, but if an instrument does not transfer property legally or equitably then it is merely a contract and no ad valorem duty is payable."*

The High Court also cited Thorne Acting CJ's judgment in the case of *Stanway Limited v Collector of Stamp Duties, Ipoh* [1932] 1 LNS 77, in which His Honour referred to a passage in the judgment of Hawkins J stipulating a similar principle:

> *"If the property is legally or equitably transferred by the instrument to which a stamp ought to be affixed, then, no doubt, an ad valorem duty ought to be paid upon an agreement, but if by an instrument no property is legally or equitably transferred, then it falls within the ordinary denomination of deeds simply to be stamped with an ordinary stamp, and no ad valorem duty would be payable until after the conveyance was actually made in pursuance of the agreement. The question is whether this agreement can be said to convey or transfer any legal or equitable interest."*

The Singapore case of *Allied Signal Inc & Anor v The Commissioner of Stamps* [1989] 1 MLJ 506 was also referred to by the High Court, where S. 22 of the Singaporean Stamp Duties Act is in *pari materia* with the Malaysian SA 1949. In that case, it was clear that S. 22(2) of the Singaporean Stamp Duties Act (which is in *pari materia* with S. 21 of the Malaysian SA 1949) operates only when there is a transfer of property legally or equitably or a sale of interest in the property.

An important question therefore arises: Does the agreement between the duty payer and MB Malaysia involve transfer of properties or interest legally or equitably?

Goodwill

Although the High Court in the case of *Cititower Sdn Bhd v Pemungut Duti Setem* [2017] 11 MLJ 694 did not dwell upon S. 21 of the SA 1949, the agreement therein was similar in that it also involved a sale of assets and liabilities. The Collector in that case argued that the agreement ought to be imposed with *ad valorem* duty under S. 21 wherein items liable to duty included goodwill, and the duty would be calculated based on Item 32(a) of the First Sch of the SA 1949. Hanipah Farikullah J (as Her Ladyship then was) dismissed the Collector's contention and concluded that there was no basis in law for the agreement to be assessed under *ad valorem* duty under Item 32 of the First Sch of the SA 1949. It is worth noting that goodwill was contested in that case, and yet the High Court was of the view that S. 21 of the SA 1949 was inapplicable. As such, in the present matter where it is conceded that there is no transfer or conveyance of goodwill, it cannot be said that there are properties or interest legally or equitably transferred to the duty payer from MB Malaysia.

Liabilities

The Collector further made a misconceived argument that the Agreement should fall under S. 21 of the SA 1949 because the Agreement contained liabilities that will be assumed by the duty payer and as such involved an element of business transfer. However, it was held by the High Court that S. 21 does not extend to acquisition of liabilities. S. 21 of the SA 1949 merely states "sale of any equitable estate or interest in any property". A plain reading of the section does not state about liability. Further, in the case of *Cititower Sdn Bhd* (supra), liabilities were included in the agreement therein, but the High Court found that the agreement was not

chargeable under Item 32 of the First Sch. In the present matter, considering goodwill is excluded from the transaction and S. 21 does not extend to acquisition of liabilities, it was held that the Agreement does not involve transfer of properties or interest legally or equitably between the two parties. Therefore, the Agreement cannot be said to be an instrument which falls within the ambit of S. 21 and Item 32 of the First Sch of the SA 1949.

ITEM 4 OF THE FIRST SCH OF THE SA 1949

Item 4 of the First Sch of the SA 1949 is plain and clear, and should be given its literal and natural meaning, as enunciated in *Affin Credit (M) Sdn Bhd v Yap Yuen Fui* [1984] 1 MLJ 169, *Public Prosecutor v Sihabduin bin Haji Salleh & Anor* [1980] 2 MLJ 273 and *Duport Steels Ltd v Sirs* [1980] 1 All ER 529.

On the plain reading of Item 4 of the First Sch of the SA 1949, the High Court found that the duty payer has fulfilled all the requirements stipulated thereunder. Therefore, the High Court allowed the duty payer's application that the Agreement should be assessed under Item 4 of the First Sch, and stamp duty on the Agreement should be assessed at the nominal rate of RM10. The Assessment raised by the Collector was ruled to be erroneous, and the High Court ordered that the Collector pay interest at the rate of 8% from the time the stamp duty was paid under protest.

REASONS AS TO THE IMPOSITION OF TAX

The High Court reaffirmed the principle that in taxing statutes, tax authorities must give reasons as to the imposition of the tax. It is enunciated in *Ketua Pengarah Hasil Dalam Negeri v Rainforest Heights Sdn Bhd* [2018] MLJU 2158 and *Port Dickson Power Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2012] MSTC 30-045 that tax authorities must specify the limbs relied upon, so that taxpayers have the information to answer their case effectively.

The burden of proof rests strictly on the tax authorities to prove that the Agreement should be assessed under Item 32 of the First Sch. There are judicial dicta in the Court of Appeal case of *Uniqlo (Malaysia) Sdn Bhd v Ketua Pengarah Kastam dan Eksais* (Appeal No. W-01(A)-423-11/2017) that failure to provide reasons as to the imposition of tax may lead to the inference that there are no good reasons for the decisions made by the public authorities. The same legal principle was highlighted in *MUI Finance Berhad v Menteri Kewangan Malaysia* [1994] 2 CLJ 630.

The duty payer had complied with the law by bringing the Agreement for adjudication and giving reasons as to their computations. The duty payer has thus discharged a higher burden placed upon them. On the other hand, the Collector made a decision without giving reasons. There is a breach of natural justice in the sense that the duty payer has a legitimate expectation that the Collector will take into account circumstances of the matters.

COMMENTARY

Primarily, the High Court's decision affirms the position that a sale of business agreement is to be taxed at the nominal rate of RM10 under Item 4 of the First Sch of the SA 1949.

This decision also serves as a reminder that a duty payer aggrieved by a stamp duty assessment is not left without any recourse. Whilst the Collector has the power to collect stamp duty from duty payers, the Collector should not exercise his authority arbitrarily. Reasons as to the imposition of tax must be provided, such that duty payers can answer their case properly[1].

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[1] *After the submission of this article, the Collector's appeal was allowed by the Court of Appeal albeit for a different reason, namely the assets were deemed to be transferred and as the Agreement did not contemplate any separate act to be undertaken by the parties for the transfer of legal title, there was conveyance of the acquired asset. Being aggrieved by the Court of Appeal's decision, the duty payer had subsequently applied to obtain leave from the Federal Court to file an appeal.*

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The column only covers selected developments from countries identified by CTIM and relates to the period 25 September 2023 to 31 December 2023.

AUSTRALIA

Government Intends to Deny Deductions for Late Tax Payment Interest

The Treasury has released the 2023/24 Mid-Year Economic and Fiscal Outlook (MYEFO), which is an update on the economic and fiscal outlook since the previous budget. The MYEFO also includes measures that the government intends to announce in the next budget.

In the documents that were made available on 13 December 2023, the government announced that it plans to deny deductions for Australian Taxation Office (ATO) interest charges, specifically the general interest charge (GIC) and shortfall interest charge (SIC), incurred in income years starting on or after 1 July 2025.

The GIC and SIC are incurred where tax debts have not been paid on time, or a tax liability has been incorrectly self-assessed and resulted in a shortfall of tax paid, respectively. Both GIC and SIC are currently tax deductible for all entities.

The MYEFO also contains other policy decisions taken since the 2023/24 Budget that will affect tax receipts, including increasing the foreign resident capital gains withholding tax rate from 12.5% to 15% and removing the withholding threshold of AUD750,000. The changes will apply to real property disposals with contracts entered into from 1 January 2025.

The government will also modernise the luxury car tax by tightening the definition of a fuel-efficient vehicle and updating the indexation rate for the taxable value threshold for all other luxury vehicles, to encourage greater take-up of fuel-efficient vehicles such as electric vehicles.

The mid-year update forecasts growth to moderate in 2023/24 as higher interest rates, high but moderating inflation and global pressures continue to weigh on the domestic economy, but economic growth is expected to regain momentum in 2024/25 with inflation projected to return to the target band. The fiscal position has strengthened with a forecast deficit of AUD1.1 billion in 2023/24, an improvement of AUD12.8 billion since the 2023/24 Budget in May 2023, and the underlying cash balance has improved by a cumulative AUD39.5 billion over the 4 years to 2026/27.

Parliament Approves Changes to Tax Treatment of Off-market Share Buy-backs and Distributions Funded by Share Raisings

The Parliament has passed a measure that aligns the income tax treatment of off-market share buy-backs by public companies with that of on-market buy-backs. The Treasury Laws Amendment (2023 Measures No. 1) Act 2023, which received Royal Assent on 27 November 2023, also contains changes to prevent the franking of certain distributions funded by share raisings.

Off-market Share Buy-backs

Prior to the changes, the share buy-back rules required a different income tax treatment for shareholders who participated in share buy-backs undertaken by companies off-market compared with those undertaken on-market. For on-market buy-backs, no part of the purchase price is taken to be a dividend for shareholders. In contrast, part of the purchase price in respect of an off-market share buy-back could be taken to be a dividend in the hands of the shareholder. A change in the tax treatment was proposed by the government in the federal Budget for 2022/23.

Under the amended rules, where a listed public company undertakes an off-market buy-back of a share or non-share equity interest, no part of the purchase price in respect of the buy-back will be treated as a dividend. The amendment applies to transactions announced on or after 18 November 2022.

In conjunction with the change above, the franking rules were also amended accordingly to align the treatment of off-market share buy-backs by public listed companies with that of on-market buy-backs. Further, distributions by listed public companies as part of selective capital reduction were made unfrankable.

Franked Distributions Funded by Capital Raisings

The law was also amended to prevent certain distributions that are funded by capital raisings from being frankable. This is an integrity measure that ensures that arrangements cannot be put in place to release franking credits that would otherwise remain unused where they do not significantly change the financial position of the entity.

This change applies from 28 November 2023.

Government Further Amends Bill on Thin Capitalisation Rules

The government has proposed further amendments to the new thin capitalisation rules that are still awaiting enactment, including changes to the debt creation rules and the third-party debt test.

Briefly, on 16 March 2023, the Treasury released Exposure Draft legislation that would repeal existing thin capitalisation rules based on the balance sheet and introduce new thin capitalisation rules based on EBITDA from 1 July 2023. On 22 June 2023, the original Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023 was introduced, which when enacted would implement the new thin capitalisation rules from 1 July 2023. Unexpectedly, the Bill included debt creation rules that were not subject to previous consultation.

On 22 September 2023, the Senate Economics Committee released a report recommending changes to the Bill and, on 18 October 2023, the Treasury released Exposure Draft legislation with substantial amendments to the Bill with the intention to improve the operation of the new rules. The amended Bill was introduced on 28 November 2023 and is based on the October Exposure Draft legislation with further substantial changes.

The key changes in the amended Bill include the following:

- the debt creation rules were deferred to 1 July 2024 (but will apply to arrangements entered into before that date);
- the debt creation rules will not apply to income years for which the taxpayer elects to apply the third-party debt test;
- the ordering rule is introduced in respect of the order of the application of the debt creation rules and thin capitalisation rules;
- extensive changes to the third-party debt test; and
- excess thin capitalisation capacity use is now available to companies and partnerships (in addition to trusts only under the original rules).

INDIA

Safe Harbour Rules: India Widens Scope of Intra-Group Loans, Replaces LIBOR with Currency Specific Reference Rates

The Central Board of Direct Taxes (CBDT) has issued a notification amending the safe harbour rules for

transfer pricing effective from 1 April 2024. The amendments are set out below.

Intra-Group Loan: The definition of intra-group loan has been expanded to include loans from all non-resident associated enterprises (currently, the definition only includes loans from non-resident wholly owned subsidiaries).

The loan may be sourced in any foreign currency (currently, only loans sourced in INR are eligible for safe harbour rules).

Safe Harbour Interest Rate on Intra-group Loan: The safe harbour interest rate, over and above the reference rate of the relevant foreign currency, will now be based on two factors: (i) credit rating of the associated enterprise and (ii) the quantum of loan being greater than or up to INR2.5 billion.

Credit Rating for Intra-group Loan: The credit rating of the associated enterprise may be determined by a credit rating agency that is registered with the Securities and Exchange Board of India (SEBI) and accredited by the Reserve Bank of India (RBI). Currently, the credit rating provided by Credit Rating Information Services of India Limited (CRISIL) is considered. The current reference to the 6-month London Inter-Bank Offer Rate (LIBOR) will be replaced with a currency specific reference rate, viz. for USD, 6-month Term Secured Overnight Financing rate (SOFR), plus 45 basis points; for EUR, 6-month Euro Inter Bank Offered Rate (EURIBOR).

If an associated enterprise has only one applicable credit rating, only such rating will be considered as its credit rating. However, if there are more than one applicable credit ratings, then the least of such ratings will be applied.

Operating Expenses and Operating Revenue: The current rule provides that loss on transfer of assets or investments is not considered as operating expenses. Likewise, income from transfer of assets or investments is not considered as operating revenue. The rule is now amended to provide that "assets on which depreciation is included in operating expenses" will not be considered as exclusions. In other words, loss on transfer of assets or investments (other than assets on which depreciation is included as operating expenses) will not be considered as operating expenses. Likewise, income from the transfer of assets or investments (other than assets on which depreciation is included as operating expenses) is not considered as operating revenue.

HONG KONG

Government Opens Public Consultation on Implementation of Global Minimum Tax and Minimum Top-Up Tax in Hong Kong

The government has launched a consultation on the implementation of the global minimum tax under Pillar Two. It was announced in the 2023/24 Budget that Hong Kong would implement the global minimum effective tax rate of 15% on in-scope multinational enterprise (MNE) groups and a domestic minimum top-up tax from 2025. The consultation paper was published on 21 December 2023 to explain the concepts of the Global Anti-Base Erosion (GloBE) rules and the Hong Kong minimum top-up tax (HKMTT), and seek views on specific implementation issues including the government's proposed approach with respect to certain areas relating to the implementation of the GloBE rules, the design and implementation of the HKMTT, and the tax compliance and administration framework.

In implementing the GloBE rules and the HKMTT, the government will adhere to the following guiding principles:

- applying the GloBE rules and the HKMTT only to in-scope MNE groups (i.e. MNE groups with consolidated annual revenue of EUR750 million or above);
- maintaining the territorial source principle of taxation and continuing to apply the broad guiding principle when determining the source of profits outside the context of the GloBE rules;
- upholding Hong Kong's simple, certain and low-tax regime with due regard to tax competitiveness; and
- minimising the compliance burden of in-scope MNE groups while safeguarding Hong Kong's taxing rights.

With respect to the implementation of the global minimum tax and HKMTT in Hong Kong, the following key aspects are open for public comments:

- the approach of charging top-up tax under the undertaxed payments rule (UTPR) by way of an equivalent adjustment which takes the form of an additional tax;
- the proposal for the UTPR top-up tax to be allocated among Hong Kong constituent entities of an in-scope MNE group based on their respective number of employees and value of tangible assets;
- the criteria to determine whether an entity is a Hong Kong resident entity for the purposes of the GloBE rules and HKMTT;
- the retrospective application of the meaning of a Hong Kong resident entity from 1 January 2024;
- the scope, allocation rules and the adoption of local financial accounting standards for the purposes of the HKMTT;
- the proposed optional variations in the design of the HKMTT, namely the inclusion of a substance-based income exclusion (SBIE), the tax rate of 15%, and the inclusion of the same *de minimis* exclusion; and
- the proposed exclusion of the initial phase of international activity under the HKMTT but limiting its application to in-scope MNE groups where no parent entity is required to apply the qualified income inclusion rule (IIR) with respect to Hong Kong constituent entities of the group.

With respect to the tax compliance and administration framework, the following key aspects are open for public comments:

- the calculation of the effective tax rate;
- the process for calculating top-up tax, in particular the *de minimis* exclusion and SBIE;
- the proposed safe harbour for the transitional CbCR, UTPR and QDMTT respectively;
- the proposed adoption of the optional provision relating to the relief for the initial phase of international activity under Article 9.3.5 of the GloBE rules;
- the proposed arrangements for the assessment, payment and filing of top-up tax;
- the proposed penalties for wrongdoing and non-compliance in relation to the GloBE rules and HKMTT; and
- the proposed application of mandatory e-filing of profits tax returns to in-scope MNE groups

from the year of assessment (Y/A) 2025/26.

Subject to the outcome of the consultation, the government targets to introduce the legislative amendments into the Legislative Council in the second half of 2024. The public consultation closes on 20 March 2024.

Legislative Council Passes Refinements to Foreign-Sourced Income Exemption Regime

The Legislative Council has passed the refinements to Hong Kong's foreign-sourced income exemption (FSIE) regime as proposed in the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Bill 2023, which expands the scope of foreign-sourced disposal gains to cover assets other than shares or equity interests.

As reiterated in the government's press release on 29 November 2023, under the refined FSIE regime, foreign-sourced non-intellectual property (IP) disposal gains will continue to be exempt from tax if the multinational enterprise (MNE) entity has adequate economic substance in Hong Kong. For foreign-sourced IP disposal gains, the extent of the tax exemption will be determined by the nexus approach promulgated by the Organisation for Economic Co-operation and Development (OECD). While the scope of assets in relation to foreign-sourced disposal gains is expanded, exemptions and reliefs have been put in place to minimise the compliance burden of the affected MNE entities. Other parts of the existing compliance framework of the FSIE regime will also continue to apply to the refined FSIE regime, including double taxation relief and treatment of losses.

The refined FSIE regime will be implemented with effect from 1 January 2024. The government will request the EU to swiftly remove Hong Kong from the EU watchlist on tax co-operation.

JAPAN

Japan Outlines 2024 Tax Reform Package Including Additional Global Minimum Tax Guidance, VAT Treatment for Digital Platforms and Crypto Asset Reporting Framework

The Cabinet has approved the outline of the 2024 tax reform package. The government will submit the relevant bills to the Diet in January 2024. The tax reform package for 2024 will cover various tax areas, including the following measures regarding international tax issues.

Reflecting Additional OECD Guidance in the Japanese Global Minimum Tax Legislation: While Japan had codified the main rule of global minimum taxation (the income inclusion rule or IIR) by June 2023, the OECD has issued additional guidance since then. Japan generally considers the guidance to contain normative rules requiring corresponding law amendments before their domestic implementation (as opposed to interpretive advice). Thus, the forthcoming tax reform package will include amendments that reflect guidance that the OECD did not provide in time for Japan's previous legislation. It will also clarify the Japanese foreign tax credit treatment for the global minimum tax imposed by foreign countries.

Full VAT Liability Regime for Digital Platforms: If foreign businesses carry out business-to-consumer (B2C) transactions (e.g. provision of digital services or sale of digital content to Japanese consumers) through digital platforms and receive consideration thereof through the digital platforms, such transactions will be deemed to be performed by the operators of the digital platforms. Thus, the digital platform operators will be solely and fully liable for value added tax (VAT) on relevant cross-border B2C digital transactions (full VAT liability regime), and the digital platform operators must prepare detailed documentation in respect of these transactions. This regime covers digital platforms where the total consideration for the relevant transactions exceeds JPY 5 billion and will apply to transactions on or after 1 April 2025. The Japanese tax authorities will specify and publicly announce the applicable platform operators, which in turn must notify foreign businesses accordingly. With this new regime, the government intends to address non-compliant foreign businesses and estimates an annual VAT leakage of JPY18 billion to be collected.

Restrictions on Small Business VAT Exemptions to Foreign Businesses: For taxable periods beginning on or after 1 October 2024, foreign businesses will no longer be able to apply for the small business VAT exemption based on being below the payroll threshold (JPY10 million). Furthermore, if a foreign entity has capital of JPY10 million or more when commencing Japanese business, it will also no longer be eligible for the small business VAT exemption. The amendment will also expand these rules to address abuse of the small business tax exemption through establishing a new subsidiary, by making the rules applicable even if the affiliated entity of the new subsidiary has a domestic turnover below JPY500 million, if its worldwide turnover is over JPY5 billion.

Implementing the Crypto-Asset Reporting Framework (CARF) and Amendments to the Common Reporting Standard (CRS): The OECD published the CARF and the amendments to the CRS on 10 October 2022. Japan is one of the countries that has pledged to implement them by 2027 and the tax reform package will include relevant domestic law amendments to meet this commitment. The Cabinet approved the 2024 tax reform package outline on 22 December 2023 following the ruling coalition's announcement on 14 December 2023.

Japan Updates Global Minimum Tax Implementation Schedule

Japan's ruling coalition has released its 2024 tax reform package outline and updated its schedule for implementing global minimum taxation. Regarding the backstop rule for the global minimum tax, it announced that it would not submit a draft bill in 2024 but would wait until 2025 or later.

In June 2023, Japan completed the legislative procedure for the main rule of the global minimum tax (the so-called IIR) and became one of the early adopters. Accordingly, it was expected that Japan would initiate legislative procedures for the remaining rules (the so-called UTPR and QDMTT) sooner or later.

In December 2023, as part of the annual routine of the Japanese tax reform practice, the ruling coalition outlined the tax reform package to be submitted to the National Diet in January 2024. However, the ruling coalition announced that it would not submit the draft legislation of these remaining rules in 2024 but would wait until 2025 or later, considering that the details of these rules are still under negotiation at the OECD.

Nevertheless, the outline emphasizes the importance of domestic implementation in accordance with the October 2021 statement of the OECD/G20 Inclusive Framework on BEPS. In particular, it notes that Japan will move forward with legislating the global minimum tax (Pillar 2) since it will benefit Japanese companies to maintain and improve their competitiveness. Thus, Japan appears to maintain its intention to ultimately implement the full set of rules of the global minimum tax.

The ruling coalition also announced that the 2024 tax reform package will include amendment proposals to reflect additional guidance issued by the OECD since July 2023, when Japan completed the IIR legislative process. In addition, it includes proposed amendments to the foreign tax credit rules, clarifying that foreign taxes under the IIR or UTPR are not creditable while foreign QDMTT will be creditable.

Japan Releases Technical Explanation on Global Minimum Tax Laws

The Japanese Ministry of Finance has published its technical explanation regarding the Japanese Global Minimum Tax Laws and Regulations following their parliamentary and governmental enactment in the first half of 2023.

The authors of this technical explanation are seven finance ministry officials who work in departments involved in implementing the global minimum tax in Japan. Although these officials wrote in their personal capacity, the technical explanation is generally considered authoritative literature in practice.

This technical explanation, which is 236 pages, is primarily intended to provide an accessible overview of the newly enacted Japanese Global Minimum Tax Laws and Regulations through narrative descriptions and illustrative examples.

This technical explanation noted that the current laws and regulations do not yet reflect the administrative guidance issued in July 2023. It also points out several issues that have been flagged in the OECD Model Rule and the commentary but have not been codified yet in Japan because the details have not been finalised and are still under international negotiation.

While the technical explanation states that the sequential tax reforms to reflect them will be necessary, it does not specify a time frame. The technical explanation also includes some brief interpretive insights. In particular, it clarifies that the existing domestic anti-abuse rules (i.e. Articles 132 and 132-2 of the Japanese Corporate Tax Act) are applicable even to the Japanese Global Minimum Tax.

PHILIPPINES

Tax Authorities Impose Withholding Tax on Gross Remittances of E-Marketplace Operators and Digital Financial Services Providers to Online Sellers

The Bureau of Internal Revenue (BIR) will impose a withholding tax on gross remittances

made by electronic marketplace operators and digital financial services providers to online sellers or merchants for goods and services sold through the operators' or providers' online platform or facility. The withholding tax is 1% of 1/2 of the gross remittances made by the e-marketplace operator or digital financial services provider to the seller or merchant. It will not apply in the following cases:

- the annual total gross remittances to an online seller or merchant for the past taxable year has not exceeded PHP500,000; the cumulative gross remittances to an online seller or merchant in a taxable year has not yet exceeded PHP500,000; or the seller or merchant is duly exempt from, or subject to, a lower income tax rate pursuant to any existing law or treaty, provided that the concerned seller or merchant is able to secure the necessary certification, clearance, ruling or any other document proving its entitlement to such exemption or lower tax rate. Such proof must be provided to the e-marketplace operator or digital financial services provider.

The withholding tax under the new subsection X of S. 2.57.2 of Revenue Regulations (RR) No. 2-98, as amended, will be in addition to existing withholding tax obligations being imposed on e-marketplace operators and digital financial services providers, such as, inter alia, withholding taxes on payments to transportation contractors for the carriage of goods and merchandise.

E-marketplace operators and digital financial services providers will be constituted as withholding agents under S. 2.57.3 of RR No. 2-98, as amended.

"Gross remittances" excludes sales returns and discounts, delivery or shipping fees billed separately, VAT and consideration for the use of the e-marketplace and/or digital financial services platform.

The definitions of "e-marketplace" and "digital financial services platforms" are provided in RR No. 16-2023, which was published on 27 December 2023. RR No. 16-2023 will come into effect 15 days after the publication date. The BIR will issue further guidance to prescribe the implementation procedure and timeline.

NEW ZEALAND

New Coalition Government to Present 'Mini-Budget' to Parliament on 20 December 2023

The Minister of Finance in the new centre-right coalition government will present a "mini-budget" to Parliament on 20 December 2023. The mini-budget is expected to contain measures to implement some of the new government's tax policies. The three-party coalition comprises a Parliamentary majority as a result of the general election that was held on 14 October 2023. As a consequence of compromises made during the negotiation of the coalition agreement, the new Prime Minister has already announced that the National Party's proposal to introduce a 15% tax on purchases of land in New Zealand by foreigners for NZD2 million or more will not go ahead.

Government Proposes Changes to Property Bright-line Test and Interest Deduction for Rental Property, Removal of Depreciation Deduction for Commercial Property in 'Mini-Budget'

The Minister of Finance's "mini-budget", released on 20 December 2023, includes the government's "first steps" to implement tax changes canvassed in the October 2023 general election. The three key tax measures announced are as follows:

- reduce the bright-line test for residential property to two years with effect from 1 July 2024;
- increase the amount of deductible interest for rental properties from April 2024. Details of the phasing in of the government's commitment to full deductibility will be announced in 2024; and
- remove depreciation deductions for commercial buildings.

The Minister stated that work is progressing on personal income tax reduction measures, including the design and implementation of a proposed "Family Boost" childcare tax credit and delivering other earner and family support income tax relief.

The government is also undertaking work on the taxation of online casino gambling operations and enhancing Inland Revenue's audit activities.

THAILAND

Revenue Department Announces Change to Taxation of Foreign Income Remitted to Thailand

From 1 January 2024, the assessable income of resident individuals from employment or business carried on abroad or from a property located abroad must be included in the calculation of income tax in the tax year such income is brought into Thailand. Where the foreign income has been taxed in a country that has a tax treaty with Thailand, tax treaty provisions will apply.

Currently, residents are taxed on foreign income only to the extent that such income is remitted to Thailand in the same year it is earned. The Revenue Department notes that the change will create fairness for those who have sources of income in and outside the country.

VIETNAM

National Assembly Approves Resolution to Implement Global Minimum Tax in 2024

On 29 November 2023, the National Assembly approved the resolution on the application of a global minimum tax in Vietnam from 2024. Approximately 122 foreign corporations will be covered by the new tax rules.

The resolution was approved at the 6th session of the 15th National Assembly. A separate resolution on the pilot application of investment support policies for high technology companies, which was intended to supplement the resolution on the global minimum tax, has not been approved at this time. Instead, the government has been assigned to develop a draft decree in 2024 to establish an investment support fund financed by global minimum tax revenues and other sources to support businesses and attract target investments.

__Ximena Garcia__ 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 September 2023 and 16 December 2023, including Public Rulings (PRs) and guidelines, if any, issued by the Inland Revenue Board of Malaysia (HASiL), Royal Malaysian Customs Department (RMCD) and other regulatory authorities.

INCOME TAX

Tax incentive for knowledge workers in the East Coast Economic Region (ECER)

The Income Tax (Determination of Knowledge Worker and Qualifying Activity in the East Coast Economic Region) Rules 2023 [PU(A) 330/2023] were gazetted on 1 November 2023 and are effective from the year of assessment (Y/A) 2022. The Rules provide that a qualifying person may apply to be subject to an income tax rate of 15% on the chargeable income of an employment with a designated company, and any excess of the chargeable income that does not qualify for the 15% rate, will be taxed at the prevailing tax rate of the taxpayer. The incentive is applicable to applications received by the ECER Development Council from 1 January 2022 to 31 December 2024.

ECER incentives extended

The ECER incentives have been extended to 2024 and will now apply to applications made to the ECER Development Council until 31 December 2024. As such, the following gazette orders have been amended (see **Table 1**).

TABLE 1

Gazette orders	Amended orders
Income Tax (Exemption) (No. 4) 2016 (Amendment) Order 2023 [PU(A) 344/2023]	**Income Tax (Exemption) (No. 4) Order 2016** The Order provides an income tax exemption on the statutory income derived from qualifying activities (as specified in the Schedule of the Order) carried out in the ECER. The amount of tax exempted is equal to the amount of qualifying capital expenditure incurred by the qualifying person.
Income Tax (Exemption) (No. 5) 2016 (Amendment) Order 2023 [PU(A) 345/2023]	**Income Tax (Exemption) (No. 5) Order 2016** The Order provides an income tax exemption on the statutory income derived from special qualifying activities (as specified in the Schedule of the Order) carried out in the ECER. The amount of tax exempted is equal to 60% to 100% of the qualifying capital expenditure incurred by the qualifying person.
Income Tax (Exemption) (No. 6) 2016 (Amendment) Order 2023 [PU(A) 346/2023]	**Income Tax (Exemption) (No. 6) Order 2016** The Order provides 100% income tax exemption on the statutory income derived from qualifying activities (as specified in the Schedule of the Order) carried out in the ECER.
Income Tax (Exemption) (No. 7) 2016 (Amendment) Order 2023 [PU(A) 347/2023]	**Income Tax (Exemption) (No. 7) Order 2016** The Order provides a 70% to 100% income tax exemption on the statutory income derived from special qualifying activities (as specified in the Schedule of the Order) carried out in the ECER.
Income Tax (Exemption) (No. 8) 2016 (Amendment) Order 2023 [PU(A) 348/2023]	**Income Tax (Exemption) (No. 8) Order 2016** The Order provides 100% income tax exemption on the statutory income derived from the following qualifying activities by an approved developer: • The disposal of any right over any land or the disposal of a building or rights over a building or part of a building located in an industrial park or a free zone • The rental of a building or part of a building located in an industrial park or a free zone.
Income Tax (Exemption) (No. 9) 2016 (Amendment) Order 2023 [PU(A) 349/2023]	**Income Tax (Exemption) (No. 9) Order 2016** The Order provides a 100% income tax exemption on the statutory income derived from the following qualifying activities by a qualifying development or park manager: • For a development manager – provision of management, supervisory or marketing services relating to the development of an industrial park or a free zone • For a park manager – provision of park management services including maintenance, marketing and rental of common facilities and utilities services in the industrial park or free zone.
Stamp Duty (Exemption) (No. 2) 2016 (Amendment) Order 2023 [PU(A) 350/2023]	**Stamp Duty (Exemption) (No. 2) Order 2016** The Order provides a stamp duty exemption on any instrument which is chargeable with ad-valorem duty for the transfer of real property or lease of land or building used for the purpose of carrying on a qualifying activity (as specified in the Schedule of the Order) in the ECER.
Income Tax (Deduction for the Sponsorship of Hallmark Event) (Amendment) Rules 2023 [PU(A) 351/2023]	**Income Tax (Deduction for the Sponsorship of Hallmark Event) Rules 2016** The Rules provide a deduction equal to any cash contribution or contribution-in-kind made by a qualifying person in relation to a hallmark event (as defined) held in the ECER. The deduction is capped at RM1 million for each Y/A.
Income Tax (Deduction for Investment in Qualifying Activity) (Amendment) Rules 2023 [PU(A) 352/2023]	**Income Tax (Deduction for Investment in Qualifying Activity) Rules 2016** The Rules provide a tax deduction on the value of investment made in the related company by a qualifying person. The amount that is allowable as a tax deduction is equivalent to the amount incurred by the related company in the qualifying activity (as specified under Rule 2 and the Schedule of the Rules) in respect of which the investment is made.

Public Ruling (PR)1/2023 – Taxation of income from employment on board a ship

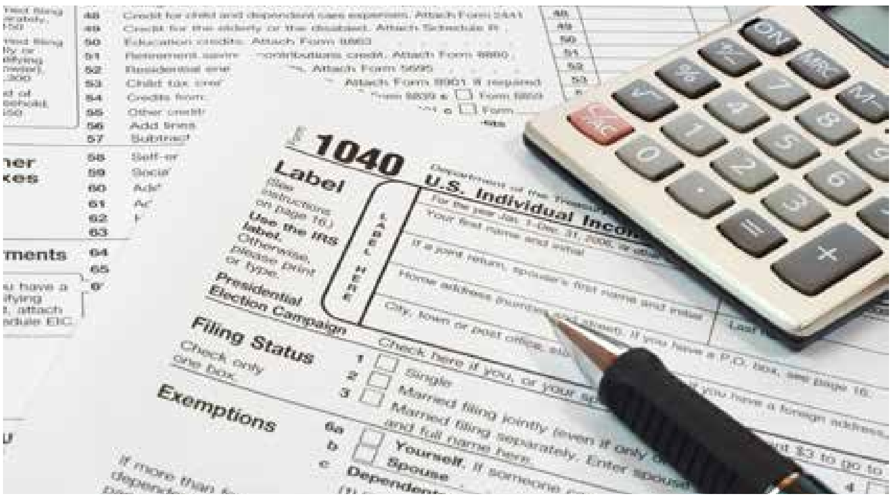
The Inland Revenue Board of Malaysia (HASiL) has published PR 1/2023: Taxation of income from employment on board a ship, dated 3 October 2023. This new PR replaces PR 12/2016, which was issued on 9 December 2016.

The contents of this new PR are broadly similar to the earlier PR which explains the tax treatment of income of an individual derived from an employment exercised on board a ship. The new PR provides a more comprehensive definition of a "seagoing ship", which is in line with the Merchant Shipping Ordinance 1952. Two new examples are also provided to illustrate the difference between a vessel which is a seagoing ship and one which is not. The new PR also has updated examples discussing specific legislative provisions which set out the tax treatment of the employment income of a seafarer.

The PR was updated to clarify the tax treatment of tax rebate for departure levy incurred for the purpose of performing umrah or other religious pilgrimages to a holy place. This PR must be read together with the PR 5/2021: Taxation of a resident individual Part I – Gifts or contributions and allowable deductions (subsequently updated by PR 6/2023) and PR 5/2022: Taxation of a resident individual Part II – Computation of total income and chargeable income.

PR 2/2023 – Tax incentive for investment in BioNexus status company

HASiL has published PR 2/2023: Tax incentive for investment in BioNexus status company, dated 4 October 2023. This new PR replaces PR 10/2018, which was issued on 4 December 2018. The contents of this new PR are broadly similar to the earlier PR which explains the tax incentives offered to an investor who has invested in a BioNexus status company in



Malaysia. The PR was updated to reflect the extension of the BioNexus Status incentive to 31 December 2022, pursuant to the Income Tax (Deduction for Investment in a BioNexus Status Company) (Amendment) Rules 2022 [PU(A) 212/2022]. This new PR must be read together with PR 1/2020: Tax Incentives for BioNexus status companies.

PR 3/2023 –Taxation of a resident individual Part III – Computation of income tax and tax payable

HASiL has published PR 3/2023: Taxation of a resident individual Part III – Computation of income tax and tax payable, dated 6 November 2023. This new PR replaces PR6/2018, which was issued on 13 September 2018. The contents of this new PR are broadly similar to the earlier PR which explains the computation of income tax and the tax payable by an individual who is resident in Malaysia.

PR 4/2023 – Investment Tax Allowance – Overview

HASiL has published PR 4/2023: Investment tax allowance – Overview, dated 10 November 2023. The PR provides an overview of the investment tax allowance that is available to companies participating or intending to participate in a business in relation to promoted activities or the production of promoted products in Malaysia.

PR 5/2023 – Tax incentive for approved food production project

HASiL has published PR 5/2023: Tax incentive for approved food production project, dated 20 November 2023. The PR explains the tax treatment of the tax incentive for an approved food production project in Malaysia that is available to persons participating or intending to participate.

PR 6/2023 – Taxation of a resident individual Part I - Gifts or contributions and allowable deductions

HASiL has published PR 6/2023: Taxation of a resident individual Part I - Gifts or contributions and allowable deductions, dated 20 November 2023. This new PR replaces PR 5/2021, which was issued on 30 September 2021. The contents of this new PR has been updated and amended in accordance with the Finance Act 2021. Some of the key amendments are the inclusion of the tax treatment of expenses for early intervention or rehabilitation programs for children with learning disabilities, and electric vehicle charging facility fees of up to RM2,500.

PR 7/2023 – Taxation of upstream petroleum Part I

HASiL has published PR 7/2023: Taxation of upstream petroleum Part I, dated 20 November 2023. The PR provides an explanation and interpretation of the taxation of upstream petroleum in Malaysia from the perspective of the Petroleum (Income Tax) Act 1967 (PITA 1967) and the scope of taxation thereunder.

PR 8/2023 – Tax treatment for a company that establishes a special purpose vehicle for the issuance of sukuk – Section 60I Income Tax Act 1967

HASiL has published PR 8/2023: Tax treatment for a company that establishes a special purpose vehicle for the issuance of sukuk – Section 60I Income Tax Act 1967 (ITA 1967), dated 15 December 2023. The PR explains the tax treatment for a company that establishes a Special Purpose Vehicle (SPV) for the issuance of sukuk under S. 60I of the ITA 1967.

Updates on the implementation of e-invoicing

Further to the issuance of the e-Invoice Guideline (Version 1.0) (Guideline) on 21 July 2023, HASiL has issued the following:

(a) e-Invoice Guideline (Version 2.1)
The e-Invoice Guideline (Version 2.1),

published on 28 October 2023, replaces the e-Invoice Guideline (Versions 1.0 and 2.0).

(b) e-Invoice Specific Guideline (Version 1.1)
The e-Invoice Specific Guideline (Version 1.1), published on 28 October 2023, provides further guidance on specific areas, such as transactions with buyers and statements/bills on a periodic basis.

(c) e-Invoice Catalogue
The e-Invoice Catalogue contains a list of the codes to be used for specific data fields in an e-Invoice.

(d) Frequently Asked Questions (FAQs) – general

(e) Industry specific (FAQs) – Healthcare (16 November 2023) and Construction (30 November 2023)

Updated guidelines on secretarial and tax filing fees, with effect from Y/A 2022

HASiL has published the updated Guidelines on secretarial and tax filing fees, dated 10 November 2023. These new Guidelines replace the Guidelines which were issued on 17 August 2022. The contents of these new Guidelines are broadly similar to the earlier guidelines which explain the tax treatment of the secretarial fee and tax filing fee. The Guidelines were updated mainly on Examples 2 and 3 to give a better clarification on the tax treatment of the expenses.

STAMP DUTY

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Public Sector Home Financing Board) Order 2023

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Public Sector Home Financing Board) Order 2023 [PU(A) 276/2023] was gazetted on 18 September 2023. The Order provides that any tax payable under the ITA 1967 and any stamp duty payable under the Stamp Act 1949 (SA 1949) in relation to the following shall be remitted in full:

(a) Business Financing-i Facility (BF-i Facility) obtained by the Public Sector Home Financing Board from Bank Islam Malaysia Berhad with the aggregate principal amount not exceeding RM1 billion (RM1,000,000,000.00); and

(b) Guarantee provided by the Government of Malaysia in relation to the BF-i Facility.

The Order came into operation on 19 September 2023.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Digital Nasional Berhad) Order 2023

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Digital Nasional Berhad) Order 2023 [PU(A) 277/2023] was gazetted on 19 September 2023. The Order provides that any tax payable under the ITA 1967 and any stamp duty payable under the SA 1949 in relation to the following shall be remitted in full:

(a) Short Term Revolving Credit-i Facility (GGRC-i Facility) obtained by Digital Nasional Berhad from Maybank Islamic Berhad with the aggregate principal amount not exceeding RM2 billion (RM2,000,000,000.00); and

(b) Guarantee provided by the Government of Malaysia in relation to the GGRC-i Facility.

The Order came into operation on 20 September 2023.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Malaysia Rail Link Sdn. Bhd.) Order 2023

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Malaysia Rail Link Sdn. Bhd.) Order 2023 [PU(A) 319/2023] was gazetted on 20 October 2023. The Order provides that any tax payable under the ITA 1967 and any stamp duty payable under the SA 1949 in relation to the following shall be remitted in full:

(a) Syndicated Short Term Revolving Credit Facility (STRC-3 Facility) obtained by the Malaysia Rail Link Sdn. Bhd. from Bank of China (Malaysia) Berhad, China Construction Bank (Malaysia) Berhad and United Overseas Bank (Malaysia) Bhd with the aggregate principal amount of RM3 billion (RM3,000,000,000.00)

(b) Syndicated Islamic Short Term Revolving Credit-i Facility (Initial STRC-i3 Facility) obtained by the Malaysia Rail Link Sdn. Bhd. from AmBank Islamic Berhad, CIMB Islamic Bank Berhad, Maybank Islamic Berhad and RHB Islamic Bank Berhad with the aggregate

principal amount of RM3.5 billion (RM3,500,000,000.00)

(c) Islamic Short Term Revolving Credit-i Facility (Additional STRC-i3 Facility) obtained by the Malaysia Rail Link Sdn. Bhd. from Maybank Islamic Berhad with the aggregate principal amount of RM1 billion (RM1,000,000,000.00)

(d) Islamic Commercial Papers and the Islamic Medium Term Notes (Islamic Commercial Papers and Islamic Medium Term Notes Programme) issued or to be issued by the Malaysia Rail Link Sdn. Bhd. pursuant to the Islamic Commercial Papers and Islamic Medium Term Notes Programme (with an option to issue the Sustainable and Development Goals Sukuk) with a nominal value of up to RM10.21 billion (RM10,210,000,000.00) including the aggregate amount that has been obtained under the STRC-3 Facility, the Initial STRC-i3 Facility and the Additional STRC-i3 Facility

(e) Other financing that will be obtained or other corporate bonds or sukuk (related future financing programme) issued by the Malaysia Rail Link Sdn. Bhd. with the approval of the Government of Malaysia with a master funding limit not exceeding RM23.49 billion (RM23,490,000,000.00) including the funding obtained by the Malaysia Rail Link Sdn. Bhd. under the Islamic Commercial Papers and Islamic Medium Term Notes Programme, STRC-3 Facility, Initial STRC-i3 Facility and Additional STRC-i3 Facility

(f) Guarantee provided by the Government of Malaysia in relation to the STRC-3 Facility, Initial STRC-i3 Facility, Additional STRC-i3 Facility, Islamic Commercial Papers and Islamic Medium Term Notes Programme and related future financing programme.

The Order came into operation on 23 October 2023.

Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Public Sector Home Financing Board) (No. 2) Order 2023

The Loans Guarantee (Bodies Corporate) (Remission of Tax and Stamp Duty) (Public Sector Home Financing Board) (No. 2) Order 2023 [PU(A) 379/2023] was gazetted on 15 December 2023. The Order provides that any tax payable under the ITA 1967 and any stamp duty payable under the SA 1949 in relation to the following shall be remitted in full:

c) Islamic Commodity *Murabahah* Term Financing Facility (CMTF-i Financing) obtained by the Public Sector Home Financing Board from Maybank Islamic Berhad with the aggregate principal amount not exceeding RM1 billion (RM1,000,000,000.00); and

d) Guarantee provided by the Government of Malaysia in relation to the CMTF-i Financing

The Order came into operation on 16 December 2023.

INDIRECT TAX

GENERAL

Indirect Tax Amnesty

Updated announcement on Penalty and Surcharge Remission Programme

On 11 December 2023, the RMCD announced, via their website, that the Penalty and Surcharge Remission Programme had been extended to 31 December 2023. Previously, this programme was only valid from 1 February 2023 to 30 September 2023. This Programme allowed taxpayers with Bills of Demand issued during the taxable periods ending on or before 31 December 2022, to pay any outstanding tax/penalty/surcharge liabilities pertaining to indirect taxes for selected Acts administered by the RMCD, and be granted penalty and surcharge waivers. In addition, the announcement also indicated guidelines pertaining to the temporary release from travel restrictions, subject to the amount of outstanding tax/penalty/surcharge paid to the RMCD.

CUSTOMS

Customs Regulations

Customs (Amendment) (No. 2) Regulations 2023

The Customs (Amendment) (No. 2) Regulations 2023 [PU(A) 305/2023] were gazetted on 10 October 2023 and came into operation on 11 October 2023. These Regulations provide for the amendments in relation to Part I and Part II of the Second Sch of the Customs Regulations 2019 [PU(A) 397/2019].

Customs (Amendment) (No. 3) Regulations 2023

The Customs (Amendment) (No. 3) Regulations 2023 [PU(A) 323/2023] were gazetted on 25 October 2023 and came into operation on 1 November 2023. These Regulations provide for the amendments in relation to Part I of the Second Sch of the Customs Regulations 2019 [PU(A) 397/2019].

Customs Duties Orders

Customs Duties (Goods under the Preferential Trade Agreement among D-8 Member States) Order 2023

The Customs Duties (Goods under the Preferential Trade Agreement among D-8 Member States) Order 2023 [PU(A) 291/2023] was gazetted on 29 September 2023 and came into operation on 1 October 2023. This Order lists the import duty rates for goods imported into Malaysia as specified in the Second Sch, originating from Bangladesh, Indonesia, Iran, Egypt, Nigeria, Pakistan and Turkiye, as specified in column (5) of the Second Sch. This Order also revokes the Customs Duties (Goods under the Preferential Trade Agreement among D-8 Member States) Order 2013 [PU(A) 328/2013].

Customs Duties (Goods under the Framework Agreement on Trade Preferential System among the Member States of the Organisation of the Islamic Cooperation) Order 2023

The Customs Duties (Goods under the Framework Agreement on Trade Preferential System among the Member States of the Organisation of the Islamic Cooperation) Order 2023 [PU(A) 293/2023] was gazetted on 29 September 2023 and came into operation on 1 October 2023. This Order lists the import duty rates for goods imported into Malaysia, as specified in the Second Sch, originating from the Participating States, at the rate of the import duty specified in column (5) of the Second Sch.

Customs Duties Exemption Orders

Customs Duties (Exemption) (Amendment) (No. 4) Order 2023

The Customs Duties (Exemption) (Amendment) (No. 4) Order 2023 [PU(A) 333/2023] was gazetted on 2 November 2023 and came into operation on 1 December 2023. This Order provides for the amendments in relation to Part I of the Sch of the Customs Duties (Exemption) Order 2017 [PU(A) 445/2017].

Customs Prohibition of Import Orders

Customs (Prohibition of Imports) (Amendment) Order 2023

The Customs (Prohibition of Imports) (Amendment) Order 2023 [PU(A) 295/2023] was gazetted on 29 September 2023 and came into operation on 1 October 2023. This Order provides for the amendments in relation to the Second Sch and Third Sch of the Customs (Prohibition of Imports) Order 2023 [PU(A) 117/2023].

Customs Prohibition of Export Orders

Customs (Prohibition of Exports) (Amendment) Order 2023

The Customs (Prohibition of Exports) (Amendment) Order 2023 [PU(A) 294/2023] was gazetted on 29 September 2023 and came into operation on 1 October 2023. This Order provides for the amendments in relation to the Second Sch and Third Sch of the Customs (Prohibition of Exports) Order 2023 [PU(A) 122/2023].

Customs Anti-Dumping Duties Orders

Customs (Anti-Dumping Duties) Order 2023

The Customs (Anti-Dumping Duties) Order 2023 [PU(A) 285/2023] was gazetted on 27 September 2023 and is in operation from 29 September 2023 to 28 September 2028. This Order states that anti-dumping duties shall be levied on and paid by the importers in respect

of the goods specified in columns (1) and (2) of the Sch, which are exported from the countries specified in column (3) into Malaysia by the producers or exporters specified in column (4) at the rates specified in column (5).

SALES TAX

GENERAL

News 19: Application for Extension of Export Period Under S. 40 Sales Tax Act 2018 (Drawback) And Sales Tax (Persons Exempted From Payment Of Tax) Order 2018

News 19, dated 1 November 2023, was uploaded in the RMCD website on 1 November 2023. News 19 contains guidelines for relevant persons who wish to apply for an extension of the export period from Bahagian / Cawangan Kawalan Kemudahan, Cukai Dalam Negeri in the zone / state before the end date of export / transportation to a special area / designated area.

News 20: Application For Sales Tax Exemption Certificate Under Items 5B, 5C, and 5D, Sch A Of The Sales Tax (Persons Exempted From Payment Of Tax) Order 2018

News 20 dated 30 November 2023, was uploaded in the RMCD website on 30 November 2023. News 20 relates to Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2023 [PU(A) 332/2023] which came into operation on 1 December 2023, and provides the guidelines for relevant persons who wish to apply for the Sales Tax Exemption Certificate under items 5B, 5C, and 5D, Sch A of the Sales Tax (Persons Exempted From Payment Of Tax) Order 2018.

Notification of Commencement Date

Appointment of Effective Date for Charging and Levying of Sales Tax on Low Value Goods

The Appointment of Effective Date for Charging and Levying of Sales Tax on Low Value Goods [PU(B) 541/2023] was gazetted on 8 December 2023 and has come into operation on 1 January 2024.

Sales Tax Guides

Guide on Sales Tax On Low Value Goods (LVG)

The Guide on Sales Tax On Low Value Goods (LVG) dated 3 November 2023, was uploaded in the RMCD website on 3 November 2023. The Guide explains the implementation of Sales Tax on LVG on persons selling LVG via an online platform or operating an online marketplace, and is divided into Part I: Scope and imposition on LVG, and Part II: Customs clearance procedures on the importation of LVG.

Frequently Asked Questions (FAQ) on Sales Tax On Low Value Goods (LVG)

The Frequently Asked Questions (FAQ) on Sales Tax On Low Value Goods (LVG) dated 6 November 2023, were uploaded in the RMCD website on 6 November 2023. The FAQ is divided into Part I: Scope and imposition on LVG, and Part II: Customs clearance procedures on the importation of LVG.

Sales Tax Orders

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2023

The Sales Tax (Persons Exempted from Payment of Tax) (Amendment) (No. 2) Order 2023 [PU(A) 332/2023] was gazetted on 2 November 2023 and came into operation on 1 December 2023. This Order contains an amendment to item 5A and the insertion of items 5B, 5C and 5D in Sch A of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 [PU(A) 210/2018].

EXCISE DUTY

GENERAL

Updates on the implementation of excise duty on Premix Preparations

The RMCD, via their website, announced that the implementation of excise duty on Premix Preparations will come into effect on 1 March 2024. Exemptions related to the excise duty on Premix Preparations will be announced upon gazettement of the orders.

Excise Duties Orders

Excise Duties (Exemption) (Amendment) Order 2023

The Excise Duties (Exemption) (Amendment) Order 2023 [PU(A) 331/2023] was gazetted on 2 November 2023 and came into operation on 1 December 2023. This Order provides for the insertion of items 44 and 45 in Part I of the Sch of the Excise Duties (Exemption) Order 2017 [PU(A) 444/2017].

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

CASE 1

MULTI-PURPOSE CREDIT SDN. BHD. V DIRECTOR GENERAL OF INLAND REVENUE BA-14-4-10/2022 (HIGH COURT)

BRIEF FACTS

The taxpayer is a company principally engaged in credit and leasing business, hire purchase and general loan financing. The taxpayer received loans from related companies, MP Venture and MP Capital (“**the Companies**”) respectively amounting to RM77,305,831 and RM1,157,306. The loan debts were then waived by the Companies. Upon audit, the Director General of Inland Revenue (“**DGIR**”) raised additional assessments for years of assessment (“**Y/A**”) 2011 to 2015 in respect of the taxpayer on the basis that the debts waived by the Companies were the taxpayer’s business income that is taxable under S. 4(a) of the Income Tax Act 1967 (“**ITA 1967**”).

The Special Commissioners of Income Tax (SCIT) dismissed the taxpayer’s appeal against the notice of additional assessment. The taxpayer then appealed to the High Court.

TAXPAYER’S ARGUMENTS

At the High Court, the taxpayer contended that:

(i) S. 4(a) of the ITA 1967 is silent as to the type of business income and what amounts to gross income. Thus, to ascertain whether the debts owed to the Companies amount to income under the ITA 1967, reference must be made to the general provision under S. 22 of the ITA 1967. Based on the decision in the case of *Bandar Nusajaya Development Sdn Bhd* (2013) MSTC 30-058 and the decision of the House of Lords in *The British Mexican Petroleum* 16 TC 570, the waiver of debt is not taxable as gross income under S. 22.

(ii) The loan debts waived by the Companies were used to repay the taxpayer’s bank borrowings and not used for its income-producing activities. Since no deduction was made under S. 33(1) of the ITA 1967, the amount of the debt waived is not taxable under S. 30(4) of the ITA 1967.

(iii) The SCIT has erred by concluding that the waiver of debts constitute gains to the taxpayer and not capital contributions since there was no increase in the taxpayer’s share capital.

DGIR’S ARGUMENTS

The DGIR argued that:

(i) The loans received by the taxpayer from the Companies were part of the taxpayer’s business transaction, which then became the taxpayer’s liability or obligations. Since the debts were waived by the Companies, the taxpayer was released from its obligation to pay. Therefore, the waiver of debts constitutes ‘gains’ to the taxpayer and shall be taxable as the taxpayer’s income under S. 4(a).

(ii) S. 30(4) of the ITA 1967 does not apply as the ‘release of debt’ under S. 30(4) is not an income per se, but it is a method in determining the adjusted income when deductions were already made under S. 33(1) of the ITA 1967 by the taxpayer.

(iii) The ‘release of the loan liability’ by the Companies had effectively made the loan, which was the taxpayer’s stock-in-trade, to be free from any liability. Thus, the taxpayer has received ‘free money’ from the Companies in the course of its business, which is income taxable under S. 4(a) as gains or profits from a business.

HIGH COURT’S DECISION

The High Court dismissed the taxpayer’s appeal and upheld the decision of the SCIT (which was in favour of the DGIR). The High Court also held that:

(i) The SCIT was correct to subject the taxpayer’s income under S. 4(a) of the ITA 1967 as S. 4 does not specifically state what constitutes gross income; and

(ii) The taxpayer failed to adduce any evidence to show that the loan was used for non-income-producing activity or equity financing.

The taxpayer has since filed an appeal against the High Court’s decision to the Court of Appeal.

COUNSEL FOR THE TAXPAYER
Information not available at the time of publication.

COUNSEL FOR THE DGIR
Information not available at the time of publication.

DECISION DATE
5 December 2023

CASE 2

NG GEIK CHENG & ORS V KETUA PENGARAH JABATAN KASTAM DIRAJA MALAYSIA [2023] MLJU 2253 (HIGH COURT)

BRIEF FACTS

On 27 January 2023, the directors of the taxpayer company (“**Directors**” and “the company” respectively) applied for judicial review to quash the decision of the Director General of the Royal Malaysian Customs Department (“**RMCD**”) to maintain a travel ban on the Directors arising from goods and services tax (“**GST**”) due and owing to the RMCD. The Directors further sought an order of mandamus to release the Directors’ names from the travel restriction blacklist.

The company had earlier been wound up by a creditors petition on 10 December 2019. Upon the winding up of the company, the Directors filed a statement of affairs with the liquidator which valued the total assets of the company at RM1.26 million.

After learning of the travel prohibition, the Directors wrote to the RMCD and applied to be released from the travel ban on the basis that the company still has assets and immovable properties, which are sufficient to settle the outstanding tax. However, the RMCD informed the Directors that the travel ban would not be removed (although the company was wound up) until settlement of the outstanding tax. The Directors then filed for judicial review which was heard at the High Court.

DIRECTORS’ ARGUMENTS

The Directors argued that:

(i) Upon winding-up, the affairs, assets and liabilities of the company are under the control and administration of the liquidator. The Directors had co-operated with the liquidator and provided all documents and information concerning the company.

(ii) Having filed a proof of debt with the liquidator and given the value of the assets of the company which are sufficient to settle the outstanding tax, the RMCD can expect to receive payment of the outstanding tax when the liquidator has realised the assets of the company.

(iii) Therefore, the RMCD’s decision to maintain the travel ban against the Directors is illegal, irrational and unreasonable.

RMCD'S ARGUMENTS

The RMCD argued that the outstanding sum must be settled by the wound-up company before the Directors can be released from the travel ban.

HIGH COURT'S DECISION

The High Court, in allowing the Directors' judicial review application, held that:

(i) Based on the proof of debt filed by the RMCD, the company owes a total sum of RM92,044.60 to the RMCD. However, when rejecting the Directors' plea for release from the travel ban, the RMCD stated in its email that the outstanding sum owed by the company was RM64,819.55. Therefore, it appears that the RMCD is unsure of the actual tax owed by the company. The RMCD also failed to convey the actual outstanding tax to the Directors. It has also imposed the travel prohibition on the Directors without their knowledge.

(ii) Under S. 53(2) of the Goods and Services Tax Act 2014 (GSTA 2014), the Directors are only jointly and severally liable if the assets of the wound-up company are insufficient to meet the amount of tax due. However, the value of the taxpayer's assets and immovable properties is more than sufficient to account for the outstanding tax. Therefore, the Directors have no liability over the outstanding tax of the company.

(iii) Additionally, any outstanding tax due from the company to the RMCD has priority over other unsecured debts as provided in S. 527(1)(f) of the Companies Act 2016.

(iv) The RMCD has invoked S. 49 of the GSTA 2014 to impose the travel ban against the Directors as a matter of course to say, so long as there is a tax owing by a company, its directors would be restricted from travelling abroad. Travel bans shall not be imposed automatically without due regard to the circumstances of the case as the right to travel abroad is a personal liberty and should not be lightly curtailed.

(v) The RMCD's decision to maintain the travel ban is tainted with illegality, irrationality and unreasonableness.

COUNSEL FOR THE TAXPAYER
LEE KOK HAO (WITH CHEW XIN YI) (ONG & MANECKSHA)

COUNSEL FOR THE DGIR
MUHAMMAD BIN SINTI (SENIOR FEDERAL COUNSEL)

DECISION DATE
28 AUGUST 2023

CASE 3

BYG ARCHITECTURE SDN BHD V MENTERI KEWANGAN MALAYSIA [2023] 12 MLJ (HIGH COURT)

BRIEF FACTS

The Director General of Inland Revenue ("DGIR") issued notices of additional assessment ("Forms JA") against the taxpayer to pay tax due and payable on certain Y/As. Dissatisfied with the Form JA, the taxpayer wrote a letter to the Minister of Finance ("MoF") requesting him to:

(i) provide directions to the DGIR under S. 135 of the ITA 1967 to review his exercise of power and functions in issuing the Form JA; and

(ii) grant a tax exemption under S. 127(3A) of the ITA 1967 to the taxpayer in respect of tax payable and penalty raised under the Form JA.

The taxpayer sought the MoF to exercise his powers within 7 days ('the period') from the date of the letter. As there was no response from the MoF within that period, the taxpayer treated the MoF's non-response as a 'decision' and filed the judicial review application. The taxpayer sought, amongst others, an order of mandamus for the MoF to exercise his powers under S. 135 and/or S. 127(3A) of the ITA 1967 in favour of the taxpayer.

TAXPAYER'S ARGUMENTS

The taxpayer argued that:

(i) The MoF had made a decision when no reply was forthcoming within the period imposed by the taxpayer;

(ii) The Forms JA was *ultra vires*, illegal, void, unlawful, made in excess of

authority, without regard to the taxpayer's legitimate expectations, irrational and unreasonable.

ATTORNEY-GENERAL'S ARGUMENTS

The Attorney-General objected to the leave application on the grounds that:

(i) The MoF had not made any decision or committed any act or omission that was amenable to judicial review;
(ii) The failure to name the DGIR as a party rendered the proceedings frivolous and vexatious;
(iii) The taxpayer had not established any legal duty to act on the part of the MoF in order for the court to issue an order of mandamus to compel the MoF to act under S. 135 and S. 127(3) of the ITA 1967;
(iv) S. 135 and S. 127(3) could not be invoked by the taxpayer to set aside the Forms JA; and
(v) The taxpayer's judicial review was premature as it had not exercised its right of appeal under the ITA 1967.

HIGH COURT'S DECISION

The High Court, in dismissing the taxpayer's judicial review leave application, held that:

(i) The taxpayer had deemed that the MoF had made a 'decision' when it received no such 'decision' within the time frame it imposed in the letter to the MoF. There must be clear evidence of a refusal to act. In this case, the taxpayer had imposed a legal duty on the MoF to make a decision when there was no such duty on the MoF under S. 135 of the ITA 1967. Therefore, the MoF's non-response to the taxpayer's letter did not amount to a decision that was amenable to judicial review.
(ii) There is no requirement for the taxpayer to name the DGIR as a party in the judicial review. The judicial review application was made against the MoF's decision not to reply or respond to the taxpayer's letter.
(iii) A mandamus can only be granted when a legal duty is imposed on an authority. S. 135 of the ITA 1967 did not impose a legal duty on the MoF to set aside the Forms JA under the ITA 1967. What exists is the MoF's discretion, and not an obligation. Thus, the taxpayer could not seek an order of mandamus against the MoF.
(iv) S. 135 of the ITA 1967 plainly provides that the MoF may give the DGIR directions of a general character which is not inconsistent with the ITA 1967. The taxpayer's letter urging the MoF to give the DGIR directions pertaining to the assessment of tax cannot be viewed as directions of a general character under S. 135 of the ITA 1967.
(v) S. 135 and S. 127(3A) of the ITA 1967 give the MoF discretion in matters pertaining to tax generally. They do not allow the MoF to exempt a taxpayer from paying tax that was due and payable as and when the MoF pleases. If such a situation came into being, it would create chaos in the whole taxation legislative framework. It would be pointless for DGIR to issue the Form JA if the MoF could easily exempt the taxpayer from complying with them. Also, S. 135 and S. 127(3A) plainly allow the MoF's discretion. The word 'may' connote a non-mandatory nature (i.e., it denotes a 'permission' or a 'discretion').
(vi) The taxpayer's judicial review application was premature as it had a right of appeal under S. 99 of the ITA 1967 to challenge the Forms JA issued by the DGIR. The avenue of appeal to the SCIT should be exhausted first.

COUNSEL FOR THE TAXPAYER
S SARAVANA KUMAR (WITH FELICIA WONG SIE YING) (ROSLI DAHLAN SARAVANA PARTNERSHIP)

COUNSEL FOR THE DGIR
KRISHNA PRIYA A/P VEENAGOPAL @ VENUGOPAL (FEDERAL COUNSEL, ATTORNEY GENERAL'S CHAMBERS)

DECISION DATE
22 AUGUST 2023

Adeline Wong, Jeff Sum Wai Loon** and **Tan Wen Ying (Wong & Partners)

INDUSTRIAL BUILDINGS:
WHAT IS AN INDUSTRIAL BUILDING? (PART 2)

Siva Subramanian Nair

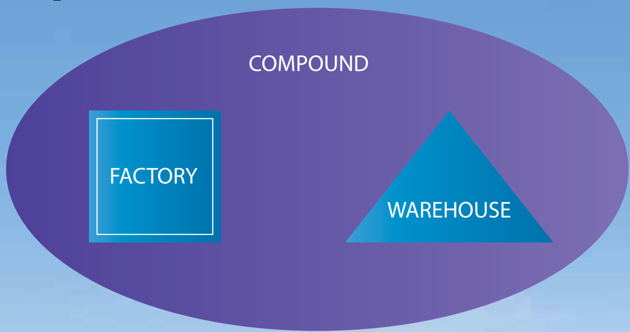
This is the second and final part of the article published previously in the Tax Guardian-2023 Quarter 4 issue.

We continue in this article on the definition of the word "factory". Note that any reference to numbered paragraphs (para) is in relation to paragraphs contained in Sch 3 of the Income Tax Act 1967 (ITA 1967).

Para 64(b) states that:
[A] building (within the same curtilage as a building which is used as a factory) used for the storage of any raw material, fuel or stores necessary for the manufacture of that product or the processing of those goods or materials, or for the storage of that product or those goods or materials when processed prior to the sale thereof.

In simple English this refers to a store or a warehouse. Public Ruling 8/2016 explains that "building within the same curtilage" would generally mean a building adjoining or adjacent to or in the land immediately surrounding a building which is used as a factory. This is clearly illustrated in the examples below.

Example 1: A Sdn. Bhd.



For A Sdn. Bhd., the warehouse is within the same compound as the factory and therefore comes within the definition of "factory" and in consequence qualifies as an industrial building.

Example 2: B Sdn. Bhd.

However, for B Sdn. Bhd., the warehouse is NOT within the same compound as the factory and therefore is ineligible to be regarded as an industrial building.

This aspect of qualifying as an industrial building is normally tested in examinations using a geographical approach or a distance method as shown in the following examples.

Example 3: C Sdn. Bhd. operates its manufacturing business through a factory in Kuala Lumpur and has a warehouse in Penang where it stores its finished goods. The warehouse does NOT qualify as an industrial building as it is quite impossible to have a compound covering KL to Penang!

Example 4: D Sdn. Bhd., a manufacturing company, has a factory and maintains a store for storage of raw materials to be used in the production of its manufactured goods. The distance between the factory and the warehouse is 80 kilometres. Obviously, candidates cannot assume the warehouse to be an industrial building due to the extensive distance between the 2 buildings.

Case law has indicated that the word "factory" can extend even further than what is mentioned in Para 64 because the word "includes" in that paragraph means that the definition of "factory" is inclusive rather than exhaustive i.e. it encompasses other items not exclusively mentioned in that paragraph. In a non-tax related case a Court of Appeal judge had stated:

> *" On settled principles of statutory interpretation, it is clear that when an Act of Parliament employs the expression "includes" to define some other word or expression, the intention is to leave the meaning of the expression defined open ended. By contrast, when the word "means" is employed to define something, there is a rebuttable presumption of statutory interpretation that Parliament intends to restrict the meaning of the expression defined"*

This might be useful for the candidates of the Revenue Law paper.

Therefore, this understanding of what constitutes a factory has been extended to encompass cold storage premises and internal road systems as illustrated in the cases below.

In ***Ellerker v Union Cold Storage Co Ltd* (1939) 22 TC 195**, the companies owned and occupied a number of cold storage premises for the purpose of its trade. The majority of these premises were purely cold stores that kept meat and other commodities at a certain temperature but a number were also used for the manufacture of ice. The companies were assessed to tax on the basis that they were not "mills, factories, or other similar premises".

The High Court judge held that the premises in question were "mills, factories or other similar premises". Macnaghten, J in considering the definition of factory and mill stated, " I take it that a factory is a building used for the manufacture of goods and equipped with machinery, and that the word is generally understood in that sense. It is a building where goods are made. The meaning of the word 'mill' is also, I think, plain enough. A mill is a building where goods are subjected to treatment or processing of some sort and machinery is used for that purpose. Giving these meanings to the words 'mills' and 'factories', it seems to me that the cold stores belonging to the respondent company are beyond doubt very similar to 'mills' in all the essential characteristics of such buildings, since they are equipped with machinery for the purpose of subjecting the meat and other commodities which are brought here to an artificial temperature.". Hence the buildings were classed as "mills, factories or other similar premises".

Similarly, in ***Ketua Pengarah Hasil Dalam Negeri v Classic Japan (M) Sdn. Bhd.* (2022) MSTC 30-476,** the taxpayer was involved in collecting, processing, and shipment of flower cutting for export. The Court of Appeal affirmed the decision of the Special Commissioners of Income Tax (SCIT) and the High Court that the taxpayer was allowed to claim industrial building allowances on the capital expenditure incurred for a cold room facility which was used to store the fresh flowers before exporting them to Japan based on the argument that there is a value-added to the processed and packaged flowers as they would be able to have a longer lifespan to survive the journey to Japan without damage. (Another argument was also stated which will be discussed in a later article).

In ***DGIR v C Company of Malaysia Bhd.* [1980] MTJ 67**, the SCIT considered whether expenditure incurred on the construction of an internal road system linking up the respondent's factory complex qualified for capital allowances. The SCIT concluded that the internal road system was an integral part of the respondent's factory complex and therefore, qualified for industrial building allowance.

> *"As per definition in Section 2 of the Act the term 'building' includes any structure erected on land (not being plant and machinery). In view of this definition, we are of the view that the term building in paragraphs 63 and 64 includes a structure erected on land. Therefore, a building or a structure which fulfils the conditions spelled out in paragraph 64 is a 'factory' for the purposes of that paragraph."*

In the same case it was concluded that:

> *"In the instant case we have found that the internal road system linking the various buildings and for the reasons mentioned above, the internal roads therefore form part of the entirety of the industrial buildings and qualify for capital allowances. Without the road system the industrial buildings would not be able to function adequately in the business of the respondent."*

The judge also stated that *"the distinction drawn between 'building' and 'structure' is merely academic...building includes structure but structure does not necessarily mean building... A road regarded in isolation would probably be a mere structure in England or Malaysia because the construction of the road would probably constitute an erection. But it would not be a building in either country if viewed in isolation. However, if it is part of the entirety of the building it qualifies for industrial building capital allowance. So, whether we consider the problem in England or Malaysia the safest course is to ask ourselves the question - Is it part of the entirety? If it is then it follows that it is an industrial building or rather part of it."*

He quotes ***Smith v York Race Committee* (1993) 1 KB 517**, where Justice Finlay explained in the following words:

> *"...all that could be said would be that 'building' must cover adjuncts that is to say, a courtyard or something of that sort necessarily use in connection with the building."*

Yet again, in ***KPHDN v Success Electronics & Transformer Manufacturer Sdn Bhd* (2012) MSTC 30-039**, Abang Iskandar J (as he then was) stated:

> *"The functionality of the claimed items in the overall context of the production in the manufacturing process in the factory ought to be taken as a valid factor to be considered in giving the appropriate meaning to the word 'factory'."*

Further, in ***Lavender Confectionery & Bakery Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2018) 1 LNS 2012** the High Court allowed the taxpayer's claim for industrial building allowances on the capital expenditure incurred for the construction of a boundary around the factory complex, guardhouse and concrete driveway. The High Court held that the functionality test should be applied in determining whether the items claimed are

necessary and integral to the functioning of the factory.

We now look at some past year questions dealing with the areas discussed above.

In **June 2019 Revenue Law paper Question 6(d)**, candidates were asked to discuss briefly whether RM50,000 incurred by Orange Cotton Sdn. Bhd. on an internal road system linking up the various buildings in the complex, would qualify for industrial building allowance and were required to support their answer with reference to the relevant provisions of the ITA 1967 and related case laws.

Solution (1 mark)
In respect of the RM50,000 *incurred on the internal road system linking up the warehouse complex, the question is whether the road system forms part of the 'industrial building' such that the costs should also be allowed. In DGIR v C Company of Malaysia Bhd (1980) 10 MTJ 67, the SCIT held that expenditure incurred on the construction of an internal road system linking up a factory complex qualified for industrial building allowance as the internal road system was an integral part of the factory complex. Here, the internal road system linking up the buildings in the complex is similarly an integral part of the complex and should similarly qualify for industrial building allowance.*

In **December 2013 Revenue Law paper Question 4(b)**, SuperTech Sdn Bhd ("SuperTech"), a company manufacturing electronic transformers ... recently incurred expenditure on the construction of an internal road system linking the various industrial buildings in its existing factory complex. By reference to the ITA 1967 and decided tax cases, candidates were asked to advise Chin, the finance manager, on [whether] the constructed internal road system [will] fall within the definition of "factory" for the purpose of industrial building allowance.

Solution
The internal road system qualifies for IBA if it forms an integral part of the factory complex (DGIR v C Company).

That concludes our discussion on what constitute a factory.

All the best to the candidates attempting the CTIM examinations in March 2024. May God be your constant companion throughout the examination.

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

FURTHER READING

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

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD Events: JANUARY – MARCH 2024

Month /Event	Details: Date	Details: Time	Details: Platform / Location	Details: Speaker	CPD Points
JANUARY 2024					
Workshop: Critical Tax Issues in Malaysia	4 January 2024	9 a.m. - 5 p.m.	Zoom Webinar	Harvindar Singh	8
Practical Approach & Preparation to Obtain Tax Agent (s153) License	22 January 2024	2 p.m. - 5 p.m.	Zoom Webinar	Renganathan	3
Workshop: SVDP 2.0: Mitigating Tax and Transfer Pricing Risk	24 January 2024	9 a.m. - 1 p.m.	Zoom Webinar	Theresa Goh	4
Workshop: Malaysian Property Tax, Capital Gains Tax, and Estates and Trusts	30 January 2024	9 a.m. - 5 p.m.	Zoom Webinar	Dr. Tan Thai Soon	8
Workshop: Tax Deductible Expenses - Principles and Latest Developments	31 January 2024	9 a.m. - 5 p.m.	Zoom Webinar	Chow Chee Yen	8
Public Holiday ***(New Year's Day: 1 January, Thaipusam: 25 January)***					
FEBRUARY 2024					
Workshop: Real Property Gains Tax and Capital Gains Tax	6 February 2024	9 a.m. - 5 p.m.	Zoom Webinar	Harvindar Singh	8
Workshop: Tax treatment on Interest – Common issues and latest updates	14 February 2024	9 a.m. - 5 p.m.	Zoom Webinar	Karen Koh	8
Workshop: Tax Issues of SMEs	19 February 2024	9 a.m. - 5 p.m.	Zoom Webinar	Jesudason	8
Workshop: Taxing the Digital Economy and E-Invoicing	21 February 2024	9 a.m. - 5 p.m.	Zoom Webinar	Jesudason	8
Workshop: Employer's Responsibilities and Compliance Matters	22 February 2024	9 a.m. - 5 p.m.	Zoom Webinar	Ho Yi Hui	8
Basic of the Malaysian Tax System (Collaboration CTIM-MAICSA)	27 February 2024	9 a.m. - 5 p.m.	Microsoft Teams	Chong Mun Yew & Michael Cheah	8
Malaysia Tax Deductible Expenses (Collaboration CTIM-MAICSA)	29 February 2024	9 a.m. - 5 p.m.	Microsoft Teams	Chong Mun Yew & Michael Cheah	8
Workshop: Review and Update on Selected Public Rulings issued in the recent years	29 February 2024	9 a.m. - 5 p.m.	Zoom Webinar	Harvindar Singh	8
Public Holiday ***(Federal Territory Day: 1 February, Chinese New Year: 10 - 11 February)***					
MARCH 2024					
Capital Allowance and Reinvestment Allowance (Collaboration CTIM-MAICSA)	5 March 2024	9 a.m. - 5 p.m.	Microsoft Teams	Chong Mun Yew & Michael Cheah	8
Workshop: Corporate Tax Strategies	5 March 2024	9 a.m. - 5 p.m.	Zoom Webinar	Harvindar Singh	8
Business or Employment Income (Collaboration CTIM-MAICSA)	7 March 2024	9 a.m. - 5 p.m.	Microsoft Teams	Chong Mun Yew & Michael Cheah	8
Workshop: Tax Agents Under Section 153(3) of the Income Tax Act 1967	19 March 2024	9 a.m. - 5 p.m.	Zoom Webinar	Karen Koh	8
Public Holiday ***(Nuzul Al-Quran: 28 March)***					

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 03-9212 7850 ext 122, 121, and 123 respectively or email to **cpd@ctim.org.my** for more information.

CHARTERED TAX INSTITUTE OF MALAYSIA

Seminar : Latest Income Tax Updates & Recent Tax Cases 2023

24 May 2024 (24SE/002)
Jen Hotel, Penang

5 June 2024 (24SE/001)
Aloft Kuala Lumpur Sentral

25 June 2024 (24SE/003)
Holiday Villa, Johor Bahru

9:00 am – 5:00 pm

MODERATOR
Mr. Chow Chee Yen
President, Chartered Tax Institute of Malaysia

SPEAKER
Mr. S Saravana Kumar
Partner, Rosli Dahlan Saravana Partnership

SPEAKER
Ms. Amira Azhar
Partner, Rosli Dahlan Saravana Partnership

PROGRAMME

8:30 am	Registration
9:00 am	Opening Remarks & Latest Income Tax Updates by Mr. Chow Chee Yen, *CTIM President*
9:45 am	Session 1
10:30 am	Morning Refreshments
11:00 am	Session 2
12:30 pm	Networking Lunch
2:00 pm	Session 3
3:30 pm	Afternoon Refreshments
4:00 pm	Session 4
5:00 pm	End of Programme

Issues	Cases
Deductibility of Bumiputera expenses under Section 33(1) of the Income Tax Act 1967 (“ITA”).	**Ketua Pengarah Hasil Dalam Negeri v Mitraland Kota Damansara Sdn Bhd**
Unconstitutionality of Section 4C of the ITA.	**Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri**
Reinvestment Allowance claim.	**Tenaga Nasional Berhad v Ketua Pengarah Hasil Dalam Negeri**
Investment Tax Allowance claim and Industrial Building Allowance claim	**Ketua Pengarah Hasil Dalam Negeri v Pulau Pinang Clinic Sdn Bhd**
Whether financing expenses deductible under s 33(1) of ITA	**Petron Oil (M) Sdn Bhd & Anors v Ketua Pengarah Hasil Dalam Negeri**

***and more cases will be highlighted and discussed by the speakers.*

Who should attend:

- CEO/CFO/ Directors
- Financial Planner
- Tax Agent/ Advisor
- Corporate Accountants
- Business Consultants
- Public Accountants

CONTACT US:
For more information / registration, kindly contact:
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8 CPD points
(For purposes of Section 153, ITA 1967)

The CPD points awarded qualify for the purpose of application and renewal of tax agent license under Section 153, Income Tax Act, 1967.