SEMINAR: UNRAVELLING THE RECENT TRENDS IN TAX AVOIDANCE CASES

Event Code	Date	Venue
19SE/021	4 September 2019	Sheraton Imperial Kuala Lumpur Hotel

Synopsis

The topic of tax avoidance is no stranger to controversy, having sparked lots of interest in both private and public discourse. With the advent of the Organisation for Economic Co-operation and Development (OECD) and G20's Base Erosion and Profit Shifting Action Plan (i.e. the BEPS Action Plan), this topic is even more prevalent than before. According to the OECD, national laws have not always kept pace with global developments, the fluid movement of capital and the rise of digital economy. Apparently, this leaves gaps and mismatches that can be exploited by businesses, thus undermining the fairness and integrity of tax systems. The OECD's stand on this matter somewhat mirrors that adopted by the Inland Revenue Board of Malaysia in public discourse, or at least in the court cases which will be discussed in this seminar.

Section 140(1) of the Income Tax Act 1967 confers on the Director General of Inland Revenue ("DGIR") the authority to disregard or vary transactions if he has reason to believe that the said transaction alters the incidence of tax, relieves any person from any tax liability, evades or avoids any duty or liability imposed or hinders or prevents the operation of the ITA. In such circumstances, the DGIR may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the transaction and make such adjustments as he thinks fit with a view to counter-acting the whole or any part of any such direct or indirect effect of the transaction. Section 140(1), which is modelled after the then Australian general anti-avoidance provision, is not peculiar to Malaysia alone; it has parallels in other jurisdictions where it has received judicial consideration. In this area of the law, there is a clear distinction between tax evasion, tax avoidance and tax mitigation. Tax evasion in most jurisdictions including Malaysia is illegal and gives rise to substantial civil and criminal sanctions. In Malaysia, by virtue of s 140(1), the DGIR is entitled to disregard or vary any transaction that is created merely for the purposes of tax avoidance.

If the incidence of tax is altered or a party is relieved of its liability to pay tax as a consequence of a transaction that has commercial justification or the transaction is a bona fide transaction, the DGIR is not entitled to disregard or vary that transaction. This is generally known as tax mitigation if a benefit is obtained by reason of a transaction that has commercial justification or is bona fide and yet, it reduces a party's liability to tax.

The case law developments illustrate how our courts have, to a large extent, managed to balance the rights and interest of both taxpayers and the government. As much as it is salutary to remember that every taxpayer, be it an individual or a company, must ensure that tax due is duly settled every year, our courts have also held that it is well settled that every exercise of statutory power cannot be done so arbitrarily. Tax avoidance is no stranger to tax controversy and will remain so, as long as tax legislation continues to flourish in our midst.

With this backdrop, this seminar will examine the judicial mood in recent tax avoidance cases in Malaysia, namely, SBP, Sabah Berjaya, Port Dickson Power, Rainforest, Maersk, Ibraco-Peremba, Ensco Gerudi and many more.

Speakers

Chow Chee Yen
Council Member, CTIM

Chee Yen is currently the Tax Advisor of Grant Thornton Malaysia. He has more than 28 years of tax experience and was involved in tax engagements concerning cross border transactions, tax due diligence review, restructuring schemes, corporate tax planning, group tax review, inbound investments and good and services tax (GST). Chee Yen's expertise is in high demand and he is a prolific trainer/facilitator for tax workshops and seminars organised by ACCA, CCH, CPA Australia, CTIM, MIA, MAICSA, MICPA and the STAR newspaper. In addition, he conducts in-house training for both professional firms and corporations as well as guest speaker for national and international conferences. He is a Council Member of the Chartered Tax Institute of Malaysia (FCTIM), a Fellow Member of The Association of Chartered Certified Accountants (FCCA) and a Chartered Accountant of the Malaysian Institute of Accountants (CA). He is also a graduate of the Malaysian Institute of Certified Public Accountants (MICPA) Examinations.

Farah Rosley
Deputy President, CTIM

Farah Rosley is a Partner of Ernst & Young Tax Consultants Sdn Bhd and has more than 20 years of experience handling tax consulting and advisory including tax structuring, tax reviews, incentives, tax audits and investigations and transfer pricing assignments, covering a range of industry sectors. Farah has worked closely with government authorities and agencies on various taxation matters for local and multinational corporations. She also has had engagements at Government consultation meetings and been invited to attend task force on tax policy matters. Farah is the Deputy President and Fellow member of CTIM.

S. Saravana Kumar
Partner
Lee Hishammuddin Allen & Gledhill

Saravana Kumar is a Tax Partner with the law firm, Lee Hishammuddin Allen & Gledhill. Saravana has appeared in benchmark litigations with a sizeable volume of wins in tax disputes. He is presently representing almost all the taxpayers involved in major tax litigations with the Inland Revenue Board. Saravana was recently named as one of the top 40 lawyers under the age of 40 in Asia. He also an Adjunct Professor with Universiti Tenaga Nasional (UNITEN).

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☐ CTIM/ACCA Member	RM477.00
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☐ Non-Member	RM689.00

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- * Walk-in participant registration and attendance is subject to availability of seats and full payment.
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Recording
Video / Sound recording is strictly prohibited.