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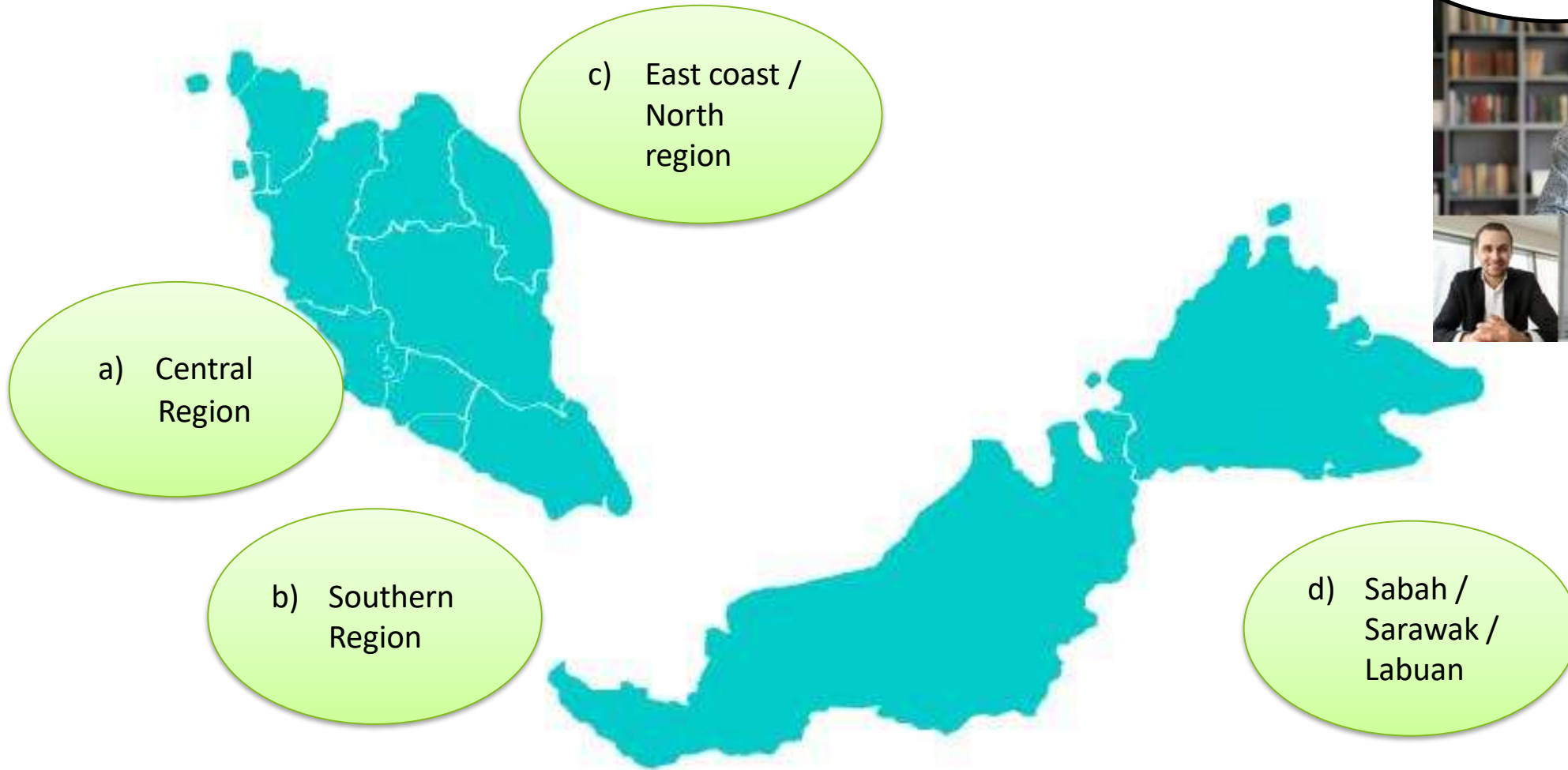


Deloitte TaxMax - The 46<sup>th</sup> series  
Forum with Inland Revenue Board of Malaysia  
(IRBM) on recent trends  
Chow Kuo Seng | 24 November 2020



**MAKING AN  
IMPACT THAT  
MATTERS**  
*since 1845*

# Poll question 1



Where are you dialing in from?



# Forum with the Inland Revenue Board (IRB)

**Malaysian government  
revenue outlook**

- Government initiatives**
- Voluntary disclosure
  - Tax identification number
  - Curb cash transaction for money laundering, etc



**IRB strategy - Risk based  
compliance model**

**Tax evasion involving large  
corporations, formal  
businesses and high net-  
worth individuals**

**Evolution of shadow  
economy through  
technology**

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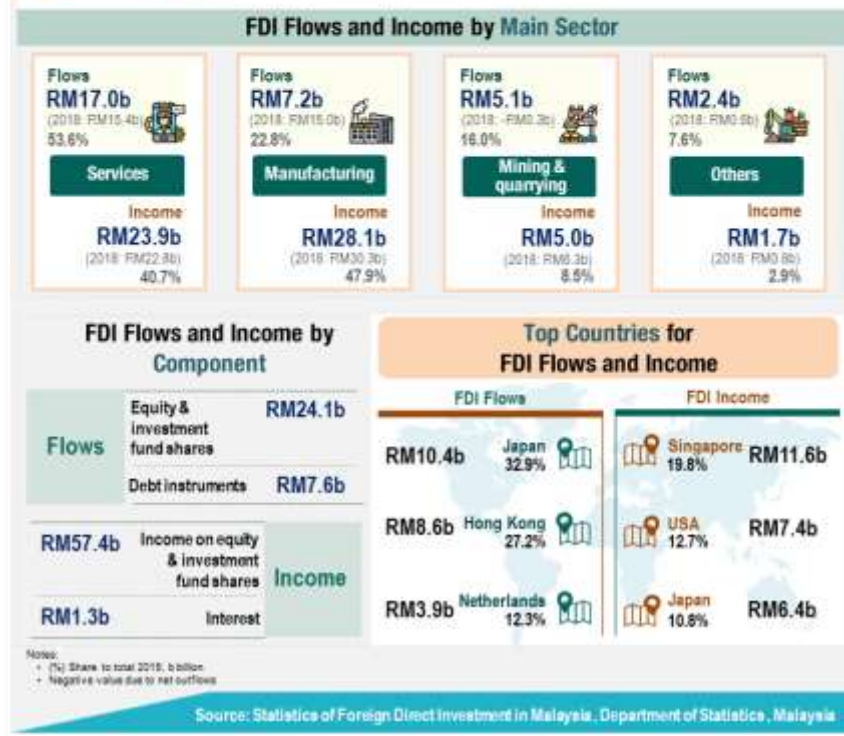
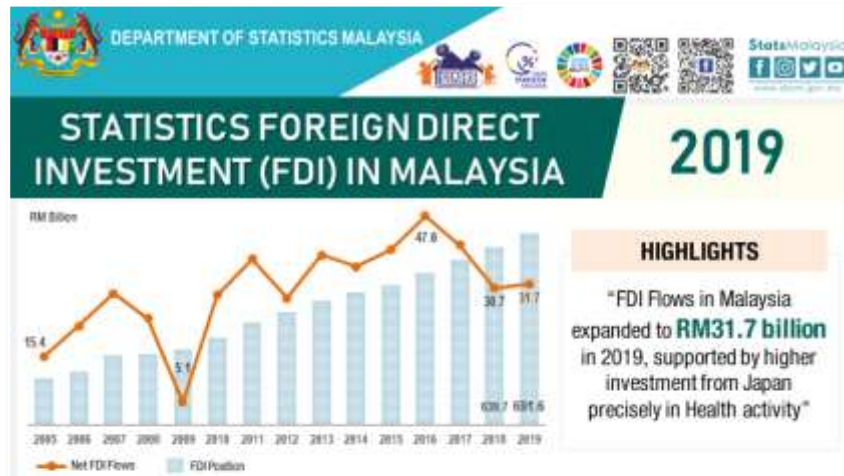
## **Forum with Inland Revenue Board (IRB) on recent trends:**

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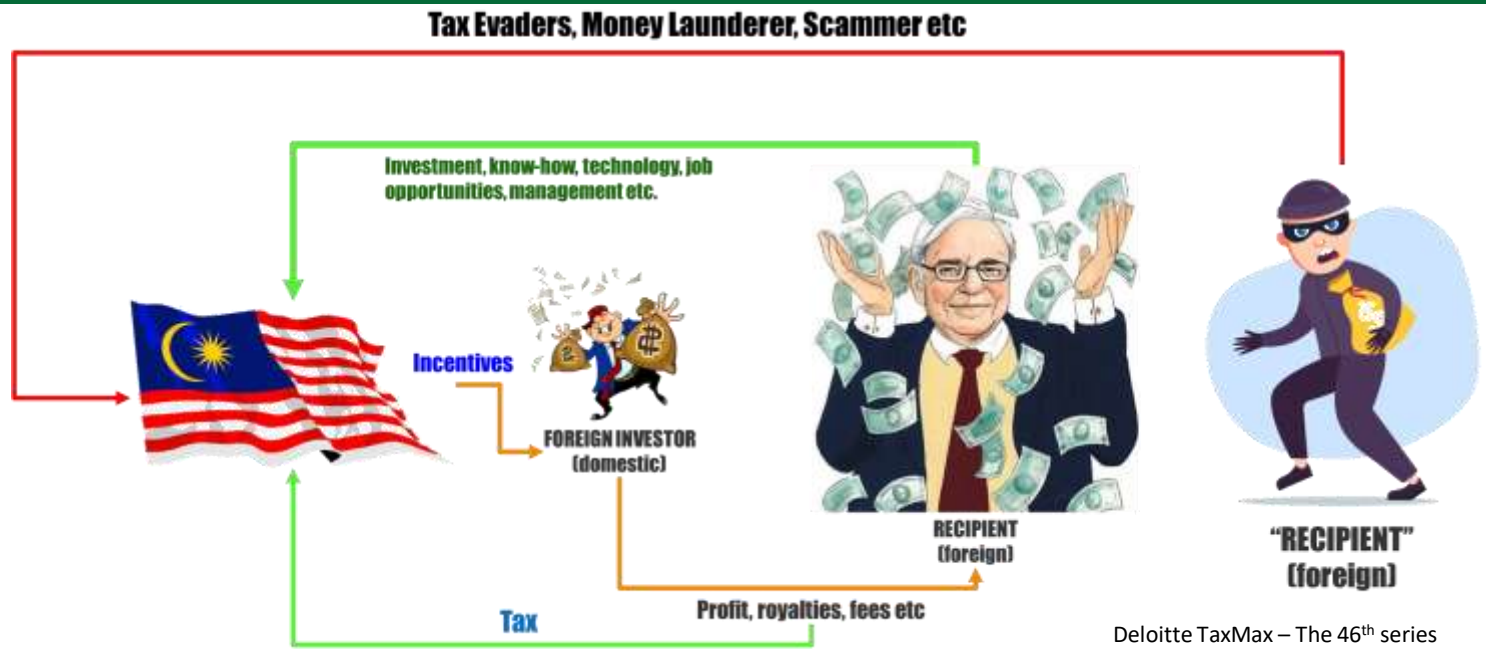
# Industry and case selection

# Industry & case selection

- Audit & investigation are conducted on all economic sectors
- Audit & investigation framework
- Deterrent & promote voluntary compliance
- Expand revenue base and reduce tax gap
  - ✓ Shadow economy
  - ✓ High net-worth individuals



# Why certain industry being selected?



# Evolution of economy through technology

## Emerging economic activities

- Gig economy / YouTuber
- Crowdfunding
- Fintech / Digital currency / Mobile apps



## Trending payment methods

- Digital currency
- Prepaid or stored valued card
- Digital wallet
- Mobile payment

## Impact / Vulnerabilities

- Connections to tax & accounting offences
- Possible anonymity of the users
- Limited human intervention, non-face-to-face registration
- Speed of transaction & high number of transactions
- International presence & limited jurisdictional competences
- Challenges for traditional financial institutions to monitor and detect suspicious financial transactions
- Digital payment gateways

# Common violations noticed by the IRB



## Common offences / violations

- Section 112 - Failure to furnish return
- Section 113 – Incorrect return
- Section 114 – Wilful evasion

## Why best judgement assessment issued?

- Failure to furnish return/capital statement
- Failure to furnish sufficient explanation/documents
- Incorrect information
- Poor cooperation
- Disagreement

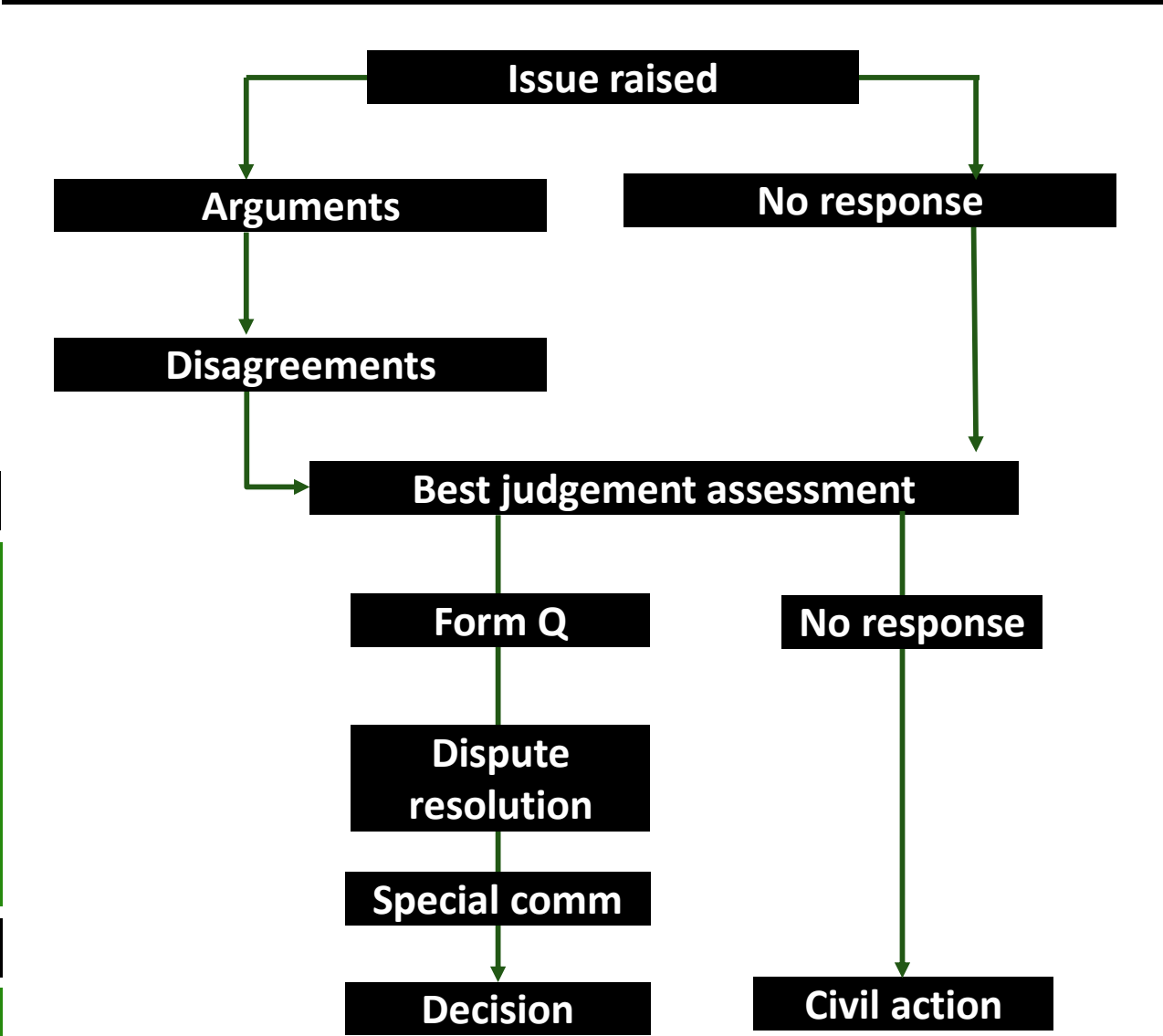
## Examples on causes of BJA:

- S113/S39 - Failure to remit WHT – **Negligence**
- S112 - Failure to furnish return/capital statement
- PE - S113/**Technical Adjustment** - Section 107A vs Section 109B
- S113/**Negligence** - % Expenses (e.g. Installation Cost) Subject to WHT
- S113/**Technical Adjustment** - Royalty vs Distribution Fee

## More examples on causes of BJA: Beneficial ownership

- Related party transaction
- Money laundering – Source of funds?

## The Process



# Timeline - Appeal by taxpayer against an assessment

## Timeline for taxpayer:

Within:

**30 days** (Form Q)

Form N for EOT

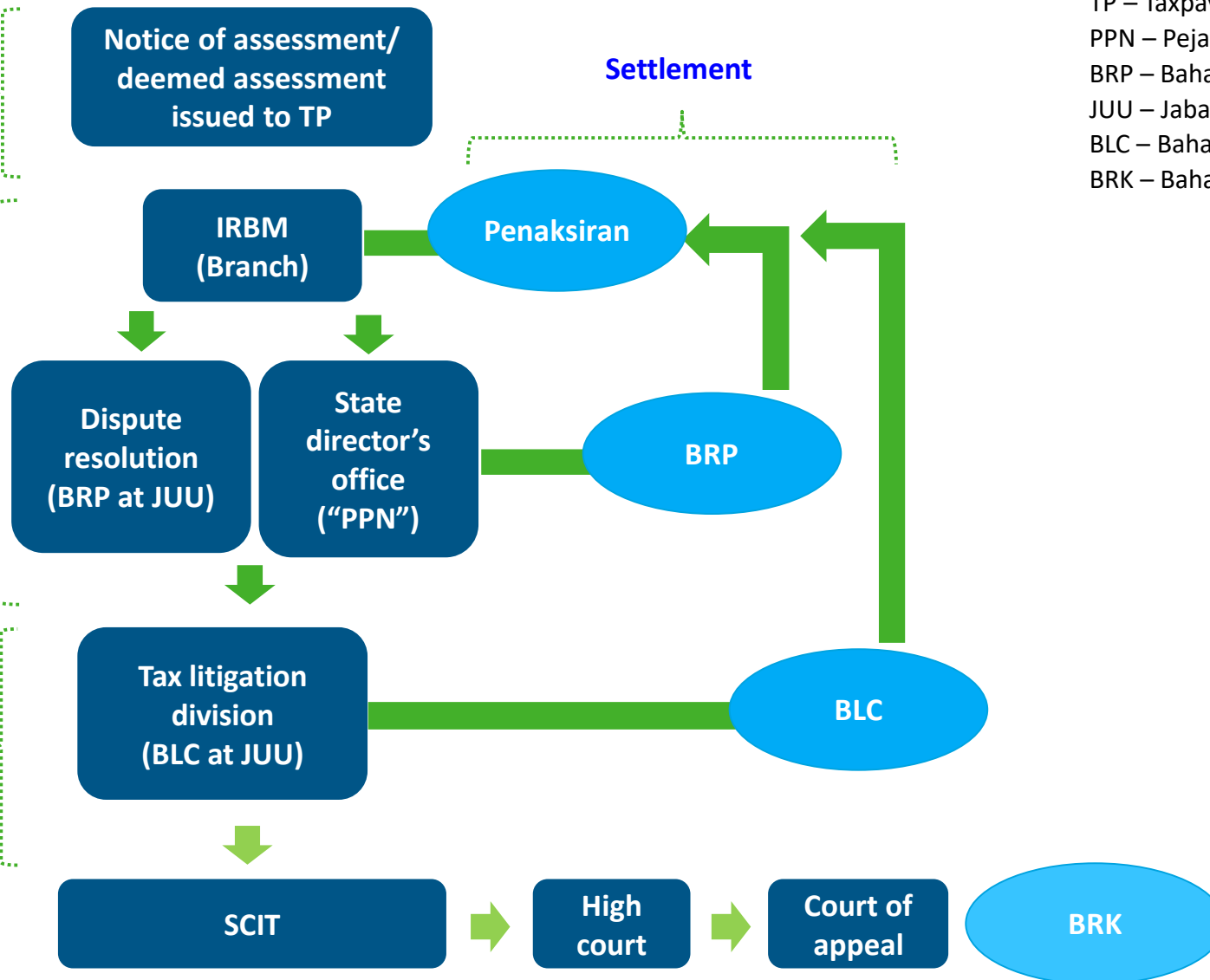
## Timeline for IRB:

**30 to 90 days** to forward the appeal to BRP at JUU / PPN for counter-proposal.

**IRB has 12 months** for the Form Q to be registered with the SCIT.

## Out-of-court settlement

between TP & IRB is possible IF JUU is agreeable to amicable resolution.



TP – Taxpayer

PPN – Pejabat Pengarah Negeri

BRP – Bahagian Resolusi Pertikain

JUU – Jabatan Undang-undang

BLC – Bahagian Litigasi Cukai

BRK – Bahagian Rayuan Khas

## Poll Question 2



a) Due to CMCO/EMCO, I'm unable to access some documents while working from home.

b) Not happy because it gives me more work

c) Tension. I got other things to worry about (i.e. company financial)

d) I'm feeling all the above.

# Anti-Money Laundering Act (AMLA)



**Financial Action Task  
Force (FATF)**



**NATIONAL  
COORDINATION  
COMMITTEE**



**The Asia Pacific Group On  
Money Laundering**



**COMPETENT AUTHORITY**

### **Reporting institutions**

- Financial institutions
- Designated non-financial businesses & professionals (DNFBP)

### **Enforcement agencies:**

- LHDNM
- BNM
- PDRM
- SPRM
- etc





**Financial Action Task Force (FATF)**



**The Asia Pacific Group On Money Laundering**

## **FATF 40 recommendations**

### **Scope:**

- **Legal systems**
- **Measures to be taken by financial institutions and non-financial businesses and professions**
- **Institutional and other measures necessary in systems**
- **International co-operation**

### **Impact if a country is being blacklisted or greylisted:**

- **Economic sanction**
- **Adverse effects on trade**
- **Rigorous monitoring by FATF**

# Tax audit vs Tax investigation, monitoring of compliance activities

# Why audit & investigation?

- Deterrent
- To promote voluntary compliance

“A fair, transparent and equitable tax administration system will enhance public confidence in the tax system. Compliance with tax laws must be strictly enforced and tax offences should be penalised in accordance with the provisions of the Law”

- Dato' Sri Dr Sabin Samitah



# Continuously monitoring Compliance is essential

- Post audit/investigation : Repetitive offences
- Becoming increasingly alarming





# Everybody should play their part: Tax agent's role



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INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA  
يُونِسُ بَرَسِيْتِي اِسْلَامًا اَنْبَارًا اِبْحْسَابًا مَلِيْسِيَا

International Conference on Accounting Studies 2014, ICAS 2014, 18-19 August 2014, Kuala Lumpur, Malaysia

## The role of tax agents in sustaining the Malaysian tax system

Khadijah Mohd Isa\*, Salwa Hana Yussof, Raihana Mohdali

*Kulliyah of Economics and Management Sciences, International Islamic University Malaysia, 53100 Jalan Gombak, Kuala Lumpur, Malaysia*

- Enhance public confidence in the tax system.
- Compliance with the provisions of the Law
- Advisory
- No to tax evasion

Why it is essential to employ tax agents to manage their corporate tax compliance activities?

Respondents:  
114 companies

### Internal factors:

- Lack of internal technical knowledge
- Tax matters are too complicated
- Cost effective to employ tax

### External factors:

- External opinions on tax issues are needed
- Updates on tax information are easily available
- Advice for income tax planning is required

# INVESTIGATION BY LHDNM

## JS

### JABATAN SIASATAN

- Common Tax Evasion



## JTK

### JABATAN TINDAKAN KHAS

- Aggressive Tax Planning
- High Profile Individuals



## JOK

### JABATAN OPERASI KHAS

- Illegal Activities
- Unregulated Industries
- Financial Crimes



For sharing of information / voluntary disclosure :  
[mohdshahfizan@hasil.gov.my](mailto:mohdshahfizan@hasil.gov.my)



# JABATAN OPERASI KHAS - WHOLE-OF-GOVERNMENT APPROACH

## JOINT OPERATION WITH ROYAL MALAYSIAN POLICE

- 4 Operations on Illegal Gambling Syndicates and Night Clubs
- 1 Operation on Contraband Cigarettes Syndicate
- 1 Operation on Illegal Money Lending Syndicate



## JOINT OPERATION WITH MACC

- 3 Operations related to Financial Crimes in Property Development
- 2 Operations on 'Missing Traders' Syndicates
- 1 Operation on Macau Scam Syndicate



## Tax dispute and controversy – Moving forward

### Gatekeeper professional services

Enforce reporting by professional enablers i.e.,  
lawyers, accountants and company secretaries

### Tax controversy department of the future

Effective tax risk and  
controversy  
management

# Why audit & investigation?

- Deterrent
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Deloitte TaxMax - The 46<sup>th</sup> series  
Challenges and future focus- Taxpayers' perspective  
Theresa Goh | 24 November 2020



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# Transfer pricing



# Failure to furnish contemporaneous TP documentation [Effective 01 January 2021]



## Section 113B

113(B)(1)

**Fine of RM20K to RM100K or imprisonment of up to 6 months or both** on conviction

113(B)(2)

**Burden of proof** on taxpayer

113(B)(3)

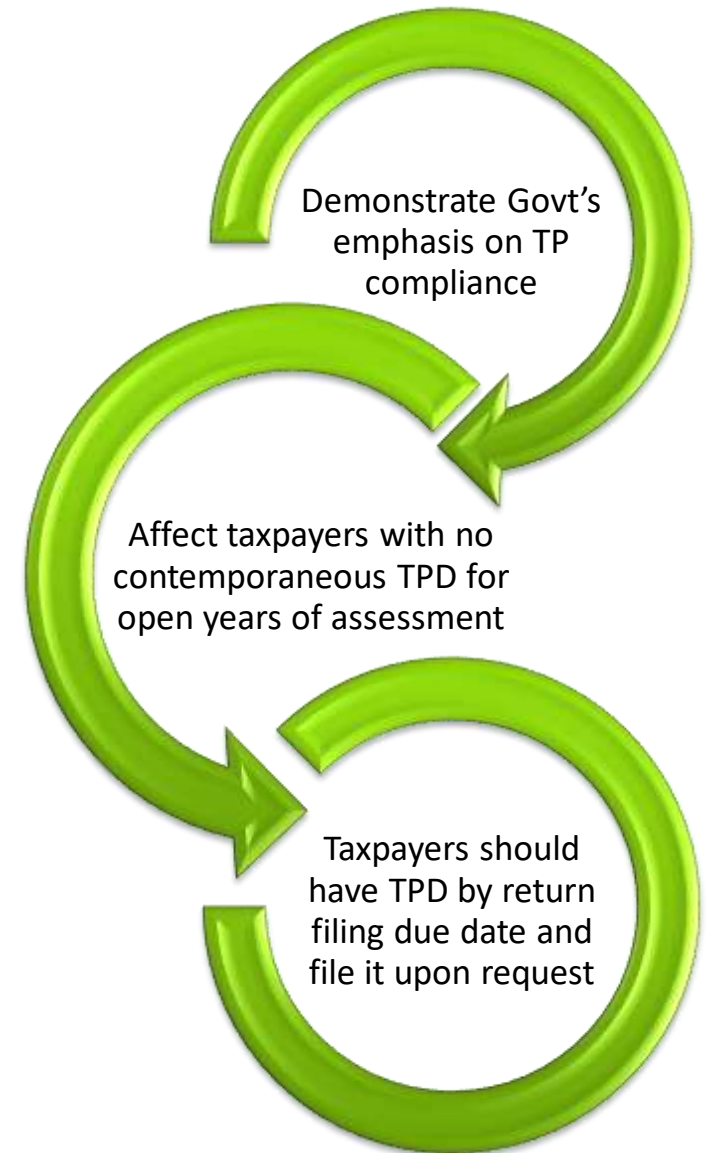
Court may order TPD to be furnished

113(B)(4)

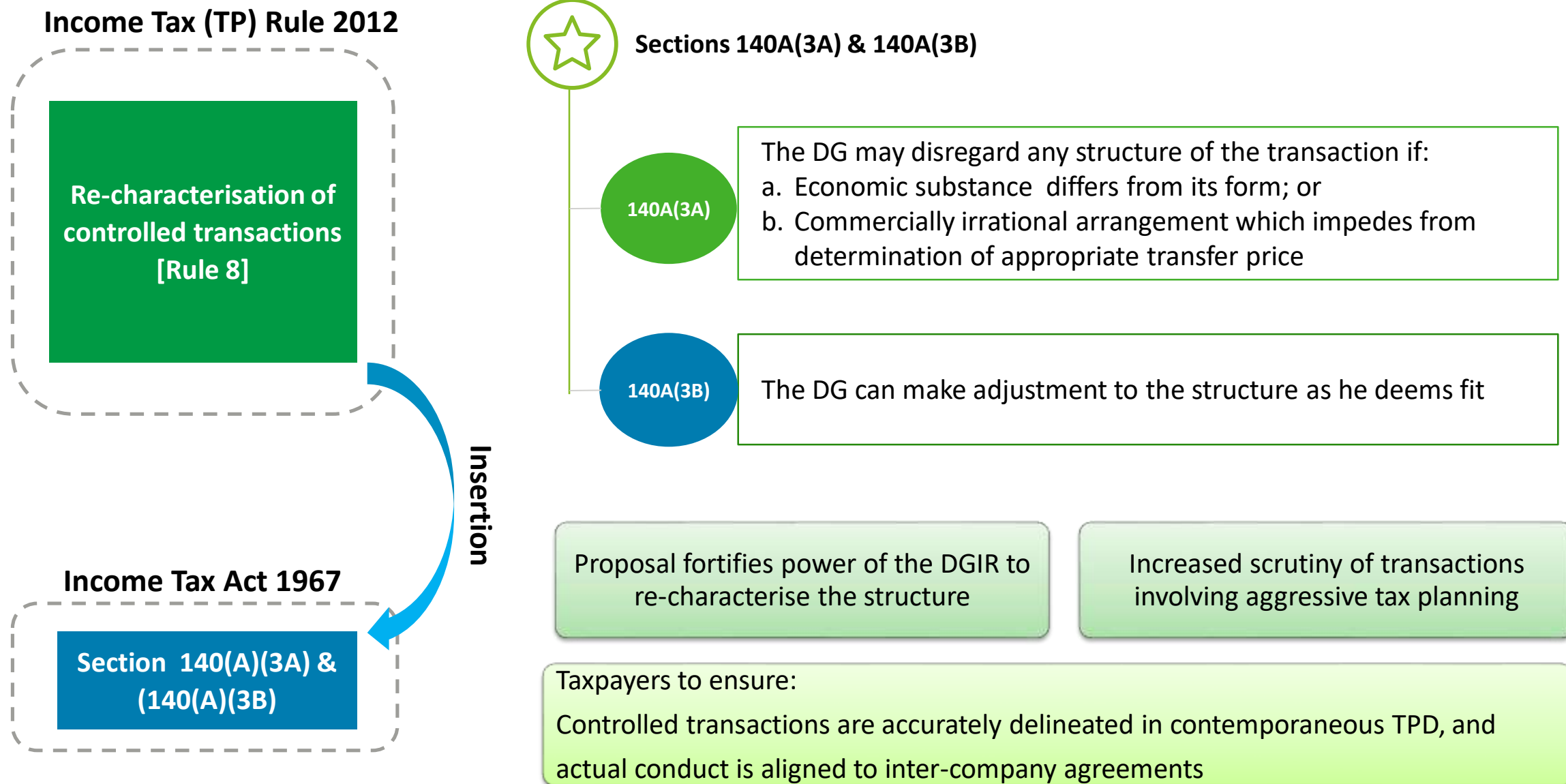
If no prosecution, a **penalty of RM20K to 100K**

113(B)(5)

Taxpayer may **appeal to SCIT** against **penalty**



# Re-characterisation of controlled transactions [Effective 01 January 2021]



# Surcharge on TP adjustment [Effective 01 January 2021]



## Sections 140A(3C) & 140A(3D)

140A(3C)

Surcharge of **not more than 5%** of TP adjustment arising from:

- substitution of a transaction price to reflect an arm's length price; or
- to disregard any structure adopted in entering into a transaction

140A(3D)

Surcharge will be collected as if it is **tax payable**



## Consequential amendment under Section 124

124(3)

DG is empowered to abate/remit any **surcharge** or penalty

Applicable to all taxpayers irrespective of tax payable position

Off-setting under MAP?

New surcharge and existing S 113(2) penalty mutually exclusive?

# Northern region

# Completion of Annex C by companies enjoying tax incentives

## Guideline on Annex C

All fields are mandatory unless otherwise indicated.

### 1. Ruling reference number, if any.

[MDEC/MIDA approval letter reference no.]

### 2. Identification of the taxpayer and where appropriate the group of companies to which it belongs.

<b>Taxpayer identification number (TIN) or other tax reference number</b>		[Income tax reference no. for the company]
<b>Legal name of the entity</b>		[Company name]
<b>Address</b> [Company business address]	<b>Street</b>	
	<b>Building (optional)</b>	
	<b>Suite (optional)</b>	
	<b>Floor (optional)</b>	
	<b>District Name (optional)</b>	
	<b>Post Office Box (optional)</b>	
	<b>Post Code</b>	
	<b>City</b>	
	<b>Country</b>	
	<b>State/Province/Canton (optional)</b>	
<b>Taxpayer's main business activity</b>		[Company's main business activity. If the company has more than one business activity, please state the main business activity even though it is not the same as MSC/PRINCIPAL HUB activity.]
<b>Name of multinational enterprise (MNE) group, if different</b>		[If the company is part of the multinational group, please state the group name. If not, please state "N/A"]

### 3. Date of issuance.

[Date of the letter issued by MDEC/MIDA]

### 4. Accounting periods/tax years covered by the ruling.

[The period of tax exemption, either 5 or 10 years. It also refers to pioneer period as stated in the pioneer certificate or letter issued by MITI or MIDA]

### 5. Type of ruling issued. Please check the appropriate box.

#### Relating to preferential regime

[Please check (✓) the box. This refers to the tax exemption given to the companies that have been approved of tax incentive. The word "preferential" refers to the privilege given to companies paying a lower tax rate (0%) as compared to the normal tax rate.]

### 6. Additional information regarding the ruling and the taxpayer.

<b>Transaction amount, if any</b>	[Refers to total amount of transactions made with related parties outside Malaysia.]
<b>Entity's annual turnover</b>	[Refers to total revenue as declared in audited report for the specific year.]
<b>Profit of the entity</b>	[Refers to net audited profit (after tax) as declared in audited report for the specific year.]

### 7. Short summary of the issue covered by the ruling ideally provided in one of the official languages of the Organization for Economic Co-operation and Development (OECD) or other language bilaterally agreed. Where this is not possible this can be provided in the native language of the sending jurisdiction.

[Please provide a brief description on the qualifying activities that entitled the MSC/PRINCIPAL HUB tax exemption]

## Completion of Annex C by companies enjoying tax incentives (Cont'd)

### 8. Reason for exchange with the recipient jurisdiction.

<b>Ultimate parent</b> [If the company has ultimate parent outside Malaysia, please ✓ this box. If not leave it blank.]	<input type="checkbox"/>
<b>Immediate parent</b> [If the company has immediate parent outside Malaysia, please ✓ this box. If not leave it blank.]	<input type="checkbox"/>
<b>Related party with which the taxpayer enters into a transaction for which a preferential treatment is granted or which gives rise to income benefiting from a preferential treatment</b> [If the company has made transactions with related parties outside Malaysia (other than sales), please ✓ this box. If not leave it blank]	<input type="checkbox"/>
<b>Related party with whom the taxpayer enters into a transaction covered by the ruling</b> [If the company has made sales transaction with related parties outside Malaysia, please ✓ this box. If not leave it blank]	<input type="checkbox"/>
<b>Related party making payments to a conduit (directly or indirectly)</b> [Not applicable to Malaysia. Please leave it blank] Malaysia is not supporting any conduit activities	<input type="checkbox"/>
<b>Ultimate beneficial owner of income from a conduit arrangement</b> [Not applicable to Malaysia. Please leave it blank]	<input type="checkbox"/>
<b>Head office of permanent establishment (PE) country</b> [Not applicable to Malaysia. Please leave it blank]	<input type="checkbox"/>

### 9. Details of the entities in the recipient jurisdiction.

[Please list down all related entities outside Malaysia that have fulfilled items ✓ that is in question #8. If the company doesn't have the full address and the tax identification number (TIN) of the related entities outside Malaysia whom they transacted with, please note down the country of that entities and please state "N/A" in the TIN column.]

	Name of entity	Address	TIN or other tax reference number, where available
1.			
2.			
3.			
4.			

# Southern region

# Employment tax audit



## Deemed employer

Section 83(6) of the Malaysia Income Tax Act, 1967 (“the Act”):

*“For the purposes of this section and subsection 107(4), any person to whom or for whose benefit a service is rendered or performed by another person shall be **deemed** to be an employer whether or not he employs that other person or is responsible for paying remuneration to that other person”*

## Deemed employer

Penalty : non-compliance with employer's obligation (Subsection 83 (1) to (5) of the Act)

Section 120(1)(b), (c) and (e) of the Act :

“ .... shall be guilty of an offence and shall, on conviction, be liable to a fine of not less than RM200 and not more than RM20,000 or to imprisonment for a term not exceeding six months or to both.”

Section 107(4) of the Act :

*“ An employer who fails to comply with subsection 83(2), (3), (4) or (5) or this section with respect to an employee of his shall be liable, in the case of a failure to comply with subsection 83(2), (3), (4) or (5), to pay the full amount of tax due from the employee and, in the case of a failure to comply with this section, to pay the amount of tax which he has failed to deduct, and such amount of tax shall be a debt due from that employer to the Government and shall be payable forthwith to the Director General..... ”*

# East Malaysia

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