



Income Tax in Malaysia

Business as usual after GST roll-back

By Stefanie Low and Kei Ooi

Goods and Services Tax ("GST") has been reduced to 0% since 1 June 2018, a move very much welcomed by the *rakyat* and certainly a booster for the Raya celebrations.

The revenue vacuum left by the 0% GST would be partially filled by the Sales Tax and Service Tax ("SST") regime come September 2018. Although the reduction in Government spending and the increase in oil price would further narrow the gap, the government would still need active measures to sustain its revenue.

Here are our thoughts as to what this could mean from the Malaysian income tax administration perspective.

Income tax rates – steady in winds of change?

The move to reduce GST to 0% should, theoretically, increase the *rakyat's* spending power and spur consumption, resulting in higher business profits. Already, we are seeing the domestic retail market embrace this by announcing various deals and incentives to increase sales before the return of the SST.

The zero-rating of GST should also see an improvement in the cash flow of businesses and encourage investments. Currently, the net output GST has to be remitted to the Royal Malaysian Customs Department on a monthly or quarterly basis, even though the invoiced amount has not been collected from customers. In comparison, under the old service tax regime, the service tax is only required to be remitted when the invoiced amount has been collected.

The GST roll-back should therefore improve income tax collection to cushion the impact of the loss of GST.

While we do not anticipate an increase in the corporate income tax rate currently weighed at 24%, the Malaysian corporate income tax rate is still relatively high compared with other ASEAN members. Our immediate neighbours, for example, have lower corporate tax rates with Singapore at 17% and Thailand at 20%. A decision to at least maintain the corporate tax rate at 24% will be in line with Malaysia's eagerness to continue to foster a business friendly environment, be it for foreign or local investors.

Similarly, being fully cognisant of the *rakyat's* frustrations with the cost of living, we anticipate the government to also hold the current individual income tax rates for the B40 and M40 segment. This will help sustain the spending power of the *rakyat*.

While we note that individual tax rates on the high income group are on an uptrend globally, we do not anticipate the tax rates to increase despite the plan to eventually abolish GST, as individuals in this category are likely to receive dividend or distribution income that is tax-exempt.

Nevertheless, as we grow as a nation, it is imperative to have progressive tax policies that could play a key role in bridging the gap between the rich and the poor. A robust economy could also improve employment income, which could result in a higher percentage of the population falling within the tax-paying bracket.

Income tax audits and investigations – step up or step down?

Income tax audits and investigations activities should continue as usual. In fact, with the loss of revenue from GST, income tax has to deliver its share of contribution to the country's coffers. Both corporate and individual income tax are estimated to contribute approximately 44% of government revenue for 2018.

Not forgetting, with the onset of Common Reporting Standards internationally, one can expect that there will be a step-up in tax audits on "wealthy" individuals. The recent request from international schools for information on the fee payers may be a prelude. A strict enforcement of income tax law against tax defaulters leading to the recovery of under-declared income would help plug the gap in GST collection.

Consequently, there would be greater expectations and emphasis for taxpayers, whether individual or corporate, to embrace tax compliance. On the same note, the Inland Revenue Board of Malaysia ("IRBM") is expected to apply the law and demonstrate that it is transparent and efficient in carrying out its duties as a tax enforcer. A transparent and efficient policy should encourage better self-compliance.

"Forced to pay more taxes" – an interesting dialogue

With so much news unfolding each day, one interesting comment that caught attention pertains to parties that were "forced to pay more taxes" previously.

We will not dwell on the specifics of who and how the parties could have been aggrieved. However, we take note of the various enforcement operations carried out in the past years, amongst them, *Ops Gegar Bersepadu*, *Ops Kutip* and *Ops Dakwa*. One would also recall the series of announcements made by listed companies on the substantial tax bills that they or their subsidiaries have received and in most cases, sought to challenge.

Based on the tax audit process and the avenues in the Income Tax Act, 1967 ("Act"), our assessment of how such issues could be dealt with under the Act can be categorised as follows:

1. If a tax audit or tax investigation has started but the tax bill has not been raised, we expect the tax audit or tax investigation to be continued. Given the Government's commitment to uphold the law and to engage in business friendly practices, we would expect the enforcement not to cause major disruptions to businesses, while at the same time, be professionally conducted in adherence to the law.
2. If a tax bill has been raised, then under the existing legal avenues, the taxpayer may file a Notice of Appeal under Section 99 of the Act to the Special Commissioners of Income Tax ("SCIT") or alternatively, where the requisite conditions are met, obtain leave for a judicial review at the High Court. However, in recent cases, the High Court has stated that taxpayers should first seek redress before the SCIT.

It should be noted that if one were to seek a hearing date before the SCIT today, the hearing date allocated would be in year 2021. As the tax (and presumably, penalties) would likely have been paid at this stage, the delay causes unnecessary cash flow constraint.

Hence, in the interim, the most practical choice is for taxpayers to seek a discussion with the IRBM's Dispute Resolution team with the aim of achieving an amicable resolution as soon as possible.

3. If the taxpayer has entered into a voluntary settlement agreement with the IRBM under Section 101(2) of the Act, the argument that the taxpayer is "forced to pay" may not necessarily hold up as Section 97 of the Act provides that an assessment raised pursuant to an agreement under Section 101(2) shall be final and conclusive.

Nevertheless, it may still be worthwhile for taxpayers to assess their situation to determine the available options.

As our new government has much to do and has not provided any indication as to what's next for income tax, we are hopeful that progressive tax policies will be implemented soon to encourage efficient income tax compliance for the benefit of the nation.

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