

■ BY MAJELLA GOMES

BUDGETING FOR THE FUTURE

BUDGET 2015 AIMS TO ACHIEVE FISCAL SUSTAINABILITY, SMOOTHEN THE TRANSITION TO GST, AND SUPPORT THE NATIONAL AGENDA FOR DEVELOPMENT.

THE final budget to be tabled under the 10th Malaysia Plan, Budget 2015 was read by Prime Minister and Finance Minister Dato' Seri Najib Tun Razak in Parliament on 10 October 2014. According to Dato' Seri Najib, the Budget aims to promote fiscal discipline and sustainability and facilitate the transition to Goods and Services Tax (GST), while supporting the nation's development into a high-income nation by 2020.

What do stakeholders think? Speaking at the recent MIA Seminar on Budget 2015, Renganathan, Partner at Thenesh, Renga & Associates opined that it was generally a welcome one, but challenging nevertheless.

With the transition to GST, it is clear that the government faces the difficult task of reducing the taxation burden of taxpayers, while keeping its fiscal house in order. Some items to ease individual taxpayers' burden include the Personal Relief for basic supporting equipment for taxpayer, spouse, child or parent; medical expenses relief for serious disease; and

relief for disabled children – proposals have been made to increase relief from the current RM5,000 to RM6,000. Further relief may be on the horizon with the proposal to allow taxpayers who are employed by the same employer for less than a year, to elect not to file their tax returns.

But there was tightening in some areas, notably with regards to transfer pricing (TP) to prevent abuse and ensure that business is at arm's length, and to curb tax offenses.

According to Mohamad Harzani Tahir, Senior Revenue Counsel of IRB's Drafting & Law Revision Division, the Director-General of Inland Revenue (DGIR) may be empowered to raise the assessment for TP cases within seven years after the expiration of a year of assessment for TP cases. Currently, this is only possible within five years. It has also been proposed that the DGIR be empowered

to raise assessment for TP cases under the Petroleum (Income Tax) Act 1967, and the due date for monthly instalment by chargeable persons be extended from the

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TAX-PAYERS

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10th to the 15th day of the month.

Tax offenders in the future face more punitive action, if the proposals for Subsections 112(1), 115(1) and 120(1) of the Income Tax Act 1967 go through. The maximum fine for failing to furnish tax returns, or leaving the country without paying tax will be increased from the current maximum of RM2,000 to RM20,000.

FIGHT FOR TAXPAYER RIGHTS

To ensure equitability, taxpayers must ensure that they understand and protect their rights. Ravi Balakrishnan, Director of Division Bell, in presenting overviews of ongoing tax cases and listing of dozens of public rulings from as far back as March 2000, did say that there are concerns. "In cases like these, decisions depend on the best judgement of the DGIR." As many of these tax cases were still under review, companies' names were changed for confidentiality purposes. His examples covered cases where additional assessments were issued according to the "best judgement" of the DGIR, and whether these had been correctly done. These ranged from decisions taken by the Special Commissioners of Income Tax (SCIT), to the Court of Appeal.

"We need to understand what the SCIT and each court looks at when handing down decisions," he explained. "You don't want to be in a position where the DGIR tells you how much your business' profit ratio was. Proper accounting and record keeping is paramount. Court appearances are an expensive, time-consuming proposition." Balakrishnan's presentation included cases where the court held in favour of the taxpayer, and the DGIR's appeal was dismissed, such as in one case of compensation for loss of employment and compensation for death or injuries,

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and another of franchise fees received from abroad. "These cases illustrate the need to do your homework," he cautioned. "You should take time to go over cases with your clients, discuss them and apply the facts. But take note of the circumstances of each case."

Speaking at a subsequent panel on Budget 2015, Cynthia Lian, Partner at Shearn Delamore & Co. remarked that courts have started to take on board some novel arguments, an indication of a more liberal approach perhaps. To illustrate her point, she cited a case where the court overruled the IRB's attempt to disallow the deduction of expenses related to exempt income.

TAX COMPLIANCE RISING

Acknowledging that there were negative perceptions of IRB, Mohamad Harzani reiterated that this was not the intention of IRB, which wanted to be seen as a partner in nation building. "We have become more public-friendly, realising that the public doesn't want to fill unnecessary forms. IRB is assisting the public, and compliance is increasing because the public is getting more help."

According to Mohd Khairul Anuar Osman, Principal Assistant Secretary of the Ministry of Finance's Direct Tax & International Section Tax Division, tax revenue in 2015 was expected to touch the RM185 billion mark. "It's good to understand the tax laws as this leads to better compliance and tax management," he said. "In 2015, we expect individual taxpayers to contribute about RM127 billion, while corporate taxpayers will pay about RM72.5 billion. This is a 7.3% increase in revenue, although about 300,000 taxpayers are expected to pay less next year. There will also be a reduction in petroleum revenues. Changes in tax laws by 1 April 2015 will change personal and corporate



(L-R): Cynthia Lian, Renganathan, Ravi Balakrishnan, Mohamad Harzani Tahir & Mohd Khairul Annuar Osman

taxes as well. There will be increases in tax relief for serious diseases, for example, and improvements in income tax administration.”

These measures, Mohd Khairul said, aim to reduce the anticipated impact of GST on the economy. However, the implementation of GST is vital, as it will increase the tax base and strengthen the fiscal position of the government and address concerns with the narrow tax base. “Currently, about 2.23 million individuals and 150,000 companies are paying tax,” he explained. “This represents only a small percentage – about 17% – of the workforce, and just a moderate number of companies, about 10% of registered businesses in Malaysia.”

However, concern was voiced regarding the proposed joint GST audits by Customs and IRB. Will cases be raised and closed simultaneously? “We haven’t seen the framework for this, and GST implementation is just months away,” said Renganathan.

SINGLE EMPLOYMENT INCOMES

Another matter of interest was the option of not filing tax returns for individuals with single employment incomes. Under Section 77C of the Income Tax Act 1967, you can opt to not furnish your tax returns, but this may be a loss to the government particularly where the employee enjoys benefits-in-kind or living accommodation benefits, remarked Renganathan.

IRB was already aware that this could lead to a drop in revenue. “There may be a high take-up rate but we are hoping it will not be so,” Mohd Khairul conceded. “In some cases, however, we may be able to apply the PCB (Potongan Cukai Berjadual) ruling, and introduce scheduled income tax deductions.”

IMPACT OF GST ON DIRECT TAXES

In a presentation that followed

the panel discussion, Thenesh Kannaa, Partner at Thenesh, Renga & Associates and a regular speaker at MIA workshops pointed out some changes that ought to be made in the Income Tax Act 1967, Real Property Gains Tax Act 1976 and Stamp Act 1949 in light of the introduction of GST. He quoted the real property gains tax (RPGT) as an example. Based on the existing provisions of the law, it appears that the disposal price for the purpose of computing RPGT would be inclusive of GST (wherever applicable) - which he opined as not correct in principle as GST is certainly not part of the disposer’s commercial gain. He explained several areas of overlap and conflicts between the GST Act and the existing direct tax legislation and urged the authorities to make provisions within the direct tax legislation for avoidance of doubt and avoidance of double taxation as well as double non-taxation. ■