

■ BY MAJELLA GOMES

GST Audits: *Cooperation is Key*

Proper documentation and polite and full cooperation with the regulators are the best strategies for companies wishing to make the best of the inevitable GST audits.

THE NOTION OF TAX AUDITS will unsurprisingly be a source of trepidation and fear for businesses. As GST is in its post-implementation phase, the regulators are putting the audit process in play, and businesses must make sure they are fully compliant and well-prepared. References are scanty right now given that GST in Malaysia is relatively new. GST here has not produced any case law yet,

said Anand Raj, Partner, Tax & Revenue Department, Shearn Delamore & Co at the recent MIA GST Conference 2016. “Records must be kept for at least seven years – preferably eight – in Malaysia, for GST purposes,” he said.

While the Royal Malaysian Customs Department (RMCD) and the Inland Revenue Board (IRB) have similar powers, he remarked that the framework

for GST and the current system appears to be weighted in favour of the RMCD. “It has the power to reward informants,” he said. “In addition, the Board of Directors and the company accountant can be interviewed. So take all guidelines literally and advise your Boards accordingly, about what the RMCD can – and will – do. Be aware of the dangers of not complying.”





GST
is in its post-implementation phase, the regulators are putting the audit process in play, and businesses must make sure they are fully compliant and well-prepared.

REMEMBER TO ALWAYS COOPERATE

He advised firms to allow the RMCD access to all documents, saying, “Let them take whatever they want; you can sue them later. If you don’t allow them access to all your documents, you could be charged for obstruction.” The Director-General of Customs is empowered to order any reward as he sees fit, so it is advisable to cooperate to the fullest extent possible. In addition, the penalty for incorrect returns is a fine of not less than RM50,000 or not more than three years’ jail, or both. Anyone assisting management in the commission of

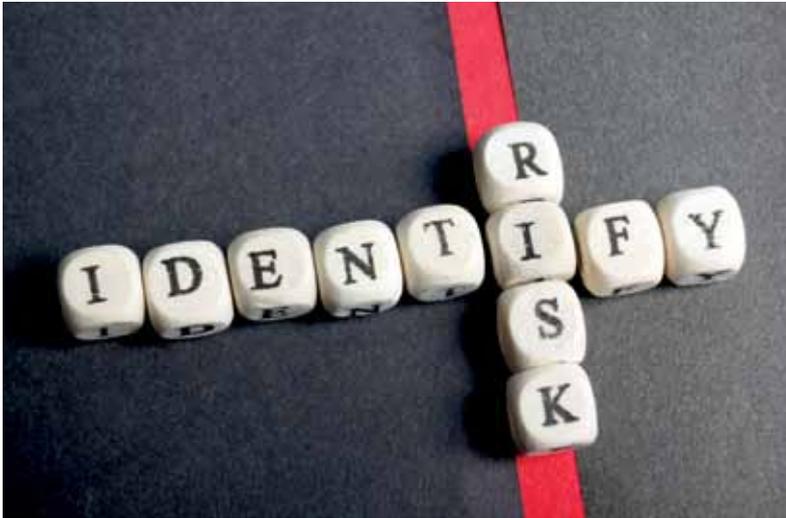
an offence under the GST Act may also be liable to a fine or jail, or both. “Section 97(2) of the Act also covers acts of employees, agents, employees of agents etc. – so “did not know” is not a defense,” cautioned Raj.

The buzzword, he stressed, was cooperation. “Always cooperate, and send experienced staff to deal with the IRB or the RMCD,” he emphasised. “There may be repercussions to sending junior staff to deal with these matters.” Exhorting participants to “seek advice as necessary and be cautious and prudent with settlements,” he added that care should be taken when responding to queries but one matter to be noted

was that because GST is still new, the questions asked by the RMCD may not be correct. His presentation covered a comprehensive (though not exhaustive) list of non-appealable matters, and cases where disputes were referred to Court.

“Appealable matters under the GST Act can be heard by the GST Tribunal, the High Court and the Court of Appeal,” he clarified. “Whereas in non-appealable matters, the dispute will first go for Judicial Review, then follow the High Court-Court of Appeal route, up to Federal Court level.” He stressed that because the RMCD officers have the power to search without a warrant, it was best to cooperate and allow

GST AUDITS: COOPERATION IS KEY



them to carry out their duties without hindrance. “They also have the power to seize or seal property,” he added. “So it’s best not to challenge. Always cooperate. It’s no fun in jail – and you can’t sue from there.”

CHALLENGES AND RISKS AROUND

The forum which followed on GST Audit Experiences and Future Outlook, identified a variety of risks existing with GST, both financial and non-financial, which pose challenges to businesses. These include:

- **Transactional:** risk of exposure connected with the application of tax laws and regulations on specific transactions;
- **Procedural and Compliance:** meeting tax compliance obligations e.g. filing of returns, keeping abreast of changes in laws etc;
- **Operational:** consequences arising from lack of awareness, loss of knowledge in the firm,

THERE HAS BEEN A LOT OF NON-COMPLIANCE, PARTICULARLY IN THE AREA OF THE ISSUANCE OF INVALID TAX INVOICES, BUT THERE HAVE ALSO BEEN AVENUES FOR REDRESS.

Teh Kheng Ean
Deputy Director of
Customs (GST)

inadequate documentation, and insufficient internal control of systems;

- **Financial:** inadequate tax provisioning and increased tax penalties payable;
- **Market and Reputation:** loss of shareholder trust, adverse public or market perceptions;
- **Personal:** directors of the firm may be liable for its taxes.

Businesses should be actively providing feedback to enable the RMCD to fully understand their unique circumstances and environment. “Customs has set up mechanisms to derive feedback,” said Dany Oon, Director, Indirect Tax Services, KPMG Tax Services Sdn Bhd. “But the Law is slightly grey on many GST matters as the RMCD may not have a complete understanding of business diversity and the constraints which businesses face.”

Allaying fears of random profiling by the RMCD, Teh Kheng Ean, Deputy Director of Customs (GST) said that only those involved in fraudulent practices need be worried. “the RMCD will advise and is willing to engage,” he confirmed. “There has been a lot of non-compliance, particularly in the area of the issuance of invalid tax invoices, but there have also been avenues for redress.”

Meanwhile, Koh Soo How, Tax Partner, PricewaterhouseCoopers pointed out that despite its stellar record, Singapore too had GST issues, two decades after implementation. Stressing that some things were inevitable, Koh said that GST Audit was here to stay and had to be appropriately managed. “Returns always have mistakes,” he said. “And all refunds will always be subject to audit. It’s part and parcel of GST, so we just have to live with it.”

Panel moderator Dr. Veerinderjeet Singh remarked that compliance also

depended on how practitioners prepared themselves and their clients for it. “Make sure all documents are available, updated and correct,” he advised, divulging that efforts similar to Singapore’s Assisted Compliance Assurance Programme were likely to be implemented in Malaysia in the near future.

ASSISTED COMPLIANCE ASSURANCE

Adding that this was introduced in Singapore in 2011 by the IRS, Koh said that all companies were encouraged to participate as it promoted transparency and certainty. Because the system employed was able to pick out weaknesses and control issues, the business ultimately experienced decreased risk. “If you can demonstrate that you have the tax control framework necessary for compliance, you will not be audited for five years,” he said, explaining

CUSTOMS IS STILL SORTING OUT ITS SYSTEM. BUT ONCE EVERYTHING STARTS BEING FILED ONLINE, THERE WILL BE MORE TRANSPARENCY. FOR INSTANCE, YOU’LL KNOW HOW LONG EACH FILE REMAINS WITH INDIVIDUAL OFFICERS, AND YOU CAN RAISE QUERIES ACCORDINGLY.

Koh Soo How
Tax Partner
PricewaterhouseCoopers

Singapore’s compliance assurance programme. Agreeing with Koh on the need for cooperation, Dr. Veerinderjeet said that the IRB in Malaysia appeared to be moving towards establishing a similar system.

“The RMCD is still sorting out its system,” confirmed Teh. “But once everything starts being filed online, there will be more transparency. For instance, you’ll know how long each file remains with individual officers, and you can raise queries accordingly.” Koh opined that while an audit framework should be able to provide certainty to all parties concerned, it should also be able to ensure that taxpayers’ rights are not infringed upon. “Getting a letter from the IRS can be quite a traumatic experience,” he admitted. “It’s not something that people look forward to.”

LOOKING OUT FOR RISKS

To increase confidence in compliance, firms should be wary of certain factors when it comes to managing the risks of GST audits.

Among other factors that contribute to the risk confronting any firm where tax is concerned, are the organisation’s information retrieval system; compliance processes & accounting systems and the quality of people handling them; how authorities interpret the law; changes in laws; cross-border compliance; government policy; awareness levels within the organisation; and its culture and attitudes. To a question from the floor on whether the RMCD will introduce self-health checks or publish common errors so that businesses will recognise pitfalls and know how to mitigate them, Teh lauded the suggestion and proposed that it be forwarded to the RMCD Compliance Department for their further action.



L-R: Dany Oon, Teh Kheng Ean, Dr. Veerinderjeet Singh and Koh Soo How.