

■ BY SHARMILA GANAPATHY-WALLACE

TITANS ON TAXATION

THE GST CONFERENCE 2017'S 'A DIALOGUE WITH THE TITANS OF THE MALAYSIAN TAX ARENA' BROUGHT TOGETHER ROYAL MALAYSIAN CUSTOMS DEPARTMENT (RMCD) DIRECTOR GENERAL DATO' SRI SUBROMANIAM THOLASY AND INLAND REVENUE BOARD MALAYSIA (IRBM) CHIEF EXECUTIVE OFFICER DATUK SABIN SAMITAH, WHO SHARED THEIR INSIGHTS ON TAXATION DEVELOPMENTS AND THEIR THOUGHT PROCESSES.

COMPLIANCE is at the heart of the taxation conversation right now as tax authorities discharge their mandate to collect revenues to support government expenditure and nation-building, and improve fiscal health.

TO PROMOTE GREATER COMPLIANCE, JOINT AUDITS ARE ON THE HORIZON.

According to Datuk Sabin Samitah, the RMCD and the IRBM have signed a standard operating procedure (SOP) agreement to facilitate joint audits. "This is one of the projects under the National Blue Ocean Strategy to increase the effectiveness of government departments. The SOP is an extension of the memorandum of understanding signed by the RMCD and the IRBM in 2013," he explained. The objective of the SOP is to ensure the success of a joint audit by both organisations, to ensure that there are no repetitive visits to common taxpayers, and to reduce the cost of compliance by taxpayers.



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Datuk Sabin Samitah,
Chief Executive Officer,
Inland Revenue Board of
Malaysia (IRBM)

With regards to joint audit leadership, both agencies have jointly set up a committee to look at the procedures and ensure seamless joint audit implementation. "If the case is handled by the IRBM, an officer from the IRBM will lead the team. But if the case is initiated by the RMCD, their officer will lead the team," said Datuk Sabin. The SOP has clearly spelled out who is in charge of what. If the RMCD has the documents and discovers irregularities, the IRBM will be allowed to view the documents and assist with the audit, and vice-versa.

The initiative will also streamline repetitive post-clearance audit issues. Dato' Sri Subromaniam noted that apart from the GST, there is a post-clearance audit division in the RMCD that oversees imports and exports. "There were many complaints from companies that were audited by this department and then GST (officers) from a different division. We found that it is time that we consolidated everything into a single audit, but at the same time the IRBM also has audits and investigations. Instead of going to the same taxpayers for repeated visits, the idea is to let the joint team look at the audit holistically and resolve the issues once and for all."

COMPLIANCE ISSUES PERSIST

Asked if they would surprise the taxpayer with the audit or tell taxpayers upfront, Dato' Sri Subromaniam answered frankly that they have an audit framework and usually notify taxpayers in advance, unless it is an exceptional case. "When we suspect under-declaration, evasion or compliance issues, or if someone has complained about you, then do you expect us to give you a one-month notice?"



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“I fully concur. The IRBM has established an audit and investigation framework. For audits, we need to inform the taxpayers- but we can also make a surprise visit. For investigations, we don’t have to give notice; we do a surprise visit,” Datuk Sabin said.

INFORMED COMPLIANCE

Both are committed to ensuring that taxpayers pay the right tax at the right time, to support national development goals. Datuk Sabin recalled that his primary agenda upon his appointment as the IRBM CEO was to ensure a fair and systematic tax system in this country.

Dato’ Sri Subromaniam meanwhile said he wanted to introduce something different on his first day as Director General, hence brainstormed ways to enforce informed compliance with his deputies. “When I communicated this idea of informed compliance, everyone was excited. This is the way forward to educate taxpayers.”

There is still plenty of room for improvement. “The GST system gave us 62,000 companies that are under suspicion of underreporting or over-claiming input. We issued friendly reminders to these 62,000 businesses to

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L-R: Dato' Sri Subromaniam Tholasy, SM Thanneermalai and Datuk Sabin Samitah

relook their returns and re-submit on a voluntary basis.

After more than five months, fewer than 10,000 companies have responded to the RMCD queries. He considers 10,000 out of 62,000 a healthy percentage. "The second phase is enforced compliance; now auditors will go visit the remaining 52,000 companies. For those who come and disclose liabilities on a voluntary basis, we would look at their penalty very favourably."

Since the GST system is still maturing, taxpayers are understandably still making errors on disbursement, reimbursement and inputs. Dato' Sri Subromaniam advised taxpayers to seek professional financial and tax advice. "Not everyone can afford the Big Four, but SMEs and micro enterprises need someone else to assist them."

Similarly, the IRBM is striving to educate taxpayers on compliance. "Our direction is quite simple, we would like to create a level playing field. Our stand is to make compliance easy and non-compliance very difficult," said Datuk Sabin. Non-compliers take note. "We are taking action against those who fail to pay their taxes - civil action and legal

action against those who have been audited and investigated before, but refuse to keep to proper documents although they have been advised."

A SECOND CHANCE FOR BUSINESSES

Both departments understand that there are prevailing GST issues, and wish to give a second chance to businesses that have made mistakes in compliance and documentation. "We don't want to enforce compliance yet, although we may have to do that eventually. Top management discussed this issue; some of us wanted to take a hard approach—but we decided finally to give them another opportunity. At the end of the day, if you deal with this audit, you will get better revenue. We are going to write to them (businesses) again to correct the statements," explained Dato' Sri Subromaniam.

He noted that many companies don't know where they went wrong. "Based on the returns, we know something's not right." For example, by studying a restaurant's sales figures and input and output tax, officers can gauge that its GST returns don't match the industry's.

"We do have a certain ratio for these

industries; if you don't fall under this ratio, you could be in trouble. Most get the input tax right, but when it comes to output tax, they sometimes under-declare. Even though you may not have a record, we can still make an assessment," he explained.

HARSHER UPCOMING TAX PENALTIES?

Businesses are understandably unsettled by the proposed dramatic increase in income tax penalties from 45% to 100% next year. But Datuk Sabin indicated that the punitive penalties will apply primarily to recalcitrant taxpayers. For example, taxpayers who were investigated in 2015 or 2016 and settled their case within that year were imposed a penalty of 15-20%.

"We have been very lenient for the last two years. But we found out that quite a number of taxpayers didn't declare the right amount of tax. It is already in the Act that we can impose up to 300%. Hence, next year we would like to increase the penalty to 100%, but not for all taxpayers, only those who are habitual tax evaders," Datuk Sabin explained.

Would the IRBM be more accommodating if taxpayers voluntarily go to the IRBM? According to Datuk Sabin, the IRBM has a provision for voluntary disclosure in its framework. "They can come to our office for a declaration, but if technical or grey areas are involved, as the implementer of the law we can only see black and white unless there is a decision by the higher court for certain cases," he clarified.

Moving forward, it will be interesting to see how informed compliance pans out for the RMCD and if higher tax penalties by the IRBM lead to greater compliance. ■