

Grant Thornton News

September 2017

Heartiest congratulations to our leaders on their leadership roles in their respective prestigious institutes. We wish our leaders every success and may they bring their institutes to greater success.

Vice-President of the Malaysian Institute of Accountants



Dato' NK Jasani
Country Managing Partner
Grant Thornton Malaysia

Dato' NK Jasani was elected as the Vice-President of the Malaysian Institute of Accountants (MIA) on 24 August 2017 for a two-year term. Dato' Jasani succeeded Datuk Zaiton Mohd Hassan.

Dato' Jasani was elected as MIA Council member, for a second term, on 19 September 2015. He is currently the Country Managing Partner of Grant Thornton Malaysia and the Chairman of Grant Thornton Cambodia.

He is the Chairman of the MIA Public Practice Committee and is also involved in a number of Committees including Small & Medium Practice Committee (SMP) and the Valuation Committee (VC). Additionally he is the Chairman of the Companies Act 2016 Task Force.

Dato' Jasani established the Malaysian chapter of the Institute of Chartered Accountants in England and Wales (ICAEW) and, was the Chairman for four years. He remains actively involved as the ICAEW Past Chairman and Adviser. He is also a member of The Malaysian Institute of Certified Public Accountants (MICPA) and the Institute of Singapore Chartered Accountants (ISCA).

President of the Chartered Tax Institute of Malaysia



Seah Siew Yun
National Tax Practice Leader
Grant Thornton Malaysia

Ms Seah Siew Yun has been elected as the President of the Chartered Tax Institute of Malaysia (CTIM) during CTIM's 25th AGM on 17 June 2017. Ms Seah has been a council member of CTIM since July 2009 with two years as the Deputy President before her role as President.

As the President, her role is to spearhead CTIM, ensuring that members are well informed and have their information base constantly updated by attending Continuing Professional Development (CPD) Programmes. She also maintains active participation in numerous dialogues and meetings organised by the relevant authorities particularly the Inland Revenue Board of Malaysia and the Royal Malaysian Customs Department.

CTIM, originally formed under the auspices of the Malaysian Institute of Accountants (MIA), was established in 1991. CTIM has approximately 3500 members comprising accountants, licensed tax agents, lawyers, members from commerce and industry and other tax practitioners like members from the IRB. Since its inception, CTIM has been actively involved in promoting the tax profession to ensure the country's demand for qualified and trained tax practitioners is met.

Changes to tax laws in sight for MNCs as the authorities adopt BEPS

As published in The Edge Weekly, August 2017. Written by Esther Lee and Supriya Surendran

Multinational corporations (MNCs) in Malaysia will soon be seeing more tax law changes coming their way as the authorities get down to tackling base erosion and profit shifting (BEPS).

This follows efforts by the Organisation for Economic Co-operation and Development (OECD), approved by G20 leaders, to formulate a 15-step action plan to equip governments with domestic and international instruments to address tax avoidance.

BEPS refers to tax avoidance strategies by MNCs that exploit gaps and mismatching in tax rules to artificially shift profits to low or no-tax locations.

Grant Thornton Malaysia executive director for international tax and global mobility services Daniel Woo opines that the implementation of the BEPS action plan in Malaysia could take about three years and will entail many changes to the country's tax landscape.

He says the Inland Revenue Board is studying the action plan and is most likely to focus on areas such as the digital economy, harmful tax practices, treaty abuse, transfer pricing and dispute resolution.

"I would say things are coming onstream. [Based on input from the tax authorities,] I



Francesca Lagerberg
Global Leader Tax Services
Grant Thornton International

think it will take probably three years [for the all actions to be implemented]. However, this is just an indicative period," he says in an interview with The Edge.

BEPS has been the buzzword in the tax fraternity for some time, especially after Malaysia became the 95th member of the inclusive framework in March.

While the BEPS recommendations will be fully adopted by the OECD nations, countries like Malaysia, which is not an OECD member, can choose to implement some of them or none at all.

Nevertheless, Woo says the effects of BEPS will be felt across the region.

"The BEPS report essentially provides countries with recommendations to update and refine their tax laws as well as propose changes to their double tax treaties to



Daniel Woo
Executive Director
International Tax & Global Mobility Services

minimise the gaps and mismatches that MNCs have been using to level the playing field," he explains.

Not a hindrance to FDI

Woo does not think the tax law changes will hinder foreign direct investments because BEPS is a worldwide movement and not confined to Malaysia.

"MNCs will continue to invest in Malaysia as long as the country has good fiscal policies, a robust tax system and stability in terms of doing business. They will have to relook their current business and reporting models and quickly adapt to the changing global tax environment that demands greater transparency and commercial substance in their operations," he says.

MNCs will have to assess how BEPS will impact their operations and start taking measures to minimise any potential



risks identified. Some high-risk areas for MNCs include provision of financial and intangible services, supply chain planning and intercompany transactions. These areas, says Woo, should be aligned with the commercial activities carried out.

Grant Thornton International global leader of tax services Francesca Lagerberg believes that the implementation of the BEPS recommendations will encourage MNCs to be more transparent when disclosing information, for the sake of their reputation.

“The reality for a multinational is, it will know that it has to follow these international rules, and transfer pricing is probably a very significant part as it is applied in many countries around the world,” she says.

“[Now with BEPS,] these MNCs will have to think about country-by-country (CbC) reporting, about the information they provide and how transparent they are about their data. So, a lot of this involves the openness of tax transactions and being more explicit in what they are doing.”

On Dec 23 last year, Malaysia issued the income tax CbC reporting rules, which are in line with Action 13 of the BEPS package. In essence, CbC provides a template for MNCs to report annually and for each tax jurisdiction in which they do business information, such as their earnings and the number of people hired.

The CbC reporting rules came into effect on Jan 1 and applies to MNCs whose ultimate holding companies are

incorporated and resident in Malaysia and have a consolidated annual turnover of RM3 billion or more.

Lagerberg says the BEPS mechanism will also change the way MNCs do international tax planning.

“It will 150% change the way multinationals do their tax planning. Back in the 1990s, they had a huge range of aggressive planning opportunities that they could or could not choose to do, and they weren’t illegal,” she says.

“But today, a lot of those planning rules and regulations have become stricter, and some you can no longer do ... or rather the appetite has changed. Because, if you are a very large multinational in the public eye such as Starbucks or Google, you won’t want to spend the rest of your life in the newspapers being attacked for your tax policies.”

BEPS encourages a more “aligned set of rules” when it comes to international tax planning, she says.

“A lot of international tax planning in the past was based on disparities between different jurisdictions, so you can trade off here and get a win there, and you can manage your effective global tax rate,” says Lagerberg.

“When the rules become more aligned, there will be less of a mismatch. So, there is less ability to trade across different jurisdictions to get a better tax effect.”

However, she points out that the implementation of BEPS does not mean

that it will be illegal for MNCs to establish their operations in countries with low tax jurisdictions. Rather, they will need to prove that they are truly operating out of that particular country that provides lower tax rates.

A boost to tax revenue?

Nevertheless, the pertinent question is whether the adoption of the BEPS action plan can result in an increase of tax revenue for Malaysia.

Lagerberg believes that the answer is not so clear-cut.

“The challenge for every government around the world is, how do you protect your tax base? How do you have enough money to do the things you want to do? So, running alongside all these international tax changes, it’s interesting to see how governments are bringing in new taxes and [finding] new ways to tax,” she says.

“Malaysia introduced the transfer pricing regime not too long ago. Each government is looking for ways to not only align the rules it currently has but also raise more revenue.”

Family-owned biz under scrutiny

As published in Focus Malaysia, August 2017. Written by Cheah Chor Soi

The time has come for investors in listed family-owned businesses (FOBs) to voice their discontent should they feel that archaic management culture has taken a toll on the companies' profit margin or share price.

Otherwise, it will be an arduous task to break ingrained beliefs even as the better educated second or third generations are more receptive to power sharing and control, according to Wee Hock Kee, managing partner of CG Board Asia Pacific, a provider of learning and leadership development in governance, risk management and internal control.

"Institutional shareholders should exercise powers to raise questions if there are many family members in senior management or on the board [signs of excess baggage], and especially so when financial performance has been lacklustre or below industry benchmarks," he tells FocusM.

Core competencies

Although meritocracy in terms of hiring the right talent is desirable, Wee says that it is still sensible to have family members within a large and well-qualified management team so long as there are sufficient core competencies to run the business well while minimising conflict of interest.

"As long as family members have control over the board decision within the realm

of a well-delegated authority, there will be a check and balance between family members and professional management team," he points out. "Hence, FOB governance structure and framework requires ongoing assessment and fine-tuning to get the right chord for long term value creation."

Wee recently completed a study commissioned by the Malaysian Directors Academy (Minda) to evaluate the performance and behaviour of FOBs in relation to their corporate governance (CG) practices, leadership and management style, including the evolution of these FOBs over time.

Entitled Perception Meets Reality: Malaysian Family-Owned Businesses, the study covered data analytics of 368 FOBs which made up 41% of the 903 listed companies on Bursa Malaysia as of end-December 2015.

They companies fell within Minda's study definition of FOBs, namely (i) at least 10% of the total issued and paid-up shares were held by family members, and (ii) at least two family members sat on the respective boards.

Two significant findings from the study are that 75% or 278 out of 368 FOBs have boards that comprised 30% to 70% of family members. Moreover, the perception from 60% of 101 respondents that independent directors are controlled by the owning family, raises serious questions on the credibility of appointed independent non-executive directors – and by extension – the credibility of the entire board when



Dato' NK Jasani
Country Managing Partner
Grant Thornton Malaysia

it comes to serving the interests of all stakeholders.

In terms of business aspirations, the FOBs can be divided into two categories: (i) those which strive to remain competitive (i.e. eager to undertake global expansion), and (ii) those whose business growth have stagnated (i.e. not keen to broaden their investor base).

Preserving impartiality

While there is nothing wrong to appoint a familiar person to be an independent director given such tendency is natural, the onus nevertheless lies on the independent director to abide by the CG code by ensuring impartially for the benefit of all shareholders, according to Grant Thornton Malaysia country managing partner Datuk NK Jasani.

“He should also ensure good internal control and the company’s compliance with the division of duties and the separation between company and family matters,” he tells says. “On the contrary, a fully independent-minded director may cause unnecessary issues by not recognising the company’s vision, hence the old cliché of ‘better the devil we know than the one we do not’.”

On the same note, Jasani holds the view that listed companies should encourage their independent directors to not only focus on the CG code and good internal controls per se but also the growth, profitability and sustainability aspects of the business.

“For companies to succeed requires dedication, team work, vision and focus on growth and profits,” asserts Jasani. “Perhaps, the Securities Commission needs to further deliberate on the CG Code to include attention of independent directors in these key matters.”

Transparent nomination

While it is difficult to perceive independent directors of FOBs as impartial or fully independent-minded, CG Board Asia Pacific’s Wee cautions that it is unfair to apply such perception across the board.

He stresses the need for a robust and transparent nomination process with independent directors who are willing to demonstrate their impartiality and courage at all times to mitigate such negative perception.

“The issue of remuneration which elicits a ‘give and take’ attitude can be minimised by recruiting independent directors who are financially stable and have high professional reputation,” reckons Wee.

In fact, there has been suggestion for independent directors to be paid from external sources/funds (capital market contribution by listed companies) to make them “truly” independent although this is still a long shot to get the buy in from the various CG stakeholders.

According to Grant Thornton’s Jasani, the ultimate hiring of external talent into FOBs is of vital importance despite facing resistance from founders and other family members who are both in the senior management or play a key role as main shareholders/financiers.

“Meritocracy should be allowed time to prevail,” he reckons. “The founding family, who could be the major shareholders, can steer by way of their control of the board of directors.”

As for CG Board Asia Pacific’s Wee, given FOBs have their own dynamics to balance with their other family members, outside talent roped in must be able to “jive” with family values apart from their professional contributions.

Among key issues that need to be ironed out include age

hierarchy with older FOB members having to compromise with relatively green upstarts in addition to matters pertaining to trust and integrity.

This may require the second or third generation successors to coax and influence the founders to open the gate for professionals who can bring changes and create value for the FOBs without jeopardising family core values.

Elsewhere, the risk of moving away from the traditional business and re-inventing a new business model is another lingering concern in the mind of FOB founders. “This is something that needs to be managed during the transitional phase especially when we are in the destructive technology era,” adds Wee.

Top four concerns plaguing FOBs

1. Lack of confidence in orderly succession planning and in the abilities of younger generation: Concern is valid as values and motivations of younger generation can change. Not seen as a major issue for those that invest in talent to build a high performance team to sustain organisational longevity. Quite a few FOBs have successfully navigated the transition by bringing in the right talent to complement the competencies of the family members.
2. Tendency to intensify management control: Astute founders recognises the fallibility and limitations of family members and believes in hiring the best management team. However, a relatively significant number of family members in leadership positions in many FOBs perpetuates this perception.
3. Influence over key management appointments and priority given to family members for key positions: Hiring is largely merits based. Understandable that preference is given to family members who are equally qualified. Hard to escape perception of favouritism as a number of FOBs have several family members on the board/ leadership team.
4. Independent directors are controlled by family members: Negative perception deemed unfair as the appointed independent directors complied with the regulatory requirements. The challenge is for independent directors appointed by the controlling shareholders to be seen as impartial and independent-minded at all times.

Beware of wrongful GST application

As published in Focus Malaysia on August 2017. Written by Cheah Chor Soi

Close to two-and-a-half-years after the implementation of the goods and services tax (GST), tax experts are still uncovering compliance issues with regard to erroneous application – even by listed companies which are oblivious to the consequences of their action.

Failure to detect incorrect application early – whether out of complacency or ignorance – would only aggravate the tendency of wrongful application over time, according to SJ Grant Thornton executive director (indirect tax & GST) Alan Chung.

“At this point, the authorities are adopting what I would consider as a consultative approach to help companies get it right,” he tells FocusM. “The fact that the authorities are accommodative or there is a lack of severe implications – coupled with the chore of correcting errors – create a situation that makes companies complacent to seek out errors.”

A case in point is the confusion surrounding “taxable supply” and “exempt supply”, of which the provision of loans are deemed as exempt supplies. In this context, it is common for listed entities which are investment holding companies to obtain financing and onward finance their subsidiaries. These loans are deemed exempt supplies for GST purposes.

“Previously, investment holding companies may be permitted to claim GST input tax credit if they fulfilled the conditions and their exempt supplies are what we term as incidental exempt financial supplies,” Chung points out. “They are no longer permitted to apply this preferential GST treatment to claim GST input tax credit.”

Very broadly, taxable supplies contrasted with exempt supplies where GST is completely not applied to the latter. When a company does not apply GST to the exempt supplies it makes, it follows then that the company would not be entitled to claim the GST on the expenditure it incurs to make the exempt supplies as GST input tax credit.

If a listed company is indeed making exempt supplies, Chung says it will not be entitled to be registered as part of a GST group. Registration in a GST group allows inter-company transactions between companies in the GST group to be disregarded for GST purposes.

“That means GST will not be applied on these inter-company transactions and there will not be a need for one company to account [ie charge and pay to the Royal Malaysian Customs Department] for GST while the other make a claim for that GST as GST input tax credit,” explains Chung. “It could be a significant impact on cash flows of the group as a whole if the inter-company transactions are large.”

On this note, Chung stresses the need for advance planning if it is unavoidable for a listed company to be a mixed supplier (companies that make both taxable supplies and exempt supplies).

“It is not rocket science to ensure all eligible GST are claimable as GST input



Alan Chung
Executive Director
Indirect Tax & GST

tax credit or to be eligible for GST group registration, but proper understanding and forward thinking is necessary to ensure that these are still available,” he rationalises. “Nevertheless, we are beginning to see more companies take GST seriously in their tax planning.”

Reimbursement and disbursement complications

Elsewhere, Chung also stresses the importance of distinguishing inter-company recharges given GST is applicable on reimbursement but not on disbursements. Such concerns stem from a general lack of understanding on what constitutes as reimbursements and

disbursements for GST purposes, leading to both terms being used interchangeably.

“To add to the confusion, the term ‘staff reimbursements’ is often used when they are technically not reimbursements for GST purposes,” he observes. “One of the challenges of applying GST on reimbursements is to determine the nature of the reimbursements in order to apply the correct GST treatment.”

In a nutshell, inter-company recharges are usually either reimbursements or disbursements of expenses incurred or paid for by one company which later seeks repayment of those expenses from another related company.

For example, a holding company of a group of companies can purchase a key-man life insurance policy that provides life insurance coverage for key members of its management across a number of companies.

Premium reimbursements

The question that arises when the holding company recharges the premiums to its subsidiaries is whether the holding company is providing life insurance coverage to its subsidiaries when it claims for the reimbursement of the premiums that it paid.

If the holding company is deemed to be providing life insurance coverage which is a GST exempted supply, it could face a host of problems related to being a mixed supplier.

“One would probably argue that the holding company is not providing life insurance coverage and it is the insurer that provided such,” reckons Chung. “Nevertheless, it is still necessary to establish the nature of the reimbursement in order to determine the GST treatment.”

At the time of writing, the Customs is believed to be working on a Public Ruling (no Public Ruling for GST has been released to-date) which has the effect of law as compared with a director general’s decision which merely states the view of the director general and/or the Customs.

“One of the concerns of the Public Ruling is how it will be applied to reimbursements and disbursements prior to its release,” suggests Chung. “Ideally, it would clearly state that the Public Ruling is applicable only for reimbursements and disbursements following its release but the question will still loom on what we should do with past deviations.”

Credit and debit note issuance

Additionally, listed companies need to look into the “diehard habit” of issuing credit note or debit note given that such practice is no longer permitted since the implementation of GST (tax invoices must be issued regardless if transactions are made between related companies or otherwise).

While hiring a consultant is the easier and quicker approach to resolve GST related issues, Chung opines that this is merely a short-term measure that should be supplemented by efforts to educate the company’s personnel.

“Ultimately, these people are frontliners who are intimately in touch with the company’s processes and transactions,” he argues. “It would be a fallacy to think that only accounting and finance staff require GST knowledge and training when many aspects of a company’s operations involve GST one way or another.”

Examples include:

- Human resource personnel who process staff claims need to know the circumstances when GST in the claims are not claimable as GST input tax credit;
- Legal personnel who are involved in the drafting of agreements should be aware of how GST are applied to the agreements;
- Staff involved in procurement need to understand how GST applies to their purchases to ensure that they prepare their purchase orders correctly; and
- Being individuals who issue tax invoices, credit notes and debit notes, sales staff should be trained to know the circumstances in which they are permitted to issue credit and debit notes.

Keeping a proper audit file intact

The Royal Malaysian Customs Department is likely to request for a GST (goods and services tax) audit file (GAF) in the event that it wishes to examine a company’s records and such examinations include GST audits. While a GAF is presently not compulsory, the availability of having one could greatly expedite the Customs’ examination.

“This will hopefully lead to a swifter closure of the Customs’ examination; after all, when an audit is being performed, one would like it to be completed as soon as possible,” SJ Grant Thornton executive director (indirect tax & GST) Alan Chung says.

Moreover, a proper GAF will demonstrate the company’s transparency and willingness to cooperate with the Customs, hence augurs well for building of a good impression of the company.

“Nonetheless, it must be noted that many companies do not pay sufficient attention to the GAR’ Chung points out. “It could be partly due to the data-centric GAF content that is difficult to translate and summarise into useful information that is easily understood”

Elsewhere, Chung views that many companies place great reliance on their systems and consultants without having tested GAF generated by the system. They fear that system-generated GAF does not conform to the required format, hence will not serve its purpose.

“On the contrary, the data contained in the GAF may not match the GST returns filed by the company and this would be counter-productive or may lead to suspicion and further queries,” he asserts.

Given that data analytics have been bandied around in many sectors - and GAF is the data analytics enabler for GST in Malaysia - it is only logical that its usage will intensify and may become compulsory in the near future, according to Chung.

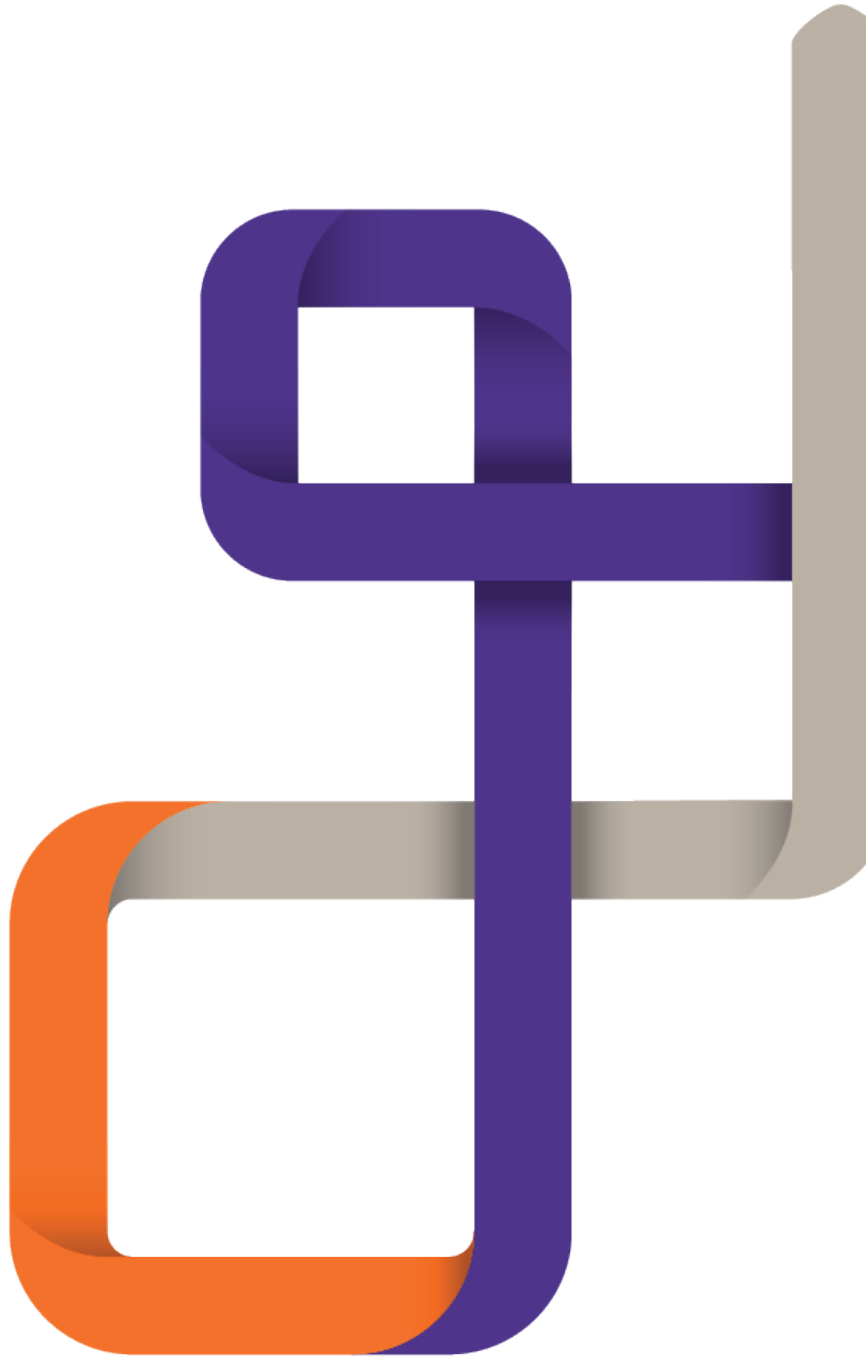
As much as it serves as a tool for the Customs to perform checks, the company itself can also leverage the GAF to examine data recorded in its system. With the right tools, GAF can be utilised to reconcile the system’s data to the GST returns and flag out any inconsistencies or errors.

“All-in, the GAF can be a useful tool to perform the company’s self-diagnosis,” adds Chung.

Find out how Grant Thornton can help you unlock the potential for growth for your business. Please contact us for enquiries.

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