Technical Group Discussion

"Never The Twain Shall Meet." Really?

8 May 2012, Tuesday

Accredited Tax Advisor (Income Tax) Ms Mak Oi Leng gave her valuable suggestions on how to resolve the tax controversy issues in various case studies.

In a lively presentation, Ms Mak Oi Leng, Accredited Tax Advisor (Income Tax) and Tax Partner of KPMG Advisory LLP, highlighted best practices and possible approaches to minimise and manage any crossings of the Inland Revenue Authority of Singapore (IRAS)'s path on tax controversy issues such that the twain (i.e. the taxpayer and IRAS) shall never meet.

Ms Mak kicked off the session with an overview of Singapore tax compliance landscape and shared ways on how to manage the tax risk of a company by proactively protecting against, preparing for, and subsequently if queried, responding to queries by the tax authorities effectively. Following that, participants were invited to participate and share in an active discussion based on four case studies.

<u>Singapore Tax Compliance Landscape</u>

Setting the context, Ms Mak explained that the IRAS' strategic compliance framework is premised on the belief that taxpayers are generally compliant.

To achieve the overarching objective of ensuring enhanced voluntary compliance, IRAS has taken a holistic approach through four strategic pillars, namely implementing a simpler tax system, engaging the community, having a credible tax administration and providing taxpayers with an easy access to information. Examples of initiatives include the introduction of the Simplified Form C for companies with an annual turnover of $1 million and below, providing comprehensive information online, leveraging on technology to assist taxpayers in getting their tax matters right and taking strong action against taxpayers who are non-compliant.

Gone too are the days where records were kept in paper format. With computerised systems, IRAS is now more efficient in reviewing tax returns and raising assessments, when necessary.

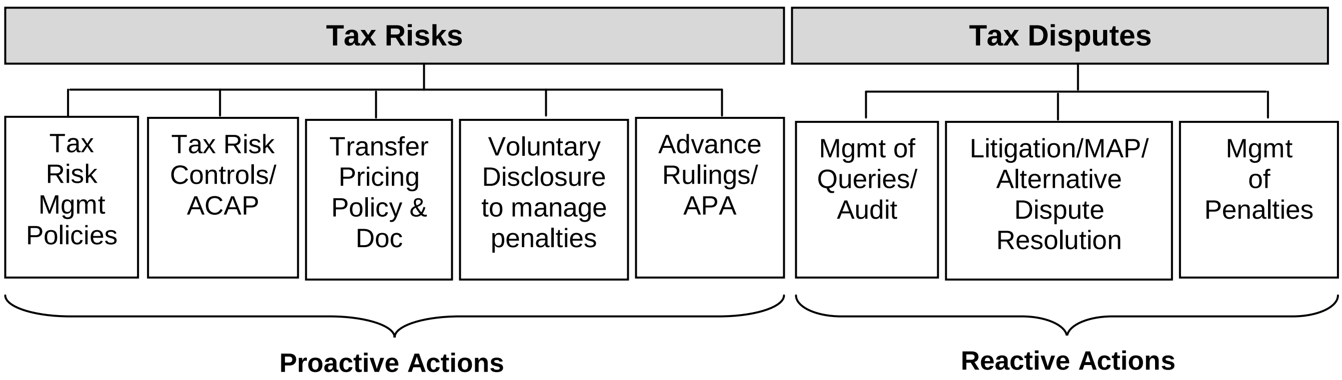
Companies are also segmented into three groups, namely small, medium and large corporations, based on the complexity of their business operations and tax profile. The approach adopted by the IRAS in handling the review and assessment for each group varies.

With the increasing international focus on tax governance, IRAS has also introduced initiatives which adopt a risk-based approach to assess the completeness and accuracy of corporate income tax reporting. At the start of every year, IRAS will publish its areas of tax audit focus on its website. Selected taxpayers will be asked to furnish responses to written queries, or complete and submit IRAS' questionnaires and accounting records to IRAS by a certain date.

Based on the responses, for taxpayers who have been identified as having potentially inadequate tax governance controls, IRAS may arrange for field visits to these taxpayers' premises to get a better understanding of the business and financial operations, examine and test the tax controls and systems in place. Subsequently, IRAS will communicate its findings to the taxpayers and finalise the assessments. Where the errors or omissions have been discovered by IRAS, penalties may be imposed.

A Proactive Approach Explained

With this risk-based approach adopted by the IRAS, Ms Mak emphasised the need for taxpayers to be proactive in identifying their tax risks and managing them; and also to be effective in defending their tax positions. Through her extensive years of experience, Ms Mak has conceptualised a Tax Risk & Dispute Management (TRDM) Continuum which she shared with the audience.



Source: KPMG in Singapore

Ms Mak explained that companies with good tax risk management policies, tax risk controls, maintain proper transfer pricing documentation and other relevant supporting documents (i.e. the first three sub-blocks of Tax Risks) will be in a better position to respond and defend should IRAS raise queries or conduct a tax audit.

Typical Features of a Good Tax Control Framework

Ms Mak shared the following key features companies should adopt when designing a tax control framework:

- ***Control environment***

  This refers to the company's overall tax strategy/ tax risk management policy. It is crucial for top management to advocate the importance of having a good tax control framework and sets the right direction to ensure that a correct and accurate tax return is submitted as any penalties imposed by IRAS will in turn reduce the company's profit.

- ***Risk assessment***

  The company's senior management should be aware of the different types of tax risks facing the company and take appropriate action. This involves identifying and proactively managing the potentially controversial tax issues faced by the company.

- ***Control activities***

  A systematic approach is essential where a company's procedures and processes are designed to ensure that various tax risks identified are appropriately managed to achieve the company's overall objectives on tax risk management. Some examples of the procedures and processes include segregation of duties, having a robust accounting procedure to capture data accurately which facilitates tax reporting, and good filing system to ensure that all relevant documentations are readily available upon IRAS' request etc.

- ***Information and communication***

  To ensure that the company's objectives with regard to managing tax risks are achieved, it is important to ensure that an efficient protocol exists for the dissemination and communication of information to ALL relevant stakeholder(s) and a good system exists for the retention and retrieval of relevant documentation(s) and information. A company-wide buy-in is important as managing tax risks should not be just the responsibility of a specific staff or department.

- ***Monitoring***

  This refers to the company's procedures put in place to review the effectiveness of internal controls over tax risks. Ms Mak commented that companies should review their tax control framework regularly. This is particularly important when a company changes its business models or re-organises its operations etc, so as to ensure that the effectiveness of the framework to identify and manage tax risks.

However, it was noted that even with a proper tax framework in place, there may still be instance(s) of errors in a company's tax reporting. When errors are identified, companies should take a proactive approach to rectify the errors and consider voluntary disclosures of these errors to IRAS to minimise any potential penalties. Ms Mak also suggested that as a best practice, companies can consider applying for advance rulings or advance pricing arrangements before they enter into large transactions that provides for some degree of uncertainty in the tax treatment due to grey areas on the interpretation of law.

Ms Mak highlighted that the key to effectively manage tax disputes is to focus on the issues and respond to the IRAS appropriately. In addition, a good representation of mitigating factors is important to manage the potential level of penalties which the IRAS may consider to impose.

<u>Key Takeaways of the 4 Case Studies</u>

Putting all the above together, Ms Mak shared her insightful analysis on areas to focus on in fronting the IRAS on tax issues through four case studies. These include grey areas on the interpretation of law, availability of circumstantial evidence to support a tax position, existence of relevant supporting documentations, commercial justification/circumstances etc.

As the session came to a close, participants were very appreciative of Ms Mak's enlightening presentation and insightful sharing through the four case studies.

The session ended with a presentation of token of appreciation by Mr Yee Fook Hong, SIATP Board Member, to Ms Mak.

About SIATP's Technical Discussions

SIATP's technical discussions have continually been very well received by accredited tax professionals. Unlike the run-of-mill Continuing Professional Educational courses which typically cover tax fundamentals, SIATP's interactive technical discussions are designed to cover tax issues that do not have clear-cut solutions or situations that may have different interpretations. Over time, these discussions contribute in boosting the overall tax standards in Singapore.

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With over 23 years of tax experience, Oi Leng has acquired an in-depth tax experience in both public and private sectors in Singapore.

Oi Leng's private sector experience primarily revolves around advising multi-national clients across a wide range of cross-border tax issues including merger and acquisition, tax efficient supply chain structuring and dispute resolution. She also works with local government agencies to secure tax incentives and other grants for her clients.

Prior to joining the private sector, Oi Leng was with the Inland Revenue Authority of Singapore's Policy and Rulings Branch and played an active role in tax policy planning and the policy formulation for fundamental changes to the tax system. She can be contacted at DID: 6213 7319 or Email: omak@kpmg.com.sg.

This technical event commentary is written by SIATP's Tax Manager, Ms Lee Shin Huay. An Accredited Tax Practitioner (Income Tax), Shin Huay has over six years of experience in corporate and individual tax. Previously from Deloitte & Touche LLP, she now leads various initiatives of Singapore's first dedicated professional body for tax specialists to enhance Singapore's position as a centre of tax excellence.