SiATP
Singapore Institute of
ACCREDITED
TAX PROFESSIONALS

Up Close & Personal with Tax

Serving our clients and managing expectations

Should we actively collaborate with them to adopt aggressive tax avoidance?

22 April 2014, Tuesday

Prof Sum Yee Loong kicked off the *Up Close and Personal with Tax* series, designed to provide a platform for robust discussion on a specific technical issue.

The Singapore Institute of Accredited Tax Professionals (SIATP) has kicked off its *Up Close and Personal with Tax* technical clinic series. Aimed at bringing participants literally up close and personal with a specific tax topic so as to enhance understanding, the inaugural session was well received and elicited positive comments similar to Paul Tan's "the Q&As and lively dialogue were excellent". Mr Tan is an Accredited Tax Advisor (Income Tax & GST) from CA Trust PAC.

The session was helmed by none other than ***Accredited Tax Advisor (Income Tax & GST) Professor Sum Yee Loong from the Singapore Management University***.

Prof Sum, who is also the Institute of Singapore Chartered Accountants (ISCA)'s Honorary Technical Advisor, shared on the topic of managing clients with aggressive tax planning strategies.

Tax Planning, Tax Avoidance and Tax Evasion – What's the difference?

The session started with the basics of what tax planning, tax avoidance and tax evasion are, as well as their differences.

In the past, the oft-quoted words of Lord Tomlin in *CIR v Duke of Westminister (1936)*, "Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Act is less than it otherwise would be.", was the legal justification for tax planning. Every person was thus free to plan his affairs in a manner that results in the lowest tax payable.

Tax planning is an exercise involving the structuring of transactions to minimise present or future tax liabilities.

Where tax planning is aimed at reducing or avoiding tax using means which are within the legal framework of the law, it is legitimate – and gives rise to the term tax avoidance. However, some opine that tax avoidance, although legal and legitimate, is not moral as it deprives the tax authorities their fair share of taxes, as expounded by the HM Revenue & Customs Issue Briefing published in September 2012. An example of tax avoidance is the arrangement of providing housing benefit instead of a housing allowance by an employer as the employee will be taxed on the housing benefit as a benefits-in-kind thus resulting in a lower tax liability. Deposits placed in overseas banks and the interest income not remitted back to Singapore is another example of tax avoidance.

Tax planning can cross the line when the arrangements are artificial and contrived to secure a tax advantage. These arrangements come within the ambit of the anti-avoidance provision (Section 33 of the Income Tax Act). Arrangements that are carried out for *bona fide* commercial reasons will not be caught under this provision.

Tax evasion, on the other hand, is a criminal offence and is often a deliberate act to defraud the government. Under the tax laws, an errant taxpayer caught evading taxes and a tax agent who helps its client evade taxes or abuse the system will face penalties which may include hefty fines and/or imprisonment. Examples of tax evasion include the under-declaration of income in the accounts and tax returns, the over-claiming of deductible expenses and the suppression of turnover to avoid a compulsory GST registration.

Managing Clients

Using various illustrations and scenarios to address the many queries raised by participants, Prof Sum shared his knowledge and experience, and dispensed wide-ranging practical advice.

A common scenario faced by participants centred on clients who insist on making claims through the Productivity and Innovation Credit (PIC) scheme, despite the lack of supporting documents or when the supporting documents were questionable; the latter could involve terms of payment on a purchase which are too good to be true – such as only upon receipt of the PIC bonus from the government. In such instances, tax agents should be more careful and should seek further clarifications. Due diligence should be conducted to ensure the validity of such claims.

In situations where clients are not able to provide satisfactory documents and justifiable commercial reasons, tax agents should, as part of their professional duty and conduct, emphasise the consequences of submitting doubtful claims and if it was felt that the claim could be without merit, persuade the client to forego the claims as such claims could be akin to fictitious claims and could be considered as tax evasion.

Other than claims, tax agents might also encounter clients with ambiguous expenses that favourably affect the tax position of the firm. Such expenses should not fall under section 15 of the Income Tax Act, which specifically disallows a deduction on the expenses. In addition, due diligence should be performed to ensure that these expenses are indeed wholly and exclusively incurred in the production of income based on the facts of the matter. Only then should tax agents act in the best interests of the client and proceed to claim a deduction on the said expenses.

Documentation. Documentation. Documentation!

A key best practice that was repeatedly highlighted was the need for tax agents to be diligent and place a high level of importance on the need to maintain adequate and sufficient documentation which should be able to hold its ground in an audit by the Inland Revenue Authority of Singapore, especially in a tax planning exercise. This is to ensure that both clients and tax agents have the same understanding and avoid any misconception or misunderstanding.

The session also highlighted that there could be scenarios where it might seem, at first glance, that there could be possible tax evasion, but on further understanding of the facts, proved otherwise. For example, a tax agent advised a taxpayer that GST registration was required when it was noted that the taxpayer's sales turnover (for example, in 2012) exceeded S$1 million in its audited financial statements. In the following year, it was noted that no such registration was made and the sales turnover for the subsequent year (that is, 2013) was less than S$1 million.

In such a case, while it is mandatory for a company with turnover in excess of $1 million to register for GST, it is justifiable that no registration was made if the taxpayer was able to explain that the circumstances resulting in the over S$1 million turnover were a one-off occurrence, and would not be repeated.

The two-hour session covered a wide range of scenarios. From permanent establishment issues to PIC cases and GST, participants – mostly Accredited Tax Advisors – left the sharing session with a little more insight and knowledge of the delicate art (and science) of managing clients. “Such sharing sessions help to affirm our past judgements. I have also learnt new tips from fellow practitioners,” commented Accredited Tax Advisor (Income Tax & GST) Jason Lee from CA.sg PAC; fellow Director Chin Ee Lin added that “participating in such sharing sessions of experience is certainly more useful than attending a seminar”.

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About SIATP’s Up Close and Personal with Tax series
SIATP’s *Up Close and Personal with Tax* technical clinic series is specially designed for Accredited Tax Advisors. Through robust discussions amongst a small group in each session, participants literally come up close and personal with a specific tax topic and develop in-depth knowledge of it through a sharing of views, perspectives and insights.

About Prof Sum Yee Loong

Prof Sum Yee Loong
Professor of Accounting
Singapore Management University
Accredited Tax Advisor (Income Tax And GST)
Fellow, Institute of Singapore Chartered Accountants
Honorary Technical Advisor, Institute of Singapore Chartered Accountants
Chartered Tax Advisor, Institute of Taxation (UK)
Fellow, Association of Chartered Certified Accountants (UK)

Prof Sum Yee Loong was Tax Partner in Deloitte Singapore from 1987 until his retirement in May 2011. He has more than 30 years of experience in Singapore and international taxation with multinationals and local companies spanning across various industries. His areas of expertise include devising strategies and leading tax review teams to create and identify tax saving opportunities; structuring and restructuring for IPOs; international and regional tax planning and advising and negotiating tax incentives for corporate clients as well as structuring for legal firms.

Yee Loong is chairman of the examinations and curriculum committee of the Singapore Tax Academy, member of the examinations committee of Singapore Institute of Accredited Tax Practitioners and Learning and Assessment Committee of the Singapore Qualification Programme under the Singapore Accounting Commission as well as authored the Singapore Tax Workbook published by CCH.

This technical event commentary is written by SIATP’s Tax Manager, Ms Eileen Goh. With over six years of experience in both corporate and GST, accumulated from mid-tier consultancy, Big Four and multi-national corporation background, she now champions various initiatives of Singapore’s first dedicated professional body for tax specialists, to enhance Singapore’s position as a centre of tax excellence.