

## Tax Musings

by  
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# Solve your tax woes with voluntary settlement

**T**HE Inland Revenue Board's (IRB) emphasis on enforcing the tax laws and rules and collecting the taxes is now more visible and intense than in the past. The volume of tax audits and investigations has certainly increased many fold.

The "wait till you catch me" attitude of the past is highly risky as the IRB is exercising greater vigilance with the use of various techniques. Among them are: 1) use of big data analytics; 2) developing industry specialists; 3) sharing of information between the IRB and the Customs Department; and 4) sharing of information between Malaysia and other countries under the Automatic Exchange of Information (applicable from 2017).

There has been a concerted effort by the IRB to increase the level of knowledge of its officers through focused training. This is evident when IRB officers visit taxpayers during audits and you can see the greater level of preparedness, in-depth questions and the thoroughness of their scrutiny.

## What is voluntary settlement?

Voluntary settlement allows non-compliant taxpayers an opportunity to correct their tax affairs in a friendly and amicable atmosphere. Non-compliance includes 1) non-submission of tax returns; 2) understatement of income; 3) expenditure wrongly claimed; 4) non-sustainable tax positions; 5) incorrect interpretation of the law; and 6) non-compliance with the existing compliance requirements (that is withholding tax deductions not made or not made on time).

## Why bother to voluntarily settle?

Voluntarily coming forward to correct one's tax issues indicates your willingness to come clean and in future to become a good tax citizen. This will enhance the credibility of the taxpayer in the eyes of the IRB. This will also lead to a reduced penalty versus the 100% penalty imposed on any audit adjustments from a tax audit.

Another big advantage is that taxpayers voluntarily settling their taxes will not be put on the Monitoring Deliberate Tax Defaulters (MDTD) Programme.

MDTD is a programme that is intended to ensure that errant taxpayers who have suffered tax adjustments from audits or investigations are monitored regularly through future scrutiny and audits to ensure that they do not repeat those offences again. Once you are on the MDTD list, your tax affairs will be closely monitored and possibly audited on an annual basis until you get a "clean bill of health".

## Who can volunteer?

All taxpayers including individuals, body corporates, corporates, trusts, and others can benefit from voluntary compliance.

## Transparency

The taxpayer should ensure that at the time of the application for voluntary settlement, all non-compliant tax matters should be brought to the attention of the IRB. The authority should not at a later date discover that there are other non-compliant issues which have not been brought to its attention.

It is important for the taxpayer to go through his past tax matters thoroughly and ensure there is completeness of all the non-compliance issues before approaching the IRB for a voluntary settlement.

It is equally important that the relevant records to support the facts presented should be compiled and presented to the IRB at the time of the application for voluntary settlement.

Will you be "black marked" and subject to extra scrutiny in the future?

Voluntary settlement will add credibility to good taxpayers and the IRB is unlikely to "blackmark" such repenting taxpayers. The IRB will treat such taxpayers just like any other compliant taxpayer. There should be no fear of a backlash on such volunteering taxpayers.

## Suggestion to the IRB

Paragraph 10.2 of the IRB 2017 Audit Framework dated May 1, 2017 encourages voluntary disclosure of omitted income before

the commencement of the audit.

However, there is no further guidance provided in the audit framework or reference in the tax legislation, public rulings, etc, that sets out a clear procedure for the implementation of the voluntary settlement mechanism. There is also no clear guidance for the various branches of the IRB to consistently implement this mechanism.

It would be helpful for the IRB to issue guidelines to the public at large, setting out the criteria to

be satisfied and the documents to be submitted by the taxpayers to avail themselves of the voluntary settlement mechanism. The guidelines will also assist the IRB's branches across the country to implement the voluntary settlement mechanism on a consistent basis.

## Conclusion

In practice, voluntary settlements are currently welcomed by the IRB.

Voluntary settlement will save

taxpayers valuable management time and money and avoid lengthy audit proceedings, potential future litigation which may take time to resolve, and most importantly, it will provide certainty and finality for the taxpayers.

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Voluntarily coming forward to resolve your tax issues indicates your willingness to come clean and to become a good tax citizen in future

## Call for prudence, forbearance to preserve peace

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prudent and expedient to completely annex the Lanfang Republic even after the latter was already militarily defeated back in 1884.

Chinese settlement in today's West Kalimantan is probably the earliest of any Chinese settlement in the whole of Borneo and those who worked the gold mines of Bau in Sarawak and then settled in the state likely trekked across from the other side of the border.

These early Chinese migrants brought with them a well-earned reputation for political militancy in latter times, when they formed the nucleus for the "North Kalimantan Communist Party" and its militia, Pasukan Rakyat Kalimantan Utara (Paraku), instigating a sometimes brutal and bloody insurgency in Sarawak that only ended in 1973.

The Chinese settlers of West Kalimantan and their descendants are now largely forgotten although the city of Singkawang remains a largely Chinese outpost and comes alive each *Chap Goh Meh* with street celebrations to mark the close of lunar new year festivities and whose residents elected a Chinese *walikota* (mayor) in free elections with the *reformasi* era after the fall of Suharto.

Both the Lanfang Republic episode and the spread of Chinese-inspired communism in Southeast Asia tended to suggest that China adopted a rather arm's length and distant political approach to the region even when political conditions appeared favourable to its asserting itself more forcefully.

But of course all these happened when China

was itself facing political turmoil at home of varying intensity and was economically still in the throes of general decline. Its imperial and later communist rulers had good reasons not to dabble too much in foreign entanglements as they preoccupied themselves with plenty to do on the home front.

However, will all this change when recent phenomenal economic growth spurts experienced by China reach a new zenith and the ancient Middle Kingdom finally discovers it has both the economic wherewithal and the political will to bend the world more closely towards its line of thinking?

The re-emerging Dragon should perhaps be given a certain leeway as it feels its way around and may even occasionally falter while doing so.

The departing Chinese consul-general in Kuching might recently have been airing personally sincere remarks publicly when he expressed hopes that the two Chinese-based political parties in the state government would work to forge unity but such direct political remarks by a representative of an increasingly powerful foreign government can, at best, be interpreted any number of ways.

Ultimately, China's newly-emerging relationship with this region will be the result of countless minor and major interactions at innumerable levels between both – either banal, benign or otherwise. Its shape will be moulded bywise policymakers in either direction, always fully conscious that they are at a rather critical juncture in the wider arc of history facing our region.

As in the time of the Lanfang Republic, other, outside forces may still be at play, which calls for utmost prudence and forbearance on the part of all actors, if regional peace and wider global harmony are to be preserved for the greater good of all concerned. FOCUSM

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