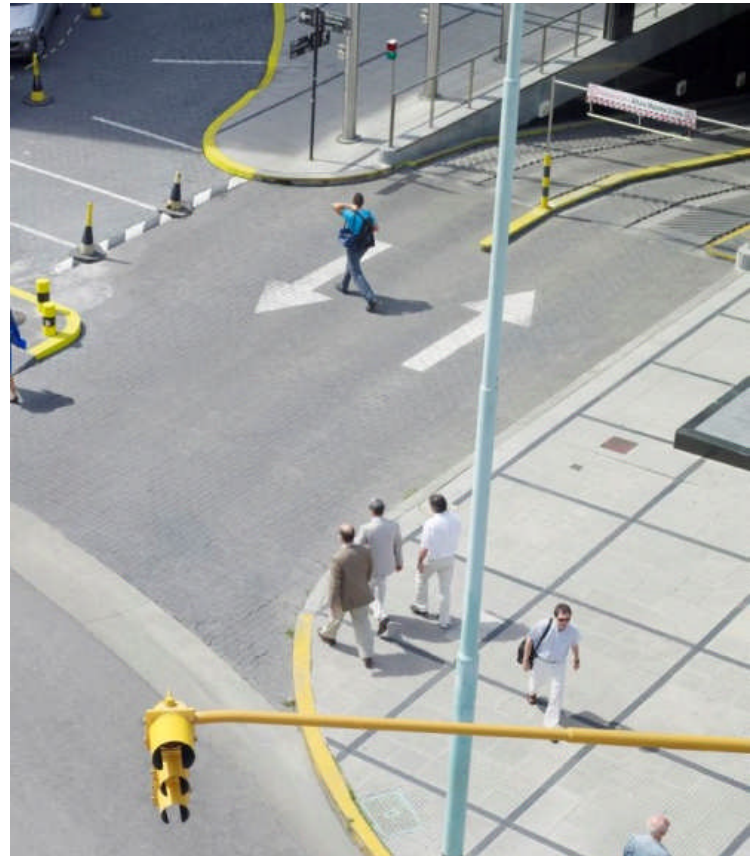


# TaXavvy

Stay current. Be tax savvy.

- 2 Recent tax cases
  - “handling and packing” charges are subject to withholding tax
  - feasibility study expenses and warranty expenses are deductible
  - structure built separately from main factory building qualifies for Industrial Building Allowance
- 3 Guideline on incentives under the Petroleum (Income Tax) Act 1967 for petroleum upstream sector

Goods and Services Tax



## Recent tax cases

### **“Handling and repacking” charges are subject to withholding tax**

In *Ketua Pengarah Hasil Dalam Negeri v Teraju Sinar Sdn Bhd* [Civil Appeal No W-01-200-2010], the Court of Appeal found that “handling and repacking” charges paid to a Singapore company in the years of assessment 1998, 1999, 2000 and 2002 fell within the ambit of section 4A(ii) of the Income Tax Act 1967 (ITA), and therefore were liable to withholding tax under section 109B of the ITA.

The charges were paid for services to dismantle imported electrical equipment (Completely Built-Up units) and then to mark, wrap and export the parts as Completely Knocked Down or Semi Knocked Down units to the taxpayer. The taxpayer contended that the services performed by the Singapore company were non-technical in nature and were not connected to technical management or administration and therefore fell outside the ambit of section 4A(ii) of the ITA. The Special Commissioners of Income Tax (SCIT) disagreed with the taxpayer but the decision was reversed by the High Court.

The Court of Appeal agreed with the SCIT that the “handling and repacking” charges fell within the scope of section 4A(ii) of the ITA and therefore Malaysian withholding tax applied.

The Court of Appeal dismissed the taxpayer’s contention that withholding tax should not apply as relief from taxation under the Malaysia – Singapore Double Taxation Agreement should be available to the Singapore company in the absence of a Malaysian permanent establishment of the Singapore company. This is on the basis that the duty to withhold tax is a responsibility of the Malaysian company which is entirely distinct and separate from the liability of the Singapore company to Malaysian tax. The issue of whether the Singapore company is entitled to relief from Malaysian tax did not arise as there was no claim of relief by the Singapore company.

### **Feasibility study expenses and warranty expenses are deductible**

In the High Court case of *Ketua Pengarah Hasil Dalam Negeri v Shell Refining Company (FOM) Bhd* [2013] MLJU 1469, it was held that expenditure incurred in conducting feasibility studies on the taxpayer’s refinery to comply with new government regulations were deductible. The High Court agreed with the SCIT’s decision that the expenditure was wholly and exclusively incurred by the taxpayer in the production of its gross income.

In *Ryoshindoh Manufacturing Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2014) MSTC 30-072, the taxpayer, a contract manufacturer for Mitsubishi Shindoh Co Ltd, was allowed a tax deduction for compensation for warranty of defective goods paid to Mitsubishi Shindoh Co Ltd. The High Court reversed the SCIT’s decision and agreed with the taxpayer that the payment was deductible.

### **Structure built separately from main factory building qualifies for Industrial Building Allowance**

The High Court had held in the *Ryoshindoh* case that an earth chamber which was built separately from the main factory and connected to the factory at the rooftop by copper wiring, forms part of the main factory and qualifies for Industrial Building Allowance.

The Court applied the “entirety test” as in the cases of *Director General of Inland Revenue v C Company of Malaysia Bhd* [1980] 10 MLJ 64 and *Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturing Sdn Bhd* (CA) (Civil Appeal No W-01-429-11). The factory would not have been able to function safely without the earth chamber which was an important safety feature.

## Guidelines

### **Guideline on incentives under the Petroleum (Income Tax) Act 1967 for petroleum upstream sector**

The Inland Revenue Board (IRB) has issued the above guideline dated 22 May 2014 to provide guidance on the following tax incentives. These incentives came into operation from 30 November 2010 for the petroleum upstream sector.

Gazette Order	Tax incentive	Qualifying person
<i>Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) Rules 2013 (PU(A) 119/2013) and Petroleum (Income Tax) (Accelerated Capital Allowances) (Marginal Field) (Amendment) Rules 2014 (PU(A) 58/2014)</i>	Accelerated capital allowance on qualifying plant expenditure incurred from YA 2010 to YA 2024.	Chargeable person carrying on petroleum operations in marginal fields.
<i>Petroleum (Income Tax) (Exemption) Order 2013 (PU(A) 122/2013) and Petroleum (Income Tax) (Exemption) (Amendment) Order 2014 (PU(A) 57/2014)</i>	Exemption for a portion of chargeable income from marginal fields resulting in a reduction of the effective tax rate from 38% to 25%.	Chargeable person carrying on petroleum operations in marginal fields.
<i>Petroleum (Income Tax) (Investment Allowance) Regulations 2013 (PU(A) 120/2013) and Petroleum (Income Tax) (Investment Allowance) (Amendment) Regulations 2014 (PU(A) 69/2014)</i>	Investment allowance of 60% of qualifying capital expenditure to be set off against 70% of statutory income for a period of 10 years.	Chargeable person carrying on petroleum operations in respect of a qualifying project.

The guideline also includes guidance on the Petroleum (Income Tax) (Marginal Field) Regulations 2013 (PU(A) 121/2013) which specifies the tax treatment for a chargeable person carrying on petroleum operations in marginal fields.

The guideline is available in Bahasa Malaysia only and can be downloaded from IRB's website [www.hasil.gov.my](http://www.hasil.gov.my) (Laws and Regulations > Technical Guidelines).

## Goods and Services Tax (GST)

The Royal Malaysian Customs Department (RMCD) opened its on-line portal, the *Taxpayer Access Point* (TAP) to accept applications for GST registration from 1 June 2014.

To register for GST or for more information, please visit RMCD's website at <http://www.customs.gov.my/>.

## Let's talk

Our offices	Name	Email	Telephone
<b>Kuala Lumpur</b>	Jagdev Singh	jagdev.singh@my.pwc.com	+60(3) 2173 1469
<b>Penang / Ipoh</b>	Tony Chua	tony.chua@my.pwc.com	+60(4) 238 9118
<b>Johor Bahru</b>	Benedict Francis	benedict.francis@my.pwc.com	+60(7) 222 4448
<b>Melaka</b>	Teh Wee Hong Au Yong	wee.hong.teh@my.pwc.com paik.hup.au@my.pwc.com	+60(3) 2173 1595 +60(6) 282 6169
<b>Labuan</b>	Jennifer Chang	jennifer.chang@my.pwc.com	+60(3) 2173 1828

Our services	Name	Email	Telephone
<b>Corporate Tax Compliance &amp; Planning</b>			
▪ Consumer & Industrial Product Services	Theresa Lim Margaret Lee	theresa.lim@my.pwc.com margaret.lee.seet.cheng@my.pwc.com	+60(3) 2173 1583 +60(3) 2173 1501
▪ Emerging Markets	Fung Mei Lin	mei.lin.fung@my.pwc.com	+60(3) 2173 1505
▪ Energy, Utilities & Mining	Lavindran Sandragasu	lavindran.sandragasu@my.pwc.com	+60(3) 2173 1494
▪ Financial Services	Jennifer Chang	jennifer.chang@my.pwc.com	+60(3) 2173 1828
▪ Technology, InfoComm & Entertainment	Khoo Chuan Keat	chuan.keat.khoo@my.pwc.com	+60(3) 2173 1368
<b>GST / Indirect Tax</b>	Wan Heng Choon	heng.choon.wan@my.pwc.com	+60(3) 2173 1488
<b>International Tax Services / Mergers and Acquisition</b>	Frances Po	frances.po@my.pwc.com	+60(3) 2173 1618
<b>Transfer Pricing, Tax Audits &amp; Investigations</b>	SM Thanneermalai	thanneermalai.somasundaram@my.pwc.com	+60(3) 2173 1582
<b>International Assignment Services</b>	Sakaya Johns Rani	sakaya.johns.rani@my.pwc.com	+60(3) 2173 1553
<b>Corporate Services</b>	Lee Shuk Yee	shuk.yee.lee@my.pwc.com	+60(3) 2173 1626
<b>Japanese Business Consulting</b>	Junichi Fujii	junichi.fujii@my.pwc.com	+60(3) 2173 1480
<b>Worldtrade Management Services</b>	Huang Shi Yang	shi.yang.huang@my.pwc.com	+60(3) 2173 1657

[pwc.com/my](http://pwc.com/my)

**Taxavvy** is a newsletter issued by PricewaterhouseCoopers Taxation Services Sdn Bhd. Whilst every care has been taken in compiling this newsletter, we make no representations or warranty (expressed or implied) about the accuracy, suitability, reliability or completeness of the information for any purpose. PricewaterhouseCoopers Taxation Services Sdn Bhd, its employees and agents accept no liability, and disclaim all responsibility, for the consequences of anyone acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Recipients should not act upon it without seeking specific professional advice tailored to your circumstances, requirements or needs.

© 2014 PricewaterhouseCoopers Taxation Services Sdn Bhd. All rights reserved. "PricewaterhouseCoopers" and/or "PwC" refers to the individual members of the PricewaterhouseCoopers organisation in Malaysia, each of which is a separate and independent legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.