Taxmen set their sights on digital economy

They seek additional GST from foreign direct service providers

STORIES BY SUPRIYA SURENDRAN

KUALA LUMPUR: The taxmen of the Inland Revenue Board (IRB) and Royal Malaysian Customs Department have set their sights on the digital economy.

Treasury secretary-general Tan Sri Dr Mohd Irwan Serigar Abdullah pointed out last week that some foreign-owned digital economy players like Google, Uber and Facebook are currently not paying taxes in Malaysia.

"It is time to internationalise our tax laws so that we can tax these people who are earning revenue here but the revenue is [transmitted] overseas, whether to the Netherlands or US and so on. We are talking to the tax authorities like IRB and customs on this," Mohd Irwan said in his keynote at the GST (goods and services tax) Conference 2017 organised by the Customs and Malaysian Institute of Accountants.

Speaking to the media at the same event, Customs director-general Datuk Seri Subromaniam Tholasy said his department is looking into amending the Goods and Services Tax Act 2014 to facilitate collection of the tax from foreign companies offering digital services in Malaysia.

He said the additional GST revenue from the digital economy could come up to "billions of ringgit".

Tax experts weigh in

Deloitte Malaysia tax partner Tan Hooi Beng said that when it comes to corporate income tax (CIT), Malaysian digital companies are not treated any different from the brick-and-mortar business.

"Their profits are subject to CIT as long as the operations are carried out [here]. In short there are no specific corporate rules for taxing the digital economy ... the same treatment applies to both the digital and traditional economy

"For foreign companies they would only fall within the ambit of Malaysia's CIT if they have a taxable presence or a permanent establishment here, for example having personnel in Malaysia who are performing the services here," Tan told *The Edge Financial Daily*.

As for the GST, PricewaterhouseCoopers Taxation Services Malaysia executive director Raja Kumaran said Malaysian companies providing goods or services in the digital economy are subject to GST, if their supply of taxable goods or services exceeds RM500,000 in a 12-month period.

Mohd Irwan pointed out last week that some foreign-owned digital economy players like Google, Uber and Facebook are currently not paying taxes in Malaysia. **Photo by Suhaimi Yusuf**

However, he said that there is no requirement for a foreign company to register for GST in Malaysia at present, unless that company is selling goods in Malaysia in which case they are required to register via an agent.

"The key determinant would be where the transfer of ownership of the goods take place. [If] it is in Malaysia and the value of the goods exceeds RM500,000 per year, then the foreign company is required to register [for GST] in Malaysia," he said.

Raja explained that goods imported into Malaysia are also subject to GST.

"[If] the goods are imported into Malaysia via air courier services, and [if] the value of the goods does not exceed RM500, then the goods are given relief from GST. Therefore where consignments are kept below RM500, Malaysians can buy goods from overseas which are not subject to GST, and if the goods exceed RM500, this would be collected by the courier service before or upon delivery" he said.

However, Raja pointed out that for the digital services economy, the Malaysian GST law does not currently tax foreign service providers unless they have a branch or establishment in Malaysia through which they provide the services.

"As such, companies like Uber, Grab or Airbnb are not required by law to register for GST in Malaysia, [even if their services supplied exceed RM500,000 a year]. These companies are not the provider of the services consumed by the customers per se, they merely act as a marketplace for the drivers or landlords to sell their own services.

"Depending on the terms and conditions, it is the driver or landlord who supplies the service who would be required to register for GST, but only where the supplies breach the annual threshold of RM500,000," he said.

Grant Thornton Malaysia executive director for international tax and global mobility services Daniel Woo said that step one of the Organisation for Economic Co-operation and Development's (OECD) 15-step Base Erosion and Profit Shifting (BEPS) plan addresses the tax challenges of the digital economy.

"Action 1 of the BEPS concludes that the digital economy cannot be ring-fenced. Hence, rules and implementing mechanisms must be developed to help to collect GST or VAT (value added tax) based on the country where the consumer is located in the case of cross-border business-to-consumer transactions

"This is to level the playing field between domestic and foreign suppliers, and facilitate the efficient collection of GST or VAT due on these transactions," Woo said.

Ernst and Young Tax Consultants Sdn Bhd Malaysia tax leader Amarjeet Singh said countries like South Korea and Japan are already implementing indirect tax methods to tax the digital economy.

"For examples, these countries require non-residents making taxable supplies to end-consumers to register for GST purposes and to impose GST for supplies made in the country

"[Based on recent reports in the media], Malaysia could be following suit," he said.

What the digital economy players say

Grab Malaysia country head Sean Goh said the ride-sharing service, which is currently registered for GST in Malaysia, absorbs the GST on its GrabCar rides.

"Our Grab rides are currently priced to balance the need for affordable rides [while] ensuring [that] our drivers are still able to earn a decent income.

"Recognising the increase in living expenditures, Grab has been offering various discounts and promos to help passengers plan their rides accordingly to fully benefit from the discounts

"As for drivers, Grab is constantly identifying like-minded partners to provide benefits to our drivers such as Petronas with their Kad Mesra Grab to help with the cost of petrol which is a major driving cost for our drivers," he told *The Edge Financial Daily*.

On which tax regime Grab falls in, given its presence in seven countries, Goh said drivers are registered according to their country of origin.

CONTINUES ON PAGE 4

Taxing digital economy players a daunting task?

KUALA LUMPUR: The two tax captains of Malaysia — Inland Revenue Board (IRB) chief executive officer Datuk Sabin Samitah and Royal Malaysian Customs Department director-general Datuk Seri Subromaniam Tholasy — both shared the same sentiment on taxing the digital economy, in particular the foreign entities providing services in Malaysia: it is a challenge.

Baker Tilly Malaysia tax partner and Asia-Pacific leader Anand Chelliah opined that the IRB and Customs both have their work cut out for them to identify and implement tax collections and recovery mechanisms for the digital economy.

"For corporate income tax, the issue of attributing income to business operations, and according a fair share of deductible expenses against it, is an arduous task.

"In terms of [the] goods and services tax (GST), every digital economy model has its unique or distinguishing features in respect of its supply chain process and thorough examination of the structure would be needed to ascertain where, and how the GST laws will impact the transactions [and to then] attribute the GST obligations and compliance on the parties involved.

"It is expected that [the IRB and Customs] will be gearing up to take on these challenges in the foreseeable future through training and recruitment of specialist forces," Anand told *The Edge Financial Daily*.

Crowe Horwath KL Tax Sdn Bhd managing director SM Thanneermalai also implied that it would not be an easy process for the authorities.

"For example, when you buy a product from a foreign e-commerce provider, you use your credit card and the money goes to an offshore bank account, and if the goods sent to Malaysia are not subject to customs duty at the point [of delivery], then the income that the foreign provider makes from providing the goods or services goes overseas, perhaps in [the] Cayman Islands or [the] Netherlands where they may have tax breaks.

"So that income leaves Malaysia and the foreign company providing the service is not present in Malaysia, so they are not subject to Malaysian income tax.

"When it comes to GST, there may be a supply of goods and services, but when you have hundreds of thousands of consumers [purchasing goods or services] through digital platforms, [it becomes difficult to track]. So how do you impose tax? [One possibility] is since most of the purchases are done through credit card, they may come up with a new mechanism where the credit card company collects tax due on the goods or services on behalf of the government," he said.

Deloitte Malaysia tax partner Tan Hooi Beng said it is important that the foreign service providers to be subjected to GST, as an absence of the charge will create a disparity between them and local service providers, who must pay GST.

"Furthermore, as other countries globally implement these rules, local Malaysian digital service providers who provide services to customers outside of Malaysia will need to register in these foreign GST regimes.

"If Malaysia does not follow suit, it disadvantages its own businesses and reduces tax collection," he said.

Anand noted that there are players in the digital economy that operate in countries with lower tax or lower cost jurisdictions, which they legitimately structure to maximise their tax efficiency and operations.

For corporate income tax, the issue of attributing income to business operations, and according a fair share of deductible expenses against it, is an arduous task.

"Tax planning is not wrong. It is the legitimate right of any taxpayer to arrange their affairs in a tax sensible and efficient manner.

"[Certain digital economy players] pay taxes in the jurisdiction in which they have an operational or management footprint, but it is extremely difficult to impose taxes in jurisdictions in which they merely have a digital footprint

"However, we need to be mindful that the logistics, warehousing and transportation businesses that support the digital economy do pay their fair share of taxes in the jurisdictions that they operate in," he said.

On whether tax laws would need to be drastically revised, Anand said there is a possibility.

"Perhaps, a shift towards community-based taxing laws aimed at taxing such entities based on pre-agreed tax rates on turnover, or activity levels across borders.

"We need to be mindful that bilateral tax treaties between countries currently determine the taxing right of business profits, which would need to be addressed otherwise.

"This leaves much for tax authorities to ponder on," he said.

'Uber is compliant regarding all current taxation requirements in Malaysia'

FROM PAGE 3

"When a driver signs up with Grab, they will register with their own country's Grab office. For example in Malaysia, you need a valid Malaysian IC (identity card) and driver's licence to drive for Grab.

"This means, Malaysian drivers register with the Malaysian office," he said.

A spokesman from Uber said that the ride-sharing firm is open to engaging with the government on the best way forward for the taxation process.

"We await the final details of such proposed regulatory updates. Uber is compliant regarding all current taxation requirements in Malaysia," he said.

An Airbnb spokesman said the online marketplace and hospitality service is committed to working with the Malaysian government to make it easier for its hosts and guests to pay their fair share of taxes.

Airbnb, she said, has entered into tax partnerships with more than 350 jurisdictions worldwide and collected and remitted more than US$320 million in hotel and tourist taxes globally.

"Airbnb is generating new tax revenue that governments around the world are dedicating to existing critical services, or funding new programmes that help address local challenges," she added.