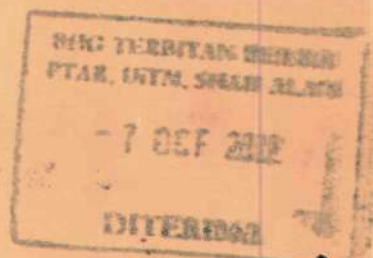


Wahana AKADEMIK



JURNAL ■ UNIVERSITI TEKNOLOGI MARA ■ CAWANGAN KEDAH ■ KAMPUS SUNGAI PETANI

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- Analisis Fungsi Permintaan Wang di Malaysia
Kaedah Pembolehubah Bertanggung Pelarasan Separa (Tahun 1960-Tahun 2000)
- Capital Budgeting in Investment and Project Appraisal
- Gambaran Sektor Pertanian Padi di Malaysia dan Kepenggunaan Tenaga Buruh di Sektor Tersebut
- How to Analyse Time Series Data Using Cointegration Techniques
- Key Success Factors of TQM Organizations : A Review of the Literature
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- Learning Styles Useful in Improving Students' Learning
- Malaysian Accounting Standards Overload?
- Motivational Styles and Instructional Designs of Second Language Learning :
A Brief Insight into Students' Language Learning Preferences
- Pengaruh Bahasa Inggeris Terhadap Kecemerlangan Pelajar :
Kajian di Universiti Teknologi MARA (UiTM) Cawangan Kedah, Kampus Sungai Petani
- Perbankan Islam: Bank Islam Malaysia Berhad
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KATA-KATA ALUAN PENAUUNG

Assalamualaikum Warahmatullahi Wabarakatuh

Tahniah diucapkan kepada Jawatankuasa Jurnal Akademik UiTM Cawangan Kedah khasnya dan warga akademik UiTM Cawangan Kedah amnya kerana telah berjaya menerbitkan penerbitan pertama WAHANA AKADEMIK iaitu Jurnal Akademik UiTM Cawangan Kedah. Usaha ini adalah sejajar dengan cabaran era globalisasi yang memerlukan keupayaan penguasaan dalam pelbagai bidang ilmu. Masyarakat yang tidak mempunyai ilmu akan terus ketinggalan dan terkebelakang dalam segala segi. Sebagai sebuah universiti, para pensyarah dapat memainkan peranan yang penting dalam menghadapi cabaran ini kerana ilmu yang diturunkan dalam bentuk penulisan dapat mengubah nasib sesebuah masyarakat. Oleh itu para pensyarah perlulah berusaha untuk melengkapkan diri dengan meningkatkan pengetahuan tentang bidang masing-masing serta komited dengan penulisan dan penerbitan.

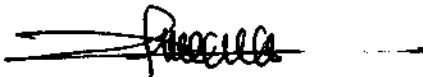
Saya amat berharap kewujudan jurnal WAHANA AKADEMIK akan menjadi pemacu kepada percambahan dan pertumbuhan ilmu serta menjadi saluran utama kepada penerbitan pensyarah UiTM khasnya UiTM Cawangan Kedah.

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Akhir kata, saya sekali lagi mengucapkan setinggi-tinggi penghargaan dan syabas di atas kejayaan menerbitkan WAHANA AKADEMIK.

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Wassalam.



Prof. Madya Dr. Zaliha bt. Hj. Hussin
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Kegiatan penulisan dalam pembentukan profesyen seorang pensyarah di institusi pengajian tinggi adalah sangat penting. Ini adalah kerana dengan melibatkan diri di dalam penulisan akademik, pensyarah dapat menunjukkan bahawa ia sentiasa berusaha untuk melengkapkan diri dan berkemampuan untuk meningkatkan ilmu pengetahuan sesuai dengan tarafnya sebagai seorang ahli akademik. Walau pun sibuk dengan beban pengajaran yang banyak, tetapi pensyarah tidak wajar menjadikannya sebagai alasan untuk tidak terlibat dalam bidang penulisan. Oleh itu, saya menyeru agar pensyarah sekalian berusaha menjadikan penulisan sebagai satu budaya serta memainkan peranan dengan sebaik-baiknya bagi menyempurnakan kegiatan yang berfaedah ini.

Saya juga berharap agar pensyarah menggunakan peluang untuk mendalami ilmu, mengemukakan pendapat dan seterusnya menyebarkan pengetahuan melalui ruang yang disediakan oleh WAHANA AKADEMIK ini dengan sebaik mungkin. Sesungguhnya penerbitan jurnal ini merupakan satu mekanisme yang dapat mempertingkatkan status akademik pensyarah UiTM Cawangan Kedah di mata masyarakat.

Sekian. Semoga segala usaha dan sumbangan bakti Jawatankuasa tuan/puan semua diberkati Allah S.W.T.

Wassalam.



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DARI KETUA PENYUNTING

Assalamualaikum Warahmatullahi Wabarakatuh

Syukur kepada Allah kerana penerbitan pertama 'WAHANA AKADEMIK,' iaitu jurnal akademik pertama Universiti Teknologi MARA Cawangan Kedah akhirnya dapat diterbitkan. Usaha untuk menerbitkan jurnal ini lahir daripada kesedaran bahawa budaya penulisan perlu dipupuk di kalangan ahli akademik. 'Wahana' yang bermakna alat untuk melahirkan atau menyampaikan fikiran atau pendapat diharap akan dapat dimanfaatkan oleh ahli akademik dalam usaha untuk menyalur dan berkongsi maklumat mengenai perkembangan pelbagai bidang akademik kepada pembaca.

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Wan Faizah bt. Wan Abdullah

SELF ASSESSMENT: AN OPPORTUNITY TO REDUCE TAX

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ABSTRACT

This paper explains the new Inland Revenue Board's Self Assessment System and its implication for the taxpayers. This paper also discusses tax evasion and tax avoidance and their legal consequences. Besides, some suggestions on how to avoid tax legally has been given in general. The anti-tax avoidance provision, which is designed to counter tax avoidance is also discussed in this paper.

Key words: **Self Assessment System, Tax Evasion, Tax Avoidance, Anti-Tax Avoidance**

INTRODUCTION

The Official Assessment Tax System will be a thing of the past when a new tax system called 'Senang' is fully implemented. New Straits Times (1999) reported that 'Senang' or Self Assessment Tax System was launched in 1999 by the then Finance Minister of Malaysia, Tun Daim Zainuddin and would be implemented in stages. Self assessment was initially applied to companies from 2001. It will be extended to cooperatives and traders in 2003 and to individuals in 2004.

Under the Official Assessment System, taxpayers are required to submit return forms to Inland Revenue Board (IRB) in which all incomes are declared. Having determined the exact amount to be taxed, a notice of assessment will be sent to the taxpayers. With the new system, taxpayers are still required to complete the return forms but the responsibility for making assessments has been shifted to the taxpayers. No notice of assessment will be sent to taxpayers as the IRB is deemed to have made an assessment based on the return form furnished.

The move to implement this new system is to enforce greater voluntary tax compliance among the taxpayers. This new system highly calls on all taxpayers to have adequate knowledge on the tax laws and rulings in order to achieve a higher level of compliance. The IRB now has more time to carry out tax audit and has a greater deterrent effect on non-compliance. This has become possible for IRB since the focus has been shifted from routine assessment that is processing, examining and reviewing returns in the IRB office to street survey and field audit (IROU, 2002). Moreover, the use of a tax agent or also known as a tax consultant may be a burden to the taxpayers as

a new subsection that is Section 114(1A) has been introduced. The section states that:

*"any person who assists in, or advises with respect to the preparation of any return where the return results in an understatement of the liability for tax of another person shall, unless he satisfies the court that the assistance or advice was given with 'reasonable care', be guilty of an offence."
The fine is between RM2,000 and RM20,000, or three years' imprisonment, or both.*

Previously, only taxpayers were liable for any income under declared but now the tax agents will also be liable. This amendment has put the tax advisers in a precarious situation whereby they may accept information, which is incomplete or incorrect from their clients. Due to this, they may have to get legal advice and spend more time to manage the clients' affairs, thereby increasing the compliance cost to the taxpayers (Jeyapalan, 2000).

Since the introduction of self assessment has placed full responsibility for compliance with the law upon taxpayers, they should equip themselves with current tax law and rulings. With such knowledge, taxpayers can take the opportunity to make their own plans to reduce tax. This reduces their reliance on tax agents whose charges have increased since the introduction of Section 114(1A). There are many ways to reduce tax liability, some of them are tax evasion and some are tax avoidance. Taxpayers must be aware that tax evasion is illegal while tax avoidance is legal. An understanding of tax evasion and tax avoidance and their legal consequences should be obtained before taking any plan to reduce the tax.

DIFFERENCE BETWEEN TAX EVASION AND TAX AVOIDANCE

Tax evasion is an illegal or fraudulent effort to escape paying tax such as concealment of income and falsification of return. It includes keeping two sets of accounts with the intention of concealing income, using a false document to claim deduction for donation and simply avoiding payment of tax due. Whatever the method used, if it is not sanctioned by the law, it is illegitimate and should be avoided by the taxpayer. On the other hand, tax avoidance is a legitimate effort to pay less tax. Taxpayers should take advantage of tax avoidance by considering many effective, legal and moral ways to pay less tax.

TAX EVASION

In order for an evasion to occur, a liability must have arisen. Here, illegal or fraudulent methods are applied to reduce that tax liability. For example, rental income subjected to tax has been deliberately omitted from the tax return. Here, tax liability on the income has arisen but the taxpayer has chosen not to declare so that tax can be reduced. Evasion is a crime if fraud occurs where efforts to reduce tax depends on misrepresentation, deception, and dishonest concealment of full facts. However, it is less serious than fraud if it resulted from a genuine mistake or negligence. In the cases of CIR v. Challenge Corporation Ltd., [refer to the Committee of Experts on Tax Compliance

(1998)], Lord Templeman pointed out the difference between fraudulent and non fraudulent evasion:

"Evasion occurs when the Commissioner is not informed of all the facts relevant to an assessment of tax. Innocent evasion may lead to reassessment. Fraudulent evasion may lead to criminal prosecution as well as reassessment."

The offences and penalty for evasion of tax are covered in Sections 112, 113 and 114 of the Income Tax Act 1967.

Section 112

This section covers default in furnishing a return in accordance with Section 77(1) or in giving a notice in accordance with Section 77(2) or 77(3). According to this section, any person who has made such default without any reasonable excuse is guilty of an offence and the penalty is a fine between RM200 to RM1,000 or imprisonment of not more than six months or both. If no prosecution has been instituted, the IRB may require that person to pay a penalty equal to treble the amount of the tax.

Section 113

This section covers making an incorrect return by omitting or understating income for himself or another person and giving any incorrect information affecting his own chargeability to tax or chargeability to tax of any other person. A person is guilty of an offence unless he satisfies the court that the incorrect return or incorrect information was made or given in good faith. A person found guilty under this section will be liable to a fine between RM1,000 to RM10,000 and twice the amount of tax undercharged. If no prosecution has been instituted, the IRB may require that person to pay a penalty equal to the tax undercharged.

Section 114

This section covers acts of persons who wilfully and with intent to evade tax or assist any other person to evade tax. Anyone who:

- (a) omits from a return made under this Act any income which should be included;
- (b) makes a false statement or entry in a return made under this Act;
- (c) gives a false answer orally or in writing to a question asked or requested for information made in pursuance of this Act
- (d) prepares or maintains or authorizes the preparation or maintenance of false books of account or other false records; or
- (e) makes use or authorizes the use of any fraud, art or contrivance,

shall be guilty of an offence and liable to a fine between RM1,000 to RM20,000 or three years' imprisonment or both plus a penalty equal to treble the tax undercharged.

Of the three sections above, Section 114 applies to the most serious tax evasion effort, which amounts to a crime.

TAX AVOIDANCE

Tax avoidance is a good thing; therefore, taxpayers should take all lawful steps by utilizing exemptions, deductions or loopholes in the law to minimize their taxes. Siegler and Weiner (1998) reported that a former U.S Appeals Court Judge Learned Hand observed, "*Anyone may so arrange his tax affairs that his taxes should be as low as possible.*"

Further, in IRC v. Duke of Westminster [refer to Jeyapalan (2000)], Lord Tomlin opined that:

"Every man is entitled if he can order his affairs so as that the tax attaching under the appropriate Act is less than it otherwise would be."

Therefore every person is free to plan his tax affairs that will minimize his tax liability provided it is done within the framework of the law.

Tax Planning

Chin Yoong Kheong (1997) noted that tax planning is an exercise in a tax avoidance scheme where tax saving opportunities in relation to the taxpayers' situations are analyzed in order to minimize tax expenses and thus maximize business profits and disposable income to individuals. Tax strategies that are suitable for the taxpayer should be laid out earlier so that there is enough time to take advantage of strategies that may take some time to implement.

Barjoyai (1996) pointed out that implementations should be done at the right time from the tax point of view because what is done today may later save the taxpayer a great amount of tax. For example, a person who is at the age of 50 and has worked for the same employer for 9 years should continue employment until the retirement age of 55 years and complete ten years of service so that the gratuity received will be exempted. It is not wise for the employee to retire before the age of 55, or before reaching ten years of service because the gratuity is not exempted.

Taking Advantage of Tax Avoidance

Among other things that should be considered are:

- Taxpayers should plan to spend on something that is allowed for deduction. For example, a business should spend on expenses allowed under Sections 33 and 34 and not expenses prohibited under Section 39. An individual owning a house that is rented out may spend on repairs but not on extension as extension is capital expenditure and is not allowed to be deducted from rental income.

- Making efforts to claim all reliefs and rebates that a resident taxpayer is entitled to under Sections 46, 47,48, and 49 and Sections 6A, 6B, and 6C respectively may reduce tax. The relief entitled to a taxpayer is not given automatically but it must be claimed by the taxpayer (Section 51) by submitting the necessary documentation. Taxpayers should take note of the maximum amount that can be claimed for each type of relief and rebate.
- The type of assessment whether joint or separate for a married couple should also be considered. Normally, a separate assessment for a working husband and wife may result in a minimum tax because both can take full advantage of the personal relief available to each of them as a taxpayer. Besides, the uncombined incomes of husband and wife enable them to be in a lower tax bracket.
- The payment of donations may reduce tax liability if it is made to institutions or individuals approved by the Inland Revenue Board under Section 44. Donations made to unapproved institutions are not allowed for deduction.
- When remitting income derived from outside Malaysia by an individual, it is wise to make sure that he is a non-resident at the point of remittance because the scope of charge on a non-resident individual is only on income derived in Malaysia as stated in Schedule 6, paragraph 28 of the Act.
- Businessmen should plan to operate as a sole proprietor before operating as a company. Normally, a new business does not make profit for the first few years. The current year business loss may be offset against the individuals' aggregate income and this reduces tax.

Unjustifiable Tax Planning

To prevent losses to the government due to unjustifiable tax planning schemes by the taxpayer, anti-avoidance provisions are found in Section 140 of the Income Tax Act 1967. The section empowers the Director General of Inland Revenue to disregard or vary certain transactions of a taxpayer and make adjustments if he has reason to believe that any transaction has altered the incidence of tax, relieved any person from paying tax, avoiding tax or even hindering the operation of income tax collection.

Transactions between persons one of whom has control over the other, between individuals who are relatives of each other or between persons both of whom are controlled by some other person are deemed to be unjustified. Relatives are defined in this section as a parent, a child (including a stepchild and a child adopted in accordance with any law), a brother, a sister, an uncle, an aunt, a nephew, a niece, a cousin, an ancestor or a lineal descendant. The rationale for the unjustification of these transactions is that they have been dealt with one another not at arm's length. An arm's length transaction is defined in Oxford Dictionary (1984) as any dealings that is beyond the reach of personal influence or control.

The related case reviewed by Choong Kwai Fatt (1999) is the *SB Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* whereby the Income Tax Commissioner had invoked Section 140 to combat such a transaction. *SB Sdn Bhd* is a

company wholly owned by Sabah Foundation. As Sabah Foundation needed cash to fund its projects, the Foundation instructed the company to donate all its surplus funds to the Foundation. No dividends were paid by SB Sdn Bhd since receiving the Foundation's directives. The company did not make donations to other approved institutions other than the Foundation. Although donation is allowed as a deduction under Section 44(6), but the Director General disallowed the deduction and invoked Section 140. The donations were treated as dividends on the grounds the company is a wholly owned subsidiary of the Foundation. The donations were abnormal, illogical and ridiculous and the company had not acted independently. The tax authorities raised an additional assessment of approximately RM16 million for a period of eight years.

It is therefore important to make sure that the provisions in Section 140 is taken care of in the implementation of tax avoidance besides avoiding the provisions in Sections 112, 113, and 114.

CONCLUSION

Taxpayers should avoid tax evasion and take advantage of tax avoidance to avoid paying more than they have to. Under the Self Assessment System, taxpayers are able to carry out a tax avoidance scheme themselves as the system indirectly requires the taxpayers to be well informed on the current tax laws and rulings. This makes it possible for them to come up with the best and most effective tax plan to ensure high tax compliance among them and at the same time enjoy on tax savings.

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