

Tax Issues of Private Specialists



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1st row from left: Mr Saravana Kumar, Mr Abdul Manap Dim, Dr Sng Kim Hock, Datuk Mohd Nizom, Dr John Chew, Dr Mohamed Namazie, Tan Sri Dr Yahya Awang, Dr Azlina Firzah, Datuk Dr Kuljit Singh, Dr John Teo Beng Ho
 2nd row from left: En Mohammad Zain Mohammad Said, En Mohd Idris Mamat, En Romli A Hamid, Dr Ashok Philip, Dr Vasu Pillai
 3rd row from left: En Mohd Ishak Adni, Dr Thirunavukarasu, En Hassim Shafiai

Some time in December 2015, the MMA was alerted that certain members in Seremban were facing problems regarding the tax matters with the Internal Revenue Board (IRB) and that they would appreciate the intervention of MMA to resolve the matter with IRB. A team of MMA office bearers headed by then President Dr Ashok Philip met with the affected Seremban doctors at the KPJ Seremban Specialist Hospital. The issue that was disconcerting was that the IRB had audited the doctors' tax returns over the years and that where the doctors had declared their income through the vehicle of their company (Sdn Bhd) the doctors were informed that this would be disregarded and would be recomputed as personal income subject to higher tax. Certain expenses that are allowed for Sdn Bhd would not be allowed for personal tax computation. This new treatment of the income would be applicable retrospectively from 2010. In addition to this there will be a penalty of 100% on the new tax computed as personal income.

On 23 December 2015, second meeting to which representatives from Association of Private Hospitals and the lawyer for the 20 Seremban doctors together with the Seremban doctors was held in the MMA house. During this meeting it was decided that MMA should seek clarification from IRB on this matter. The representatives from Bar Council, Malaysian Institute of Accountants and Chartered Tax Institute of Malaysia were also invited but they failed to turn up for this meeting.

MMA wrote to IRB for a round table meeting to which IRB responded positively and the meeting was held

on 12 February 2016. During this meeting MMA representatives proposed that the MMA will advise the members to subject their income as personal if they had entered into a contract with the hospital in their personal capacity and not as Sdn Bhd and requested the IRB to apply this prospectively from 2017 and not retrospectively. MMA further emphasised that the Association will not support any doctor who has evaded tax or who had committed unlawful acts in the tax filings. The notes of

the proceedings of this meeting was sent to IRB. After a period of 4 months IRB replied confirming their stand of retrospective application of tax treatment of the income from 2010 and had not taken our appeal into account. In the letter it was also mentioned the IRB will produce guidelines (Garis panduan) for the future use by the specialist doctors.

A second roundtable meeting was held among the MMA-ASPMP representatives and LHDN on 4 August 2016 to further plead our case.

Dissatisfied with the reply from IRB, MMA requested a meeting with the YB Minister of Finance 2 who was sympathetic to our appeal and had implied that the new tax treatment would be applied from 2017.

During the third round table meeting with IRB held on 5 September and which was chaired by the Director General of IRB (DGIRB) he reiterated that the tax treatment would be retrospective but for a reduced period starting from 2013 as a special concession for the doctors. MMA was not happy with this decision and he was requested to reconsider it before writing to us officially.

A letter dated 9 September, 2016 from IRB was received and this confirmed the stand taken by the DGIRB during the meeting on 5 September, 2016. This letter was what we had not expected and our appeal to apply the new tax treatment prospectively was completely ignored.

MMA once again wrote to IRB to seek further clarifications as some of the items in the letter were not clear and

certain decisions (eg imposition of penalty, off set of tax paid by the company and the individual) that were taken by the DGIRB during the earlier meetings had not been addressed in the letter.

IRB called for another meeting on 12 October 2016 together with the representatives from the Association of Specialists in Private Medical Practice Malaysia.

PPSMMA, in the meanwhile, organised a Forum on Tax Issues on 5 October 2016 for all doctors including non-MMA members to examine the issues that the specialists faced on taxation. Two eminent professionals, Mr Vicent Josef, retired Assistant Director General of IRB and now a private tax practitioner and Mr Saravana Kumar, legal counsel specialising in taxation were invited to speak followed by a panel discussion. Mr. Saravana had earlier represented the group of Seremban doctors. The number of participants for this forum was more than expected and the panel discussion was extremely lively and informative.

MMA members who attended the forum requested that the delegation for the meeting on 12 October, 2016 include Mr Vicent Josef and Mr Saravana Kumar. Mr Saravana was also the advisor to ASPMP. The meeting on 12 October 2016 was chaired by the Deputy Director General of IRB (DDGIRB). The meeting was very cordial like the previous meetings, but the outcome was no different and disappointing. The DDGIRB just confirmed that the decisions by DGIRB in the letter of 9 September 2016 stands but he would convey the appeal of the MMA to the DGIRB after listening to our pleadings. He also acknowledged the failure of IRB to address the Sdn Bhd issue in the tax audits before 2015 and he conceded that this would be a mitigating factor that he would put forward to the DGIRB to reconsider his decision.

The following pertinent points were once again emphasised by Dr Ashok Philip, Dr Sng Kim Hock, Dr Mohamed Namazie, Dr John Teo and Tan Sri Yahya Awang for the DGIRB to consider and to give us a more equitable, fair and just decision in not applying the tax treatment retrospectively:

1. The private medical specialist practice has a long history of more than half a century.
2. The business aspect of the practice including accounting and taxation had been handled by respective professionals as doctors are not trained in these areas. As Tan Sri Yahya said "I only know the heart and nothing else"
3. Based on the advice given by the tax and accounting professionals, the Sdn Bhd were formed as vehicle for managing the business aspects in good faith.
4. There was never any intention to evade or avoid taxes and in fact the private specialists have been a high tax paying segment of the society with the highest professional and ethical values as enshrined in the Hippocratic oath that they had taken at the beginning of their professional life.
5. The question of tax avoidance should not be considered at all by the DGIRB as in certain years the company tax was higher than the personal tax and

the specialists had paid this higher tax even though they knew about it.

6. It was only when the tax law was changed to incentivise the small and medium enterprises with lower tax that there was a differential in favour of the specialists Sdn Bhd.
7. Formation of Sdn Bhd was not forbidden by the medical professional code of conduct of Malaysian Medical Council and the Medical Act nor by any other laws unlike some other professions (eg legal).
8. Many tax audits and investigations of doctors practice had occurred in the last 50 years and the issue of disallowing Sdn Bhd was never brought up and this reinforced the belief that running a medical practice under a Sdn Bhd was perfectly acceptable to IRB.
9. It was a rude shock when in 2015 the Seremban doctors were slapped with the new ruling of retrospective application of income recognition as personal and disregarding the previous tax filings under Sdn Bhd by using the Section 140 of the Income Tax Act.
10. This has caused significant moral and financial impacts on those who had diligently and honestly filed their tax returns all these years.
11. It is highly damaging to the professional values and reputation that have been established over many years of hard work and selfless service to the society and the nation. Many of these affected had been loyal civil servants and academics who had participated in the process of nation building.
12. Their service in the private sector over the years has reduced the government spending for health care. Without the private specialists the government would have been in a more dire straits when the economic turmoils occurred and also in the future.
13. This unjust action by the IRB is demoralising and causing severe stress to the affected specialists and this in turn may affect the quality of care to their patients.
14. The MMA's only request is not to apply the new ruling retrospectively and with this to allay all the anxiety and emotional upheaval the specialist are going through.

MMA respects and acknowledges the right of the DGIRB to invoke Section 140 of the Income Tax Act. But in the light of the representations cited above we appeal to DGIRB to reconsider his decision which is within his discretion as allowed by law.

MMA has fervently put forward its case with faith in the DGIRB that he would do the right thing and deliver to us what is just, moral and equitable to all those specialist who have been diligent and honest. MMA is also heartened by the assurance given by the DDGIRB at the conclusion of the meeting on 12 October 2016 that the doctors would be extended "**the most favourable treatment**". MMA believes that this is what would be delivered by the DGIRB soon and that doctors would be able to go back to doing what they do best – looking after the health of the nation which they love dearly.