



UPDATE

on Improving Tax Environment

The Belt and Road Initiative Tax Administration Cooperation Mechanism

EDITOR'S NOTE:

The strong desire for economic recovery after the COVID-19 pandemic has fired jurisdictions with the enthusiasm for enhancing business environment and they gradually adopted it as a national strategy. The business environment is the sum of the external environment involved in the life cycle of market players from entry, operating, to exit, including political, economic, rule-of-law, market, and tax factors. A jurisdiction's business environment is related to its investment attraction, foreign exchange and international competitiveness, and is an important economic soft power. The *Nur-Sultan Action Plan (2022-2024)* adopted by the Second BRITACOF has listed improving tax environment as one of the main topics and encouraged BRITACOM members to improve their tax environment by preparing taxation guidelines, optimizing procedures of tax law application, providing targeted services to taxpayers and improving taxpayers' compliance. To sum up, in order to facilitate the ease of tax business environment, a two-pronged approach from tax system and administration could be followed, i.e., reducing tax burden which hampers the operation and profitability of enterprises and enhancing tax administration capacity which mainly affects the experience and feelings of enterprises in tax-related aspects. The purpose is to encourage enterprises to focus on business development and minimize unnecessary losses in the process of operation, so as to effectively lift the burden on enterprises, stimulate their vitality, and promote economic growth.

The Special Edition of the BRITACOM Update on Improving Tax Environment is issued, aiming to provide a platform for BRITACOM Council Members, Observers, and other stakeholders to exchange views and share experiences for improving the tax environment and providing reference. Issue 3 is an article on measures to improve the tax environment in Malaysia. This essay analyzes the approaches taken by IRBM to improve tax certainty, the results achieved and the direction of future efforts.

Later we will share more experience of tax environment construction from countries and regions and views of international organizations and tax experts with you. If you would like to provide material and experience to the Special Edition, please contact us via email secretariat@britacom.org.



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Measures to Improve Business Environment from a Tax Administration Perspective: The Case of Inland Revenue Board of Malaysia

Abstract: This paper reviews the literature on the sources of tax uncertainty in tax administration dimension and its effect on taxpayers. It examined two measures taken by IRBM which are the Advance Ruling (AR) and Advance Pricing Arrangement (APA) as dispute prevention and early issue resolution in addressing tax uncertainty. This study found that while the AR and APA have been made and issued, and succeeded in providing tax certainty to the taxpayers, their application is limited. This is reflected in the small number of AR issued and APA that have been made. There is a need to widen the scope by implementing other measures such as the Cooperative Compliance Programme which is already under consideration by IRBM to introduce.

Keywords: Tax certainty; Business environment; Inland Revenue Board of Malaysia; Advance ruling; Advance pricing arrangement

1. Introduction

Investment decisions can be influenced by many factors and tax certainty has been recognized as one of the main factors. This is acknowledged in the OECD/IMF Progress report on tax certainty (OECD/IMF, 2019).¹ Existing study also provided support that tax uncertainty impact negatively on investment (Zangari, Caiumi, & Hemmelgarn, 2017).² In Owens (2018), tax certainty is considered as a key component of a good tax system which provides a tax environment that is conducive to growth and FDI.³

In Malaysia, within the context of tax administration, the Inland Revenue Board of Malaysia (IRBM) is responsible in implementing measures that address issues on tax uncertainty for taxpayers. The objective of this paper is to review the literature on the sources of tax uncertainty in the tax administration dimension and its effect on taxpayers. It further examines the measures taken by IRBM to address the issue of tax uncertainty before a dispute arises. Advance Ruling (AR) and Advance Pricing Arrangement (APA) are two programmes or schemes that offer or promote tax certainty for taxpayers and tax authority (Waerzeggers & Hillier, 2016).⁴

These two programmes are available in IRBM. This paper reviews and considers their

¹ OECD/IMF (2019). Progress Report on Tax Certainty. Paris: OECD/IMF.

² Zangari, E., Caiumi, A., & Hemmelgarn, T. (2017). *Tax Uncertainty: Economic Evidence and Policy Responses*. Luxembourg: European Union.

³ Owens Waerzeggers, C., & Hillier, C. (2016). *Introducing an Advance Tax Ruling (ATR) Regime-Design Consideration for Achieving Certainty and Transparency*. Tax Law IMF Technical Note Vol 1 (2/2016).

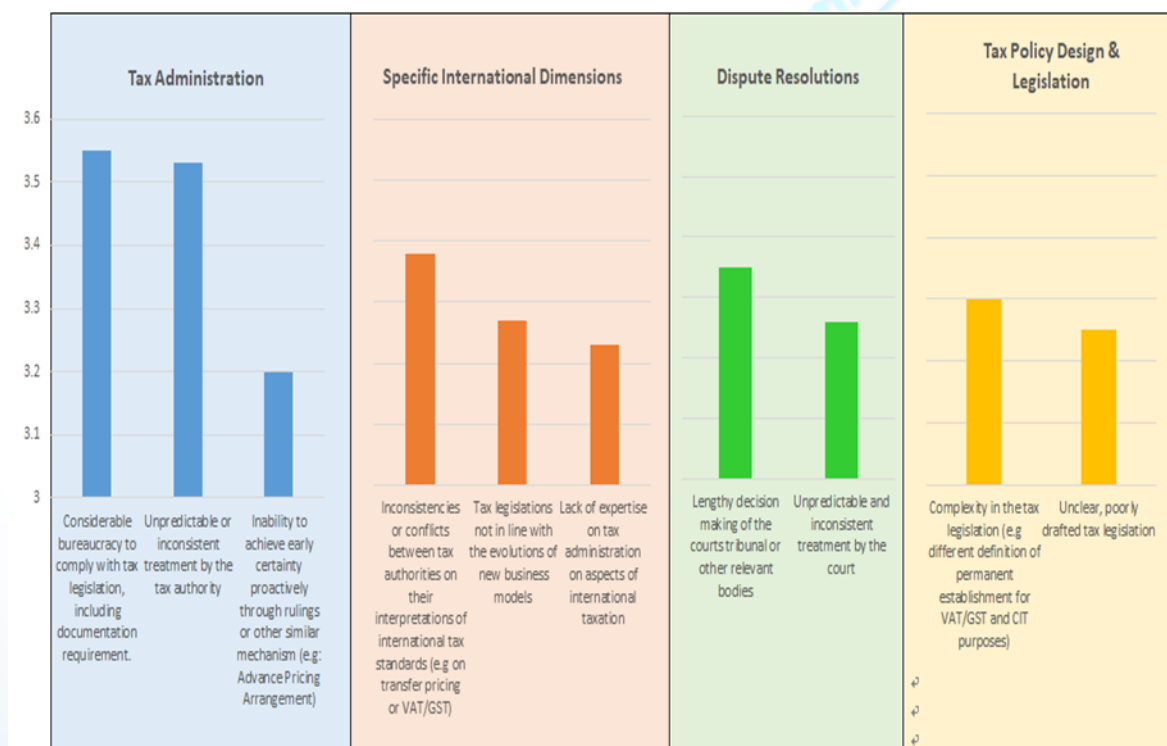
⁴ Waerzeggers, C., & Hillier, C. (2016). *Introducing an Advance Tax Ruling (ATR) regime-Design consideration for Achieving Certainty and Transparency*. Tax Law IMF Technical Note Vol 1 (2/2016).

effectiveness and adequacy in providing tax certainty to taxpayers.

2. Tax Uncertainty

In the context and perspective of business, tax certainty may be linked to the definition in Owens (2018) in which tax certainty is referred to as the capacity to make accurate assessment of the tax and compliance costs associated with an investment or a continuation of an investment in a country over the lifecycle of the investment or company. Based on a survey conducted by the Organization for Economic Co-operation and Development (OECD) in 2016 (IMF/OECD, 2017),⁵ business has listed “considerable bureaucracy to comply with tax legislation, including documentation requirements”, “unpredictable or inconsistent treatment by the tax authority” and “inability to achieve early certainty pro-actively through rulings or other similar mechanisms (e.g. APA)” as three of the main sources of tax uncertainty under the dimension of tax administration as shown in Figure1. These three sources also appeared in the top 10 sources of tax uncertainty under the overall dimensions surveyed, which also covered “specific international dimensions”, “dispute resolution” and “tax policy design and legislation”.

Figure 1: Businesses’ Views on Sources of Tax Uncertainty



Source: IMF/OECD (2017). Report for the G20 Finance Ministers (IMF/OECD,2017).

In Zangari et.al. (2017),⁶ the lack of precision of tax legislations, conflicting tax provisions and interpretations over time and frequent changes of the tax rules were also identified as the main

⁵ IMF/OECD (2017). *Report to the G20 Finance Ministers*.

⁶ Zangari, E., Caiumi, A., & Hemmelgarn, T. (2017). *Tax Uncertainty: Economic Evidence and Policy Responses*. Luxembourg: European Union.

sources of tax uncertainty in the domestic level.

3. AR

3.1 Background

AR in the OECD Glossary of tax terms is defined as a letter ruling, which is a written statement, issued to a taxpayer by tax authorities, that interprets and applies the tax law to a specific set of facts (OECD, 2021).⁷ This AR also known as private ruling, is different from a public ruling. AR is a private ruling, granted by the tax authorities to a single taxpayer, usually with respect to a single transaction or series of transactions and normally the ruling can be relied upon only by the taxpayer to whom it is issued, not by other taxpayers, and is binding upon the tax authority provided all relevant facts have been disclosed (OECD Glossary). A public ruling on the other hand is not issued to a specific or single taxpayer. It is issued by a tax authority as a guide to the general public and also the officers of the tax authority issuing it on the interpretation of a particular tax law and the policy as well as the procedure applicable to it (IRBM, 2021).⁸

The AR Programme or scheme has been introduced for some years now by many tax administrations and is a common scheme or feature in established tax systems. It is available in almost all OECD countries and many non-OECD countries are also increasingly making it available to their taxpayers (Waerzeggers & Hillier, 2016).⁹

For Malaysia, the AR Programme was made available by the IRBM since 1 January 2007 (IRBM, 2021).¹⁰ AR may be issued with regard to the interpretation and application of the income tax provisions under the Income Tax Act 1967 upon request by any person. The scope, procedures and fees for the application of ARs are outlined in the Income Tax (AR) Rules 2008 which was effective from 1 January 2007. For the purpose of the administration of tax rulings, the IRBM has issued guidelines on 10 June 2016.

Generally, countries treat their tax rulings as binding on the tax authority. As shown in Table 1, with the exception of only 1 out of the 57 jurisdictions that were studied which indicated that they do not provide tax rulings to taxpayers, none of the 56 jurisdictions indicated that the tax rulings are not binding on the tax authority when issued (OECD, 2019).¹¹ This is also the case for Malaysia. However, the ARs will not be binding if there is a material difference in the actual

⁷ OECD. Glossary of Tax Terms. Retrieved from OECD: <http://www.oecd.org/ctp/glossaryoftaxterms.htm>.

⁸ IRBM (2021). Lembaga Hasil Dalam Negeri Malaysia. http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=3&bt_unit=1&bt_sequ=1.

⁹ Waerzeggers, C., & Hillier, C. (2016). Introducing an Advance Tax Ruling (ATR) regime-Design consideration for achieving certainty and transparency. Tax Law IMF Technical Note Vol 1 (2/2016).

¹⁰ IRBM (2021). Lembaga Hasil Dalam Negeri Malaysia. http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=3&bt_unit=1&bt_sequ=1.

¹¹ OECD (2019). *Tax Administration 2019: Comparative Information on OECD and Other Advanced and Emerging Economies*. Paris: OECD.

arrangement that has been carried out or there has been a misrepresentation, omission or inaccuracy of facts which has been relied on in the issuance of the AR (IRBM, 2021).¹²

Table 1: Selected features of the revenue rulings system

Jurisdiction	Rulings																	
	Rulings provided to taxpayers		Public rulings				Private rulings										Percentage of rulings made within deadline	
			Issued		Binding		Issued		Binding		Subject to fees		Issued within a set time frame		Legislation imposes deadlines for providing private rulings			
	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017	2016	2017
Argentina	■	■	■	■			■	■							□	□		
Australia	■	■	■	■	■	■	■	■	■	■			■	■	■	■	89.0	89.0
Austria	■	■	■	■	■	■	■	■	■	■	■	■			■	■	D	D
Belgium	■	■					■	■	■	■			■	■	□	□		
Brazil	□	□													□	□		
Bulgaria	■	■	■	■			■	■					■	■	■	■	D	D
Canada	■	■	■	■			■	■	■	■	■	■	■	■	□	□		
Chile	■	■	■	■	■	■	■	■							□	□		
Colombia	■	■	■	■	■	■	■	■	■	■			■	■	■	■	D	D
Costa Rica	■	■	■	■	■	■	■	■	■	■			■	■	□	□		
Croatia	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	100.0	100.0
Cyprus	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	93.0	93.0
Czech Republic	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□		
Denmark	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□		
Estonia	■	■					■	■	■	■	■	■	■	■	■	■	100.0	100.0
Finland	■	■	■	■	■	■	■	■	■	■	■	■			□	□		
France	■	■	■	■	■	■	■	■	■	■					■	■	D	D
Georgia	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	90.0	90.0
Germany	■	■	■	■	■	■	■	■	■	■	■	■			□	□		
Greece	■	■	■	■	■	■									□	□		
Hong Kong (China)	■	■	■	■			■	■	■	■	■	■	■	■	□	□		
Hungary	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	D	D
Iceland	■	■	■	■			■	■	■	■	■	■	■	■	■	■	81.8	82.6
India	■	■	■	■	■	■	■	■	■	■	■	■			□	□		
Indonesia	■	■	■	■	■	■	■	■	■	■			■	■	□	□		

¹² IRBM (2021). *Lembaga Hasil Dalam Negeri Malaysia*.

http://www.hasil.gov.my/bt_goindex.php?bt_kump=5&bt_skum=5&bt_posi=3&bt_unit=1&bt_sequ=1.

Ireland	■	■	■	■			■	■							□	□		
Israel	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	72.0	66.0
Italy	■	■	■	■	■	■	■	■	■	■			■	■	■	■	100.0	100.0
Japan	■	■	■	■	■	■	■	■	■						□	□		
Kenya	■	■	■	■	■	■	■	■	■	■					■	■	D	D
Korea	■	■	■	■	■	■	■	■	■	■					□	□		
Latvia	■	■				■	■	■	■	■			■	■	■	■	100.0	100.0
Lithuania	■	■					■	■	■	■			■	■	■	■	100.0	100.0
Luxembourg ¹	■	■	■	■	■	■	■	■	■	■	■	■			□	□		
Malaysia	■	■	■	■	■	■	■	■	■	■			■	■	□	□		
Malta	■	■					■	■	■	■	■	■	■	■	■	■	D	D
Mexico	■	■	■	■	■	■		■		■					■	■	0.0	85.0
Morocco	■	■	■	■	■	■	■	■	■	■					□	□		
Netherlands	■	■	■	■	■	■	■	■	■	■					□	□		
New Zealand	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□		
Norway	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	95.0	94.0
Peru	■	■	■	■	■	■	■	■	■	■			■	■	■	■	100.0	100.0
Poland	■	■	■	■			■	■		■	■	■	■	■	■	■	100.0	100.0
Portugal	■	■	■	■	■	■	■	■	■	■	■ ²	■ ²	■	■	■	■	73.8	88.3
Romania	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	D	D
Russia	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	100.0	100.0
Singapore	■	■					■	■	■	■	■	■	■	■	□	□		
Slovak Republic	■	■					■	■	■	■	■	■	■	■	□	□		
Slovenia	■	■	■	■			■	■	■	■	■	■	■	■	■	■	100.0	100.0
South Africa	■	■	■	■	■	■	■	■	■	■	■	■			□	□		
Spain	■	■	■	■	■	■	■	■	■	■					■	■	60.0	60.0
Sweden	■	■					■	■		■	■				□	□		
Switzerland	■	■	■	■	■	■	■	■	■	■					□	□		
Thailand	■	■	■	■	■	■	■	■							□	□		
Turkey	■	■	■	■	■	■									□	□		
United Kingdom	■	■	■	■	■	■	■	■	■	■			■	■	■	■	D	D
United States	■	■	■	■	■	■	■	■	■	■	■	■	■	■	□	□		

- Yes
- No
- D Data not available

Source: OECD (2019). *Tax Administration 2019: Comparative Information on OECD and Other Advance and Emerging Economies*

3.2 The AR Programme of IRBM

Since the AR Programme was introduced in 2007, IRBM has received 84 applications as shown in Table 2. Out of these, 31 rulings were issued and 53 applications were rejected. Under the Income Tax (AR) Rules 2008, there are several circumstances where an AR shall not be issued or declined. Among the reasons most of the applications have been rejected were, at the time of the application for the AR was made, the person applying the AR has already entered into or affected the arrangement sought in the application. The other reason was that the arrangements would involve the agreement of competent authorities to avoid double taxation. The next common reason was that the applicants have not provided sufficient information as required by IRBM (IRBM Tax Policy Department, 2021).¹³ These reasons which are among the various reasons outlined for a rejection of an application are provided in Rules 3(a), 3(c)(ii) and 3(f) of the Income Tax (AR) Rules 2008 (Hasilpedia, 2021).¹⁴

Table 2: Advance Ruling Agreements issued by IRBM

Year	No. of Advance Ruling application	Issued	Rejected
2007-2020	84	31	53

Source: Tax Policy Department, IRBM.

4. APA

4.1 Background

The OECD Glossary of tax terms defines APA as an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g., method, comparable and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time. An APA may be unilateral involving one tax administration and a taxpayer or multilateral involving the agreement of two or more tax administrations (OECD, 2021). This can be distinguished from AR, where in APA, a determination of the legal consequences would only be made after a detailed review and verification of the factual assumptions are done. There is also the need for a continual monitoring of whether the factual assumptions remain valid throughout the course of the APA period (OECD, 2017).

4.2 The APA programme of IRBM

¹³ IRBM Tax Policy Department. (2021). Reasons for Low APA Applications in IRBM. Cyberjaya: IRBM Tax Policy Department.

¹⁴ Hasilpedia. (4 March, 2021). *The Income Tax (Advance Ruling) Rules 2008*. Cyberjaya, Selangor, Malaysia.

The APA programme was made available since 1 January 2009 by IRBM with the introduction of the Section 138(c) in the Income Tax Act 1967 and further supplemented by the APA Rules 2012 and APA Guidelines 2012. Table 3 shows the APA applications in IRBM from 2009 to 2020. A total of 52 applications have been received from 2009 – 2020. Out of these applications, 16 were accepted for processing while 24 were rejected and 12 withdrawn. IRBM has signed 3 unilateral agreements with the applicants within this period (Department of International Taxation IRBM, 2009-2020).¹⁵

Table 3: APA applications in IRBM

Year	No. of Applications	Accepted	Rejected	Withdrawn	Agreement signed
2009-2020	52	16	24	12	3

Source: Department of International Taxation, IRBM

5. Discussion

The 84 applications of AR by taxpayers to IRBM over the last 13 years is a small number taking into consideration that there is around 59,000 large taxpayers in Malaysia (IRBM Tax Operation Department, 2021).¹⁶ Similarly, the 52 applications for APA since 2009 is a small number in comparison to the number of the taxpayers in Multinational Tax Department, IRBM which is around 1,600 (IRBM Department of International Taxation, 2021).

Table 4 shows the appeal cases filed related to transfer pricing issues since 2016 to 9 March 2021 in IRBM (IRBM Legal Department, 2021).¹⁷ A total of 62 appeal cases have been filed, out of which 13 have been resolved out of court through the Dispute Resolution Department of IRBM and 47 cases have been forwarded to the Special Commissioner of Income Tax for legal process. The number of appeals in comparison to the number of APA signed indicates that the APA programme has not been effectively used to provide tax certainty. There could be various reasons for this which needs further study.

¹⁵ Department of International Taxation IRBM. (2009-2020). APA Statistic. Cyberjaya: DIT IRBM.

¹⁶ IRBM Tax Operation Department (2021). Statistic on Large Taxpayers. *Cyberjaya: IRBM Tax Operation Department.*

¹⁷ IRBM Legal Department (2021). Appeal Cases Related to Transfer Pricing Issues. Cyberjaya: Legal Department, IRBM.

Table 4: Appeal related to TP issues in IRBM

	2016	2017	2018	2019	2020	2021		
						(as of 9 March)		
Balance b/f	0	8	15	14	9	4		
No. of appeal filed (Form Q)	15	18	14	9	6	0		
Dispute resolved via out of court settlement	0	1	5	6	1	0		
Forwarded to the Special Commissioners of Income Tax (SCIT)	7	10	10	8	10	2		
Balance c/f	8	15	14	9	4	2		

Source: IRBM Legal Department, 2021

The IRBM suggested that the small number of AR applications may be an indication that other measures taken by IRBM to support taxpayers are already providing certain level of assurance of tax certainty. Furthermore, IRBM stresses that the provisions of the Malaysian tax laws are relatively clear and when complemented with the various publications such as the Public Rulings, Guidelines and Practice Notes, the clarity of the tax laws are enhanced. IRBM also conducts frequent engagements with the tax practitioners and other stakeholders. Seminars and conferences particularly to explain the new provisions of the tax laws after each Budget are regularly conducted. All these measures, activities and other taxpayer services create taxpayers' confidence that the access to information and discussion with IRBM on taxation issues that may need clarification from IRBM is easily accessible (IRBM Tax Policy Department, 2021).¹⁸

6. Conclusion

The AR Programme and APA Programme are considered as quite recent programmes and are still developing in IRBM. The number of applications for AR and APA are relatively small and in terms of the number of AR issued and APA signed, they are even smaller. Therefore, although AR and

¹⁸ IRBM Tax Policy Department (2021). *Reasons for Low APA Applications in IRBM*.

APA offer tax certainty to taxpayers, their current relevance and effectiveness are limited for taxpayers in Malaysia. Further promotion of the programmes may increase the interest of taxpayers to apply for the programmes.

A recent initiative announced by the Chief Executive Officer of IRBM, Dr. Sabin Samitah during the 25th Anniversary celebration of IRBM, to introduce a cooperative compliance programme with the emphasis on Tax Control Governance as part of the Cooperative Compliance Framework may provide more avenue for taxpayers and IRBM to increase tax certainty and enhance voluntary compliance (IRBM Media, 2021).¹⁹



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¹⁹ IRBM Media. (1 March, 2021). *Speech of IRBM during 25 Anniversary Celebration of IRBM*. Cyberjaya, Selangor, Malaysia.