Environmental Tax Laws in Malaysia Today

By Loo Choo Hong

Many countries in the world have been very seriously looking at environmental degradation since the 1980s. One issue relates to the thinning of the ozone layer. Since then, various issues concerning the environment such as global warming, the disappearance of many animal and plant species has come into picture. Various measures and tools have been developed by governments and the public to elevate the issues related to environmental degradation. Some measures are voluntary- like not eating shark-fins and others, were exercised using the power of the law such as tolls when entering city limits. Taxation is a tool that the government uses to collect revenue and to prevent and encourage certain behaviour. As taxation is monetary in nature, it is a good way to encourage or discourage a country's citizen to behave in a certain way as deemed appropriate by the government.

Malaysian Law and the Environment

Like any other country on the planet, Malaysia is not immune to environmental degradation. The authorities have come up with various laws to tackle the problem. The main environmental law was introduced in 1974 with the Environmental Quality Act 1974. In 1996, Malaysia hosted the Commonwealth Heads of Governmental Meeting. One of the major successes of the meeting was the Langkawi Declaration, the first declaration from the British Commonwealth concerning the environment. As a signatory of the UN Framework Convention on Climate Change, Malaysia ratified the Kyoto Protocol in September 2002. In 2009, Malaysia introduced a comprehensive policy on the environment called the National Green Technology Policy. The New Economic Model introduced in 2010 envisions Malaysia as a leader in green technology through the commercialisation of the country's biodiversity into high-value products and services and to cut by 2020 the country's green house emissions to 40% of 2005 levels.

Malaysian Environmental Tax Law

Taxation in Malaysia encompasses direct taxation, indirect taxation and local government taxation. Malaysian law, including tax law, due to historical connections to British Colonial History, is based on the British Common Law system. The Malaysian Tax system, a subset of the Malaysian legal system, acknowledges cases from UK dominions such as Australia, Hong Kong and India. The Income Tax Act 1965 is based on British, Australian and Indian models. Since independence, case laws from the Commonwealth may have influenced the lawmakers in Malaysia; however Malaysian Laws are derived from Parliament and from the decisions of the local courts. Britain began to adopt large chunks of environmental tax laws due to European Union membership. Due to the need to move its economy from an agricultural base to a manufacturing base, in the post independence years, Malaysian taxation laws had moved in tandem with that need. Various tax incentives such as Reinvestment Allowances, Accelerated Capital Allowances, Investment Tax Allowances and Pioneer Status concentrated on the manufacturing sector.

Environmentalism in Malaysia came into the picture to a certain degree in the earlier 1970s but mostly in the 1990s due to the pressures of environmental degradation- especially the ozone layer. As a mode to carry out government policy, taxation laws were amended to suit the evolving policies of the day. To answer the need for the country to go "green", the government has introduced various tax and tax incentive to address the needs of the various sectors of the economy.

The Energy Sector

The promotion of environmental measures and use of renewable energy especially in the form of biomass in the private sector through incentives was first introduced 8th Malaysia Plan/Five Fuel Policy, which covered the period 2001-2005. The incentives in budget 2004 are

- Pioneer status
  An exemption of 70% (100% for value added products and promoted areas) of increased statutory income for 5 years for any manufacturing company, which reinvests in machinery utilising oil palm biomass (in the 2004 Budget).

- Investment Tax Allowance (ITA)
  Tax exemption up to 70% of statutory income for each year of assessment from ITA computed at 60% of additional qualifying capital expenditure incurred within 5 years for any manufacturing company, which reinvests in the machinery by utilising oil palm biomass

For the energy related measures, companies can also qualify for higher exemptions or allowances if the activities take place in 'promoted areas'. Originally the four-fuel diversification policy focused on oil, gas, coal and hydro. In the 8th plan, it was broadened to

include renewables as a fifth item in the new Five Fuel Strategy.

In 2003 - 2006 the Phase I Biogen Project came into effect in the form of Grid-Connected Power Generation and Co-Generation (Biogen) Project. The project aims to reduce the growth rate of greenhouse gas emissions from fossil fuel by promoting biomass-based power generation and combined heat & power generation system using wastes from palm oil mills. Phase II of Biogen Project was implemented between 2007 and 2009.

The Malaysian government could go further in encouraging renewable energy. Various measures were taken by the U.K. government to encourage the usage of biofuel. In 2003, the price of biofuels was set at a price 20p lower than low sulphur fuel. In Australia, a tax incentive is given to vehicle owners who use biomass and Liquefied Natural Gas (LNG)/ Liquefied Petroleum Gas (LPG) vehicles. As Malaysia is a major producer of palm oil (and biomass fuels) and LNG/LPG, incentives to encourage the production of biomass and LNG/LPG vehicles and machines should be introduced.

Green Buildings

The Malaysia Building Integrated Photovoltaic Technology Application (MBIPV) (2005-2010) project was introduced to promote increased use of photovoltaic (PV) technology to tap solar energy and generate electricity for buildings. The project is expected to increase Malaysia's installed BIPV capacity by about 330% (2MWp by 2010), and to lower the technology unit cost by some 20%.

In Budget 2010, owners of buildings awarded the Green Building Index certificates are entitled to a tax exemption of 100% of the additional capital expenditure and exemption from stamp duties for first owners. Hong Kong is the other territory, which has similar incentives. Developers should take advantage of this incentive to come up with products to suit the "green" property buyer.

Transportation Sector

In the Budget of 2009 franchise holder of hybrid cars are given 100% import duty and 50% excise duty exemptions on new Completely Built Unit (CBU) hybrid cars. In Budget 2011, the government fully exempted the import and excise duties on hybrid and electric cars and motorcycles.

The duty exemption of the import of hybrid cars is a first step towards getting Malaysian to own hybrid vehicles. However the government should encourage Malaysia vehicle manufactures to produce hybrid or electric vehicles through tax incentives such pioneer status or investment tax allowances.

Public Transport

Governments around the world give various incentives to encourage the usage of public transport. In Australia, as a measure to encourage businesses to invest in public transport, accelerated depreciation is given to taxpayers for the purchase of transport equipment. In Malaysia, instead of tax incentives, the government invests in government linked transport companies such as RapidPenang and RapidKL.

In the Budget 2009, the Malaysian government will provide a soft loan facility of RM3 billion under the Public Transportation Fund, to finance the acquisition of buses and rail companies.

To encourage private transport providers to modernise their fleet, the government should consider giving the reinvestment allowances to the providers so that they can buy newer more fuel-efficient fleets.

Plastic Bags

The ban on the issuance of plastic bags began at the state government level in Penang in 2009 and Selangor in 2010. In Penang retailers are not allowed to provide plastic bags to their customers on Mondays, then slowly up to Thursday. By 2011, the Penang State banned the issuance of plastic bag by all retailers. Customers who want plastic bags will be charged 20sen per bag. The collections are donated to the poor in Penang. In Selangor plastic bags are not provided on Saturdays. In 2011, the Federal government discouraged the issuance of plastic bags nationwide on Saturdays.

The act of restricting the use of plastic bags through taxation or other methods is nothing new. The Republic of Ireland imposed a tax on plastic grocery bags in 2002, San Francisco became the first U.S. city to ban conventional plastic bags and the City of Los Angeles followed suit in 2010.

The concept of plastic bag taxation in Penang and Selangor works similarly to the concept of Baitul mal, which is unique in Malaysia whereby the monies collected are redistributed to the poor. The ban of plastic bags opens the opportunity for business people to come up with recyclable bags (which can be pricier than plastic bags) and paper shopping bags.

Waste recycling

To promote waste recycling in industry Malaysia introduced various incentives in the form of Pioneer status, Investment Tax Allowances, Accelerated Capital allowance and Reinvestment Allowances.

In the U.K., the government concentrates on recycling even to the level of the householders. The Climate Change Bill enables local authorities to pay rebates to householders for good performance on recycling and waste minimisation. It also allows an authority, if it chooses; to collect incentive based payments from householders for waste collection. Authorities will also be able to pay back rebates, and collect any payments, through the Council Tax system, should they wish to do so.

It is commendable that Malaysia is starting to encourage its citizens beginning with the business sector to recycle. However a more comprehensive recycling policy, which includes the household, should be introduced. Like the recycling rewards system, measures such as the compulsory separation of garbage should be introduced.

Employment Taxation

In Malaysia, the provision of employee transportation is a deductible expense under section 33 of the Income Tax Act 1967. In Australia, employee transport claims if the employee uses public transport is a deductible business expenses.

Certified emission reduction units

Malaysia exempted the income from the sale of certified emission reduction units from tax from the year of assessment 2008 to 2012. However there are plans for the Malaysian government to incorporate certified emission reduction units with “Green Palm Oil”. However, according to the *New Economic Model for Malaysia Part 1 report*, this initiative can work if a more comprehensive and binding global carbon trading and emissions regulation is set up.

The Future is “Green”, but it can be “Greener”

Whether we like it or not, environmental degradation has become a serious problem internationally. Countries have come up with various measures to tackle environmental degradation. One of the tools to discourage environmental degradation is the introduction of environmental tax. Developed countries such as the United Kingdom, Australia and the European Union were one of the first to introduce laws to address environmental degradation with Australia in the 1940s and the United Kingdom in the 1950s. Malaysia began to introduce laws governing the environment in the 1970s.

However with the worsening environmental situation globally in the 1990s, countries including Malaysia began to introduce tougher environmental laws – including environmental tax laws. However the development of environmental laws in the U.K., Australia, U.S. and even in Malaysia were based on a piece meal approaches. Changes to the laws were introduced to address issues such as landfill waste, traffic and ozone thinning as and when the laws were needed.

China and the HKSAR however took a different approach when dealing with environmental degradation beginning in 1996 where the policy of “polluter pay” was introduced. This is the first time whereby environmental tax policies in China were looked at as a group of inter-related laws rather than piece meal issues as practiced in Australia, U.K. and U.S. In the Malaysia the same piece meal approach is used when introducing environmental protection policies in the country. As described earlier, between 1974 and today, various pieces of legislation (including environmental tax laws) have been introduced to try to address the issue of the day.

If a country like China can take a bold step by introducing a more comprehensive set of environmental laws in 1996, the same approach could also be adopted internationally including in Malaysia. However there is a need to introduce a set of comprehensive tax law, which are acceptable and operational to the public. This would actually reduce the instances of non-compliance or even mitigation.

Whether it is going to be a lighter or darker shade of “green tax” laws, it is for us to see. Like it or not, to keep up with world developments, Malaysian tax laws have to become “greener”.

About the Authors
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