

[The Star Online](#) > Business

Monday December 24, 2012

Are defaulting taxpayers exposed to heavy penalties?

Comment by Kang Beng Hoe



FEW people realise that when they commit a tax offence, they could open themselves to being charged under the Anti-Money Laundering and Anti-Terrorism Financing Act (AMLATFA) 2001.

They are liable to be fined up to RM5mil and jailed up to five years or both. The three tax offences under the AMLATFA are failure to file income tax returns, submitting incorrect income tax returns and willful evasion of tax.

The Inland Revenue director-general was quoted as saying: "Taxpayers should not take income tax matters lightly. The IRB (Inland Revenue Board) can freeze or seize the assets of suspects while they are under investigation."

Offences and penalties under the Income Tax Act	
Offence	Penalties
Failure to furnish Income tax return	<p><i>Section 112 of the Income Tax Act, 1967 (the "Act")</i></p> <ol style="list-style-type: none"> 1. Fine between RM200 – RM2,000 or imprisonment for a term not exceeding 6 months or to both if convicted; or 2. Penalty of treble the amount of tax payable before any set-off, repayment or relief if there is no prosecution by the IRB.
Submitting Incorrect returns	<p><i>Section 113 of the Act</i></p> <ol style="list-style-type: none"> 1. Fine between RM1,000 and RM10,000 plus twice the amount of tax undercharged if convicted; or 2. Penalty equal to the amount of tax undercharged if there is no prosecution by the IRB.
Willful evasion of tax	<p><i>Section 114 of the Act</i></p> <ul style="list-style-type: none"> > Fine between RM1,000 and RM20,000 or imprisonment for a term not exceeding 3 years or both, plus a penalty of treble the amount of tax undercharged if convicted.
Any one of the above offences charged as money laundering	<p><i>Section 4 of the Anti-Money Laundering and Anti-Terrorism Financing Act</i></p> <ul style="list-style-type: none"> > Fine of RM5mil or imprisonment for a term not exceeding 5 years or both if convicted.

©The Star Graphics

This statement is likely to cause confusion if not alarm among the taxpaying public. This is because the three offences cited, primarily offences under the Income Tax Act (the Act), give rise to penalties that are nowhere

near the penalties which he warned taxpayers of in his statement.

The **table** compares the maximum penalties that a defaulting taxpayer would be exposed to under the two laws.

Taxpayers would want to know why an offence under the income tax law is also an offence under the law against money laundering viz AMLATFA. This Act defines money laundering to be an act of a person who:

- engages directly or indirectly, in a transaction which involves the proceeds of any unlawful activity;
- acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia the proceeds of any unlawful activity; or
- conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity.

This question has become a hot topic in many countries. The United Kingdom and other European Union countries have similarly made tax crimes a predicate offence of money laundering. (India is mulling over the idea.) This effectively means that a tax offence is treated on par with the offence of money laundering.

This can best be understood from the following example. If a person receives RM100,000 commission for legitimate services rendered and is liable to pay tax at the marginal rate of 26%, but fails to declare this income, then RM26,000 is considered as stolen from government coffers. If the amount of RM100,000 is then invested in shares in the name of his sibling to conceal the income, an offence of money laundering can be said to have been committed. The amount laundered is the tax evaded i.e. RM26,000. By concealing the proceeds of tax evasion, an offence of money laundering has also been committed. The tax offence is thus a predicate offence of money laundering.

The international watchdog organisation on money laundering, the Financial Action Task Force (FATF), defines a “predicate offence” as any criminal offence as a result of which proceeds generated become the subject of a money laundering offence.

The FATF has issued an extensive set of recommendations to guide the fight against money laundering. Malaysia, as part of its international obligations and commitments has enacted AMLATFA with almost all the recommendations adopted therein.

Taxpayers should however be assured that despite the adoption of the three said offences as predicate offences under AMLATFA, a tax offence by itself should not be regarded as a predicate offence of money-laundering.

For example, unreported sales from a business would be a tax offence but would not be a money-laundering offence if there is no attempt to launder the proceeds of the unreported sales takings.

AMLATFA, however, has adopted a slew of offences as predicate offences under various legislations. These are listed in its Second Schedule. They range from offences under the Penal Code, the Companies Act, the Insurance Act, Customs Act, the Banking and Financial Institutions Act etc, and more recently, the Income Tax Act as mentioned.

The Finance Minister may appoint a person to be the competent authority and in the case of tax offences, the IRB director-general would be the competent authority.

The powers given to the competent authority under AMLATFA are very extensive and include seizure of property, arrest without warrant, freezing of any property, and seizure of businesses.

Clearly a taxpayer who has made a simple mistake of filing an incorrect tax return should not be exposed to the very harsh penal provisions under the AMLATFA. An official statement that the wide powers will not be abused will help address public concerns.

- *Kang Beng Hoe is an executive director of Taxand Malaysia Sdn Bhd, a member firm of Taxand, the first global organisation of independent tax firms. The views expressed do not necessarily represent those of the firm. Readers should seek specific professional advice before acting on the views. Beng Hoe can be contacted at kbh@taxand.com.my*

© 1995-2013 Star Publications (Malaysia) Bhd (Co No 10894-D)