taxnotes® international

Volume 99, Number 4 ■ July 27, 2020

Today's Taxes, Yesterday's Terms: Reimagining Old Concepts To Understand a New Normal

by Eng Kiat Loh

Reprinted from *Tax Notes International*, July 27, 2020, p. 513

tax notes international®

Today's Taxes, Yesterday's Terms: Reimagining Old Concepts to Understand a New Normal

by Eng Kiat Loh

Eng Kiat Loh

Eng Kiat Loh is the tax practice leader at Baker Tilly in Singapore.

A version of this article appeared in *The Business Times (Singapore)* on May 22, 2020.

In this article, the author examines some recent international tax developments through the lens of old beliefs and business jargon.

Some have boldly predicted the death of the physical office, but anecdotal evidence tells me another corporate creation is set to thrive, perhaps more than ever: business jargon.

Wikipedia includes the word "reimagine" on its "list of common buzzwords which form part of the jargon of corporate, academic, government, and everyday work and social environments." As many of us in Singapore seek to return to normal life, we can "leverage" our "core competencies" to handle this "paradigm shift," sometimes by "taking a step back."

Just as some long-standing practices like quarantining — which, according to the Centers for Disease Control and Prevention, began during the 14th century as a way to protect coastal cities from plague outbreaks[1] — have been revived during these extraordinary times, I think some very old ideas can help us grapple with several modern happenings in the tax world.

'Settling the Score After the Fall'

Discussing the violent protests in Hong Kong, a *Financial Times* article, assertively titled "Beijing Will Have Its Revenge on Hong Kong," referenced the Chinese phrase "*qiu hou suan zhang*" in concluding that the Chinese government will seek vengeance against the region, even if details such as when and how remain unclear.[2] While the literal translation of the phrase is "to balance the books after the autumn harvest," the article explains that the aphorism can be used in many situations, particularly when vengeance is almost certain but the circumstances require a bit of patience before revenge can be sought.

As the world at large grapples with the COVID-19 pandemic, the priorities of the world's tax authorities have had to take a back seat and allow broader economic and health concerns to take center stage. This concession is in keeping with the recommendations advanced by several of the tax field's most influential supranational entities. For instance, the IMF suggested temporarily reducing actions related to tax audits and using simplified procedures for relaxed tax obligations, with a view to resuming enforcement actions post-crisis when warranted.[3]

In this part of the world, the Australian Taxation Office appears to have heeded this suggestion, indicating that in most cases it will pause any new audit activity.[4]

Likewise, the Inland Revenue Authority of Singapore (IRAS) has introduced some temporary

[1] Centers for Disease Control and Prevention, "History of Quarantine" (Jan. 10, 2012).

[2] Jamil Anderlini, "Beijing Will Have Its Revenge on Hong Kong," *Financial Times*, Oct. 6, 2019.

[3] IMF Fiscal Affairs Department, "Tax and Customs Administration Responses," Special Series on Fiscal Policies to Respond to COVID-19 (2020).

[4] OECD, "Tax Administration Responses to COVID-19: Measures Taken to Support Taxpayers" (Apr. 21, 2020).

taxation measures that can be beneficial to taxpayers in many ways.[5] Many of the measures are subject to audit, which ultimately means that the need for businesses to focus resources and attention on tax matters will continue unabated.

For example, in a corporate context, tax residency cannot be unlinked from some sort of in-country presence. Recent IRAS guidance acknowledges this, but it also proposes allowing companies to take a lookback approach to residency.[6] Put simply, if a company was a Singapore tax resident in its 2019 financial year, it can potentially remain a tax resident for its 2020 financial year even if travel restrictions mean that the company cannot hold its board of directors' meetings in Singapore — often a key determinant of residency status.

While the lookback approach is one of several useful measures that can help to alleviate businesses' concerns regarding Singapore tax obligations — specifically, the lookback rule can help companies avoid the tax consequences of losing tax residency status and the attendant tax benefits thereof — the IRAS still expects documentary support to be prepared and maintained. Consequently, a future tax audit could focus on a company's self-asserted tax residency status, and tardy or nonexistent documentation could trigger difficult disputes with the IRAS.

Taxpayers — in particular, businesses with cross-border activities — that unwisely underestimate the importance of managing their tax risks during the pandemic may face the wrath of numerous tax authorities down the road. These risks are especially pronounced because tax administrations around the world have been ramping up efforts to collate and exchange information automatically under internationally agreed protocols such as the common reporting standard.

'*Qiu Hou Wen Zhan*'

A phrase that appears to be a predecessor term to — and of which "*qiu hou suan zhang*" became a by-product — may also be useful for reimagining a modern tax phenomenon.

"*Qiu hou wen zhan*" literally refers to implementing capital punishment after the fall season. Apparently, there are several reasons for waiting to carry out punishments until after autumn has passed, including the desire to publicly shame the wrongdoers. After the fall harvest was complete, the largely agrarian populace would have more time to witness morbid public executions, a practice that further humiliated the criminals and may have had a deterrent effect on the general public.

A disconcerting parallel exists in today's world of taxation. Over the last decade, high-profile naming-and-shaming exercises have become the norm. This includes legislatures grilling multinational enterprises about low effective tax rates as well as the sensationalized publication of information obtained as a result of several large-scale data leaks identifying taxpayers who use offshore vehicles and imputing negative motives to those individuals and entities. Typically the moral aspects of the issues get conflated with the legal facets.

The trend of using the court of public opinion to gather support for tax-related reform looks set to continue. While this is unlikely to have been the intention — given that the level of public discourse on tax matters typically is not intense in the country's traditional media platforms — another example is developing in Singapore. The Jobs Support Scheme (JSS) is a new wage subsidy scheme through which the government of Singapore will fund between 25 and 75 percent of the first SGD 4,600 (approximately $3,300) of gross monthly wages paid to each local employee for a 10-month period. Payments are automatic; employers who do not require wage support and who wish to be excluded from JSS payouts can apply to decline the payouts. Numerous news reports have highlighted the return or donation of JSS payouts by a few large companies that ostensibly did not need the payments they received.[7] These reports, which include selective naming of the companies in question, have

[5] Inland Revenue Authority of Singapore, "Tax Residence Status of a Company and Permanent Establishment."

[6] *Id.*

[7] Rachel Phua, "COVID-19: More Than 130 Companies Return Jobs Support Scheme Wage Subsidies Worth S$97 Million," Channel News Asia, June 15, 2020.

generally commended the corporate altruism displayed but also — perhaps unwittingly — have fostered public discourse and cynicism regarding the program, including questions about whether the automatic nature of JSS payouts leads to misuse and should be reevaluated.

'Striking While the Iron Is Hot'

"Striking while the iron is hot" seems to be the OECD's philosophy in recent years as it bulldozes through fundamental international tax reforms under the umbrella of the base erosion and profit-shifting project initiatives, including the latest efforts commonly referred to as BEPS 2.0. This project looks poised to rock the arm's-length principle — a concept that has been in formal existence since the 1920s (a century old!) — but intense political pressure to tax highly digitalized MNEs fuels it on.

Partly in jest, I submit that the linguistically awkward nomenclature of BEPS 2.0, including the use of the term "amount A" to describe a new taxing right focused on profits allocable to market jurisdictions, implies that the OECD itself — let alone the broader business world — is not quite ready for this change.

It may also be tempting for a layperson in Singapore to view such discussions as highfalutin ideas relevant elsewhere or to have a "not in my backyard" mindset about them. But the country's deputy prime minister, Heng Swee Keat, saw fit to publicly pinpoint BEPS 2.0 on several occasions as a key international development that could significantly affect hub economies like Singapore's, thus underscoring the gravity of the issue and its relevance to our country. Indeed, a broad way to characterize Singapore's approach — including its decision to join the inclusive framework for the global implementation of the BEPS project in 2016[8] and its civil servants from the finance ministry being very involved in the ongoing international discussions — may be to call it an outgrowth of the belief that "if you're not at the table, you're on the menu."

However, the BEPS 2.0 discussions could still become more "nuanced," and there may still be time for the OECD and interested countries to "pivot" away from discussions heavily focused on the taxation of profits.

'Picking One's Battles'

"Picking one's battles" is key. The bigger picture, especially the depressing economic outlook with the continuing pandemic, suggests a BEPS 2.0 victory may be hollow. With losses expected to be prevalent, there will be little profit to allocate and thus little for market jurisdictions to tax.

'Death and Taxes'

I end with "death and taxes" — the certainty of which is often noted. While this trite association did not inspire tax professionals to lobby for essential-worker status, I nevertheless find the overly elevated stature of tax risk in today's business climate somewhat unnerving, particularly in times such as these.

In years past, I wrote — perhaps, I admit, with some pride — about how "C suite" executives surveyed globally cited "high taxation" as their top business risk, pushing even the loss of customers into second place. Such inflated sentiments toward tax may need to be normalized over time, but for now they represent a privilege that must come with responsibility for us as tax leaders. The world today needs businesses to survive; "death from taxes" cannot be allowed to be an outcome of aggressive taxing attitudes. Some form of tax amnesties may even be merited depending on the circumstances.

However, "taxes from death" might be "low-hanging fruit" that can provide a "quick win." According to an OECD tax policy study, only four OECD members were still levying recurrent taxes on individuals' net wealth in 2017.[9] The study also pointed out that some countries have shown a renewed interest in net wealth taxes as a way to raise revenue; as revenue from income and consumption-based taxes declines, this call may intensify in the days ahead. ■

---

[8] Singapore Ministry of Finance, "Singapore Joins Inclusive Framework for Implementing Measures Against Base Erosion and Profit Shifting (BEPS)" (June 16, 2016).

[9] OECD, "The Role and Design of Net Wealth Taxes in the OECD," Tax Policy Studies 26 (2018).