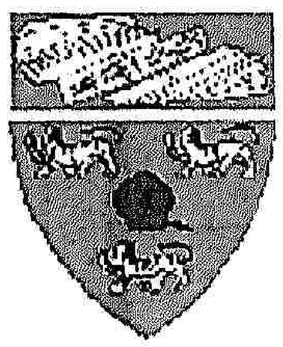

Universiti Malaya

Dear Tax Professional,

A Survey On The Views of Tax Agents' on the Introduction Of Section 114(1A)[1], Income Tax Act 1967

This survey is part of a study that examines the role and perception of increased penalties on tax advisers under the recently introduced Self-Assessment System(SAS). The recent change has brought about an apprehension that we believe is a serious concern for tax professionals.

This study is undertaken as a partial fulfillment towards completion of a post graduate degree at the Faculty of Business and Accountancy, University Malaya. The findings of this study would provide valuable information that may be useful to Taxpayers, Tax advisers and the Revenue Authorities.

We hope that you would kindly spare some of your precious time, which will provide an opportunity to obtain feedback from an important development affecting tax professionals.

Please feel free to share your thoughts, as all responses will be treated with strict confidentiality. Thank You.

Yours sincerely,

.....

K.Sandra Segaran
Faculty of Business & Accountancy
University Malaya

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[1] Section 114 (1A) :"Any person who assists in, or advises with respect to, the preparation of any return where the return results in an understatement of the liability for tax of another person shall, unless he satisfies the court that the assistance or advice was given with reasonable care, be guilty of an offence and shall, on conviction, be liable to a fine of not less than two thousand ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both."

SECTION A: PENALTIES TO IMPROVE TAX COMPLIANCE

Please state the extent to which you agree/disagree with each of the statements by circling the appropriate number on the following scale.

Scale

1 = Strongly Disagree	4 = Agree
2 = Disagree	5 = Strongly Agree
3 = Neutral	

	Strongly Disagree		Neutral		Strongly Agree
1. Imposition of fines alone will not help in improving the compliance level under the Self Assessment System.	1	2	3	4	5
2. Jail sentence for understating tax liabilities will help improve tax compliance.	1	2	3	4	5
3. The Self-Assessment System imposes an unfair burden on tax agents as it effectively shifts the taxpayers' responsibilities to the tax agent.	1	2	3	4	5
4. Criminal sanctions should not be imposed on tax agents for offences related to return preparation.	1	2	3	4	5
5. Penalties should vary according to the severity of the offence by the tax agents rather than to impose one single standard to judge all offenders.	1	2	3	4	5
6. Existing legislation is insufficient to address the issue of tax agents who aid and abet taxpayers in understating their tax liabilities.	1	2	3	4	5
7. Penalties relating to understatement of tax liabilities under the Self-assessment System should be higher.	1	2	3	4	5
8. IRB does not aggressively pursue tax agents who engage in unethical practices.	1	2	3	4	5
9. Increased penalties on tax agents will reduce the aggressiveness of tax planning advice.	1	2	3	4	5

SECTION B : PERCEPTION OF S.114(1A)

	Strongly Disagree		Neutral		Strongly Agree
1. The scope of the provision is very wide. If you agree, state, why?	1	2	3	4	5
2. These penalties will have no bearing on any situation where there is a reasonably arguable position put forward by the tax agent.	1	2	3	4	5
3. The new penalty provisions will not result in increased compliance cost to tax agents.	1	2	3	4	5

	Strongly Disagree		Neutral		Strongly Agree
4 Tax agents will now take greater precautionary measures to safeguard their interests.	1	2	3	4	5
5. These penalties will not have any effect on general tax advice which is not related to the submission of tax returns.	1	2	3	4	5
6. Section 114 (1A) of the Income Tax Act 1967, is substantially the same as existing penalty provisions.	1	2	3	4	5
7. Tax agents will now be reluctant to provide assistance to businessmen who do not have complete records.	1	2	3	4	5
8. New entrants to the profession are unlikely to be aware of the serious ramifications to professionals in relation to penalties against tax agents.	1	2	3	4	5

SECTION C: APPLICATION / IMPACT

Please circle the appropriate number on the following scale:

1 = Strongly Agree	2 = Agree	3 = Neutral	4 = Disagree	5 = Strongly Disagree

	Strongly Agree		Neutral		Strongly Disagree
1. One of your very important clients has suggested that you change the treatment of an item on his income tax return which has no reasonable basis. In view of the low possibility of the return being reviewed, you entertain your clients suggestion.If discovered, you will be liable under section 114(1A). If you disagree, state why?.....	1	2	3	4	5
2. You usually require clients to forward detailed records and documents to make double deduction claims and instructed the same to your Tax Manager. However in view of heavy workload, he did not sight the original documents. The claim was later discovered to be false. You are liable to be prosecuted under section 114(1A). If you disagree, state why?.....	1	2	3	4	5
3. Rex is a licensed tax agent who undertook to advise and prepare a company's tax return. All the information required was provided by the company's accountant. Rex sought clarification on the information provided on many occasions. Rex was not satisfied with some of the clarifications. However, he proceeded to prepare the return which was later discovered to contain false information. Rex is not liable to be prosecuted under section114(1A), as he relied wholly on the information provided to him. If you disagree, state why?.....	1	2	3	4	5

	Strongly Agree		Neutral		Strongly Disagree
4. The "reasonable care" concept under section 114(1A) is very vague and needs more clarification from the tax authorities.	1	2	3	4	5
5 Where there is reliance on incomplete records and estimated figures and the returns are prepared in a manner that suggests that it is not an estimate, the tax agent would be liable for prosecution.	1	2	3	4	5
6. Penalties under section 114(1A) only concern wilful evasion and will not cover negligence and recklessness of tax agents.	1	2	3	4	5
7. The onus of proof that the tax agent has not taken reasonable care will lie on the authorities.	1	2	3	4	5
8. Tax agents will be liable to prosecution if their employees, in the course of their work had assisted in the preparation of tax returns which result in an understatement of taxes.	1	2	3	4	5
9. Where assistance or preparation of tax returns is based on incomplete records, the tax agent should not be liable to prosecution, as they are relying solely on the information provided by their clients.	1	2	3	4	5

10. Other thoughts and comments on the introduction of section 114(1A).

.....

.....

.....

.....

.....

.....

P.T.O.

SECTION D : DEMOGRAPHY

Please circle the appropriate numbers or indicate the boxes concerned.

1. Age ☐

2. Gender

Male ☐
Female ☐

3. Professional Affiliation

Are you a member of MIT? | Yes | No |

If 'No', please specify professional affiliation:.....

If employee in tax practice, state position:.....

4. Working Environment

1	2	3	4
Sole Practitioner	Small Practice	Medium Sized	'Big Five' Accounting Firm

5. Designation In Firm

1	2	3	4	5
Partner/ Proprietor	Director	Manager	Assistant Manager	Others: Specify .....

6. Number of Years of Experience in Tax Work ☐

P.S. Please be assured that all responses will be treated with strict confidentiality.
Thank You.

DRAFT

LEMBAGA HASIL DALAM NEGERI
INLAND REVENUE BOARD

PUBLIC RULING

ASSISTANCE OR ADVICE IN THE PREPARATION OF A RETURN RESULTING IN UNDERSTATEMENT OF TAX LIABILITY

PUBLIC RULING NO. 8/2000

DATE OF ISSUE:

CONTENTS

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2.0	The Application of this Ruling	1
3.0	How the Tax Law Applies	1 - 3
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DIRECTOR GENERAL'S RULING

A Ruling is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

Director General of Inland Revenue,
Malaysia

ASSISTANCE OR ADVICE IN THE PREPARATION OF A RETURN RESULTING IN UNDERSTATEMENT OF TAX LIABILITY

Public Ruling No. 8/2000

Date of Issue:

1.0 TAX LAW

This Ruling applies in respect of any person assisting in, or advising with respect to, the preparation of a return where, as a result of that assistance or advice, there is an understatement of the liability for tax of another person, which is an offence under section 114(1A) of the **Income Tax Act, 1967**. This Ruling is effective from 1 January 2000.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers:

2.1 the nature of assistance or advice given by any person in the preparation of a return that can be considered an offence under section 114(1A); and

2.2 the consequences of giving such assistance or advice.

3.0 HOW THE TAX LAW APPLIES

3.1 Generally, this provision would apply where it can be construed that there is dishonest intention on the part of the giver of that assistance or advice to evade or assist another person to evade tax.

3.2 This provision would not apply if the assistance or advice was given based on an interpretation of the law as stated in the Act or in the decision in any tax case and that interpretation was one that any reasonable person with his knowledge and experience would have arrived at. The giver of the assistance or advice should have acted in good faith, in the light of all information available after making inquiries that any reasonable person would have made.

3.3 By way of illustration, the following examples indicate where a person who gives assistance or advice in the preparation of a return that results in the understatement of liability for tax of another person may be prosecuted:

Example 1

Mr. A is an accountant with XYZ Sdn. Bhd. where he heads the accounting department. He also completes the income tax returns of the company. For a particular year, he was instructed by Mr. B, a director of the company, to reclassify the entertainment expenses of the company as purchases of goods and services. This resulted in reducing the tax liability of the company by RM10,000.

The accountant may be charged for giving assistance in the preparation of a return that resulted in the understatement of the company's tax liability.

[The director may be charged for authorizing the preparation or maintenance of false books of account.]

Example 2

After the financial year end of a company, a tax agent was engaged to prepare the company's income tax return. In the tax computation, the tax agent claimed a double deduction for research and development expenses. The figures were provided by the company's accountant. The tax agent did not inquire as to whether there was sufficient basis or documentation for making such a claim, or whether the company was eligible for double deduction. When a tax audit was made on the company, it was discovered that there was insufficient documentation to support the claim. The figures were found to be estimated.

Both the company's accountant and the tax agent may be prosecuted for assisting in the preparation of a return that resulted in the understatement of liability for tax of the company.

Example 3

A sole proprietor did not keep proper books of accounts. A bookkeeper was engaged to prepare the final accounts and to complete the income tax return. The final accounts and the return were submitted by the sole proprietor. During a tax audit, it was discovered that no proper books of accounts had been kept by the sole proprietor and that many of the figures in the final accounts were estimated without any documents or records to support them. The sole proprietor showed a receipt for the fees paid for services provided by the bookkeeper.

The bookkeeper may be prosecuted for assisting in the preparation of the sole proprietor's return that resulted in the understatement of liability for tax.

[The sole proprietor may be charged for failure to keep sufficient records.]

Example 4

A tax agent who was engaged to prepare the tax computation for a company had with him the audit working papers. In the audit working papers, it was noted that a donation of RM20,000 to an organization was included in "office expenses". The tax agent did not request for the donation receipt and did not make any adjustment in the tax computation.

A tax agent is expected to know that a donation to an approved institution can only be allowed if there is evidence in the form of an official receipt. *Since he did not perform his duties with reasonable care, the tax agent may be prosecuted for assisting in the preparation of a return that resulted in the understatement of liability for tax.*

APPENDIX C

(Translation from the original Bahasa Malaysia text)
Public Ruling No. 8/2000

WILFUL EVASION OF TAX AND RELATED OFFENCES

1.0 TAX LAW

This Ruling applies in respect of wilful evasion and other related offences under section 114 of the **Income Tax Act 1967**. This Ruling is effective from 1 January 2001.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers:

2.1 what constitutes or amounts to wilful evasion or intent to evade or to assist any other person to evade tax under section 114(1) of the Income Tax Act 1967 [hereinafter referred to as *the Act*];

2.2 the nature of assistance or advice given by any person in the preparation of a return that can be regarded as an offence under section 114(1A) of the Act; and

2.3 the consequences of such wilful evasion, intent to evade tax or to assist any other person to evade tax, and of giving of assistance or advice in the preparation of a return which results in the understatement of liability for tax.

3.0 HOW THE TAX LAW APPLIES

3.1 General

Generally, where a false statement or false entry or deliberate omission of an entry is made in a return or in any books of account or other records maintained by or on behalf of any person, that person may be presumed to have made that false statement or false entry or deliberate omission with the intention to evade tax.

3.2 Wilful evasion

Wilful evasion of tax means any action or deed deliberately performed or done with the purpose or intention of evading or assisting any other person to evade tax, and (without necessarily displacing or superseding the general meaning of this statement) would include any of the following:

3.2.1 deliberate omission of any income from a return;

3.2.2 making a false statement or entry in a return;

3.2.3 giving a false answer (orally or in writing) to a question asked or to a request for information made for the purposes of the Act;

3.2.4 preparing or maintaining false books of account or other

(Translation from the original Bahasa Malaysia text)
Public Ruling No. 8/2000

WILFUL EVASION OF TAX AND RELATED OFFENCES

1.0 TAX LAW

This Ruling applies in respect of wilful evasion and other related offences under section 114 of the Income Tax Act 1967. This Ruling is effective from 1 January 2001.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers

2.1 what constitutes or amounts to wilful evasion or intent to evade or to assist any other person to evade tax under section 114(1) of the Income Tax Act 1967 (hereinafter referred to as the Act);

2.2 the nature of assistance or advice given by any person in the preparation of a return that can be regarded as an offence under section 114(1A) of the Act, and

2.3 the consequences of such wilful evasion, intent to evade tax or to assist any other person to evade tax, and of giving of assistance or advice in the preparation of a return which results in the understatement of liability for tax.

3.0 HOW THE TAX LAW APPLIES

3.1 General

Generally, where a false statement or false entry or deliberate omission of an entry is made in a return or in any books of account or other records maintained by or on behalf of any person, that person may be presumed to have made that false statement or false entry or deliberate omission with the intention to evade tax.

3.2 Wilful evasion

Wilful evasion of tax means any action or deed deliberately performed or done with the purpose or intention of evading or assisting any other person to evade tax, and (without necessarily displacing or superseding the general meaning of this statement) would include any of the following:

3.2.1 deliberate omission of any income from a return;

3.2.2 making a false statement or entry in a return;

3.2.3 giving a false answer (orally or in writing) to a question asked or to a request for information made for the purposes of the Act;

3.2.4 preparing or maintaining false books of account or other

3.5 **Differing position or stand**
Where the person making a return or the person giving assistance or advice in the preparation of a return adopts a position or takes a stand in respect of any provision of the Act:

3.5.1 that is not in accordance with any requirement, direction, determination or decision in any guideline, ruling or other published statement or any statutory or prescribed form issued by or furnished to the Inland Revenue Board [IRB]; and / or

3.5.2 that constitutes a departure from his normal practice or treatment; and he can show that there are sufficient and reasonable grounds for him to justify that position or stand, he should make a written disclosure of that position or stand and the grounds for it, as well as how it affects the person's tax liability.

3.6 **Examples of circumstances or situations**
By way of illustration, the following examples indicate circumstances or situations where a
person may be considered liable for prosecution for wilfully evading tax or assisting any person to evade tax or giving assistance or advice in the preparation of a return that results in the understatement of liability for tax of another person. [*The examples are not exhaustive and the title under each example is intended as a description only and should not be regarded as a classification of the type of offence.*]

Example 1

Omission of income

Mr. A submits a duly completed return for year of assessment 2001 on his own behalf. He declares income from the carrying on of a restaurant business only. It is discovered during a tax audit that he has not declared his income from the business of selling imported gift items and souvenirs that he has been carrying on for the past 5 years.

Mr. A may be liable for prosecution for wilful evasion [section 114(1)] for omitting his income from the business of selling imported gift items and souvenirs in his return for the year of assessment 2001 and relevant preceding years.

Example 2

Preparing or maintaining false books of account or other records
Mr. B is an accountant employed by XYZ Sdn. Bhd. He heads the accounting department. He also completes the income tax returns of the company. For a particular year, on the instructions of Mr. C, a director of the company, he reclassifies certain entertainment expenses of the company (which are not allowable for income tax purposes) as purchases of goods and services. By doing so, he manages to understate the tax liability of the company by more than RM5,000. This is discovered during a tax audit.

The company may be liable for prosecution for wilful evasion [section 114

records, or authorizing the preparation or maintenance of false books of account or other records;

3.2.5 falsifying books of account or other records, or authorizing the falsification of books of account or other records; and

3.2.6 making use of any fraud, art or contrivance, or authorizing the use of any fraud, art or contrivance.

3.3 **Assistance in, or advice with respect to, the preparation of a return**

3.3.1 Where a person assists in, or advises with respect to, the preparation of a return and as a result of that assistance or advice there is an understatement of the liability for tax of another person, the person giving that assistance or advice may be liable for prosecution if it can be construed that there is dishonest intention on his part to assist the other person to evade tax.

3.3.2 No inference of dishonest intention should be made if it can be shown that the assistance or advice was given with reasonable care, on the basis of an interpretation of the law as stated in the Act or in the decision in any tax case or in a ruling and that interpretation is one at which any reasonable person with his knowledge and experience would have arrived. The person giving the assistance or advice should have acted in good faith, in the light of all information available after making inquiries that any reasonable person would have made.

3.4 **Examination of specific claims for deductions, allowances, reliefs or rebates**

3.4.1 Any person who assists in, or advises with respect to, the preparation of a return should examine specific claims for deductions, allowances, reliefs or rebates made in the return [*see paragraph 4.7*] and, where considered necessary or prudent, should scrutinize (or, if not already available, obtain and scrutinize) written analyses or detailed statements in respect of items in the accounts wherein there is a likelihood that expenses or outgoings that are not allowable or are only partially allowable have been included, especially expenses or outgoings that are grouped or categorized collectively (such as bad or doubtful debts, general / miscellaneous / sundry expenses, management expenses, legal or professional fees, repairs, etc.). The person making the return or on whose behalf the return is made should certify or confirm in writing and provide such documents, analyses, statements or other relevant information which might affect his liability for tax, whether requested or not by the person giving the assistance or advice.

3.4.2 An adverse inference may be drawn where there is failure to call for or failure to provide the documents, analyses, statements or other information mentioned in paragraph 3.4.1 above, or where there is failure to disclose or draw attention to any matter affecting liability for tax for which disclosure should have been made or to which attention should have been drawn.

3.5 **Differing position or stand**
Where the person making a return or the person giving assistance or advice in the preparation of a return adopts a position or takes a stand in respect of any provision of the Act:

3.5.1 that is not in accordance with any requirement, direction, determination or decision in any guideline, ruling or other published statement or any statutory or prescribed form issued by or furnished to the Inland Revenue Board [IRB]; and / or

3.5.2 that constitutes a departure from his normal practice or treatment; and he can show that there are sufficient and reasonable grounds for him to justify that position or stand, he should make a written disclosure of that position or stand and the grounds for it, as well as how it affects the person's tax liability.

3.6 **Examples of circumstances or situations**
By way of illustration, the following examples indicate circumstances or situations where a
person may be considered liable for prosecution for wilfully evading tax or assisting any person to evade tax or giving assistance or advice in the preparation of a return that results in the understatement of liability for tax of another person. [*The examples are not exhaustive and the title under each example is intended as a description only and should not be regarded as a classification of the type of offence.*]

Example 1

Omission of income

Mr. A submits a duly completed return for year of assessment 2001 on his own behalf. He declares income from the carrying on of a restaurant business only. It is discovered during a tax audit that he has not declared his income from the business of selling imported gift items and souvenirs that he has been carrying on for the past 5 years.

Mr. A may be liable for prosecution for wilful evasion [section 114(1)] for omitting his income from the business of selling imported gift items and souvenirs in his return for the year of assessment 2001 and relevant preceding years.

Example 2

Preparing or maintaining false books of account or other records
Mr. B is an accountant employed by XYZ Sdn. Bhd. He heads the accounting department. He also completes the income tax returns of the company. For a particular year, on the instructions of Mr. C, a director of the company, he reclassifies certain entertainment expenses of the company (which are not allowable for income tax purposes) as purchases of goods and services. By doing so, he manages to understate the tax liability of the company by more than RM5,000. This is discovered during a tax audit.

The company may be liable for prosecution for wilful evasion [section 114

for the donation in the tax computation. It is discovered during a tax audit that there has been an understatement of the company's liability for tax as the donation had been made to a non-approved body, about which the company has neglected to inform the tax agent subsequently.

The company may be liable for prosecution for making a false claim in the return [section 114(1)] or for making an incorrect return [section 113].

No action should be taken against the tax agent since he has performed his duties with reasonable care by calling for the receipt and advising the company accordingly, and the understatement arises primarily because of his reliance, in good faith, upon the written confirmation given by the company.

Example 5

Claim for deductions or incentives not supported by documents

A tax agent is engaged to prepare a company's income tax return for a particular year of assessment. A director of the company provides a statement (confirmed by him) containing details of research and development (R&D) expenses incurred by the company and instructs the tax agent to make a claim for double deduction for the R&D expenses. The tax agent advises the director of the requirements and conditions for a valid claim under section 34A of the Act and, being satisfied with the director's confirmation that the company is eligible for the double deduction, forwards the claim in the appropriate form duly completed and signed by the director of the company. During a tax audit, it is discovered that there is insufficient documentation to support the claim. The figures upon which the claim is based are found to be estimated and some of the expenses included are not related to the research project.

The company may be liable for prosecution for making a false claim in the return [section 114(1)] or for making an incorrect return [section 113].

The director of the company may be liable for prosecution for assisting in the preparation of a return that has resulted in the understatement of the company's liability for tax [section 114(1A)].

No action should be taken against the tax agent as he has acted in good faith and the understatement of the company's liability for tax essentially arises from the misrepresentation on the part of the company's director

Example 6

Non-disclosure by person on whose behalf a return is prepared

A tax agent completes a return on behalf of an individual, who has verbally confirmed that his wife has no income. After the return form has been signed by the individual, it is dispatched on his behalf by the tax agent. Rent of RM12,000 received by the individual's wife is not included in the return as this has not been disclosed to the tax agent.

(1)] or for making an incorrect return [section 113].

The director Mr. C may be liable for prosecution for assisting another person (the company) to evade tax by authorizing the preparation or maintenance of false books of account or other records [section 114(1)].

The accountant Mr. B may be liable for prosecution for assisting another person (the company) to evade tax by preparing or maintaining false books of account or other records [section 114(1)].

Example 3

Final accounts prepared from estimated or fictitious figures

A sole proprietor Mr. C, who has not kept proper records or books of account, engages a bookkeeper to prepare the final accounts and to complete the income tax return. The final accounts and the return are signed and submitted by Mr. C. During a tax audit, it is discovered that no proper books of accounts have been kept by Mr. C and that many of the figures in the final accounts are either estimated or fictitious, without any documents / records to support them.

The bookkeeper may be liable for prosecution for assisting in the preparation of Mr. C's return that results in the understatement of his liability for tax [section 114(1A)]

Mr. C may be liable for prosecution for making a false statement or entry in a return [section 114(1)] as well as for failure to keep sufficient records [section 82] [see Public Ruling No. 5/2000].

To avoid any inference of dishonest intention, the bookkeeper should have made a disclosure in the final accounts that they are prepared from incomplete records and that figures shown in the final accounts which are not supported by proper records or documents are based on reasonable estimates that are justifiable or otherwise defensible either by the bookkeeper or Mr. C; and, where appropriate, showing the basis for the estimates. Similarly, Mr. C should have made such a disclosure in his tax computation. Failure to make a disclosure on the part of either person may be regarded as indicative of dishonest intention.

Example 4

Claim not supported by documents

A tax agent is engaged to prepare the tax computation for a company. The detailed statement for "Sundry Expenses" of RM80,000 provided by the company clearly indicates that a donation of RM10,000 is included therein The tax agent makes an immediate request in writing for sight of the receipt, advising the company that only donations made to approved bodies or institutions under section 44(6) would be eligible for deduction. The company confirms in a letter that the donation had been made to an approved body and that it was in the process of obtaining a receipt for it. In view of the impending due date for the submission of the return and relying on that confirmation, the tax agent makes the relevant adjustments

The individual or his wife may be liable for prosecution for evasion of tax by deliberate omission of income in the return [section 114(1)].

No action should be taken against the tax agent, as no inference of dishonest intention should be drawn against him.

Example 7

Mistake or error in return

A tax consultancy firm is engaged to complete a return on behalf of a company. The tax computation indicating a tax liability of RM144,144 and the duly completed return are submitted to the company for review and approval. The return is later furnished to the IRB by the firm on behalf of the company. In the return, the tax liability is erroneously stated to be RM141,414. Nevertheless, settlement of tax liability is made by the company on the basis of the correct figure; the return is accompanied by a cheque for RM24,144 (RM144,144 less RM120,000 previously paid by instalments). The under- statement is not detected until a tax audit is carried out 2 years later.

Since the correct amount of tax is paid despite the error in the return, there should be no inference of dishonest intention. No action should, therefore, be taken against either the company or the firm.

Both the company and the tax consultancy firm should have exercised care and diligence in checking and ensuring that the return is correctly completed.

If settlement of tax had negligently been made on the basis of the incorrect figure, action may be considered against the company under section 113 for making an incorrect return.

If there is evidence to indicate that the understatement is made other than innocently (for example, previous or subsequent incidences of a similar nature in the same case and / or a pattern of frequent occurrences of a similar nature in a number of other cases), then action may be considered against the tax consultancy firm under section 114(1A).

3.9 **The Consequences of Wilful Evasion, Intent to Evade or Assisting Any Other Person to Evade Tax**

A person who performs an action or deed wilfully and with intent to evade tax or assist any other person to evade tax may be liable for prosecution and, on conviction, is liable to a fine of not less than RM1,000 and not more than RM20,000 or to imprisonment for a term not exceeding three years or to both, and as well as a special penalty of three times the amount of tax which has been undercharged or which would have been undercharged if the offence had not been detected.

3.10 **The Consequences of Giving Assistance or Advice that Results in the Understatement of Liability for Tax of Another Person**

A person who assists in, or advises with respect to, the preparation of a return where the return results in an understatement of the liability for tax

of another person may be liable for prosecution and, unless he satisfies the court that the assistance or advice was given with reasonable care, is liable to a fine of not less than RM2,000 and not more than RM20,000 or to imprisonment for a term not exceeding three years or to both.

4 0 INTERPRETATION

For the purpose of this Ruling:

4 1 "Fraud, art or contrivance" includes any intentional or deliberate concealment, deception, falsehood, forgery or misrepresentation which is contrived and intended to deceive or to gain an illegal advantage.

4 2 "Person" includes a company, a co-operative society, a partnership, a club, an association, a Hindu joint family, a trust, an estate under administration and an individual.

4 3 Reasonable care" means the degree of care or conscientiousness in paying proper attention to a task that is expected, in a similar situation, of an ordinary person who, considering the circumstances and the foreseeable consequences, acts with reason, sound judgment and responsibility.

4 4 "Return" means any return made for the purposes of the Act.

4 5 "Tax computation" means the working sheets, statements, schedules, calculations and other supporting documents forming the basis upon which a return is made and which are required to be submitted together with the return or maintained by the person making the return.

4 6 Understatement of the liability for tax" means the tax liability declared or stated in a return that is less than what it should be under the law. The term implies dishonest intention. Understatement is normally the result of one or more of the following: understating income, inflating expenses, omitting a source of income or failing to make adjustment for an expense (or part thereof) that is not allowable for the purposes of the Act.

4.7 Examination of specific claims for deductions, allowances, reliefs or rebates" [*see paragraph 3.4.1 above*]:

4.7.1 "Examine" means, in relation to a person who assists in, or advises with respect to, the preparation of a return, to satisfy himself as to the appropriateness and validity of such claims on the basis of such documents, analyses, statements or other relevant information as certified or confirmed and provided by the person on whose behalf the return is made or by any other person acting for him

4.7.2 Specific claims for deductions, allowances, reliefs or rebates" refer to claims which are required to be supported by documents such as prescribed forms, certificates and receipts.

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