



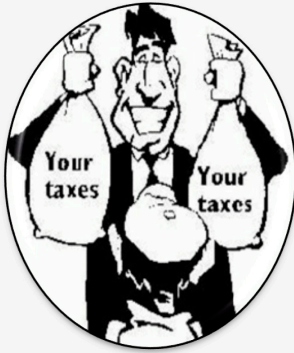
# TAX CERTAINTY

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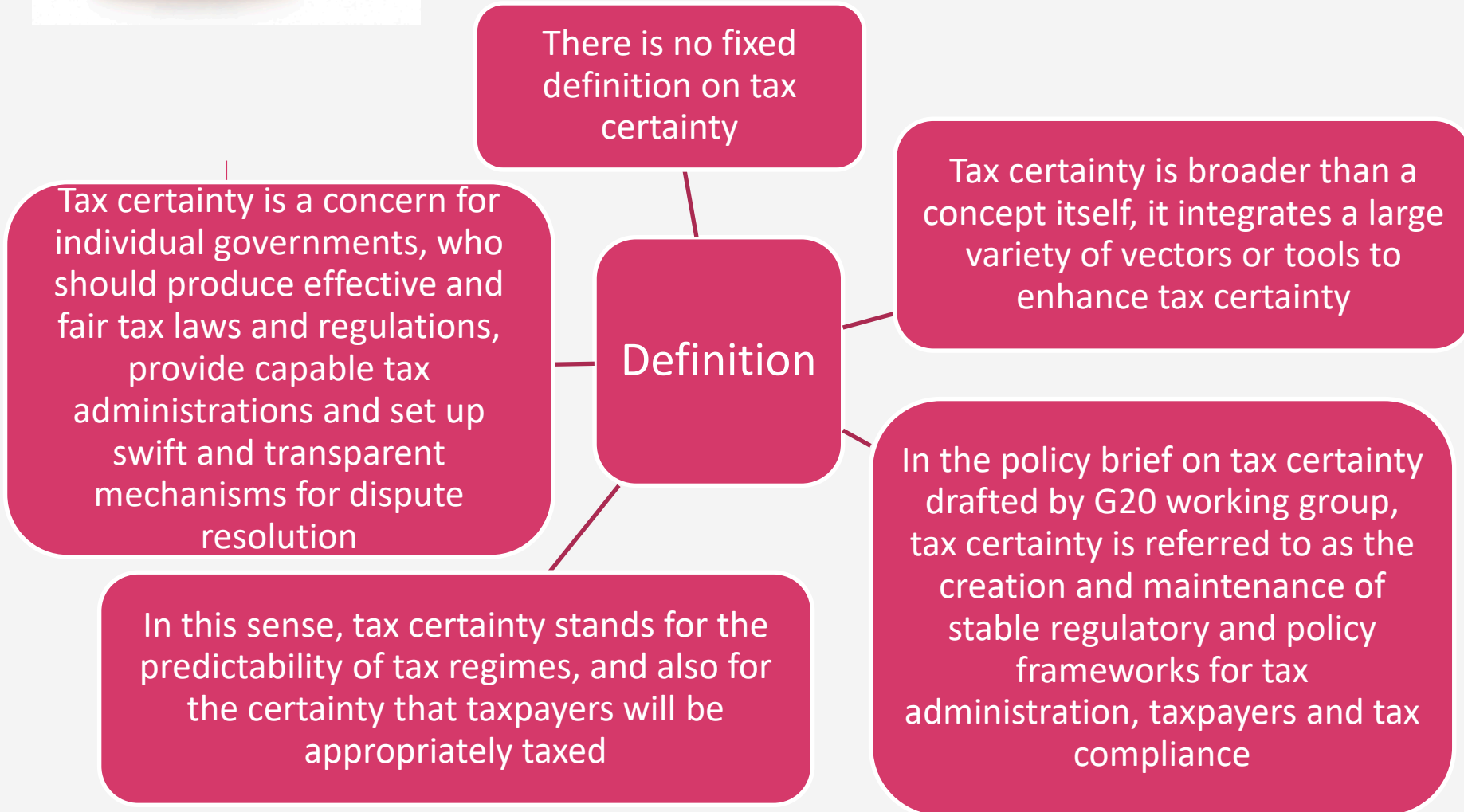
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# DEFINITION OF TAX CERTAINTY



# FRAMEWORK ON TAX CERTAINTY IN MALAYSIA



- In Malaysia, one of the tools used by the government to achieve tax certainty is through the effective and fair tax laws and regulations.
- Some of the provisions of laws that promotes and illustrates tax certainty in Malaysia are as follows-

No.	Subject & Provisions of Law	Description Taxpayer's perspective
1.	Filing of Returns Section 77 & 77A of the Income Tax Act 1967	<ul style="list-style-type: none"><li>• Both sections provide a mechanism for taxpayers to submit his/her returns within a specified deadline.</li></ul>
2.	Finality of Assessment Section 97 of the Income Tax Act 1967	<ul style="list-style-type: none"><li>• Section 97 provides on circumstances where assessment raised by tax authority shall be final and conclusive.</li></ul>

No.	Subject & Provision of Law	Description Taxpayer's perspective
3.	Right of Appeal Section 99 (1) of the ITA 1967	<ul style="list-style-type: none"> <li>• Explain the taxpayer's right to appeal against an assessment within 30 days after he/she received the notice of assessment.</li> <li>• Further extension based on the merit of the application.</li> </ul>
4.	Relief in Respect of Error or Mistake Section 131 of the ITA 1967	<ul style="list-style-type: none"> <li>• Taxpayer's rights to claim relief in respect of any error or mistake made in a return or statement made by him for the purposes of the Act furnished by him to the Director General.</li> </ul>
5.	Payment of tax section 103 of the ITA 1967	<ul style="list-style-type: none"> <li>• Payment of tax to be made within 30 days after on the service of the notice of assessment.</li> </ul>

No.	Subject & Provision of Law	Description Revenue's perspective
1.	Public Rulings	<p>IRB has taken a step forward to provide tax certainty to taxpayers by issuing Rulings on specific issues -</p> <ul style="list-style-type: none"> <li>a) <b>Public Ruling No. 2/2019 on Director's Liability:</b> to explain the liabilities of a company director in respect of the company's tax.</li> <li>b) <b>Public Ruling No. 3/2018 on Qualifying Expenditure and Computation of Industrial Building Allowances:</b> to explain the tax treatment in relation to QBE and IBA.</li> <li>c) <b>Public Ruling No. 11/2017 on Residence Status of Individuals:</b> to explain on the determination of residence status for individuals as it is the main criteria that determines an individual's liability to Malaysian income tax.</li> </ul>
2.	Advance Rulings	<ul style="list-style-type: none"> <li>• The IRB may issue advance rulings on the interpretation and application of the income tax provisions upon request by any person.</li> <li>• The issuance of an advance ruling aims to ensure clarity and certainty of tax treatment and consistency in the application of the income tax laws. This in turn will help to promote compliance and minimize disputes between the IRB and taxpayers.</li> </ul>
3.	Kuala Lumpur Litigation Branch	<ul style="list-style-type: none"> <li>• Kuala Lumpur Litigation Branch ("CGKL") was established on 1 May 2017 and started its operation on 1 August 2017.</li> <li>• This is part of the IRB continuous efforts to improve efficiency and to strengthen the tax collection and civil suit process whereby CGKL focuses in handling court cases involving taxpayers who fails to pay their taxes.</li> </ul>

No.	Subject & Provision of Law	Description Revenue's perspective
4.	Internal Technical Committee	<ul style="list-style-type: none"> <li>This committee will discuss and conclude on whether based on the merit of the case assessment can be raised against the taxpayers.</li> </ul>
5.	Dispute Resolution Mechanism in Tax Matters	<ul style="list-style-type: none"> <li>The Dispute Resolution Department (DRD) is an independent body which was formed to review appeals and resolving dispute.</li> <li><b>Section 101:</b> The DG with the assistance of the DRD will review the assessment under appeal. During the review process, the DRD will request the taxpayer to furnish documents in respect of the assessment.</li> <li><b>Section 102:</b> If the proposal for settlement from the taxpayer is accepted by the DG, notice of appeal will be withdrawn and the parties will enter into an agreement. If the parties fails to reach an agreement, the DG will forward the appeal to Special Commissioners of Income Tax (SCIT).</li> </ul>
6.	Special Voluntary Disclosure Programme (SVDP)	<ul style="list-style-type: none"> <li>This Special Program is part of the government's efforts in tax reformation.</li> <li>It is to encourage taxpayers to make voluntary disclosure in reporting their income to increase tax collection for the country's development.</li> </ul>

# TAX CERTAINTY IN CROSS BORDER TRANSACTIONS



- In Malaysia, the government via tax laws and regulations strives to achieve tax certainty in its cross border transactions.
- Some of the laws, regulation and policies that were enacted by the government for such purposes are as follows:

## Advance Pricing Arrangement (APA)

-An advance pricing arrangement (APA) is an arrangement between a taxpayer and the Director General of Inland Revenue (DGIR) or between Competent Authorities (CAs) that determines the transfer pricing methodology to ascertain the prospective arm's length transfer prices of specified related party transactions between the taxpayer and its foreign affiliates over a specified period of time, under specified terms and conditions.

-APAs are intended to provides certainty on the appropriate Transfer Pricing Methodology (TPM) to apply in pricing a covered transaction thus enhancing the predictability of tax treatment on international transactions.



**Advance Pricing Arrangement  
(APA)**

**Unilateral Advance Pricing  
Arrangement**

Arrangement between a taxpayer and the DGIR.

**Bilateral Advance Pricing  
Arrangement**  
**(BAPA)**

an APA that involves the taxpayer, Competent Authorities of the tax payer in the foreign country, tax authority of the country where the tax payer is located, and the foreign tax authority.

**Multilateral Advance Pricing  
Arrangement**  
**(MAPA)**

an APA that involves the taxpayer, two or more Competent Authorities of the tax payer in different foreign countries, tax authority of the country where the tax payer is located, and the tax authorities of Competent Authorities.

### **Mutual Agreement Procedure (MAP)**

The Mutual Agreement Procedure (MAP) allows the Malaysian Competent Authority (CA) to interact with CAs of Treaty Partners with the intent to resolve international tax disputes involving double taxation and inconsistencies in the interpretation and application of a Tax Treaty.

### **Double Taxation Agreement (DTA)**

The government of Malaysia have signed Double Taxation Agreement (DTA) with other countries in order to avoid or alleviate (minimise) territorial double taxation of the same income by the two countries.

# CONCLUDING REMARKS



## Practical Tools to Enhance Tax Certainty

- In IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors dated July 2018, one part of this report elaborates further on tax certainty in developing countries. In this section, some ideas that were discussed to enhance tax certainty in developing countries are as follows:

Increase tax dialogue  
between relevant  
stakeholders

Improve dispute resolution  
mechanisms

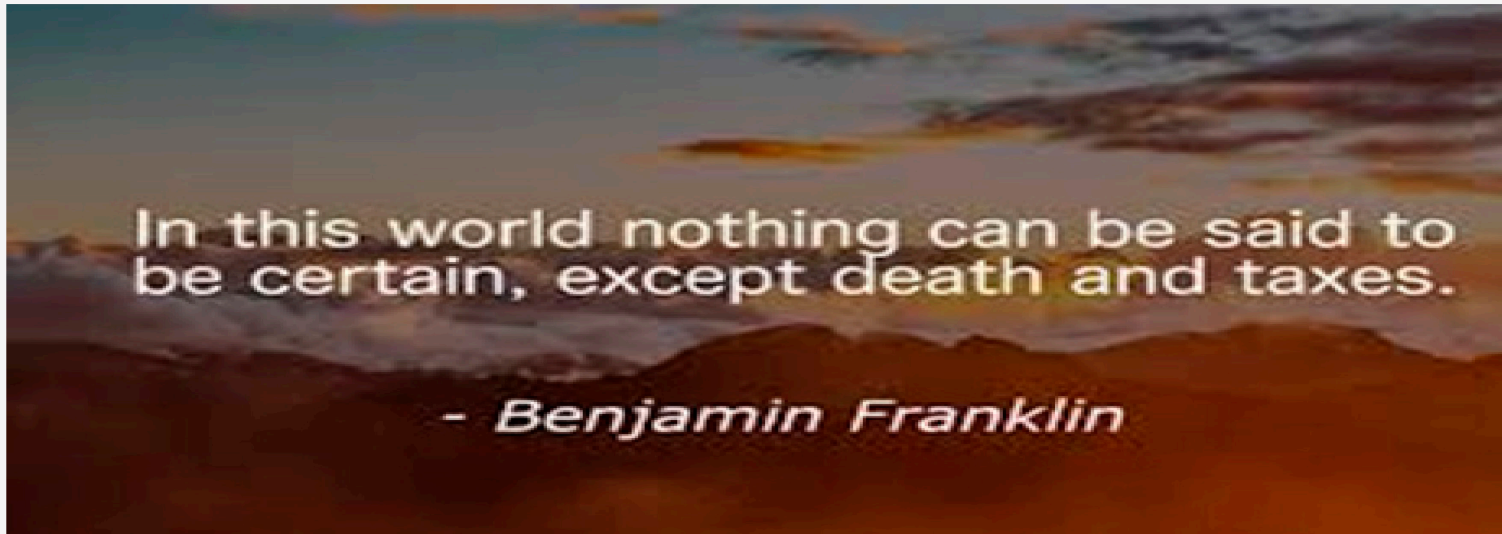
Develop more coherent and  
transparent (regional)  
processes for the granting of  
tax incentives

Ensuring balanced and  
appropriate double taxation  
treaties

Improve tax policy design  
and legislation

Formalise the informal  
sector to increase the tax  
base and tax certainty

- To summarise, tax must be certain to some extent in order to ensure that the social and fiscal objectives in raising taxes for the operations of the government and for the development of a country can be achieved.
- If tax remains to be uncertain and if allowed to be uncertain, this would open floodgates for the public to challenge the tax imposed on them in every occasion, each and every time, for very flimsy and unjustifiable reasons and this is not good for the economy and for the growth of a country.





**SOARING**  **TO GREATER**  
EXPECTATIONS