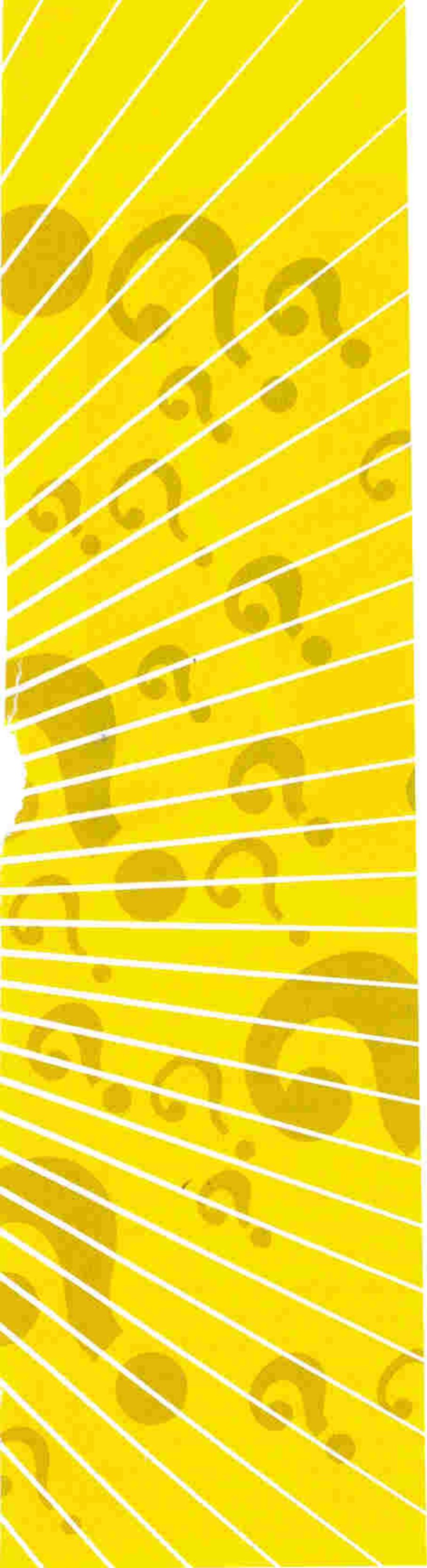


YOUR TOP 8 tax questions answered

by Celine Tan

April is not a month that Malaysian taxpayers look forward to each year. Usually, we'd be scrambling around, scrounging up receipts, payslips and EA forms before filing our income tax return and paying up any tax dues. It can be stressful and costly if we leave things to the last minute. There are some potential savings that can be derived if we are proactive throughout the year. However, there can still be little things to do now to save on taxes provided that your records and supporting documents are intact.

To help you arrange your financial activities so that you save as much as possible on taxes, four tax consultants answer eight tax questions for individuals with employment and/or non-employment income:

1. How do I make amendments to my tax filing if I make a mistake?

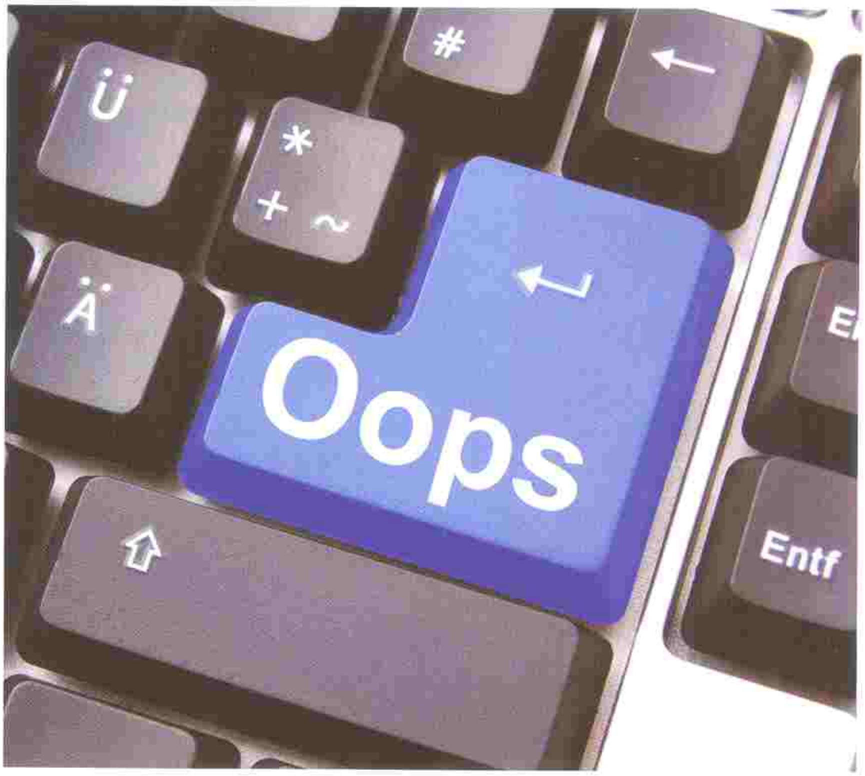
Electronic filing enables you to prepare and file your return online. If you have only employment income, filing your taxes should be straightforward. "Read the explanatory notes given with the tax return form. Go carefully through each relief and deduction that you are eligible to claim," says Thang Mee Lee, executive director of Taxand Malaysia Sdn Bhd. "Your record-keeping must be good so that you can minimise penalties imposed for non-compliance with the law."

David Lai Shin Fah, executive director of BDO Tax Services Sdn Bhd, adds that it is important to have original documents to support all claims.

Although it is convenient and fast (the program does the calculations for you), the moment you push the "submit" button, your return is filed and you can't make any amendments. "The Income Tax Act 1967 allows you to file an amended tax return for 'increased assessment'," says Thang. "This is where you have under-declared income or you have overclaimed relief or expenses that result in a lower taxable income."

Lai adds that you may make an amendment subject to certain conditions. "For example, you are allowed only one amendment for each year of assessment and it must be made in the prescribed form."

If you have to make an amendment, do it before the sixth month. "Thereafter, you can no longer make amendments," says Thang. "In this case, you risk being investigated by the tax authorities for concealing any income in your return. This is serious compared with a tax audit [which generally involves technical adjustments]. A penalty can be imposed on you for tax evasion and it depends on the amount of tax evaded." In almost every country, tax evasion is a crime. Therefore, the penalty may include a harsh jail sentence.



While you are penalised for tax evasion even though it is by "error", don't expect a "reward" if you have over-declared your income. "Also, you can only claim a tax relief in the year you incurred the expenses," says Thang. For instance, you bought a personal computer in year of assessment 2008 (YA2008) and you forgot to make a claim for the YA2008. You cannot make the claim in YA2009.

K Sandra Segaran, technical director of Deloitte Malaysia's tax practice, says if you want to add reliefs, you can do it under the provision called "relief in respect of error or mistake" under the Income Tax Act. Thang adds that there is no deadline for making such amendments.

"If you do online filing, print out Form BE that you have saved and submitted. Make the amendment on the side of the form next to the original entry and add your initials. Submit the form together with a cover letter explaining the reasons for the change to the IRB. There is a big chance that the IRB will want to see the supporting documents," says Thang. She adds that this can sometimes trigger a tax audit since you are essentially telling the IRB that you have made a mistake. "But, if the adjustment is small, the IRB won't conduct an audit." ▪

2. How can I minimise taxes on my property investment?

WHEN it comes to property investment and taxes, there are two main things to be cognisant of — tax deductions and capital gains tax.

To maximise returns on your property investment, you can claim expenses relating to your rental property. "From a tax perspective, you have to consider whether the rental income is to be assessed as non-business or business income," says Thang. It is more advantageous to take the latter route. "As a business source, you can also claim capital allowances on certain items such as furniture and fittings that are rented out with the unit. This is aside from the normal expenses like interest on the loan, cost of repair and maintenance, quit rent and insurance that you can claim if the rental income is treated as non-business source," says Thang. Segaran adds that if you are renting out a fully furnished unit, the expenses can be deducted on a replacement basis when you replace furniture and fittings.

During hard times, when you can't rent out your unit or can rent it out only at a lower rate, you might face negative gearing. This is when the annual cost of your investment is more than your return. As a business source, you can then convert your losses into tax savings. "You can carry forward the losses to the next year(s) and set it against future profits," says Thang. This way, you will be paying less tax. But that doesn't turn this year's losses into a profit, you are just making a smaller loss.

In order to treat rental income as a business source of income, you need not necessarily incorporate a company. Under Public Ruling No 1/2004 issued in June 2004, the letting of a property can be considered a business source of income and the income received will be charged to tax under Section 4a of the Income Tax Act if you provide ancillary or support services and facilities. (Section 4a states that the income upon which tax is chargeable is income in respect of gains or profits from a business, for whatever period of time carried on.) Such services include security provided on a 24-hour basis by a security firm hired by the owner or housekeeping services provided optionally at an additional charge.

Alternatively, you can also incorporate a company to claim capital allowances if you have at least four properties. "Usually, property investors set up companies for legal protection. If any legal suit is brought against you, the plaintiff can claim only the maximum of the value of the company," says Thang. Most people incorporate companies for their properties not so much for tax savings, but for flexibility in the future. "If you have a company holding properties, when you want to cash out, you can either sell the properties or the shares of the company." She adds that incorporating a company for property investment is attractive for individuals already in the top tax bracket. "The corporate tax rate is currently at 25% while the top tax bracket is 26%. If you fall under that category, you can take advantage of the 1% difference." (Note that from YA2010, the rate of tax applicable to all chargeable income of a resident individual in excess of RM100,000 will be reduced to 26% from 27%, based on Budget 2010.)

Lai explains that the incorporated company needs to establish that the rental income is "business income" as opposed to "investment income". Based on Public Ruling No 1/2004, the letting of four or more commercial units, four or more floors of shophouses or four or more residential properties or any combination of four units (as mentioned) may be treated as a business source of a company and the income therefrom charged to tax under section 4a. (The entire property, except for a shophouse

constituted under the particular title, should be included in the letting).

However, it is wise to weigh the costs and benefits of incorporating a company. "You have to consider the additional cost of setting up and maintaining a company. For example, your company needs to prepare accounts and be audited annually," says Thang.

What the government gives with one hand, it takes with the other. The real property gains tax (RPGT), a tax on the profit you've made on a property disposal, was reintroduced on Jan 1. It was suspended in April 1, 2007. According to the recent Budget announcement, if you dispose of your properties within five years of purchase, your capital gains are taxed at 5%. "Planning the timing of the disposal of your real property investment can help reduce taxes. If your holding period is more than five years, any capital gain is exempted from RPGT," says Lai.

Segaran adds that the gain is the difference between the price at which you sold the property and what you paid for it (the purchase price plus what you have spent on capital improvements). "All those expenses, such as renovations and legal costs, can be deducted, provided that the records are kept properly." Losses from property disposal can also be deductible, he says. "Under the recent amendments, the way of deducting gross loss has been simplified and is similar to the normal income tax situation. The calculation is if you made a disposal loss of RM1,000 [from one property], you can deduct RM1,000 from your disposal gain [from another] before your tax is computed. Since it is quite unusual for you to sell more than one property in any one year, this loss can be carried forward to subsequent years, which is treated like a business loss." ▪

3. I have non-employment income. How do I file my taxes?

OFTEN, you might think that your side business or part-time business is just a passing interest. But, it does come under the category of a business source or non-employment income, if it is making some money for you. The best thing about earning non-employment income is that you can deduct related business expenses before arriving at your taxable income. But to do so, "You need to understand the right deductions and organise the business in such a way that you have maximum write-offs," says Ang. For example, if you provide part-time tuition and you need to photocopy materials for your students, this expense can be deducted from the tuition fee that you receive.

Business losses can be carried forward indefinitely to offset against future income, and not necessarily for the same business, according to the Income Tax Act.

Capital allowances are also given to business activities. "As a business-income earner, you are entitled to claim capital allowance if you have expended on the purchase of the said asset and the asset is used in relation to your business," says Segaran. For example, if you provide tuition and you purchase a computer to prepare notes for your students, you can claim the capital allowance on your computer. Other examples of assets are motor vehicles, machines, office equipment and furniture. Schedule 3 of the Income Tax Act has laid down several allowable deductions in the form of allowances for the capital expenditures that have been incurred. "The claim for capital allowance can be made in the relevant column provided in the return form," adds Segaran.

You are required to do proper accounts for your non-employment income. "It is efficient and minimises stress if you ensure that the income and expenses accounts, the supporting receipts and vouchers, details of fixed assets of the business such as computers and office furniture and fittings, and relevant documents such as agreements and contracts are maintained in a tax file," says Lai.

As a self-employed person, comply with the statutory requirements of making tax-instalment payments, says Lai.

Thang adds that it is important to estimate your taxes properly. "If you overestimate your taxes, you end up paying a lot more. Technically, you can get a tax refund, but it can take a while. On the other hand, if you underestimate your taxes, you are subject to a penalty."

The self-employed are given the opportunity to seek a revision of the instalment amount by June, says Segaran. ■

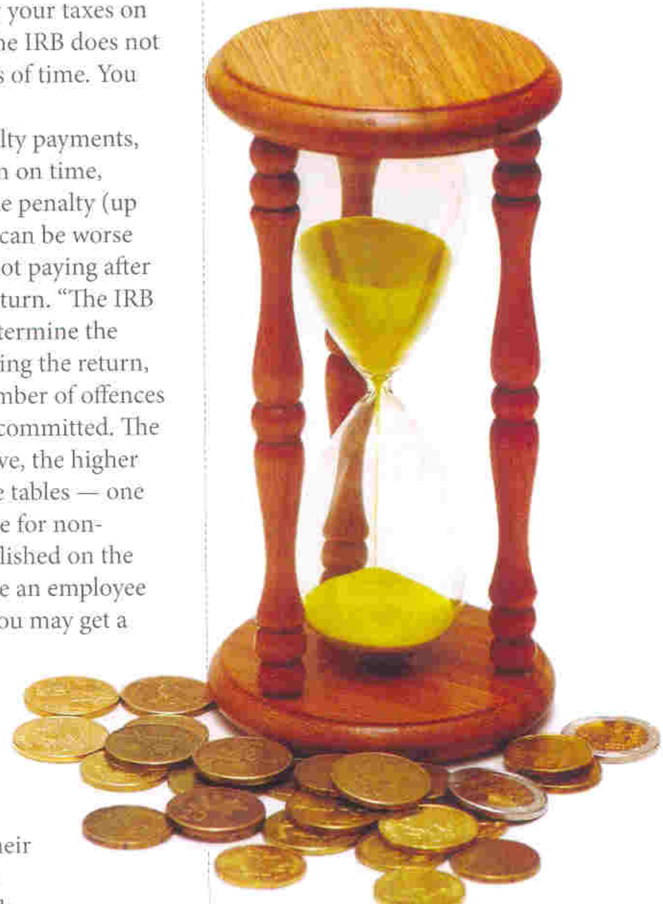
SUHAIMI YUSUF/THE EDGE

SEGARAN: As a business-income earner, you are entitled to claim capital allowance for assets purchased

4. What happens if I can't settle my taxes on time?

ALTHOUGH you may find it is not always possible to pay your taxes on time, unfortunately, the IRB does not provide for extensions of time. You may face penalties

To minimise penalty payments, at least file your return on time, says Thang. In fact, the penalty (up to 20%) for not filing can be worse than the penalty for not paying after you have filed your return. "The IRB uses a scale rate to determine the late penalty for not filing the return, depending on the number of offences [late filing] you have committed. The more offences you have, the higher the penalty." The scale tables — one for employees and one for non-employees — are published on the IRB's website. If you're an employee and a first offender, you may get a penalty of 2% of the tax payable, a minimum of RM50 or a maximum of RM100. Individuals with non-business income have to file their returns and pay their taxes by April 30 while individuals with business income are required to file their returns by June 30.



Under the Income Tax Act 1967, penalties for late payment are imposed at a rate of 10% on the outstanding of tax payable and, if the tax is still not paid after 60 days, a further 5% penalty will be imposed. Thang illustrates: "Say, your tax amount is RM500, your penalty will be RM50. If you do not pay the RM550 after 60 days, an additional 5% will be imposed. The maximum that you are required to pay is RM577.50 [(5% x RM550) + RM550]. The IRB can take legal action against you if you do not pay the dues." So, if you do not have the funds, borrow the money from a financial institution or friends and relatives but beware of the costs involved.

Individuals with business income have another option. "Business-income earners who have cashflow constraints may appeal to pay their taxes via an instalment-payment scheme," says Lai. "However, note that such schemes are granted at the discretion of the IRB on a case-by-case basis." ■

5. What should I do before the GST comes into effect?

THE goods and services tax (GST), also known as value-added tax, is a tax on the final consumption of goods and services. It is a multi-stage tax, which means the government collects the tax at various stages along the delivery process. The consumer generally bears the burden, owing to the increase in the price of goods or services, which is passed through the production and distribution chains.

Regionally, only Brunei, Hong Kong, Malaysia and Myanmar have not put GST regimes in place. In Malaysia, the GST bill was tabled in Parliament on Dec 16, 2009. It is likely to be passed this year and will come into force in mid-2011, with the rate set at 4%, say tax professionals.

In Lai's view, consumption taxes are not something new to the Malaysian economy as service and sales taxes are currently imposed on taxable items. "Although there was short-term inflation in the prices of certain goods and services from countries that implemented the GST, the effects in Malaysia may be different. Unlike countries such as Singapore or Australia where GST was a new tax altogether, in Malaysia, GST is a replacement of the existing sales and service tax."

In February, the government also announced that up to 40 basic goods and services are tax-exempted from (or not subject to) GST. The supplies and services exempted from GST are basic necessities that include basic foodstuff such as rice and sugar, transportation systems, education services, healthcare services, toll highways and residential property. Contrary to the notion of a price hike, one may find that there may be price reductions for certain goods and services, which were previously subject to sales and service tax at 5% or more. "Before rushing into purchasing big-ticket items pre-GST, one must consider the effects of the existing sales and service tax," says Lai.

Currently, the service tax of 5% is imposed on services such as the provision of rooms for lodging, health services; professional and consultancy services provided by legal, engineering, surveyor, architectural, accounting, advertising, consultancy firms, insurance companies; motor vehicles service and repair centres; estate agents; parking space services; courier service firms, dentists, veterinary doctors, provision of accommodation and food by private hospitals and credit-card companies. On the other hand, tax on taxable goods subject to the single-stage sales tax varies, at 5%, 10% or 15%. For instance, certain non-essential foodstuff and building materials are taxed at 5% while cigarettes and liquor are taxed at 15%.

The manufacturer or distributor will pay the GST collected on its sales (also known as output tax) to the Royal Malaysian Customs, but only after deducting the GST the business has incurred on the purchase of goods and services as part of its operations (also known as the input tax).

Segaran illustrates the case of the purchase of car. "The 10% sales tax will not be there with the introduction of GST, which is at 4%. Generally, we expect car prices to go down, owing to the lower cost of production."

Even though an item is not subject to GST, however, the consumer may not have cause to celebrate. "The business will not have any input tax to set off against its output tax," says Segaran. This is because, as a registered GST business, you can actually claim input tax if you are providing standard rated goods, says Thang. If the input tax is greater than the output tax, the business can seek a refund from the Royal Malaysian Customs. The converse applies.

In the case of residential

properties, says Segaran, though they are exempted from GST, the property developers will still see input costs for building materials subject to GST. "End-consumers might end up paying GST on these inputs, as the property developer will not be able to claim input tax credit. In other words, although it sounds 'rosy' that there is exemption from GST for the particular product or good, for instance, in the case of residential properties, we think it is better to buy this big-ticket item now rather than wait," he says.

Datuk Kamariah Hussain's presentation at the Chartered Tax Institute of Malaysia's seminar on the GST on March 15 indicated that sectors that would see an increase in CPI include education, recreation and culture, health, and food and non-alcoholic beverages.

There is also the risk that businesses may increase prices because they think all costs of inputs have increased. Thus, business entities such as sole proprietors, partnerships and cooperatives have to execute action plans to get ready for GST compliance. "Some of the items that businesses need to be aware of are whether the goods and services that they produce are subject to GST; review their business model to see at which stage GST is imposed; GST registration requirements; ways to claim their input tax; and review whether the accounting system needs to be modified to cater to the introduction of the GST," notes Thang.

Basically, there will be a threshold on the sales turnover before an entity is required to be a registered GST business. "Industry players are saying that the minimum sales turnover is RM500,000 but the ultimate figures and items on GST will be determined after the second reading in Parliament," says Thang. ■

6. How do I claim work-related expenses and are allowances taxable?

THERE must be sufficient connection between the expenses and your work. For example, if you are a sales officer and you are required to travel to meet customers, travelling expenses such as taxi fares are considered work-related expenses. If you are a secretary who is desk-bound, you are not allowed to claim travelling expenses.

There are two ways to claim your work-related expenses, and it depends on your remuneration package. You can be given a fixed allowance to finance your expenses or you can incur the expenses before your company reimburses you upon your submission of receipts. "Generally, fixed allowances provided by an employer are viewed as taxable income while work-related expenses incurred that are reimbursed are generally not brought to tax at the hands of the employee if these expenses are incurred wholly and exclusively for the business," says Lai.

Thang illustrates: "Say, you went on an outstation trip and incurred expenses on accommodation, petrol and toll. You spent RM500 and your company reimburses you the sum. You do not 'earn' anything extra and there is no question of your being taxed. However, if your company gives you RM600, you should bring the difference of RM100 to tax because it is over and above what you spent."

When a fixed allowance is given, the amount is reported in your EA form. "You can actually claim the actual amount spent on official duties. Say, out of the travelling allowance of RM1,000, you actually

spent RM800. Effectively, you pay tax only on RM200," says Thang. However, you have to support the deductions with receipts and relevant documents, she says. "It is not easy but you have to keep a proper record system."

Take note that some benefits given to employees are tax-exempted effective from YA2008. For instance, you can claim exemption of up to RM6,000 per year for petrol card, petrol allowance or travel allowance and toll card for official duties. There are also some of the tax-exempted benefits that are not associated with work such as interest subsidies on loans totalling up to RM300,000 for housing, passenger motor vehicles and education. "When your employer decides to provide cash allowances as part of your remuneration package and if they are tax-exempt, it is your employer's responsibility to ensure that the allowance provided is reasonable and you, as the employee, are not required to show proof," says Pauline Tam, executive director of KPMG Tax Services Sdn Bhd.

Where you are given an allowance that exceeds the tax-exempted amount allowed, while the difference is taxable, you can still deduct the expenses incurred. In this case, you are required to show proof of the total amount incurred in the year. "For instance, you are given an annual RM7,000 in travel allowances for official duties. While you are only taxed on the difference, that is RM1,000, to make a deduction from your taxable allowance, you are required to keep supporting documents for expenses over and above the RM6,000 amount," says Lai. Thus, if your total expenses together with supporting documents show that you have spent RM 6,300 for travelling on official duties, only RM300 can be deducted from your taxable fixed allowance of RM1,000. ▪

7. What are the tax-efficient investments?

WE are currently using the single-tier tax system introduced in Budget 2008 to replace the imputation system. Under the new system, corporate income is taxed at the corporate level and this is a final tax. Companies may declare a single-tier exempt dividend that would be exempt from tax in the hands of their shareholders. Therefore, as a shareholder, you need not report the dividend income to the IRB. Nevertheless, not all companies go under the single-tier system; they might instead have imputation tax credits left, which they can use till 2013.

Depending on your tax rate, the tax system used by the companies you are invested in can give you the tax savings. "Under the imputation system, as long as your tax rate is below 25%, you can claim the tax credit on dividend received, which is the difference between 25% and your tax rate," says Thang. On the flip side, if you are a high-income earner with a tax rate of 26%, you benefit from receiving dividends from corporations taxed at 25% under the single-tier tax system, she says.

Real estate investment trusts (REITs), which own and manage property and pay out returns from rental and capital gains, are given a special tax treatment. "Unit holders enjoy a concessionary tax rate at 10% (from Jan 1, 2009 to Dec 31, 2011). This implies that tax of 10% is withheld, as opposed to normal dividends that suffer tax at 25%. From the tax point of view, it is more beneficial to invest in REITs than normal shares [under the single-tier system] at this point of time," says Thang. For example, when a REIT distributes RM10,000, the company withholds tax at 10%, thus, you receive a net of RM9,000. When listed companies make a profit of RM10,000, they have to pay tax at source of 25% and they end up distributing RM7,500 to you. Under the single-tier system, you don't bring this source to tax anymore. "From a tax perspective, before Dec 31, 2011, it seems more beneficial to invest in REITs than shares," says Thang.

Alternatively, you can look at investing in overseas stocks that have lower corporate tax. For instance, the overall company tax rate in Singapore is a flat 18%, which will be further reduced to 17% from this year. From the tax point of view, you gain 8% (25% minus 17%). "Being a foreign source of income, after tax implication in the country of origin, it will be tax-free when repatriated back to Malaysia," says Ang.

Richard Thornton, a chartered accountant and member of the Malaysian Institute of Accountants and a fellow of the Chartered Tax Institute of Malaysia, says funds under national bodies like Permodalan Nasional Bhd (PNB) usually offer some kind of tax exemption under statutory instruments. For example, the IRB states that dividends received from a unit trust approved by the Minister of Finance such as Amanah Saham Bumiputra are exempt from tax. "You could, in general, expect to receive a higher income (all other things being equal) from funds like Amanah Saham Bumiputra (ASB) and Amanah Saham Malaysia (ASM), compared with conventional unit trust funds."

Overall, Thornton, who stressed that "tax is a less important factor

8. How can I save for retirement and get some tax advantages?

IT is important to put money aside in a retirement plan. Once you get used to saving, you won't miss the amount put aside and it becomes easier to save even more. As an added bonus, you can get certain tax advantages too.

Take deferred annuity schemes, for example. They have returned to the limelight after the 2010 Budget announcement. Resident individuals are to get extra relief of RM1,000 for payments to deferred annuity premiums. "The change is to allow the RM6,000 Employee Provident Fund (EPF) limit to be exceeded by RM1,000 but only in respect of additional deferred annuity premiums," says Ang Weina, executive director and head of the global employer services group of Deloitte Malaysia's tax practice.

Thang explains that if you take up a new annuity scheme this year under which you pay a RM2,000 premium, you can claim an additional RM1,000 tax relief. "Say, you pay a tax rate of 25%, you are saving about RM250."

However, the tax consultants do see drawbacks in the scheme. "The nature of the deferred annuity policy is that it requires you to pay a lump sum to buy the policy," says Segaran. "Also, since it is insurance-based, the older you are, the more expensive it is to get the plan. Furthermore, we understand that it is not common among insurance agents to market this policy."

Here is the snag. Checks with the Life Insurance Association of Malaysia and its members indicate that no such product is being offered now. If it does become available, you still need to weigh several factors before purchasing one for its tax benefits, which include the net returns of the product vis-à-vis other products, although you can also factor in the tax savings. The earlier EPF annuity scheme that was suspended was priced on the basis that the insurance company would guarantee that the premiums invested would earn between 4% and 5% a year with a projected bonus of 2% a year.

The EPF is currently the bedrock of retirement savings for most Malaysians. The yearly dividends earned and withdrawals on the monthly compulsory contributions are tax-free. Note that the relief of up to RM6,000 a year includes EPF contributions, premiums for life insurance or deferred annuity policies and contributions relating to widow's and orphan's pensions.

Therefore, if you have not reached

the threshold of RM6,000, you can opt to increase your monthly EPF contribution or get new life insurance policies that can form part of your retirement savings, says Thang. "If you had reduced your EPF contribution to 8% from 11% last year to increase your disposable income and now you see that your cash flow is better, you can opt to increase the contribution rate." The reduction beginning last year was allowed under the stimulus package to boost economic growth.

You can also help your employer to optimise its tax deductions by contributing more to your retirement account (currently, the contribution rate is 12%). "Employers can actually get tax deductions of up to 19% from contributing to their employees' EPF account," says Segaran. "If cash is not required now, you can negotiate your package with your employer, where you increase your employer's contribution and compromise with a lower take-home pay." You also benefit in the sense that you are not taxed on this portion of income, he adds.

Nevertheless, by leaving most of your retirement savings in the EPF, you have less flexibility in managing your own retirement savings and you are essentially putting all your eggs into one basket. Some companies do offer private pension schemes for their loyal employees and there are also special tax rules for lump-sum payments on retirement. "Retirement gratuities paid at the retirement age of 55 can be tax-exempt provided you have been with the same employer for over 10 years," says Lai. This means that you have to stay with your employer from the age of 45. Thus, you have to take time to reassess and weigh your moves during this period. "Ultimately, it also depends on whether your employer provides such gratuities," adds Lai. ▪