

CPA Australia Ltd
ABN 64 008 392 452
Incorporated in Australia

Malaysia
200202000017
(994112-V)
Suite 10.01, Level 10
The Gardens South Tower
Mid Valley City
Lingkaran Syed Putra
59200 Kuala Lumpur

T +603 2267 3388
F +603 2287 3030
E my@cpaustralia.com.au

cpaustralia.com.au

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YB Dato' Seri Mohamed Azmin Ali
Senior Minister
Minister of International Trade & Industry
Level 30, MITI Tower,
No.7 Jalan Sultan Haji Ahmad Shah,
50480 Kuala Lumpur
Selangor, Malaysia

Dear Senior Minister,

MALYSIAMUDAH (#MYMUDAH) – REDUCING UNNECESSARY REGULATORY BURDEN TO SUPPORT ECONOMIC GROWTH

CPA Australia represents the diverse interests of more than 166,000 members working in 100 countries and regions around the world, including 10,500 members in Malaysia. On behalf of our members and in the broader public interest, we make this submission outlining suggestions to reduce unnecessary regulatory burden.

The COVID-19 pandemic made 2020 a very challenging year, and the environment remains highly uncertain. To assist the speed of recovery, we support the Government's increased focus on reducing unnecessary regulation and costs on business.

Such action should help improve business productivity, growth and competitiveness, assisting businesses to reset and recover. Also, it may result in more businesses being established in Malaysia by both locals and foreigners. Reducing such burden may contribute to higher rates of business success.

From our experience in Australia, we suggest the government consider both cutting existing unnecessary regulation and setting core principles that guide government on when to introduce new regulation. Possible examples of such principles include:

- government intervention in the operation of markets is avoided unless there is a significant risk of market failure or information asymmetry, taking into account the costs and benefits of introducing such regulation
- regulation should only be considered if there is significant evidence of a problem, and other potential remedies to the problem, such as education or better enforcement of existing regulations prove ineffective, and the proposed regulation is limited to specifically addressing the issue.

We expand upon our thoughts and experiences on reducing regulatory burden in the **Appendix**.

If you have any questions, please do not hesitate to contact Geeta Balakrishnan of our office at 012 590 4413 or via email on geeta.balakrishnan@cpaustralia.com.au.

Yours sincerely,

Priya Terumalay FCPA (Aust.)
Country Head – Malaysia

Dr. Gary Pflugrath CPA (Aust.)
Executive General Manager,
Policy & Advocacy

APPENDIX

1. Over-regulation of the public service leads to over-regulation

A major observation from Australia is that overly complex internal processes within regulators can lead to over-regulation, increased burden and uncertainty in the entities they regulate.

While oversight is fundamental to an accountable public service and therefore good administration, striking the right balance between too much and too little oversight is challenging. The risks of too little oversight are well documented. However, too much oversight can also impede the effective operation of the public service by diverting resources away from policy development and service delivery, and resulting in a disproportionate focus on process over outcomes.

2. Under-investment in technology by government agencies can lead to unnecessary regulatory burden

We have observed in Australia that regulatory burdens may emerge where the technology government agencies use is not up to date with the technology typically used within business. A common outcome of this is a requirement to lodge paper forms where the information is readily available from business in digital form.

3. Embedding commitments to reducing red tape into key performance indicators

We support the Government's explicit commitment to reduce regulatory requirements by 25 per cent in each ministry. As was done in Australia, we suggest that this target could be incorporated into the key performance indicators of government agencies, ministries and their chief executives (or equivalent) if not already the case. Increasing the accountability of senior public servants towards reducing regulatory burden may help achieve this target.

In Australia, we have observed that improvements in public administration can stem from making senior public servants accountable for removing overly prescriptive, process driven approaches to regulation.

4. Improving public consultation

The Government and the public service should in almost all circumstances engage in public consultation on new policy and administrative proposals where this is not already the case. Our experience in Australia is that the best policy outcomes are achieved when policy, from its earliest stages of development, is informed by thorough consultation with stakeholders, including business.

A key objective of such consultation should be to test whether the regulatory requirements being proposed can be easily implemented by business and whether there are other more efficient approaches that achieve the same desired outcome.

5. Standardise the administration of regulations across different agency offices, locations etc.

A good example of the need to standardise the application of the law is the administration of customs and other indirect tax matters. While there is one law, administration and interpretation of that law appears to differ between stations. The different approaches to the administration and interpretation of the same law adds to the compliance burden for businesses operating across Malaysia. It also creates opportunities for regulatory arbitrage, allowing businesses to "shop around" for the most favourable outcome.

Having a standardised administration of the law would not only reduce regulatory burden on business but also could reduce revenue collection costs for government.

6. Improving the policy creation process

Our experience in Australia is high compliance costs often stem from poor policy design. We see examples of policy announcements without adequate evidence supporting the need for such policy. Improvements in the policy creation process can be achieved through the development and implementation of robust methodologies to test the necessity and efficacy of all

new policy ideas before they are publicly released. Such a “necessity test” would reduce uncertainty and the negative impacts that unnecessary policy has on business and government.

Such a process could involve subjecting policy ideas to several key tests. If the idea “passes” those tests, the policy proposal should be announced publicly. These tests could include:

- What is the problem the proposed policy is seeking to address?
- Is there evidence that the problem exists and that it is a significant issue?
- Is there evidence that existing regulation fails to address the problem?
- Is there evidence that non-regulatory approaches, such as education or better enforcement of the current law has failed or is likely to fail to address the problem?
- What is the objective of the proposed policy?
- Does the proposed policy response specifically target the problem and has no unintended consequences?

Confidential external consultations should form a critical part of such testing.

7. Improving the regulatory design process

Once a policy idea passes the “necessity test”, those who design the policy should examine the cumulative impact of the proposed regulation on those being regulated and its impact on Malaysia’s international competitiveness. Such analysis should be released publicly as part of the consultation process.

We have found in Australia that while a policy proposal in isolation may pass this proposed necessity test, it may add a significant burden to an already heavily regulated industry, impacting the effectiveness of the regulation (as the industry may struggle to implement it) and the competitiveness of the industry.

8. Set up a single platform for all government public consultations

Having a single public platform that lists all public consultations by all government agencies will support government efforts to improve transparency and public engagement by making consultations easier to find and contribute to, leading to better policy development and implementation.

A dedicated, purpose built, consultation webpage for all government public consultations is common practice in most OECD countries. Australia’s public consultation [webpage](#) has improved the consultation experience, reduced barriers to engagement and increased the likelihood of government agencies receiving useful responses.

Submissions from various stakeholders and the outcomes of consultations could also be communicated to the public via the one public consultations platform.

9. Benchmarking Malaysia’s policy and regulatory performance

The Government should, when benchmarking Malaysia’s regulatory/deregulatory performance and policies, benchmark against similar common law jurisdictions such as Singapore, Hong Kong, New Zealand and Australia, which rank in the top 10 of the 2020 Index of Economic Freedom¹, as well as emerging economies such as Indonesia, Thailand, Vietnam, India and the Philippines.

10. Excluding small business from regulation

Reducing the regulatory burden on small businesses can facilitate their greater participation in the formal economy, help improve their productivity and competitiveness, as well as enhance their involvement in and benefits from a globally integrated economy². It should be noted that the proportion of resources they divert to administrative functions is usually greater than for larger firms³.

The Government should, in designing new policy and in reviewing existing policy, make greater use of *de minimus* thresholds to exclude, where appropriate, small business from a piece of regulation. In doing so, the government must consider the problem being addressed and the objective of the proposed policy response. Where it is thought appropriate to include small business in a regulatory regime, the government agency responsible should make greater use of safe harbours, where appropriate, to reduce the administrative burden of regulation on business while still achieving the objectives the regulation.

¹ <https://www.heritage.org/index/ranking?version=38>

² <https://www.oecd.org/cfe/smes/ministerial/documents/2018-SME-Ministerial-Conference-Parallel-Session-1.pdf>

³ OECD (2017), Small, Medium, Strong. Trends in SME Performance and Business Conditions, OECD Publishing, Paris

11. Review areas of law or regulation of greatest disputation and litigation

We suggest that a review of the areas of law most likely to result in disputation or litigation between ministries and government agencies, and the businesses they regulate, or between businesses be undertaken. If it is the legislation triggering the litigation, such legislation should be reviewed to see if it can be amended or clarified to reduce disputation. For instance, the interpretation of taxable services under the Service Tax Act 2018.

12. Tax and reducing the compliance burden

CPA Australia believes that a range of tax measures should be implemented which lessen the compliance burden the tax system imposes on all businesses whilst maintaining a robust tax system. In particular, the compliance load borne by businesses could be significantly alleviated by the enactment of clearer rules and/or definitions in the Sales Tax and Service Tax rules (for instance), as well as the standardisation and formalisation of eligibility conditions for relief and exemption facilities under the indirect tax laws.

We recommend that the Economic Action Council work with the Ministry of Finance, the Royal Malaysian Customs Department and the Inland Revenue Board, as well as the Ministry for Trade and Industry, to identify areas in the tax system that impose unnecessary compliance burdens and develop swift plans to lessen/remove those burdens. The focus should be on facilitating business activities and transaction flows which boost business productivity, economic growth and the country's international competitiveness.