

Ministerial Power To Exempt Tax: Balancing Authority & Accountability

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Taxation funds public services and development, but governments may grant exemptions to spur growth or support key sectors. When such powers rest with the Minister of Finance, concerns arise over transparency, accountability, and potential misuse.

Legal Framework And Ministerial Authority

In many countries, finance ministers can grant tax exemptions to individuals, corporations, or industries under specific conditions, usually through ministerial orders or executive decisions. While this allows economic flexibility, safeguards are needed to prevent abuse. For example, Malaysia's Income Tax Act 1967 gives the finance minister this power, but with a need for fiscal responsibility. In the U.S., exemptions require congressional or executive action; in the U.K., they are proposed by the Chancellor and approved by Parliament; and in Canada, they face legislative oversight. Some countries use independent bodies to oversee exemptions, but where institutions are weak, broad discretion can lead to favouritism, poor accountability, and revenue losses.

Justifications For Ministerial Tax Exemptions

Tax exemptions are used for economic, social, or crisis-related goals to promote growth. They attract investment, create jobs, and support entrepreneurship, especially in export and manufacturing sectors of developing countries. They also aid social welfare by helping low-income groups, non-profits, and educational institutions, enhancing community development and access to services.

In times of crisis, such as COVID-19, exemptions ease financial pressure on industries and workers. They can also improve tax compliance through amnesty programs that encourage disclosure of undeclared income. Sector-specific incentives support growth in renewable energy, R&D, technology, agriculture, and special economic zones, driving investment and exports.

Challenges And Concerns

While tax exemptions offer benefits, they also raise concerns over governance, transparency, and fairness. Many are granted without public input or oversight, making it hard to assess their fiscal impact or effectiveness.

Discretionary exemptions risk abuse, favouring politically connected entities, especially in weak regulatory environments. Stronger transparency and oversight are essential to prevent misuse. Moreover, excessive exemptions can strain public finances, widen inequality, and shift tax burdens, particularly when large corporations benefit over small businesses.

Courts may intervene when exemptions violate legal limits or principles of fairness, highlighting the need for sound policies. Finally, poorly designed exemptions can distort markets, reduce competition, and deter investment. Transparent, consistent tax systems help avoid these risks.

Key Judicial Decisions On Ministerial Tax Exemption Powers

Several key judicial decisions have clarified the limits and responsibilities of the MOF's discretion to grant or revoke tax exemptions under Malaysian law.

Kidurong Power Generation Sdn Bhd v Minister of Finance (2022) MSTC ¶30-525

Kidurong Power Generation, operator of gas turbine plants in Sarawak, was granted Approved Service Project (ASP) status and investment allowances under Schedule 7B of the Income Tax Act (ITA) in 2017, leading to over RM3 billion in investment. The 2018 Finance Act later imposed a 7-year cap on carrying forward such allowances. Kidurong's application to retain the original terms under section 127(3A) ITA was rejected, prompting judicial review.

The High Court ruled for Kidurong, holding that once granted, tax benefits become vested rights that cannot be unilaterally altered without sufficient justification. The Court ordered the Minister to honor the original 2017 approval, allowing use of the allowances beyond the 7-year cap.

Balingian Sdn Bhd v Minister of Finance Malaysia (2022) MSTC ¶30-527

A similar issue arose in the Balingian case, where the taxpayer, approved for tax incentives in 2016, sought to claim RM3.3 billion in investment allowances beyond the new 7-year limit introduced in 2018.

The High Court ruled for the taxpayer, holding that the Minister was bound by the original approval and setting aside the refusal. The Court affirmed the taxpayer's right to carry forward the allowances indefinitely, emphasizing that retrospective changes to substantive rights require justification and procedural fairness.

Baleh Hydro Power Sdn Bhd v Minister of Finance Malaysia (unreported)

In the Baleh Hydro Power case, the taxpayer's application for investment allowances under the 2006 Exemption Order and section 14(2) of the Customs Act was rejected without reasons, despite the RM10.9 billion project satisfying all statutory criteria.

The High Court held the rejection unlawful, emphasising that decisions on significant investments must be reasoned and consistent with the law. It directed the Minister to apply the 2006 Exemption Order and grant the investment allowance accordingly.

Ensuring Accountability And Good Governance

To mitigate risks from ministerial tax exemptions, governments should establish clear legal frameworks aligned with policy goals and fiscal stability. Independent reviews and judicial oversight enhance accountability and prevent misuse.

Parliamentary scrutiny is essential, requiring ministers to justify exemptions with financial assessments and public reporting. Independent tax bodies can evaluate, advise, and support sustainable policy. Periodic reviews ensure outdated exemptions are phased out in line with global standards.

Conclusion

The ministerial power to grant tax exemptions is a powerful tool for promoting growth, social welfare, and crisis relief. However, without safeguards, it risks misuse and undermines transparency, fairness, and efficiency. Balancing authority with accountability through clear laws, transparency, and strong oversight ensures exemptions serve the public good while maintaining fiscal discipline and sustainable growth.

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