

Tax malfeasance of high net-worth individuals in Malaysia: tax audited cases

High net-worth individuals in Malaysia

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Abstract

Purpose – This paper aims to analyse the profiles of high net-worth individuals (HNWIs) who were caught for tax malfeasance during a tax audit and to examine factors that influence tax malfeasance among HNWIs in Malaysia.

Design/methodology/approach – This paper examined 235 HNWIs who were involved in tax malfeasance after audited by the Inland Revenue Board Malaysia from year 2009 to 2013. A research model was developed to examine the influence of four independent variables which are tax rate, level of income, source of income and taxation performed by tax professionals on tax malfeasance.

Findings – Multiple regression was used to test the proposed research model. The findings show that source of income and taxation performed by tax professionals influence tax malfeasance among HNWIs in Malaysia. This study also uncovers no significant relationship between tax rate and level of income with tax malfeasance of HNWIs.

Originality/value – This study could be the first in Malaysia that has used actual audited data in examining tax malfeasance among HNWIs. This study provides important insights not only to the Malaysian tax authorities but also to tax authorities and tax researchers in other parts of the world, given the fact that tax malfeasance of HNWIs is a prevalent and universal problem.

Keywords Tax audited cases, High net-worth individuals, Tax malfeasance

Paper type Research paper

1. Introduction

The tax malfeasance issue among high net-worth individuals (HNWIs) is a major concern for tax authorities and governments around the world. According to [Organisation for Economic Co-operation and Development \(OECD\) \(2009\)](#), HNWIs pose significant challenges to their tax administration because of the complexity of their tax affairs, their revenue contribution, their opportunity for aggressive tax planning and the impact of compliance behaviour on the integrity of the tax system. With the existence of tax havens and offshore financial centres, tax malfeasance among HNWIs surged significantly. The tax scandals exposed by Luxembourg and the Panama Papers cases has caused great concerns for the tax authorities. The prevalence of tax malfeasance among HNWIs has significantly affected tax revenue collection, economic and social developments and widen the tax gap between



the rich and the poor. Hence, there is a growing need to deter tax malfeasance among HNWI's and to uncover the determinants of tax malfeasance.

Likewise, Malaysia has also encountered similar issues of tax malfeasance among HNWI's. In 2015, the US-based Global Financial Integrity reported the total amount of illegal capital outflow is approximately US\$418.5bn from the period 2004 to 2013. These outflow funds are from tax malfeasance, corruption and other illegal activities (Kar and Spanjers, 2015). According to Knight Frank's 10th Edition of The Wealth Report 2016, the number of Malaysia's super rich looking for a new country outside Malaysia to live is 26.3 per cent and have migrated and moved their investments overseas (The Star, 2016). In addition, a few incidences have shown that HNWI's have failed to meet tax obligations. Recently, a group of Malaysian medical specialists who are HNWI's were reported to be involved in a tax minimization scheme. They received hefty contracts from hospitals to provide medical services; however, these doctors set up firms and claimed all deductible expenses under their firms rather than their personal income tax, even though the contracts were under their names and not in the name of their firms (Shukry and Ramlan, 2016). These HNWI's have committed serious tax offences that had somewhat affected the national tax collection and are bad examples.

This study has adopted the Organisation for Economic Co-operation and Development (OECD)'s (2013) definition for HNWI's, where HNWI's are individual taxpayers with a chargeable income of RM 1m or more or have assets worth RM 5m or both income and assets totalling RM 5m or more. HNWI's may represent a small percentage of the total population, but they contribute a large portion of income tax, and their complex tax affairs require extra attention from tax authorities. The statistics obtained from the Inland Revenue Board of Malaysia (IRBM) show that although HNWI's comprised only 0.32 per cent (total of HNWI's divided by the total of individual taxpayers), they contributed 11.95 per cent of the total collection in 2013 of total ordinary individual taxpayers (Table I).

Except for the few cases reported in the news, there is little empirical study on tax malfeasance among HNWI's in Malaysia at the time of this study. The tax scandals revealed by Luxembourg and Panama Papers plus tax fraud cases in Malaysia gave rise to the general concerns on how to deter tax malfeasance of HNWI's and what are the determinants influence tax malfeasance of HNWI's in Malaysia. The research objectives are to profile HNWI's in Malaysia who have been involved in tax malfeasance based on audited cases and to examine the determinants that influence tax malfeasance among them.

2. Literature review and hypothesis development

Richardson *et al.* (2014) view tax malfeasance to include both tax avoidance (social wrong) and evasion (criminal act). Russell and Brock (2015) argued that tax malfeasance also can

Year assessment	Total individuals tax collection (RM bn)	Total HNWI's tax collection (RM bn)	Total contribution (%)
2009	15.57	1.43	9.18
2010	17.80	1.68	9.44
2011	19.38	2.24	11.56
2012	22.96	2.38	10.37
2013	24.91	2.94	11.95

Table I.
HNWI's tax
contribution in
Malaysia

Source: Annual Report Inland Revenue Board of Malaysia (IRBM) 2009 to 2013 and statistic from Tax Operational Department

prohibit innovative tax avoidance schemes or creative accounting techniques that remain within the letter of the law only by exploiting legislative technicalities that policymakers have yet to anticipate (p. 2). A plethora of tax research that examine individual taxpayers' behaviour has identified a large number of determinants of tax malfeasance. However, studies on tax malfeasance among HNWI are scarce. Worldwide, there are only a few studies on tax malfeasance of HNWI (Braithwaite *et al.*, 2002; Piketty and Saez, 2012; Zucman, 2014). At the time of study, little has been published on tax malfeasance in Malaysia.

Notably, there are two main schools of thought, one based on the economic theory and the other on behavioural theory. Both theories have attempted to explain the reasons for tax malfeasance. The first theoretical approach explains the problems of tax malfeasance and is the extension of Becker's (1968) economics of crime model, which frames the decision to evade tax as a choice under risk. The tax compliance theory suggested by Allingham and Sandmo (1972) is also known as the economic deterrence theory, which is considered to be the main approach to discuss tax malfeasance, using the tools of probability of detection and penalties (Allingham and Sandmo, 1972; Becker, 1968; Fischer *et al.*, 1992; Graetz *et al.*, 1986). Based on the expected utility theory, Allingham and Sandmo (1972) argued that taxpayers will decide to dodge paying tax when the expected benefits exceed the cost of tax evasion. This economic deterrence model has become a prominent approach in examining taxpayers' compliance behaviour (Alm and McKee, 2004; Sapiei and Kasipillai, 2013).

However, many researchers have claimed that economic determinants alone do not explain taxpayers' behaviour adequately when probability of detection is low. As such, Fischer *et al.* (1992) adapted Jackson and Milliron's (1986) study and built a model that incorporated economical, sociological and psychological factors. This attests that tax compliance requires complex considerations. Hasseldine and Bebbington (1991) and James and Alley (2002) suggest to further understand the uniqueness of taxpayers' behaviour, socio-psychological factors and fiscal psychological approach have to be studied together with the economic deterrence factors.

In Malaysia, there are several studies that examined tax compliance among individuals; Hai and See (2011), Kasipillai and Abdul Jabbar (2006), Loo *et al.* (2009), Sia *et al.* (2008) and Al-Mamun *et al.* (2014) to name a few. The focus of these studies is the effects of the attitudes and behavior of the Malaysian taxpayers. To have a comprehensive view of tax compliance behaviour and taxation of HNWI in Malaysia, this study examines the determinants of tax malfeasance among HNWI. These determinants are discussed next.

2.1 Tax rate

Based on Allingham and Sandmo's (1972) model, no clear hypotheses were formed on tax rate and tax compliance. Empirical studies provide the evidence that tax rate plays a role in influencing tax behaviour; a higher tax rate would lead to the increase in tax malfeasance (Clotfelter, 1983; Witte and Woodbury, 1985), especially in the case among higher income earners (Ali *et al.*, 2001). In contrast, it is worth noting here that Yitzhaki (1974) argues that an increase in tax rate encourages individuals to declare more income.

A higher tax rate will lead to a higher level of tax malfeasance is a common finding when examining the relationship between tax rate and tax malfeasance (Ahangar *et al.*, 2011). Obid (2004) explains that taxpayers have to pay a higher tax in relation to a higher income. An increase in tax rate will definitely reduce disposable income. With the decrease in risk and perceived lower probability of detection, taxpayers are likely to evade tax if the margin between penalties is lower than the benefits derived from non-compliance [Barbuta-Misu, 2011; Organisation for Economic Co-operation and Development (OECD), 2013]. Therefore,

to maximize their financial self-interest, it could be more cost-effective for taxpayers to engage in tax malfeasance. However, there are a few studies that show that tax rate does not influence tax malfeasance (Kirchgässner, 2011; Kirchler *et al.*, 2008).

In Malaysia, effective from year of assessment 2016, an individual tax resident with a chargeable income of more than RM 1m will be taxed at the highest rate of 28 per cent. At the time of study, there was no special tax rate for HNWI's in this country. Therefore, this study attempts to test whether there is a relationship between tax rate and tax malfeasance. *H1* is formulated as follows:

H1. There is a positive relationship between tax rate and tax malfeasance among HNWI's.

2.2 Level of income

The income level of taxpayers does play a crucial role in taxation. However, the effective predictors of income level based on the standard economic model are unclear. Allingham and Sandmo (1972) hypothesized that tax non-compliance is linked to a higher gross income. Several studies using archival-empirical and experimental analysis found mixed results for the relationship between income level and tax compliance (Kirchler, 2007; Kirchler, *et al.*, 2007). In Korea, Park and Hyun (2003) arrived at the same conclusion where they found no relationship between the income level and tax malfeasance.

However, there are several studies that show a positive relationship between the level of income and tax malfeasance (Clotfelter, 1983; Dubin, *et al.*, 1990; Alm, *et al.*, 1992; Ali, *et al.*, 2001; Alm and McKee, 2006). The effect being more marked in the case of high income earners, particularly when there is an opportunity to evade tax. It is believed that when people become rich, they are more willing to engage in risky activities (Sandmo, 2005).

A Malaysian researcher Abdul (2001) discovered that when distributional income is not fair, HNWI's tend to evade tax because they feel that they are not being treated fairly or equally by the tax system. This study has evidenced that the level of income has significant impact on tax compliance. As such, *H2* is formulated as follows:

H2. There is a positive relationship between the level of income and tax malfeasance among HNWI's.

2.3 Source of income

A source of income refers to a type or nature of an income item (Jackson and Milliron, 1986). In the UK, the indirect approach developed by Pissarides and Weber (1989) confirms that there is a relationship between self-employed income earners and high non-compliance (Slemrod, 2007).

Johansson (2000) uses the expenditure-based approach developed by Pissarides and Weber (1989) to estimate the extent of underreporting of income by the self-employed in Finland. This study found that the larger a household's share of income from self-employment, the greater the chances of income being underreported. The available empirical studies generally support the basic hypothesis that those who are self-employed tend to underreport their income compared to wage earners.

Engström and Holmlund (2009) used data from the Swedish Household Budget Survey from 1999 to 2001, 2003 and 2004 to examine the extent of underreporting of income among self-employed individuals. This study shows that these individuals have arguably greater opportunities than wage earners to underreport their income. They estimated that households with at least one self-employed member underreported their total income by around 30 per cent. In New Zealand, by using the thematic analysis on interview data,

Natrah (2012) found that participants generally believe that the source of income partly contributes to taxpayers' non-compliance behaviour. Therefore, when studying tax malfeasance among HNWI, it is important to distinguish between different types of income. As such, *H3* is formulated as follows:

H3. Tax malfeasance among HNWI depends on source of income.

2.4 Taxation services performed by tax professionals

An area of concern for tax authorities is the influence of tax professionals in income tax reporting. Tax professionals are tax practitioners, tax advisers, tax preparers, tax agents, tax accountants, tax intermediaries and tax lawyers (Devos, 2012; Frecknall-Hughes and Moizer, 2015). Based on the econometric model, Klepper *et al.* (1991) empirically tested the influence of tax practitioners on tax compliance and discovered that when tax laws are ambiguous, tax practitioners are exploiters, but when tax laws are not ambiguous, tax practitioners are enforcers. Erard (1993) found that taxpayers who have received advice, predominantly from certified public accountants and tax lawyers, have a higher level of tax malfeasance. Sakurai and Braithwaite (2003) found that the minority of the Australian taxpayers perceive their tax professionals to be creative aggressive tax planners, engaging with caution in tax planning and tax mitigation. Whereas, the majority believe that their tax professionals are honest and risk adverse. In essence, it is a well-known fact that HNWI engage professional tax advisors, who know how to navigate the ambiguities in tax law (Blumenthal and Christian, 2001). HNWI are more likely to receive advice from expert tax professionals because of their wider range of income sources, structures under their control and international features that provide a greater opportunity for aggressive tax planning.

Damjanovic and Ulph (2010) note that there is an imperfect competitive industry that is dominated by a relatively small group of large players. For example, in 2010, the Big 4 accounting firms in the UK, namely, KPMG, Ernst & Young, Pricewaterhouse Coopers and Deloitte often face criticism for providing tax shelter schemes to HNWI and business corporations. Alleurope (2015) states that there is a need to pay particular attention to the harm caused by tax competition and the role of enablers (tax power brokers) especially the Big 4 accounting firms, as they have the ability to develop avoidance or evasion schemes on behalf of their wealthy and powerful clients. It has also been discovered that tax competition between practitioners could escalate harmful tax practice. As such, *H4* is formulated as follows:

H4. There is a positive relationship between HNWI who hired tax professionals and tax malfeasance.

3. Research model

Based on the literature review, the research model is developed and presented as follows. The model is designed to explore the extent of the relationship between the independent variables (tax rate, level of income, source of income and taxation performed by tax professionals) and the dependent variable (tax malfeasance). (Figure 1)

The research model is presented as a multiple regression model:

$$\begin{aligned} \text{Tax Malfeasance} = & \alpha + \beta_1 \text{Tax Rate} + \beta_2 \text{Level of Income} + \beta_3 \text{Source of Income} \\ & + \beta_4 \text{Taxation Performed by Tax Professionals} + \varepsilon \end{aligned}$$

whereby, α is the intercept, β is the multiple regression coefficient and ε is an error term.

3.1 Research method

This study uses archival tax data obtained from the IRBM to examine tax malfeasance among HNWI in Malaysia. In doing so, actual amount of underreporting of income can be examined. From year 2009 to 2013, the IRBM had audited and finalized a total of 511 cases related to HNWI. All these HNWI had chargeable income of RM 1m or more. A preliminary screening found 192 HNWI were compliant with no tax adjustments after tax audit; hence, they were excluded from the data analysis. There were 319 tax malfeasance cases detected in tax malfeasance. In turn, univariate and multivariate detection methods were used to examine the outliers; as a result, 84 outliers were detected and excluded. Thus, 235 usable HNWI cases were analysed.

3.2 The research variables

This study examines tax malfeasance among HNWI based on the actual tax audit findings. Tax malfeasance is measured by under-declared income over actual income. Based on the Organisation for Economic Co-operation and Development (OECD)'s (2013) definition, chargeable income is used as a proxy for declared income. Actual income is defined as the total of under-declared income plus total declared income. Tax audit adjustment is used as a proxy for under-declared income. Tax audit adjustments are additional taxes imposed on HNWI after a tax audit due to tax malfeasance activities, either under-declared income or over claiming/deducting purchases, expenses or relief and hidden income to minimize tax liability.

The first independent variable is tax rate. Tax rate imposed used in this study are according to the particular year from 2009 to 2013. The second independent variable is the level of income. The level of income for HNWI is based on their chargeable income reported on their tax return form. The third independent variable which is source of income are classified into three categories, namely, business income, employment income and other income. While, HNWI who earn any other income besides business and employment income as stated in Section 4(c) through Section 4(f) Income Tax Act 1967 are classified as other income earners. The last independent variable is HNWI who hired tax professionals to perform their tax return. The dummy variable 1 indicates that HNWI hired tax professionals or 0 if they did not. A summary of each variable is presented in Table II.

4. The findings

The findings are presented in Sections 4.1 and 4.2.

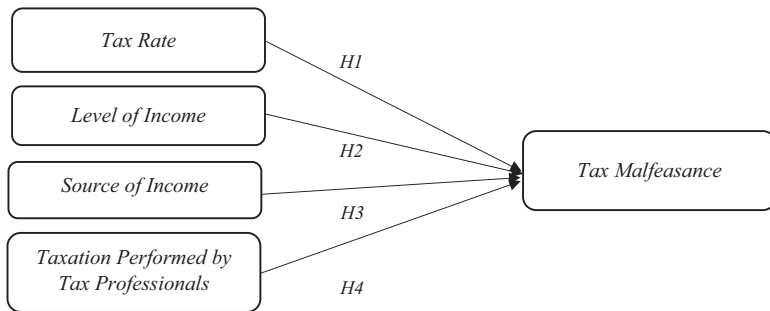


Figure 1. Research model of HNWI tax malfeasance

Table II.
Descriptive of
variables

No.	Variables	Role	Measurement type	Description
1	<i>Log tax malfeasance</i>	Dependent	Ratio	Natural logarithm of total under-reported income over actual income
2	<i>Tax rate</i>	Independent	Ratio	Tax rate
3	<i>Income level</i>	Independent	Ratio	Natural logarithm of total chargeable income
4	<i>Source of income</i>	Independent	Nominal	Source of income: 1: Business income 2: Employment income 3: Other income
5	<i>Taxation performed by tax professional</i>	Independent	Nominal	Taxation performed by tax professional: 1: Yes 0: No

4.1 The profiles of high net-worth individuals

In this study, the profiles of the 235 HNWI engaged in tax malfeasance (tax dodgers) are presented in Table III. Notably, 40 per cent are aged 56 and above, and they make up the larger percentage of those involved in tax malfeasance and followed by HNWI aged 46 to 55 (34.9 per cent). It is important to segment HNWI into different age categories, as they need time to create and accumulate their wealth. This study found that the majority who tend to engage in tax malfeasance (89.4 per cent) are males and married (92.8 per cent) as compared to females (10.6 per cent) and singles (7.2 per cent). Most HNWI (33.6 per cent) have business income and 55.3 per cent of HNWI receive employment income. Only 11.1 per cent of HNWI have other income such as interest, dividend, rental and commission.

As for the level of income, 91.1 per cent of the HNWI were individuals with a total income between RM 1m and RM 3m. Only 1.7 per cent of HNWI declared total income of more than RM 5m. With regards to penalty rate imposed, the majority (74.9 per cent) of HNWI were imposed a penalty of 45 per cent. This rate is the standard penalty rate that is commonly imposed during tax audit. Only 25.1 per cent of HNWI were charged with a lower penalty rate of less than 45 per cent. Under the [Income Tax Act, 1967](#), if a person fails to furnish a return of income, the Director General has the power under section 112(3) to impose a penalty at the rate of treble (300 per cent), the amount of tax charged. In the case of incorrect information that leads to omission and understatement of income, the rate of penalty under section 113(2) is 100 per cent or equal to the amount of tax undercharged. However, in practice, as stated in the tax audit framework (IRBM, 2015), the Director General would only impose a penalty of 45 per cent on the tax undercharged and not the maximum rate as stipulated in the law. The reasons for the imposition of a reduced penalty rate vary, among others are consideration given to full cooperation provided by taxpayers during the audit process or full disclosure of information or documents made prior to the audit.

This study shows that 45.1 per cent of the HNWI hired tax professionals to handle their tax affairs; however, the remainder of 54.9 per cent did not disclose if they did so. This study also found that during this period, the effective tax rate for HNWI in Malaysia was 23.11 per cent, and after the tax audit adjustments, the effective tax rate went up to 25.12 per cent.

Several issues and findings were discovered by the IRBM during the audit activities from 2009 to 2013. The most frequently used strategies by HNWI were to underreport other income (67.7 per cent), over-claim of relief (15.3 per cent), over-claim of purchases (7.2 per cent), underreport their tax liability involving underreport of sales/income (6.8 per cent) and

JFC 25,1	Variables	Frequency (N)	(%)
	<i>Gender</i>		
	Male	210	89.4
	Female	25	10.6
162	<i>Age</i>		
	Below 35	3	1.3
	36-45	56	23.8
	46-55	82	34.9
	56 and above	94	40.0
	<i>Marital status</i>		
	Single	17	7.2
	Married	218	92.8
	<i>Source of income</i>		
	Business income	79	33.6
	Employment income	130	55.3
	Others income	26	11.1
	<i>Total income reported</i>		
	Between RM 1,000,000 and RM 3,000,000	214	91.1
	Between RM 3,000,001 and RM 5,000,000	17	7.2
	Above RM 5,000,000	4	1.7
	<i>Penalty rate</i>		
	Below 45%	59	25.1
	45%	176	74.9
	<i>Hired professional tax advisor</i>		
	Yes	106	45.1
	No	129	54.9
Table III. Profiles of HNWI	Effective tax rate/average tax rate		23.11
	Revised effective tax rate		25.12

claim unallowable expenses (3 per cent). The findings show that most of HNWI who were involved in tax malfeasance did not report their other income which could be their secondary income or other illegal income.

4.2 The result of multiple regression analysis

This study uses multiple regression analysis to test the relationship between independent variables and dependent variable. Multiple regression was carried out using tax malfeasance as the dependent variables, and the formula is depicted as follows:

$$\begin{aligned} \text{Log (Tax Malfeasance)} = & \alpha + \beta_1 \text{ Tax Rate} + \beta_2 \text{ Level of Income} + \beta_3 \text{ Business Income} \\ & + \beta_4 \text{ Employment Income} + \beta_5 \text{ Other Income} \\ & + \beta_6 \text{ Tax Professionals} + \varepsilon \end{aligned}$$

The result is shown in [Table IV](#).

H1 proposes a positive relationship between tax rate and tax malfeasance among HNWI. However, the multiple regression result shows that *H1* is not supported. The

Table IV.
Multiple regression
results

Variables	Standardized coefficient β Criterion variable Log tax malfeasance (Log underreported income/actual income)
Intercept	6.957
Business income	1.268***
Employment income	0.294
Other income	0.170
Tax professionals	0.543**
Tax rate	0.062
Level of income	-0.399
F-value	8.888
R ²	0.305

Notes: ** $p < 0.05$; *** $p < 0.01$

tax rate is measured by tax rate imposed based on a yearly basis. This study fails to supported *H1* but is rather consistent with the findings by Kirchgässner (2011) and Kirchner *et al.* (2008) which concluded that tax rate does not influence tax malfeasance. From a theoretical point of view, the relationship between tax rate and tax malfeasance is still ambiguous. It could be concluded that the majority of HNWI's will pay tax notwithstanding the rate that is imposed under the existing law. Nonetheless, HNWI's have opportunities to take the risk of engaging in aggressive tax planning activity when tax rate is high. They may shift their income or wealth to low or no tax jurisdictions to minimize their taxable income. Therefore, tax rate alone may not be the only determinant influencing their decision to evade tax.

H2 proposes a positive relationship between the level of income and tax malfeasance among HNWI's in Malaysia. This study predicted that the level of income would have a relationship with tax malfeasance but found insignificant relationship between the two. This study is consistent with Feinstein (1991), who compared data from TCMP for the year 1985 and 1982 and found that there is no significance relationship between level of income and tax malfeasance. The result shows that nowadays HNWI's have the ability and capability to plan their tax liability.

In turn, this study found a strong relationship effect between the source of income and tax malfeasance of HNWI's which supports *H3*. This study shows that HNWI's with business income ($\beta = 0.305$, $t = 0.495$, $p > 0.05$) are less compliant than employment income earners. This study is consistent with the findings of Engström and Holmlund (2009), Slemrod (2007) and Hashimzade *et al.* (2014), where the results from their research show that opportunity for tax malfeasance are based on source of income. HNWI's with business income have greater tendencies to structure their taxable income to minimize their tax payable.

As for the influence of tax professionals on tax malfeasance, this study found that there is a significant relationship between the influence of the tax professionals and tax malfeasance ($\beta = 0.138$, $t = 0.495$, $p > 0.05$); hence, *H4* is supported. This study is consistent with the findings Walpole and Salter (2014) who examined the role of tax professionals in Australia and found that tax intermediaries do play a critical role in tax compliance. Russell and Brock (2015) examine the main reasons for the existence of abusive tax avoidance and argue that tax professionals (e.g. lawyers, accountants and financial advisors) do contribute to abusive tax avoidance.

R^2 appears to be low (30.5 per cent), but when compared to other studies, for example, with Mohd Yusof *et al.* (2014) and Yuzaimi (2014) who examined tax malfeasance of SMCs and corporations in Malaysia by using archival tax audit data, R^2 is acceptable.

5. Conclusion

The analysis of archival tax-audited cases related to HNWI's indicate that the most significant predictors of tax malfeasance among them are source of income and taxation performed by tax professionals. Generally, HNWI's would not jeopardize or risk their reputation because of the need to pay a higher tax as compared to other taxpayers. HNWI's may be more concerned with how the money is spent by the government and their returns in paying high taxes.

Furthermore, progressive taxation of income is one of the many effective ways for governments to redistribute income. According to Damjanovic and Ulph (2010), a greater progressivity of the tax schedule may reduce the number of tax malfeasance cases. Conversely, the flatter the schedule, the lower the equilibrium price of tax minimization schemes, and hence, the greater the level of malfeasance. It is suggested that the Malaysian Government should follow this approach in dealing with HNWI's. It is encouraging to note that in the recent 2016 budget, the government has taken the initiative to increase the tax rate, a 2 per cent hike from 26 to 28 per cent for those HNWI's with chargeable income of RM 1m and above. But the top income tax rate of 28 per cent is still low compared to the top income tax rate imposed in other countries as depicted in Table III.

This study has implications for tax authorities and policymakers. This study reveals that where tax adjustment is made pursuant to tax audit process, taxpayers are required to pay a penalty rate of 45 per cent of the amount of tax undercharged. The existing penalty structure is relatively minimal as compared to the maximum amount of 100 per cent provided under the tax law. Therefore, this study suggests that the IRBM should review the current penalty structure and propose a change in the existing law for mandatory imprisonment to be implemented in the case where a taxable person is convicted of tax offences. In addition, any conviction by the court on any tax malfeasance cases must be publicized. The IRBM must send a strong message to the public, particularly to HNWI's, that a tax offence is a serious crime and that they should not commit any tax avoidance or use any evasion schemes. Other than imposing monetary penalty and imprisonment, the IRBM must also propose or explore other effective deterrent methods. The power to freeze and seize assets of tax offenders, a sanction that has been a practice in other tax jurisdictions must be considered in due course. The criminal record of tax offenders must be distributed to all relevant agencies and bodies and to be published. The public must be aware of the punishment of being a tax offender.

In addition, the role of tax professionals in assisting HNWI's in preparing a tax return is also an area of concern. Tax professionals must be made responsible and punishable for any tax avoidance or evasion engaged by HNWI's based on their advice. At present, in Malaysia, any person who assists or advises a taxpayer in filing a return that results in an understatement of liability may be prosecuted and upon conviction be liable to a fine up to RM 20,000 or imprisonment for a term not exceeding three years. However, to date, the IRBM has not taken up any cases against tax professionals under such law. It is time for the provision of the law to be fully enforced by tax authorities to minimize any potential loss of revenue to the country. The IRBM should not protect the rich and tax professionals, rather should protect a tax system that is fair for all.

This study found that the common strategy undertaken by HNWI's to evade tax is underreporting other income. This suggests that during tax audit, the IRBM should pay

greater attention to other source of incomes such as HNWI's do transfer their fund to low tax jurisdictions, underreport income from other sources, underreport director's fees when they own multiple companies especially controlled companies and underreport commission from either legal or illegal activities.

The findings show that the majority of HNWI's with a total income of RM 1m to RM 3m tend to engage in tax malfeasance. HNWI's have the resources and ability to engage in tax malfeasance by hiring a tax adviser. In view that the probability of being selected for tax audit is once in every five years, it is reasonable to assume that a good percentage of HNWI's in Malaysia also perceive their chances of being selected for tax audit is relatively low. Based on the [Organisation for Economic Co-operation and Development \(OECD\)'s \(2010\)](#) suggestion, tax authorities should administer tax audits on a regular and aggressive basis to deter tax malfeasance among HNWI's. Hence, it is suggested that the IRBM increases tax audits on HNWI's, and audits should be carried out once every two years.

This study found that the majority of HNWI's with business are more non-compliant as compared to other income earners. The reason is obvious as business ventures are more complex and give opportunities to HNWI's to avoid and manoeuvre as compared to those who receive a fix monthly income. Most HNWI's have business endeavours overseas, and it is not a secret that HNWI's shift profits or income out of the country. Therefore, the IRBM should consider allocating more resources to audit or investigate and, at the same time, to educate and assist these HNWI's in tax compliance. It is suggested that all HNWI's who are caught in tax evasion and avoidance schemes must be identified and investigated and brought into compliance, and appropriate legal actions must be taken against tax professionals who helped with these schemes. In line with developed and developing countries, the IRBM should strengthen strategies to combat tax malfeasance among HNWI's and find ways to tax them.

At the time of study, there is a scarcity of studies that examine HNWI's and tax malfeasance, let alone from the Malaysian perspective. In addition, a study that uses actual archival tax data is rare. This study has merit as it uses actual archival tax audited cases to examine tax malfeasance among HNWI's in Malaysia. Based on HNWI's audited data from 2009 to 2013, it is evident that HNWI's in Malaysia did conceal income by exploiting the loopholes in the tax laws when reporting their tax returns.

Nonetheless, this study has its limitations. This study only used resolved tax audited cases related to HNWI's from 2009 to 2013, a longitudinal study should be conducted and to examine other variables such as taxpayers' motivations, beliefs, perceptions and attitudes to accurately explain and predict HNWI's' behaviour in Malaysia. Future studies can be conducted to examine tax malfeasance among HNWI's from the perspectives of tax professionals and tax auditors.

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High net-worth
individuals in
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