Malaysian Institute Of Taxation

TAX NASIONAL

Official Journal of the Malaysian Institute of Taxation
Vol.15/2006/Q2 RM38.00

Intangible Property – A Transfer Pricing Peril?

To What Extent is Leave Passage a Deductible Entertainment Expense?

Page 36
Benefits-in-kind vs Perquisites

Page 50
Excise Control on Liquor

ISSN 0128-7580
KDN PP 7829/2/2007

Malaysian Institute Of Taxation

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

TRAINING PROGRAMMES/EVENTS - 3rd Quarter 2006

Date	Training Programme	Time	Venue	Speaker	Target
	July 2006				
6	Workshop: Recent Dev & Practical Analysis on LHDNM Public Rulings	9 am - 5 pm	Hyatt Regency, Kota Kinabalu	Chow Chee Yen	Junior/Senior level
7	Workshop: Recent Dev & Practical Analysis	9 am - 5 pm	Holiday Inn, Kuching	Chow Chee Yen	Junior/Senior level
7	Workshop: Public Ruling on Property Developments & Tax Audits	9 am - 5 pm	Mutiara Hotel, Johor Bahru	Harvindar Singh	Junior/Senior level
8	Workshop: Public Ruling on Property Developments & Tax Audits	9 am - 5 pm	Legacy Hotel, Melaka	Harvindar Singh	Junior/Senior level
11	Workshop: Tax Audits and Recent Development on Public Rulings	9 am - 5 pm	MIT Training Room	Chow Chee Yen	Junior/Senior level
	Aug 2006				
3	Workshop: Basic Corporate Tax Planning	9 am - 5 pm	Hyatt Regency, Kota Kinabalu	Chow Chee Yen	Junior/Senior level
4	Workshop: Advanced Corporate Tax Planning	9 am - 5 pm	Hyatt Regency, Kota Kinabalu	Chow Chee Yen	Junior/Senior level
10	Workshop: Advanced Corporate Tax Planning	9 am - 5 pm	Holiday Inn, Kuching	Chow Chee Yen	Junior/Senior level
11	Workshop: Advanced Corporate Tax Planning	9 am - 5 pm	Holiday Inn, Kuching	Chow Chee Yen	Junior/Senior level
22	NATIONAL TAX CONFERENCE 2006	9 am - 5 pm	PWTC, Kuala Lumpur	Various Speakers	Junior/Senior/ Management level
23	NATIONAL TAX CONFERENCE 2006	9 am - 5 pm	PWTC, Kuala Lumpur	Various Speakers	Junior/Senior/ Management level

DISCLAIMER: Malaysian Institute of Taxation reserves the right to change the speaker(s)/date(s) and/or cancel the workshops/events without notice at their discretion.

The President's Note

On 1 June 2006 I had the privilege, together with Dr Veerinderjeet Singh, the Chairman of the Institute's Technical and Public Practice Committee, to attend the Budget Consultation 2007 at Putrajaya. Prior to this, we had submitted a jointly prepared memorandum by MIT-MIA-MICPA-MAICSA on our proposals for the budget 2007 to the Ministry of Finance (MOF). The theme of this year's budget has been identified as "Leveraging Diversity and Endowments for Quality Growth". In line with this theme, the professional bodies have collated our specific and constructive comments to achieve quality growth. We believe that our proposals would be reviewed favourably by the Government.

Over the last few months, we have received many enquiries from members who are auditors and have applied for the renewal of their tax agent license. The problem raised to us was that although they had submitted their applications within the timelines stipulated under the new Section 153 guidelines issued by the MOF, they have yet to obtain their licenses. They are understandably perturbed as they are unable to practice upon the expiry of their licenses. These practitioners would face the risk of losing their rice bowls as they are unable to service clients. The delay also causes a lot of uncertainty in the business environment.

Therefore, we have proposed to the MOF to pass a directive enabling those auditors who have submitted their applications for renewal four months prior to the date of expiry to be permitted to practice legally until the applicant's license is renewed. If the renewal is approved, then the license will be backdated from the day after the expiry of the audit license. In the event that the license is not renewed then the date from which the applicant is unable to practice will be from the date the applicant is informed that the license will not be renewed by the Ministry.

In addition, we have also forwarded to the MOF a list of the members who have submitted their applications for renewal of their tax agent licenses within the prescribed period but have yet to receive the approval for renewal. We are closely monitoring the status with the MOF and will update members accordingly.

As President of the Institute, I would like to specifically mention the National Tax Conference 2006, which is expected to be held on 22 and 23 August 2006. The premier tax event of the year, is a comprehensive two day Tax Conference and as in the past, it will be a joint venture between the Institute and the Lembaga Hasil Dalam Negeri Malaysia.

The theme of the conference is "Moving Forward, Managing Changes" and we hope to bring together tax practitioners, tax accountants, tax related academicians, accountants, financial planners, directors and government agencies to a common platform for a discussion with renowned local and international speakers to keep abreast of current developments in the field of taxation. I would like to encourage all members to participate at this conference for a quality learning experience.

We are now approaching the middle of the year and it is again the time for the members of the Institute to gather for a time of fellowship and exchange of views on the future direction of the Institute at the 14th Annual General Meeting. I am pleased to inform that the 14th Annual General Meeting has been scheduled on Saturday, 29 July 2006 at Hilton Kuala Lumpur. I would deeply appreciate the presence of my fellow members to share some views and suggestions on enhancing the prestige and status of the tax profession.

MALAYSIAN INSTITUTE OF TAXATION
225750-T

Haji Abdul Hamid bin Mohd Hassan
President

The Editor's Note

For the past few months, the Institute has been actively enlightening taxation professionals on the recent developments of the tax regime through various seminars and road shows. Members can read from the "Institute News" the various events that have taken place.

Looking forward, in the next quarter of the year our government will announce the 2007 National Budget. In this issue we provide members with the opportunity to know the budget memorandum that the Institute had jointly proposed together with other professional institutions to the Ministry of Finance.

Other articles of interest covered in this issue include:

Intangible Property – A Transfer Pricing Peril?
The treatment of Intangible Property (IP) can be one of the most difficult to apply, both for tax advisors and administrators, alike in Transfer Pricing (TP) practice. In this article, Mr Serjit Singh shares some insights into the research on the treatment of IP from a TP perspective so as to explain the complications surrounding the treatment of IP.

Benefits-in-kind vs Perquisites
In this article, Mr Lee Voon Siong examines the differences between benefits-in-kind and perquisites, types of perquisites and their tax treatment in the context of the public rulings issued by the Lembaga Hasil Dalam Negeri Malaysia.

To What Extent is Leave Passage a Deductible Entertainment Expense?
In this article, Mr Manvinder Singh writes on issues pertaining to the deductibility of leave passage "related cost' from the company and the individual taxable income by referring to the provisions in the *Income Tax Act 1967* and the relevant public rulings. Mr Manvinder also provides some tax planning ideas in connection to individual leave passage claims.

Learning Curve: Taxability of Business Receipt
In this article, Mr Siva Nair deliberates on the taxability of voluntary receipts and government grant and assistance in relation to business income by reviewing some relevant tax cases to help students have a good understanding of the subject.

Excise Control on Liquor
Mr Thomas Selva Doss, a custom consultant, explains the excise licensing system and controls on liquor, taxes and customs enforcement on liquor.

Harpal S. Dhillon
Editor of Tax Nasional

Tax Nasional

Official Journal of the Malaysian Institute of Taxation

The Publisher

CCH is a part of Wolters Kluwer group, a leading global publisher active in 26 countries. For nearly a century now we have been providing our subscribers with the highest standard of reporting, for which the CCH group of companies has an established worldwide reputation. CCH publications keep professionals and business people up-to-date with developments in a wide range of topics. What distinguishes CCH publications is the effective combination of accuracy, authority, practicability and ease of reference. Today we have an extensive range of knowledge products – in-range, which is constantly expanding to meet our clients' changing needs.

CCH

a Wolters Kluwer business

Commerce Clearing House (M) Sdn Bhd
Suite 9.3, 9th Floor, Menara Weld,
76 Jalan Raja Chulan,
50200 Kuala Lumpur.

Telephone	: (603) 2026 6003
Customer Support Hotline	: 1 800 181 151
Facsimile	: 00 800 2240 0000

ENQUIRIES

Editorial	: The Secretariat, Malaysian Institute of Taxation
Subscription and sales enquiries	: Commerce Clearing House (M) Sdn Bhd
Designer	: Red DNA
Printer	: Maxima Colour Separation Sdn Bhd

Commerce Clearing House (M) Sdn Bhd are the official publishers of Tax Nasional

CCH Publishing Team

Editor in charge	: Michelle Chin

Contents

2nd Quarter 2006

Note : The views expressed in the articles contained in this journal are the personal views of the authors. Nothing herein contained should be construed as legal advice on the applicability of any provision of law to a given set of facts.

Malaysian Institute Of Taxation

NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given in accordance with Articles 39(2) and 42(1) of the Institute's Articles of Association that the Fourteenth Annual General Meeting of the Malaysian Institute of Taxation will be held on Saturday, 29 July 2006 at 10.00 am at Ballroom A, 6th Floor, Hilton Kuala Lumpur, No 3 Jalan Stesen Sentral, 50470 Kuala Lumpur.

AGENDA

1. President's address

2. Retirement of Council Members.

   All four members of the Council namely Harpal Singh Dhillon, Andrew Kok Keng Siong, Neoh Chin Wah and SM Thanneermalai retire in accordance with Article 59 of the Institute's Articles of Association.

   Pursuant to Article 59, being eligible, Harpal Singh Dhillon, Andrew Kok Keng Siong, Neoh Chin Wah and SM Thanneermalai offer themselves for re-election.

3. Election of new members to the Council.

4. To consider and accept the minutes of the Thirteenth Annual General Meeting held on 14 May 2005.

5. To receive the annual report of the Council.

6. To receive the statement of accounts of the Institute for the year ended December 31, 2005 and the report of the auditors thereon.

7. To appoint Auditors for the ensuing year at a remuneration to be mutually agreed upon.

8. Any other business for which due notice has been duly notified to the Secretary.

By Order of the Council

Harpal Singh Dhillon
Honorary Secretary

Dated this 30 June 2006

Seminar on Managing FRS Transition: Tax Perspective

Mr Ng Swee Weng from KPMG presented the talk

Companies other than private entities in Malaysia with their financial year beginning on or after 1 January 2006 must comply with the Financial Reporting Standards (FRS) which is in line with the International FRS. Adoption of the FRS will have an impact on the financial position of companies.

In line with the change, the Institute invited some of the leading tax and accounting experts to be the speakers of the seminar on *Managing FRS Transition: Tax Perspective*. The focus of the seminar was to find out how an organisation will be affected by the FRS particularly with regard to the taxation aspects.

The Institute received an overwhelming response to this seminar which registered approximately 200 people.

Some of the prominent speakers at the seminar

Nationwide Road Show on Recent Tax Developments

At the Ipoh Road Show

All that one needed to know about the new Tax Agent License was discussed at this seminar on recent tax developments held at various states in Malaysia including Sabah and Sarawak. Mr Harpal Singh Dhillon, the Honorary Secretary represented the Institute and presented various issues pertaining to the new Tax Agent License and also gave updates on technical and operational matters.

A special segment of the seminar was the briefing of the new e-filing system by a team of officers from the Lembaga Hasil Dalam Negeri Malaysia.

Mr Harpal Singh took this opportunity to meet the members of the Institute residing outside the Klang Valley via the Members Dialogue. He shared the recent developments of the Institute with the members.

Seminar on Section 153 - The New Tax Agent License

Puan Khodijah bte Abdullah, Principal Assistant Secretary, Tax Analysis Division of Ministry of Finance presented the latest information on the new Section 153 guidelines. Tax practitioners found this seminar very informative as the introduction of the new guidelines had created a lot of queries among them which reqiured clarification. Puan Bidari binti Ahmad Sapawi, Ketua Penolong Pengarah di Jabatan Pengurusan Hasil was also present to answer queries raised by the participants.

This seminar was chaired by the Chairman of the Continuing Professional Development Committee, Mr Lim Kah Fan.

Key speaker, Puan Khodijah bte Abdullah from Ministry of Finance

Seminar: Tax Cases and Critical Issues

Tax professionals as well as taxpayers must be aware of the current developments relating to the Malaysian taxation in order to provide full disclosure when preparing their tax returns. It is important that every tax practitioner is up to date with the implications of new tax laws, issues and decisions.

In this seminar on *Tax Cases and Critical Issues*, a team of experienced practitioners and leading lawyers discussed the varied and far reaching implications of new tax laws, issues and decisions while addressing the matters regarding transfers between inventory and investment property, compulsory acquisition of land, recovery of taxes and tax appeals.

In addition, En Othman Abdullah, the Special Commissioner of Income Tax, talked about tax appeals and its relevant procedure and criteria.

WORKSHOP: PUBLIC RULING ON PROPERTY DEVELOPMENT AND CONSTRUCTION CONTRACTS

The Institute has organised a series of workshops at the various states to discuss salient features of the recent Public Ruling released by the Lembaga Hasil Dalam Negeri Malaysia on Property Development and Construction Contracts.

Form B/BE Training and e-Filing

Following the introduction of the e-filing system by the Lembaga Hasil Dalam Negeri Malaysia (LHDNM), the Institute conducted a workshop on how to submit tax returns (Form B/BE) using the new e-filing system. The training was provided by a team of officers from the Kuala Lumpur Bandar branch of the LHDMN.

In the second part of the workshop, Mr Chow Chee Yen provided some updates on the recent tax developments which consist of the discussion on some of the latest public rulings.

Participants listening to the LHDNM officer explaining how to use the e-filing system

Technical Updates

(2nd Quarter - as at 31 May 2006)

BY MIT TECHNICAL DEPARTMENT

Public Rulings

The Lembaga Hasil Dalam Negeri Malaysia (LHDNM) released the following public rulings:

- ***Public Ruling 3/2006 on Property Development & Construction Contracts.*** This Ruling was issued on 13 March 2006. This Ruling explains the basis of determining gross income for the purpose of computing adjusted income derived from the business of property development and construction contracts. This Ruling is effective from year of assessment 2006.

- ***Public Ruling 4/2006*** on ***Valuation of Stock in Trade and Work in Progress Part 1.*** This Ruling was issued on 31 May 2006. This Ruling explains the importance of the valuation of stock in trade and work in progress for the purposes of ascertaining the adjusted income of a person from a business for the basis period for a year of assessment, the bases of valuation and the special rules to be applied when the person permanently ceases to carry on the business. This Ruling is effective from year of assessment 2006.

- ***Public Ruling 5/2006*** on ***Professional Indemnity Insurance.*** This Ruling was issued on 31 May 2006. This Ruling explains the deductibility of premium expense(s) paid for a professional indemnity insurance policy and the taxability of insurance proceeds received on professional indemnity insurance. This Ruling is effective from year of assessment 2006.

Legislation

Gazette Orders
The following Orders and Rules have been gazetted. The key features are highlighted below.

- ***Income Tax (Exemption) (No.11) Order 2006 [P.U.(A) 112]***
  - with effect from year of assessment 1998, a Malaysian resident company is exempted from tax on the statutory income (70% or any other prescribed rate) derived from an approved pre-package incentive scheme.
  - the exempt period shall be determined by the Minister of Finance or the Minister of International Trade and Industry, as the case may be.

- subject to the conditions stated in the approval letter, the *Promotion of Investments Act 1986* shall apply to any business granted an exemption under this Order.
- the Order sets out the required manner relating to the utilisation and claim of the losses and capital allowances.
- the deductions for the promotion of exports shall be accumulated and claimed in the first year of assessment after the exempt period.
- paragraphs 5 and 6 of Schedule 7A of the *Income Tax Act 1967* (ITA) shall apply.
- this Order shall not apply where the company has been granted certain incentives such as Reinvestment Allowance under Schedule 7A and 7B, allowance for increased exports, etc.

• ***Income Tax (Exemption) (No.12) Order 2006 [P.U.(A) 113]***
  - with effect from year of assessment 1998, a Malaysian resident company is exempted from tax in respect of the statutory income derived from an approved pre-package incentive scheme which is equivalent to the amount of allowance determined by the Minister.
  - the allowance shall be given in respect of qualifying capital expenditure incurred for an approved period.
  - "qualifying capital expenditure" has been defined to mean capital expenditure incurred on an asset in Malaysia for the purpose of the approved business in relation to manufacturing, agriculture, information and communication technology or provision of services.
  - paragraphs 5 and 6 of Schedule 7A of the ITA shall apply.
  - this Order shall not apply where the company has been granted certain incentives such as Reinvestment Allowance under Schedule 7A and 7B, allowance for increased exports, etc.

• ***Income Tax (Deduction for Audit Expenditure) Rules 2006 [P.U.(A) 129]***
  - with effect from year of assessment 2006, statutory audit fees incurred shall be allowed a deduction in arriving at the adjusted income of a company.

• ***Income Tax (Deduction for Establishment Expenditure of Real Estate Investment Trust or Property Trust Fund) Rules 2006 [P.U.(A) 135]***
  - with effect from year of assessment 2006, establishment expenditure incurred shall be allowed a deduction in arriving at the adjusted income of a unit trust.
  - "unit trust" is defined to mean a unit trust which is approved by the Securities Commission as a real estate investment trust or property trust fund.
  - "establishment expenditure" is defined to mean legal, valuation and consultancy fees for the purpose of establishing the unit trust prior to the approval by the Securities Commission.

• ***Stamp Duty (Remission) (No.2) Order 2006 [P.U.(A) 148]***
  - 50% of the stamp duty payable on the loan agreement instrument for an amount not exceeding RM1 million granted or to be granted to a small and medium enterprise is remitted.
  - "small and medium enterprise" is defined to mean as follows:-

Sector	Definition
Manufacturing (including agro-based industries and manufacturing related services)	With full-time employees not exceeding 250 or annual turnover not exceeding RM25 million
Services (including information and communication technology and primary agriculture)	With full-time employees not exceeding 50 or annual turnover not exceeding RM5 million

  - this Order is effective from 1 October 2005.

Dialogues

A Technical Dialogue was held by the LHDNM with the professional bodies on 15 March 2006. A copy of the minutes can be downloaded at www.mit.org.my

An Operational Dialogue was held by the LHDNM with the professional bodies on 10 April 2006. A copy of the minutes can be downloaded at www.mit.org.my

Guidelines

Ministry of Finance
The Ministry of Finance has issued a guideline relating to the carrying forward of unabsorbed losses and capital allowances following the changes announced in the 2006 Budget.

A copy of the guideline is available at www.mit.org.my under the Technical Section – Guidelines/Rulings.

Miscellanous

The Ministry of Finance has announced that the earlier concession granted to employee share option scheme (ESOS) granted prior to 31 December 2005 but exercised in 2006 will continue to apply to those share options granted prior to 31 December 2005 regardless of the date the options are exercised or exercisable. A copy of the announcement is available at the Treasury's website at www.treasury.gov.my.

2007 National Budget Memorandum

Jointly submitted to the MOF by The Malaysian Institute of Taxation (MIT), the Malaysian Institute of Accountants (MIA), the Malaysian Institute of Certified Public Accountants (MICPA) and the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA).

INTRODUCTION

As reported by the Bank Negara Malaysia in its 2005 Annual Report, the Malaysian economy expanded by 5.3% in 2005 despite high oil prices and the downturn in the global electronics cycle in the first half of the year. The private sector continued to be the main stimulus for the growth. All sectors, except the construction sector, registered positive growth rates with the manufacturing and services sector the key drivers.

As for the foreign direct investments (FDI), the amount of inflow increased to RM25 billion in 2005 from RM23.5 billion in 2004. The inflows were seen mainly in the oil and gas, manufacturing and services sectors.

The economic outlook for 2006 is expected to be optimistic with expected real GDP growth of higher than 6%. The upturn of the electronics industry and the continuing growth of the services sector are seen as contributing factors. Steady inflows of FDI are expected to strengthen the overall balance of payments with a large amount of FDI in the form of reinvestments by existing multinationals in Malaysia.

In the Ninth Malaysian Plan unveiled on 31 March 2006, Malaysia is embarking on its next development phase to achieve a developed nation status by 2020 through its National Mission. Some of the key thrusts of the Mission include moving the economy, especially the manufacturing, services and agriculture sectors, up the value chain, intensified efforts to improve the human capital and improving the standard and sustainability of quality of life.

The Malaysian Institute of Taxation (MIT), the Malaysian Institute of Accountants (MIA), the Malaysian Institute of Certified Public Accountants (MICPA) and the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) are pleased to submit a joint memorandum relating to tax proposals for consideration in the forthcoming 2007 National Budget.

The proposals have been broadly categorised under the following categories:-

- Improving the efficiency of tax administration
- Maintaining a competitive tax environment
- Continuous review in ensuring an equitable and business-friendly taxation system
- Stimulating the business environment
- Development of human capital
- Promoting a caring society

We hope that the matters suggested in the joint memorandum will contribute towards the preparation for the 2007 National Budget and in the long term, assist to achieve the Ninth Malaysian Plan.

A. IMPROVING THE EFFICIENCY OF TAX ADMINISTRATION

1. Self Assessment System

Malaysia has now fully implemented the self assessment regime, which relies on the taxpayers to assess their income tax liability. The Government needs to review the current regulations and administration of the tax system so as to improve tax compliance. As highlighted by the Commissioner of Taxation in Australia, compliance management is not simply about audit, verification and enforcement. It is also about making it as easy as possible for taxpayers to comply.

The Inland Revenue Board (IRB) should review the taxpayers' charter towards adopting a more open and fair approach in the treatment of taxpayers within the framework set by the law. The tax administration system should be revamped to eliminate inefficiencies, bureaucratic bottlenecks and lack of clarity in rules and practices. There is need for the IRB to issue clear guidelines and clarifications on a timely basis to ensure transparency in the tax system and to assist taxpayers in making their financial decisions. The delivery system should be improved with the aid of technology so that things can be done efficiently, at a lower cost and in a shorter time period with the minimum of hassle. More efficient processing of applications as well as refund of overpaid taxes will promote confidence in the system. A business-friendly rather than bureaucratic tax system will not only enhance tax compliance but also add to Malaysia's competitive edge in attracting foreign investment.

In this regard, the Institutes would like to commend the Government for initiating a comprehensive review of the tax system, with a view to improving its efficiency, transparency and effectiveness.

The Institutes would like to submit the following proposals for the Government's consideration.

- **Submission of Income Tax Return**

  Under the self assessment system, persons other than a company, trust body or co-operative society are required to submit the tax return by April 30 in the year following the year of assessment for those with non-business source income, and by June 30 for those carrying on business. A company, trust body and co-operative society are required to submit the tax return within 7 months from the date following the close of the accounting period.

  Proposal

  The Institutes would like to propose that the deadline for submission of tax returns in respect of the first category of taxpayers (i.e. persons other than a company, trust body or co-operative society) be streamlined to June 30 in the year following the year of assessment, regardless of whether the income is in respect of business or non-business source.

- **Basis Period**

  Under the new tax system, sole proprietors and partnerships are required to close their accounts on December 31.

  Proposal

  The Institutes are of the view that taxpayers should be given the prerogative to determine their financial year ends. Hence, sole proprietors and partnerships should be allowed to determine their own financial year ends.

- **Assessments**

  Proposal

  An advance ruling/private ruling system should be introduced and outsourced, if deemed necessary. Please see paragraph 3 below for further details on this suggestion. Advance pricing arrangements/agreements for transfer pricing purposes should also be introduced.

- **Tax audits and Investigations**

  Proposal

  (a) Provide a shorter time frame for carrying out tax audits so that if after the time limit, an audit has not been conducted, then the tax position is deemed final and conclusive. This will provide certainty and not leave a taxpayer's tax position open for six years, which is too long a period.

  (b) The conduct of tax audits and investigations must be in line with respecting the rights of all parties. An effective framework with a proper mechanism and clear guidelines must be set up to ensure that audits are properly carried out and the IRB officers abide to a formal code of conduct. A clear mechanism must also be set in place for any appeal against the manner in which an audit/investigation is carried out and such appeals must be settled on a timely basis by an independent party, for example, an Administrative Appeals Tribunal.

- **Appeals**

  Where it is unlikely that the IRB and the taxpayer will reach an agreement on an area of dispute, either party can appeal to the Special Commissioners (SC). Either party to the proceedings before the SC may appeal on a question of law against the decision of the SC to the High Court. Further appeals may be made to the higher courts, subject to the provisions of the Courts of Judicature Act 1964. There are some limitations in allowing an appeal to be heard beyond the Court of Appeal.

  Proposal

  To improve the appeal process, the following measures are proposed:-

  (a) the Courts of Judicature Act be amended to allow cases first heard by the Special Commissioners to be eventually heard at the Federal Court. This would allow taxpayers the right of appeal to the Federal Court.

  (b) Review the time frame for disposal of appeals by the Director General of Inland Revenue (currently, a maximum period of 18 months is far too long and does not motivate efficient handling of appeals).

  (c) Consider the setting up of an Administrative Appeals Tribunal (AAT) for taxpayers aggrieved by decisions of an administrative nature including the imposition of penalties.

  (d) Provide an avenue for appeals against penalties which are imposed through the exercise of the discretionary power of the IRB. This could be through the AAT stated above.

- **Revision of Tax Estimates**

  Under the self assessment system, every company is required to submit an estimate of tax payable of not less than 85% of the revised tax estimate for the immediately preceding year of assessment or if no revised tax estimate is furnished, not less than 85% of the tax estimate for the immediately preceding year of assessment, 30 days before the beginning of the basis period for that year of assessment.

  In practice, the IRB has considered applications (via Form CP204) which are submitted with a lower tax estimate than the permitted amount (i.e. 85% of the revised or original estimate of tax payable for the immediately preceding year of assessment) provided the Form is accompanied with an appeal letter with valid reasons and supporting documents. Such cases are considered based on the merit of each case and the IRB and are thus subjectively determined.

Proposal

The Institutes propose that Section 107C of the Income Tax Act, 1967 (the Act) be amended to specifically allow a company with valid reasons to file a tax estimate lower than the permitted amount so as to reduce its financial burden.

- **Refund of Tax Overpayment**

  Following the submission of the initial tax estimate as stated above, a company may revise the estimate of tax payable in the 6th and 9th month of the basis period and in the event that actual tax payable exceeds the estimated tax by an amount of more than 30% of the actual tax payable, the company shall be liable to a penalty of 10% on the difference. Due to this requirement, some taxpayers tend to furnish a higher estimate of tax payable to avoid a penalty being imposed. As a result, some taxpayers find that they have overpaid their taxes.

  Under the Act, penalties are imposed on the taxpayers for late payment of taxes so as to encourage taxpayers to settle their tax liability on a timely basis and also as a form of compensation for the Government due to late collection of taxes. Having regard to this, we suggest that taxpayers should also be compensated for the loss of use of funds due to a delay in the refund of tax overpayment. It must be appreciated that in some of the cases, the amount of tax overpayment is substantial and any delay in the refund will affect the taxpayer's cash flow as well as leading to a loss of profit in view of the opportunity cost associated with the money withheld by the IRB.

  Proposal

  In view of the above, it is proposed that any tax overpayment due to a taxpayer should automatically be used to set off the taxpayer's current year tax liability unless a refund application has been made. A penalty should not be imposed if sufficient tax credits are available. Where a tax overpayment is not refunded within a period of 60 days, there should be an increase in the amount of tax repayment, perhaps at the same rate of increase as that imposed on taxpayers for a delay in the payment of tax.

2. Public Rulings/Guidelines/Legislative Amendments

Since the self assessment system started, the IRB has issued guidelines/public rulings to provide guidance to the public and officers of the IRB in respect of tax laws, policies and procedures to be complied with.

The Institutes are of the view that public rulings which are issued under the self assessment system should not be applied retrospectively to the assessments under the previous official assessment system.

Taxpayers (including individuals) are required to make a disclosure in the income tax return form as to whether they have complied with the relevant Public Rulings. It is noted that some of the Rulings would not be relevant to an individual. This requirement to disclose vests the Rulings with some degree of "power" to compel compliance on the part of taxpayers although it is only intended as a guide. Rulings are issued to provide guidance for the public and officers of the IRB and in essence, set out the interpretation of the Director General of the IRB (DGIR). This presents an unfair dilemma to the taxpayers. Taxpayers should not be penalised if they have a different interpretation of the law as long as it is supported by a valid basis. Since the return forms are prescribed forms, the implicit requirement to declare compliance with the Public Rulings gives the rulings the force of law which is certainly not the legal position.

Taxation must keep pace with business developments. The taxation of electronic commerce activities is one area that requires guidelines so that there is clarity about the tax treatment of such activities. Specific provisions/guidelines are also needed to specify the tax treatment of financial instruments.

Proposal

The following measures are proposed:-

(a) The effective date for laws or any guidelines/public rulings should commence from the date such announcements, legislation or amendments to the legislation are made and announced to the public and it should be prospective instead of retrospective. This is because retrospective treatment will cause hardship and it is unfair to taxpayers when a penalty is imposed during a tax audit on those tax returns which were submitted before the relevant public rulings were issued and the law was not clear at that point of time.

(b) Appropriate lead-time should be given to taxpayers to comprehend and understand the legislation or amendments made thereto. For example, the Public Ruling 1/2006: Perquisites from Employment which was issued by the IRB on 17 January 2006 should be effective from year of assessment 2006 instead of year of assessment 2005. It is unfair to taxpayers in view of the short notice given as the public ruling was only made available on the IRB's website in the middle of February 2006 while the individual taxpayers (without business income) are required to file their tax returns by 30 April 2006. The situation becomes worse when some taxpayers have submitted their tax returns for year of assessment 2005 in the beginning of February before the said public ruling was made available to the public.

(c) The requirement to disclose compliance with public rulings by a taxpayer in the tax return form should be removed. Taxpayers should not be asked to indicate compliance with the rulings which represents the DGIR's interpretation of the law.

(d) Specific guidelines/rulings should be issued on a timely basis to provide clarity on the tax treatment of new emerging business developments. A mechanism must exist for taxpayers to seek rulings on the tax treatment for new financial instruments, more so now with the rapid expansion of the capital market. Please see paragraph D 12 for further details on e-commerce.

3. Advance Rulings

Advance rulings are as an indispensable tool in the modern world of tax administration and compliance, particularly with self-assessment. Based on a survey by the International Bureau of Fiscal Documentation of 56 countries, 45 of these countries have a system of introducing advance rulings.

In Malaysia, as in other jurisdictions, income tax is imposed by statute and the statute lends itself to interpretation. A wrong interpretation or one that is not similar to that which is acceptable to the tax authorities may result in shortfall in taxes and large penalties in tax audits. Taxpayers need to equip themselves with the right tools in order to calculate their tax liability; more so in a self-assessment environment where the onus of proof rests with the taxpayer.

Currently, there is no provision in the Act that provides for the issuance of advance rulings.

Countries such as Australia, Singapore, India and Hong Kong have an advance ruling system in place. Australia has a broad formal private rulings system, governed by comprehensive statutory provisions and operates as an integral part of its self assessment system whilst India introduced its system in 1993. Singapore has also introduced the advance ruling process.

Proposal

It is proposed that a formal advance ruling system be introduced to form part of the tax administration structure. This will enable the business sector to make informed investment decisions.

4. Taxpayers' Rights

With the implementation of the self-assessment system, the IRB is able to place emphasis on enforcing compliance via tax audits and investigations. Compliance with the tax legislation must be strictly enforced and tax offences such as non-compliance and tax evasion should be penalised. Civil investigation is one of the measures of enforcement. Penalties imposed should commensurate with the degree of culpability of the offence. To further promote effective enforcement, criminal investigations are also being carried out by the IRB.

With widening powers being granted to the IRB, it is even more pertinent that the rakyat is fully aware of their rights and obligations as a taxpayer. The tax system should be clear, transparent and equitable.

Proposal

The following suggestions are proposed-

a) The introduction of the office of a Taxation Ombudsman as an avenue for taxpayers to forward complaints in relation to non-technical matters.

b) The introduction of an Administrative Appeals Tribunal (mentioned earlier) for taxpayers aggrieved by decisions of an administrative nature (including the imposition of penalties).

c) The establishment of a Taxpayer's Charter which sets out the rights and obligations of taxpayers and to ensure that there is effective monitoring of the adherence to the Charter.

d) The establishment of a Tax Audit and Tax Investigation Framework which sets out the rights and obligations of both the IRB and taxpayers and the process of carrying out a tax audit or a tax investigation case.

e) Criminal proceedings should only be initiated on repetitive or recalcitrant offenders and not as a first recourse of action.

5. Effective Use of Technology

In order to continue to collect more tax revenue (which will be essential in assisting future moves to attain a balanced budget), the need for effective enforcement by the tax agencies (both the IRB and the Customs Department) is an important component. There have been instances of tax and duty evasion as well as lapses in enforcement. With technology, we can do a lot to ensure that tax officers are free to concentrate on enforcement be it via audits, inspections or investigations.

Proposal

It is time that the tax agencies are transformed into truly "service-oriented" entities which use information technology effectively and efficiently. It is time to stop "piecemeal" introduction of technology. There must be a holistic plan which is integrated and well-coordinated. There will be a need for the Government to budget for such expenditure but we must move along this road and it requires a holistic approach i.e. the whole agency must be wired, trained and have a service-oriented mindset. A proper and systematic approach towards implementing technology and efficient and well-trained staff will lead to a more effective and efficient tax agency. This should lead to the registration of more taxpayers, effective recovery action and thus greater tax revenue. The IRB's website and the press should be fully utilised to convey latest policies and accurate information ***instantly*** to taxpayers all over the country.

6. Application of Decided Tax Cases

It is not always possible for a piece of legislation to be perfectly clear resulting in certain provisions in the Act to be the subject of disputes with the tax authorities. It is here that case law provides the opinions of the courts on the interpretation of the legislation which are relied upon by practitioners and tax officers. It is noted that the IRB adopts decisions made in cases which are still under appeal.

Proposal

The following are proposed-

a) Tax cases decided by the Special Commissioners and courts should be made available to the public for better transparency through the timely dissemination via the IRB website or other means.

b) Taxpayers should be allowed to adopt the decisions passed by the courts (irrespective of the stage of appeal of the case) in the preparation of their tax computation in respect of the interpretation of the legislation since the IRB applies such decisions. There should be a level playing field.

7. Waiver of the Need to Gazette Tax Exemption

It has been gazetted that the exemption of income tax, real property gains tax and stamp duty given only on a case-to-case basis be effected without the requirement for gazette notification.

Although the Institutes appreciate the rationale of deeming that the relevant letter of exemption would be adequate for such cases due to the long delays that occur between the approval and the actual gazetting of the exemption, there is also a need to balance this administrative rationale with the need for transparency and accountability as the government gazette is for public consumption and all parties have the prerogative to be kept aware of who has been granted an exemption.

Proposal

The Institutes would suggest that the proposal be withdrawn. Instead, the relevant tax authorities can be directed to accept the official letter of exemption issued by the Ministry of Finance to have the force of law instead of insisting on the actual gazette order.

B. MAINTAINING A COMPETITIVE TAX ENVIRONMENT

1. Review of Income Tax Rates

• Corporate Tax Rates

As a measure to reduce the costs of doing business in Malaysia and to promote growth in view of the globalisation of markets, it is imperative that our corporate tax rate be reduced further in order to be competitive with neighbouring countries to continue to attract foreign direct investments.

Our prevailing corporate tax rate has remained at 28% since year of assessment 1998. For purposes of comparison, the corporate tax rates of some countries that have had dynamic growth in the region are as follows:-

Country	*Corporate tax rate (%)*
Singapore	20
Hong Kong	17.5
Taiwan	25

We acknowledge that the impact of a corporate tax rate reduction on the Government's revenue collection is a matter of grave concern. We wish to highlight that contrary to common belief, it has been proven historically that a corporate tax rate reduction would lead to increased tax revenue collection in the context of a growing economy.

In the mid-1990s, there was a significant reduction in the corporate tax rate by 4% within a time-frame of two years. Yet, statistics have shown that there was an improvement in the total Federal Government revenue collected from corporations and an increase in Gross Domestic Product (GDP) in the context of a growing economy.

Year	Corporate Tax Rates	Percentage Increase in Revenue	GDP Growth
1993	34%	13.6%	8.3%
1994	32%	23.5%	9.2%
1995	30%	10.8%	9.5%

It is evident from past experience that a reduction in the corporate tax rates has had a positive impact on the nation's GDP growth and tax revenue.

Proposal

It is proposed that the corporate tax rate be reduced to 25% and then be continuously reviewed so as to maintain Malaysia's competitiveness with the neighbouring countries.

• Personal Tax Rates

Currently, an individual resident in Malaysia will hit the top tax rate of 28% once the taxable income reaches RM250,000. The tax payable for an individual with chargeable income of RM500,000 is RM124,975, as shown below:

first RM250,000	RM 54,975
next RM250,000 @ 28%	RM 70,000
Total tax payable	RM 124,975

The corporate tax rate for small and medium scale companies for the first RM500,000 is 20%, which translates to a tax payable of RM100,000. Hence, there is an additional tax payable of RM24,975 borne by the individual taxpayer compared to a small and medium scale company at the same level of chargeble income.

In comparison, a resident of Singapore will only be taxed at the rate of 18% at the same income level from year of assessment 2006. Furthermore, the top tax rate for an individual in Singapore is only 21% on income over S$320,000 from year of assessment 2006 compared to our top tax rate of 28% on income over RM250,000.

Proposal

The Government should review the tax brackets for individuals with the objective of having larger income bands and aligning these to the corporate tax rate of small and medium scale companies so as to improve its competitiveness and to ease the financial burden of individuals. In addition, a higher level of disposable income in the hands of taxpayers will increase consumption, thereby boosting the domestic market.

2. Real Property Gains Tax (RPGT) Rate

Under the existing provisions of the Real Property Gains Tax Act 1976, RPGT is imposed on companies at the rate of 5% on the gains on disposal of real property in the fifth year of acquisition and thereafter. RPGT is imposed on the capital gains of companies regardless of the period of time that the real property is held. Individual taxpayers, on the other hand, are subjected to RPGT on gains on disposal of real property up to the fifth year after the date of acquisition. Gains on disposal for real property disposed by individuals in the sixth year after the date of acquisition are not subjected to RPGT.

The objective of the RPGT is to curb speculation in real properties. Properties purchased and disposed after five years are unlikely to have been acquired for speculation. Therefore, it would be illogical to impose RPGT on disposal of such real properties held by companies.

With effect from 17 October 1997, the rate of RPGT for a non-Malaysian citizen or permanent resident who disposes of property within five years after the date of acquisition is 30% and the tax rate is reduced to 5% if the property is disposed of in the sixth year after acquisition or thereafter.

Proposal

The following measures are proposed:-

(a) RPGT imposed on companies should be in line with RPGT imposed on individuals. Thus, companies should not be subjected to RPGT for properties disposed in the sixth year after the date of acquisition.

(b) In order to boost the development of the property industry, the Institutes propose that the RPGT rate for non-Malaysian citizens or permanent residents be streamlined to be the same as the tax rate for resident individuals for disposal of property within 5 years after the date of acquisition.

3. Goods & Services Tax (GST)

The Ministry of Finance made an announcement on 22 February 2006 to defer the implementation of GST to allow businesses sufficient time to prepare for GST. Based on recommendations by the International Monetary Fund, the minimum time frame recommended for the implementation of GST is one year from the date the legislation is introduced.

Proposal

It is hoped that the draft legislation on GST will be made available for public consultation before it comes into force. It is essential that the general public, in particular businesses and traders, are adequately informed about the features of the GST and the procedural requirements before the GST legislation is effective. This is necessary to avoid unwarranted increases in prices of goods and services. A one year lead-in period from the date of announcement of the GST legislation to the effective date of implementation is important for educational campaigns and preparation for computerisation.

In addition, the Institutes also hope that guidelines/rulings on specific arrangements/administrative practices be made known to the public on a timely basis to ensure transparency and clarity in the application of the GST provisions.

4. One-Tier Corporate Tax System

Currently, Malaysia adopts the imputation system of taxation whereby a resident company is required to deduct tax at source at the rate of 28% on dividends paid out to shareholders. This tax is accounted for by the tax paid by the company on its profits. The corporate taxes paid are accumulated as Section 108 credits. Where the company has insufficient tax credits to account for the tax to be deducted from the dividends (i.e. to frank the dividends), a tax charge is payable.

When shareholders receive the dividends, they are entitled to a credit on the tax already paid by the company in respect of the income. These credits are used to set off the shareholders' tax liability. This means that the tax paid by the company is "imputed" to the shareholders and the shareholders' tax liability is therefore reduced by the tax paid by the company or the shareholders may receive a refund if no tax is due or the imputed tax exceeds the tax due. Effectively, the distributed corporate income is taxed only once and at the shareholders' marginal tax rate.

Proposal

It is proposed that a one-tier corporate tax system be introduced. Under this system, tax collected at the corporate level is considered as a final tax. Dividends that are paid to the shareholders are tax exempt in the hands of the shareholders regardless of whether the dividends are paid out of taxed income or tax-free gains. It is a "one-tier" tax because the income is only taxed once at the corporate level, and not again at the shareholder level.

The one-tier system is a more robust and progressive tax system. Resident companies are free to distribute their profits as dividends to shareholders as and when these profits are available for distribution. Tax is to a large extent no longer a consideration or a constraint. The timing issue, the compliance and administrative burdens of tracking the Section 108 credits will no longer be relevant. There is no longer a timing issue because dividends can be distributed freely to shareholders without the need to determine the availability of Section 108 credits arising from taxes paid. The need for tracking of Section 108 credits is eliminated thereby reducing the compliance and administrative costs for companies.

Transitional provisions should also be introduced to ensure companies are not worse off. Companies should be given a grace period of five years to transition into the new system. Any Section 108 credits that remain unutilised at the end of the transition may be utilised against future tax liabilities or be allowed to be transferred to a subsidiary company.

C. CONTINUOUS REVIEW IN ENSURING AN EQUITABLE AND BUSINESS FRIENDLY TAXATION SYSTEM

1. Convergence between Accounting and Taxable Profits

Over the years, accounting standards have undergone fundamental changes so as to fairly reflect business transactions and the underlying economic reality in the modern business environment, both domestically and globally. This is evidenced by the recent issuance of the Financial Reporting Standards (FRS) in Malaysia.

All companies other than private entities, with financial year ends beginning on or after 1 January 2006 would be required to adopt the FRS released by the Malaysian Accounting Standards Board which are in line with the International Financial Reporting Standards; with the exception of FRS 117 (Leases), FRS 124 (Related Party Disclosures) and FRS 139 (Financial Instruments: Recognition and Measurement) which shall apply to annual periods beginning on or after 1 October 2006. The adoption of the FRS would result in changes in accounting treatment which would impact the net profit of an entity. With such changes, there is a need to also review the tax impact of such adjustments and to determine whether the tax treatment of certain transactions should be changed or modified. This is even more important in the context of self-assessment. The adoption of the FRS would also move towards fair value accounting which would affect taxation.

Singapore companies were required to adopt the FRS with effect from 1 January 2005. Following this, in December 2005, the Inland Revenue of Authority of Singapore (IRAS) released a guideline on the Income Tax Implications Arising from the Adoption of FRS 39 Financial Instruments: Recognition & Measurement which explains the changes to the treatment of financial assets and liabilities for income tax purposes.

However, the Malaysian tax legislation has not kept pace with these changes. In order to facilitate tax administration and reduce the cost of tax compliance under the self assessment system, the principles of recognition of profit and expenditure under the revenue laws should converge with the principles prescribed in the FRS. This convergence would overcome the problem of mismatching that arises from different accounting and tax treatment for specific items (whether income or expenditure).

Proposal

A working group should be formed between IRB, MOF, Malaysian Accounting Standards Board, the Malaysian Institute of Taxation and the accounting profession to address the issues to ensure a greater convergence between tax and accounting.

Some examples of accrual of income/expenses as provided for under the FRS which should be adopted for tax purposes are listed below

- Interest receivable should be taxed on an accrual basis in the year in which it is accrued as required under the accounting standards rather than be taxed in the year it is received.
- Recognition of income based on percentage of completion in the construction and property development industries (as provided for under FRS 111$_{2004}$ and FRS 201$_{2004}$) should also be adopted by the IRB without forcing or requiring taxpayers to compute its profits by following a specific formula which may have no legal basis.
- Receipt of advance rental income for a period of say, five years which will be spread evenly throughout the said period of time (according to the accounting standard) should be taxed according to the accrual basis instead of taxing it in advance when it is received. Please see paragraph 9 below for further details.

2. GST Implementation Costs

In view of the implementation of GST in the near future, businesses would need to incur additional expenditure to ensure that their current management and business information systems are adequately modified to account for GST. The employees would also need to be trained to understand the workings and mechanism of GST.

Proposal

It is proposed that the legislation be specifically amended to allow the deduction of the expenditure incurred by taxpayers for the purpose of enhancing or improving their operating systems, training their workforce, etc in preparation for GST.

3. Withholding Tax

- **Withholding Tax under Section 109B**

  The scope of Section 109B of the Act and the types of payments that would be subjected to withholding taxes under this provision have been controversial issues. As a result, withholding tax is applicable on a wide range of payments made to non-residents including the disbursements made to non-residents, e.g. travelling and accommodation costs etc. Based on the Public Ruling No.4/2005: Withholding Tax on Special Classes of Income, disbursements or reimbursements of out of pocket expenses incurred in the course of rendering services to the non-resident are subject to withholding tax. Taxpayers are required to pay the withholding tax first to the IRB and subsequently attempt to recover the sum from the non-resident.

  In practice, most taxpayers are compelled to deduct withholding tax or in certain cases have to bear the withholding tax. This inevitably increases the cost of operations and thus affects competitiveness.

  The Institutes are of the view that certain expenses payable to non-residents (e.g. management and administrative fees) and reimbursements of costs made to non-residents should not fall within the ambit of Section

109B(1)(b) and be subjected to withholding tax. Strictly, payments of out-of-pocket expenses to non-residents reflect a settlement of debts incurred by the non-residents in connection with the services provided under Section 109B and are not payment for such services provided per se. It would not be equitable for the IRB to compel residents to deduct withholding tax on the out-of-pocket expenses on the basis of potential abuse and tax evasion as the charging of out-of pocket expenses by the non-residents can be supported by documentary evidence such as receipts, invoices, etc.

Proposal

It is proposed that Section 109B be amended to provide that reimbursements/disbursements (example travelling, accommodation, etc) are not subject to withholding tax. This will help to reduce the cost of doing business in Malaysia.

- **Penalty on Non-Compliance of Withholding Tax under Sections 107A, 109 and 109B**

The penalty provisions on withholding tax were amended in 1998 to impose higher penalties for non-compliance. A 10% penalty on the gross amount liable to deduction was introduced, notwithstanding that withholding tax may not be deducted on only a portion of the fee.

In these instances, there is no intention to avoid paying the withholding tax. It is often the case that withholding tax was not deducted due to an oversight or a differing interpretation on whether such a payment was subject to withholding tax.

Proposal

It is proposed that Sections 107A(2), 109(2), and 109B(2) of the Act be amended to impose penalties only on the amounts on which withholding tax was not deducted. Penalties should not be imposed on the payments on which withholding tax has been deducted and duly remitted to the IRB within the stipulated deadline.

4. Harmonisation of Capital Allowances and Depreciation

Under the current tax system, deductions are not allowed for capital expenditure or for depreciation of assets used in the production of gross income. Accounting depreciation is not recognised as a tax deductible expense as it is merely a write off of the cost of a fixed asset over its estimated useful life and the rate of depreciation applied varies from company to company depending on the circumstances.

The Act however, provides for tax depreciation or deduction of capital expenditure for certain types of capital expenditure in the form of capital allowances. The capital allowance rates are fixed based on the type of asset. However, the rates of accounting depreciation and capital allowances are often not the same and would require recomputation for tax purposes. Under the 2006 Budget, qualifying expenditure on small value assets (capped to RM10,000) is now given 100% capital allowance. However, this review of tax treatment does not bring with it the expected simplification effect – companies still need to keep track of the individual asset items leading to higher compliance costs in monitoring the movement of the small value assets and the administrative work in preparing tax computations is increased even greater than before.

The adoption of FRS will also bring with it valuation of assets based on fair values. Reliance would be placed on third party valuation in estimating the fair value of the assets.

Proposal

The following are proposed-

(a) small value assets should be given an outright deduction instead of a 100% capital allowance claim(it is reiterated that this is fundamentally a timing difference) and the sale proceeds of such assets be subjected to tax when sold; and

(b) the computation of capital allowances should be further simplified. It is suggested that the "pooling" system as practised in the United Kingdom be adopted by Malaysia.

Pooling is carried out in terms of a business source so a separate pooling system is done where a separate source of business is carried on. Generally, expenditure on all items of plant and machinery is 'pooled' rather than each item being dealt with separately. Based on the "pooling" system, first year allowances are available for qualifying expenditure on plant and machinery.

Where a first year allowance (FYA) is claimed, the balance of the expenditure after deducting the FYA is added to a single pool of expenditure with just a single calculation no matter how many items are included. An allowance which is referred to as a writing down allowance (WDA) is calculated as, say 25% of the balance remaining in the pool at the end of the previous period. Allowances are calculated for each accounting period of the business. If an asset is sold, the sales proceeds are deducted from the pool. If the sale price is more than the value of the pool, the difference is a balancing charge which is taxable. There are no balancing allowances until the qualifying business activity ends. When it does, the balancing allowance is equal to the unrelieved qualifying expenditure.

To illustrate, we set out an example below:

During the year to 31 December 2005, a medium-sized business buys plant and machinery costing RM80,000. A FYA of 40% is due and this amounts to RM32,000. The balance to carry forward to the next period is RM48,000 (being RM80,000 less the FYA of RM32,000). In the year to 31 December 2006, plant is sold for RM10,000 (original cost RM14,000) and new machinery is purchased for RM16,000. The allowances due are calculated as follows:

	RM	RM	RM
Pool balance brought forward		48,000	
Less: Proceeds from disposal		10,000	
		38,000	
WDA @ 25%		9,500	9,500
		28,500	
New machinery	16,000		
FYA @ 40%	6,400		6,400
		9,600	
Pool balance carried forward		38,100	
Total allowances			15,900

5. Capital Allowances and Rental Claims on Private Motor Vehicles

Currently, a company that purchases private motor vehicles for its business and a leasing company that leases out private motor vehicles may claim initial allowances (20%) and annual allowances (20%) on private motor vehicles up to a limit of RM100,000, if the cost of the vehicle is less than RM150,000. If the cost of the motor vehicle is more than RM150,000, the qualifying expenditure for the capital allowance claims is limited to RM50,000.

Similarly, for a lessee of a private motor vehicle, the maximum deductible rental expense is RM100,000 per vehicle provided that the cost of the vehicle is less than RM150,000. If the condition is not fulfilled, then the claim is limited to RM50,000.

The limit of capital allowances and rental claims on the private motor vehicles should be reviewed as in most instances the cost of a private motor vehicle is more than RM150,000 and the tax relief is only limited to RM50,000 per vehicle.

Proposal

It is proposed that the limit of qualifying expenditure for capital allowances and rental claims on private motor vehicles be set at RM150,000.

6. Industrial Building Allowances on Non-Industrial Buildings

Currently, only industrial buildings such as a factory, warehouse, dock, wharf, jetty, etc qualify for Industrial Building Allowance. In addition, where part of a building or of an extension to a building is used as an industrial building and the other part of the building or extension, is not so used, then if the capital expenditure incurred on the construction of the part which is not used as industrial building is not more than one-tenth (10%) of the capital expenditure incurred on the construction of the whole building or extension, the building or extension shall be treated as an industrial building. This means that if the extension to an office building within an industrial building is more than one tenth of the total extension, that portion relating to the office building is not considered as an industrial building.

Based on FRS 116: Property, Plant and Equipment, buildings have a limited useful life and therefore, are depreciable assets.

Proposal

To provide for further convergence between accounting and tax treatment, capital allowances should be in line with accounting depreciation. Industrial building allowances should be extended to non-industrial buildings. This will provide relief for the costs incurred by businesses as well as simplify the computation of industrial buildings allowances where a portion of an industrial building is not so used.

Like a factory building, alteration or renovation of new office premises is often necessary to make it suitable for the business operation. In addition, periodic renovation and refurbishment of existing office premises are necessary so as to maintain an effective and comfortable work environment for the employees.

With the services sector continuing to play a major role in the Malaysian economy, office buildings and the cost of alteration or renovation of an office building, which are incurred solely and exclusively for the purpose of a business, should be allowed as qualifying expenditure eligible for industrial building allowances.

7. Deduction of Recurring Compliance Expenditure

In order to ensure compliance with statutory requirements set out by specific legislation or by regulatory authorities, companies necessarily incur expenses such as tax agent's fees, secretarial fees and annual listing fees.

The *Income Tax (Deduction for Audit Expenditure) Rules 2006* provides that statutory audit fees incurred by companies are allowable expenses with effect from year of assessment 2006. This raised doubts as to whether other recurring compliance expenditure such as tax agent's fees, secretarial fees, etc will continue to be deductible. The IRB, in a Technical Dialogue on 15 March 2006, confirmed that only audit fees will be deductible whereas secretarial fees and tax agents' fees (which have always been allowed as a deduction though not specifically listed in the legislation) will no longer be deductible from year of assessment 2006.

It is highlighted that the Companies Act 1965 requires a company to appoint a company secretary. Notwithstanding that tax agents are not required to be appointed by companies under any law, the role of these parties (i.e. company secretaries and tax agents) are essential to the operation and administration of businesses. The expenses incurred are recurring costs in operating a business as secretarial matters and tax matters arise in the course of a financial year. In addition, the Institutes would like to highlight that salaries paid to such professionals for example, a qualified tax manager and company secretary who are employed by the organisations (in house services instead of services being outsourced) would be fully deductible as staff/salary costs. In reality, to achieve cost efficiency and to minimise the internal operational cost, most organisations will outsource such services.

In Australia, it is provided for under Section 25-5 of the Income Tax Assessment Act 1997, that expenses relating to managing your own tax affairs (such as preparing and lodging tax returns, dealing with the Tax Office and making an appeal) are deductible expenses.

Proposal

It is proposed that recurring compliance fees which are revenue in nature such as tax agent's fees, secretarial fees and annual listing fees be legislated as specific deductions to recognise business realities that such expenses are essential in operating a business.

8. Deduction for Cost of Acquisition of Proprietary Rights

Pursuant to *the Income Tax (Deduction for Cost of Acquisition of Proprietary Rights) Rules 2002*, among others, the cost of acquisition of proprietary rights such as patents, industrial designs and trademarks may be claimed over five years of assessment by a manufacturing company which has incurred the same or by the manufacturing company's subsidiary if the proprietary rights are transferred to the latter.

However, the Government has not introduced any incentive to encourage the acquisition of intellectual property in the non-manufacturing sectors. The criteria to allow only the manufacturing sector this deduction is too restrictive as on occasions, a holding company which is a non-manufacturing concern may incur the cost of acquisition of proprietary rights.

Proposal

It is proposed that the incentive to allow only manufacturing companies to claim the cost of acquiring proprietary rights be extended to all companies to encourage these companies to acquire new technologies to evolve into innovation-driven, knowledge-based companies. The incentive should also cover new business where the intellectual property was created or acquired prior to the commencement of business.

9. Tax Treatment of Advance Payments/Prepayments

Currently, there is no specific provision in the Act on the taxation of advance payments/prepayments received except where it relates to interest and rental income. Therefore, general provisions within the Act are relied upon for guidance on the recognition and taxation of such income.

Section 24(1) of the Act has some relevance on the timing of taxability of advance payments. This section provides that:-

"Where in the relevant period a debt owing to the relevant person arises in respect of-

(a) any stock in trade sold (or parted with on requisition or compulsory acquisition or in a similar manner) in or before the relevant period in the course of carrying on a business;

(b) any services rendered at any time in the course of carrying on a business; or

(c) the use or enjoyment of any property dealt with at any time in the course of carrying on a business,

the amount of the debt shall be treated as gross income of the relevant person from the business for the relevant period."

From the ordinary reading of this section, there must be services rendered or actual use and enjoyment of the facilities in order for the incidence of taxation to arise. This accords with the common law principle embodied in Section 3 of the Act that income is taxable where it has accrued in or derived from Malaysia – in other words, income is taxable when it has been "earned".

Prepayments or advance payments should not be subject to tax in the year of receipt. They should only be deemed received or receivable in the year they accrue i.e. in the year they fall due. The prepayments should be taxed only when the amount has been earned or derived, which is not at the point of receipt, but rather, through the effluxion of time. The prepayments do not constitute gross income in the year of receipt as the amount has not been derived and no "debt" under Section 24(1) of the Act arises at the point of receipt.

The taxation of prepayments in the year of receipt would result in a gross mismatch of income and expenses. In this regard, the upfront fees would not match the expenditure (e.g. repairs and maintenance) in future years. This is a most inequitable tax position.

Proposal

It is proposed that the appropriate provision be introduced to tax advance payments/prepayments as and when they fall due. This converges with the accounting method of recognising such income in the accounts. Prepayments should not be taxable until they fall due each year as the debt for the prepayments has not arisen until the payments fall due each year.

10. Concession for Enterprise Development

Generally, a business will be deemed as having commenced operation on the first day of the accounting year in which it earns its first ringgit. Some of the outgoings and expenses incurred by a new business before trade revenue is earned (commonly referred to as pre-operational expenses) may not be eligible for tax deduction. Examples of such outgoings and expenses are cost of feasibility study, registration and licensing fees, legal fees, office rental and salary of employees. Consequently for every new business that is established, it is necessary to determine, based on the facts in each case, the date on which the business commences its operation in order to determine whether or not any of the outgoings or expenses incurred can qualify for tax deduction. This may pose tax uncertainty to some businesses.

Proposal

To encourage entrepreneurship and provide businesses with greater certainty regarding tax matters, it is proposed that all outgoings and expenses incurred in respect of a business that are not capital in nature, including those incurred prior to the day on which the business earns its first ringgit of business receipt, will be deductible for income tax purposes.

11. Entertainment Expenses

Following the 2004 budget announcement, Section 39(1)(l) of the Act was amended as follows:

"a sum equal to fifty percent of any expenses incurred in the provision of entertainment including any sums paid to an employee of that person for the purpose of defraying expenses incurred by that employee in the provision of entertainment."

The Institutes welcome the amendment to the said legislation. However, the amendment has led to disputes due to different views and interpretations on the said section despite the guidance provided in the Public Ruling 3/2004: Entertainment Expenses. As a result, a lot of issues/problems have arisen and the public ruling is unable to address all the issues faced in reality. There are a number of restrictions imposed before an entertainment expense is allowed for deduction as provided in the said public ruling. As defined under Paragraph 3.2 of the ruling, "entertainment related wholly to sales" means the entertainment which is directly related to sales provided to customers, dealers and distributors excluding suppliers. In interpreting Paragraph 3.2 above and Paragraph 6.7 on the provision of entertainment related wholly to sales arising from the business, the Institutes are of the view that entertainment of clients, whether new or existing, should be wholly deductible (instead of only 50% deduction is allowed for existing clients) so long as the expense is incurred in the provision of entertainment and is directly related to attempting to generate sales.

The Institutes would like to highlight that entertainment of all (both potential and existing) customers is part of a company's business activity to secure business and sales and segregation between entertainment of potential and existing clients would prove commercially and administratively impractical.

In a recent Technical Dialogue, the IRB indicated that entertainment expenses incurred on potential customers would not qualify for a deduction under Section 33(1). This is a statement/decision that is very surprising to the Institutes.

Proposal

To ease the administrative work in preparing tax computations and to promote simplicity in tax compliance under the self assessment system, the Institutes propose that any expenses incurred in the provision of entertainment should be partially allowed as a deduction against the gross income while entertainment expenses which fall under Section 39(1)(l)(i) to (vii) of the Act should be allowed in full as a deduction to arrive at the adjusted income.

12. Donations to Approved Institutions

With effect from year of assessment 2001, Section 44(6) of the Act limits the eligibility for tax deduction in respect of any gift of money made by a company to approved institutions to 5% of the company's aggregate income in the relevant year. The above restriction has an impact on the total amount of donations that the private sector may wish to make for charitable purposes.

Proposal

It is suggested that the 5% restriction should be removed as it is contrary to the Government's intention to build a caring society. If the IRB is concerned that a particular approved institution may have abused the provision of Section 44(6), the IRB should review the exempt status of that institution. In addition, the condition that an organisation approved under Section 44(6) as a charitable organisation is required to spend yearly at least 50% (70% prior to year of assessment 2005) of the income received in the preceding year for carrying out the objects of the organisation should address the IRB's concern on the disbursement of the income and donations received by a charitable organisation. Hence, there should be no limitation on donations that a company may wish to make to approved charitable institutions/organisations in line with the Government's efforts to promote a caring society.

On the other hand, in order to recognise the importance of sports in promoting a healthy lifestyle for all, it is proposed that the advancement of sports be recognised as a charitable purpose and qualify for tax deduction in the hands of taxpayers. This could be limited to sports that require physical skill and exertion which advances the health of individuals.

13. Presumptive Tax

Small businesses such as hawkers, small contractors and petty traders often do not maintain complete books of accounts and hence, incur high cost in tax compliance.

In some countries, presumptive taxation is implemented for small businesses to facilitate tax compliance. Presumptive taxation is an estimated income method of assessment where tax is based on some measure of economic activity rather than on the taxable income itself. For example, tax may be assessed on the basis of the business inventory of its output, of some input in the production process or of turnover over a period of time.

Proposal

The Institutes propose that presumptive taxation be introduced for small businesses. Appropriate parameters are needed to be looked into to prevent loss of revenue to the Government and ease the tax compliance burden for the small businesses as well. Profits from small businesses can be deemed as being a prescribed percentage of the total turnover in the previous year. Different percentages may be prescribed for different types of business, based on the statistics compiled by the IRB on the respective performance and profitability of businesses.

14. Confirmation of Tax Exempt Account

Section 21(3) of the Promotion of Investments Act, 1986 (PIA) requires the exempt income of a pioneer company to be confirmed by the IRB before the company can distribute tax exempt dividends to its shareholders. This leads to the pioneer companies not being able to declare tax exempt dividends if their tax computations have not been reviewed by the IRB. This has caused undue hardship to the companies concerned, which need to distribute dividends on a regular basis to shareholders.

Although the Act has been amended to put into force the self assessment system, there is no corresponding amendment to the PIA on the procedures for payment of tax exempt dividends.

Proposal

It is proposed that a suitable amendment be made to the PIA to dispense with the above requirement for confirmation from the IRB in line with the self-assessment system.

15. Basis Period for Non-Corporate Bodies

Pursuant to Section 56 of the Trade Unions Act, 1959, the secretary of the trade union shall submit the audited financial statement of a registered trade union in respect of the period of twelve months ending on 31st March in each year before 1st October in every year. However, as stated in Section 21 of the Act, the basis year for a year of assessment in relation to a source of a person other than a company, trust body or co-operative society shall constitute the basis period for that year of assessment with effect from year of assessment 2004 i.e. the calendar year shall form the basis period.

In view of the different requirement of the Acts as stated above, practical problems arise in complying with the requirements of filing the tax return form. As required by the Trade Unions Act, 1959, the audited accounts for a trade union have to be closed on 31 March, but the Return Form T for a year of assessment is for the calendar year from 1 January to 31 December. In most of the cases, the audited accounts for say, 31 March 2006 would only be available in August or September 2006. In practice, it is difficult to estimate and apportion the income for the period from 1 April 2006 to 31 December 2006. This would create additional compliance issues.

Proposal

It is proposed that a trade union and any other non-corporate body (including a trade association, trust body, co-operative society, etc) be allowed to prepare their tax computations based on their financial year being taken to be the basis period for a year of assessment rather than on a calendar year basis. This will assist these taxpayers to comply fully with the filing requirements under the self assessment system.

16. Tax on Interest Income Earned by Associations

Many associations (including trade associations) raise scholarship and medical funds to provide assistance to its members. These are positive signs of contribution to assist individuals to enhance the quality of life. These funds are usually kept in fixed deposits at local banks and the interest income derived will be subject to tax at the relevant tax rates applicable to the association.

Proposal

To encourage these associations to continue to play a pro-active role, it is proposed that the scope of Section 109C of the Act be extended to include associations i.e. interest income earned would be subject to a 5% final tax instead of subjecting the interest income to tax at the relevant rates applicable to such associations.

17. Bilingual Income Tax Returns

With Malaysia opening its doors to foreign manpower, we have seen an increasing influx of expatriates seeking career opportunities in Malaysia. Some of these expatriates may eventually qualify as Malaysian tax residents due to their presence in Malaysia and therefore, will be required under the legislation to discharge their tax responsibilities. With the recent implementation of the self-assessment system for individuals, these resident expatriates need to understand their obligations in order for them to fully discharge their responsibilities.

Proposal

It is proposed that the prescribed income tax return forms be available in both Bahasa Malaysia and English for submission purposes. This will be seen as a genuine gesture of the Government to assist foreign expatriates and further assist in projecting Malaysia as a destination that welcomes expatriates.

18. Definition of a Real Property Company

The definition of a real property company (RPC) is set out in Paragraph 34A, Schedule 2 of the Real Property Gains Tax Act 1976 to mean a controlled company which:-

i) as at 21 October 1988, owns real property and/or shares in a RPC, the defined value of which is at least 75% of the value of its total tangible assets; or

ii) after 21 October 1988, acquires real property and/or shares in a RPC, the defined value of which is at least 75% of the value of its total tangible assets.

In the absence of a chargeable asset, RPGT cannot be imposed. Land held by a property development company would be considered as stock-in-trade for income tax purposes and thus should not be considered as being a property asset for the purposes of RPGT. Therefore, since the character of the asset was not real property, a property development company should not fall within the definition of a RPC. The issue in question is that the objective at the time of acquisition of the property should be looked at before one tries to impose the status of a RPC on a company.

Proposal

It is proposed that paragraph 34A be amended to exclude companies from being considered a RPC when the land held are trading stock.

19. RPGT Returns – Conditional Contracts

Pursuant to Section 13 of the RPGT Act, 1976, every chargeable person who disposes of a chargeable asset and every person who acquires the asset so disposed of shall make a return to the Director General of the IRB within one month (or such further period as the Director General may allow on a written request being made to him) of the date of disposal of that asset.

In practice, the disposer is required to submit CKHT 1 return and the acquirer is required to submit CKHT 2 return to the tax authorities within one month from the date of disposal of the chargeable asset. Under normal circumstances, disposal of real property is deemed to have taken place on the date of a written agreement. However, conditional contracts, (for example, where approval from specific authorities is required, etc) would defer the date of disposal to a later date. In some cases of conditional contracts, problems arise where the disposer and the acquirer had submitted a return to the Director General within one month from the date of the contract and the assessment had been raised based on the return submitted, but the contract was aborted subsequently due to non-fulfillment of all the conditions as stated in the contract. Under such circumstances, the disposer may face difficulties in recovering the tax he/she had paid to the IRB. At present, a taxpayer can apply for an extension of time from the IRB to file the return but such an extension may need to be further extended depending on the circumstances.

Proposal

In view of the above, the Institutes propose that Section 13 of the RPGT Act, 1976 be amended to allow the filing of RPGT returns (CKHT 1 and CKHT 2) upon the fulfilment of all conditions as stated in the contract. This will cut down taxpayers' compliance costs as well as the administrative costs of the IRB.

D. STIMULATING THE BUSINESS ENVIRONMENT

1. Group Relief

Section 44A was introduced vis the Finance Act 2005 (2006 Budget) to provide for group relief for tax losses whereby a surrendering company may surrender not more than 50% of its adjusted loss in the basis period for a year of assessment to one or more related companies resident and incorporated in Malaysia in the basis period for that year of assessment. The conditions to qualify for group relief are also extremely stringent and this makes it difficult for claimant companies to benefit from the group relief. Among the conditions imposed is that the shareholding of the claimant and surrendering companies in the group, whether direct or indirect, must not be less than 70%. This condition hinders a lot of companies from enjoying the group relief as the indirect shareholding interest could result in an interest below the 70% level.

As a consequence, Schedule 4C which allows a surrendering company to surrender its adjusted loss, in full or in part, in the basis period for a year of assessment in respect of an approved food production project to one or more related companies resident in Malaysia in the basis period for that year of assessment, is deleted with effect from year of assessment 2006.

Apart from food production companies, other companies engaged in forest plantations, biotechnology, nanotechnology, optics and photonics were also allowed to surrender 100% of their losses to the claimant companies.

As a result of the introduction of group relief for 50% of tax losses for companies in all sectors, the previous 100% relief available to companies engaged in food production, forest plantations, biotechnology, nanotechnology, optics and photonics is now no longer available to new companies engaged in such sectors.

Proposal

The following measures are proposed:-

(a) group relief be given to companies that fall under the definition of related companies as provided under the Companies Act, 1965 and the restriction of a 70% shareholding be removed. In addition, it is proposed that the losses to be allowed should be restricted only by the defined aggregate income (not limited to 50%) and any penalty should only be imposed if there is proven culpability.

(b) the 100% relief previously given to companies engaged in approved agricultural projects, biotechnology, nanotechnology, optics and photonics should be reinstated whilst the 50% relief applies to other companies.

2. Unutilised Tax Losses and Unabsorbed Capital Allowances (Section 44 and Paragraph 75A of Schedule 3 of the Act)

Following the 2006 Budget proposal, it has been legislated that unutilised business losses and unabsorbed capital allowances shall not be carried forward to future years of assessment for deduction if the shareholders of that company on the last day of the basis period for that year of assessment were not substantially the same as the shareholder of the company on the first day of the basis period for the year of assessment.

It is further defined that the shareholders are substantially the same if on both those dates (a) more than 50% of the paid up capital in respect of the ordinary shares of the company is held by or on behalf of the same persons and (b) more than 50% of the nominal value of the allotted shares in respect of the ordinary shares in the company is held by or on behalf of the same persons.

With this, companies with tax losses and unabsorbed capital allowances would lose its value to potential purchasers. It would deter internal restructuring of a group of companies to achieve greater efficiency and hinder a genuine turn-around exercise to rescue a loss-making company. Eventually, this will not only bring negative impact to our economy but may also discourage foreign investors to invest in our country. Furthermore, minority shareholders will lose out on the value of the investment for something that they cannot control.

In view of the above, the Institutes are of the opinion that this provision should not apply to situations of internal group restructuring where the ultimate ownership of the shares after the transfer remains unchanged. As provided under Section 44(5D) of the Act, the Minister may, under special circumstances, exempt that company from the continuity of ownership test.

Proposal

To avoid any delay in the group restructuring exercise and other practical difficulties as well as administrative burden in dealing with various applications for the above exemption, the Institutes propose that so long as the loss-making company remains within the group before and after the group restructuring exercise, the carry forward of losses and capital allowances should not be affected.

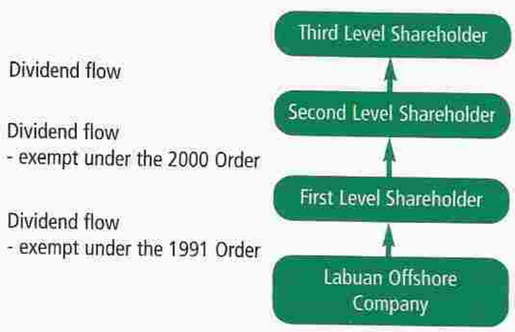
The Institutes are of the view that the said provision should only be applied to those exercises which seek to obtain a tax advantage by acquiring a loss-making company without valid commercial justification. However, it should not deter a genuine turn-around exercise to rescue a loss-making company. In cases of genuine acquisitions of ongoing businesses (with employees, assets, liabilities, etc) by a loss making company with the intention of turning around the business, it would be unfair that unabsorbed losses and capital allowances are disallowed following changes that are essential to the future well-being of the company.

3. Flow-through of Dividends from Labuan Offshore Companies to Domestic Companies

- **Dividend Franking Mechanism**

The *Income Tax (Exemption) (No. 16) Order 1991* (1991 Order) provides that a Malaysian resident company will be exempt from tax in respect of dividends received from an offshore company, provided that this is paid out of income derived from an offshore business activity or from income exempt from tax under the Labuan Offshore Activity Tax Act, 1990. However, this Order does not specify that the dividend income received by the Malaysian company will be credited to an exempt account, to enable the flow-through of these dividends to the shareholder(s) of the Malaysian company.

The *Income Tax (Exemption) (No. 10) Order 2000* (2000 Order) provides that shareholders of a domestic company will be exempted from tax on dividends received from that company, which are paid out of dividends received from an offshore company. The dividend flow is illustrated below:



Dividends received by the domestic company are exempt from tax under the 1991 Order whilst dividends received by the second level shareholder are exempt from tax under the 2000 Order.

Whilst the 1991 and 2000 Orders exempt the domestic company and its shareholders from tax in respect of dividend income received from an offshore company, there are no specific provisions which negate the need for the domestic company to "frank" the dividends on paying these dividends to its shareholders. In the absence of specific statutory provisions to create an exempt account, technically, the domestic company would need to have a Section 108 account to frank out the dividend payments to its shareholders.

The Technical Department of the IRB had confirmed that the domestic company needs to have sufficient Section 108 credits (which it will not have, in respect of Labuan dividends received) when it wishes to on-pay the Labuan dividends to its shareholders, or otherwise suffer tax at 28% on such dividend payment. The second level shareholder are only able to receive dividends net of tax (at 28%) and is required to apply for refund of the 28% tax withheld on the dividends paid by the domestic company.

- **Dividend 'Trap"**

In a structure using Labuan as a holding company, tax-free dividends from overseas are "trapped" at the second level shareholder i.e. the third level shareholder will be taxable. In contrast, structures using a foreign holding company enjoy one additional tier of exemption of income from its foreign investments i.e. the 3rd level shareholder will be able to receive tax exempt dividends from overseas investments.

This creates a disadvantage for Malaysian/domestic companies which already had or are planning to invest overseas through Labuan. Effectively, the disadvantage may well discourage the use of Labuan by Malaysian companies, which is inconsistent with LOFSA's objective of promoting the use and development of Labuan as an International Offshore Financial Centre.

Proposal

It is proposed that in order to allow the dividends to flow from the domestic company to its shareholders without the need for Section 108 credits, the 1991 Order should be amended to include the following provision:

"Paragraphs 5 and 6 of Schedule 7A, ITA shall apply 'mutatis mutandis" to the amount of income derived and received by a resident company exempted under paragraph 2(b) of this Order".

The inclusion of the above would make it clear that the domestic company is entitled to flow dividends received from the offshore company to its shareholders without the need for dividend franking credits. It also allows the dividends received from a Labuan offshore company by the third level shareholder to be exempt from tax.

4. Real Estate Investment Trusts (REIT)

- **Mismatch of Income**

Section 61A of the Act provides that the total income of a unit trust (i.e. a unit trust approved by the Securities Commission as Real Estate Investment Trust or Property Trust Fund) for a year of assessment which is equivalent to the amount of income distributed to the unitholders in the basis period for that year of assessment which is ascertained by reference to the unitholders' share of income shall be exempt from tax.

It is to be noted that "income distributed" is a cash flow concept whilst "total income" is a tax concept and there is a mismatch between the two concepts. It is not possible to determine the income that can be distributed without knowing the amount of tax. Likewise, it is not possible to determine the amount of tax without knowing the income distributable, as shown in the following example:

The above shows that the tax amount (X) is dependent on amount of income distributed (Y) to arrive at the chargeable income (Z), whilst Y is dependent on X.

Income Statement		Tax Computation	
	RM		RM
Rent	10	Net income	10
Dividends	4	Add: Depreciation	4
Interest	6		
	20		14
Less: Depreciation	(4)	Less: Capital allowance	(2)
Other expenses	(6)		
(all allowable)			
Net income	10	Chargeable income	12
Less: Tax payable	X	Less: Income distributed	Y
		(exempt from tax)	
Net income after tax	Y	Chargeable income	Z
(distributable income)		subject to tax	

- **Withholding Tax Rate**

Unitholders may receive distributions from the REIT out of income which is exempt from tax under Section 61A. The unitholders will be taxed on the gross dividend income received. Where the unitholder is a non-resident, the dividend payment will suffer withholding tax at 28% under Section 6(1) of the Act. The tax rates applicable to the unitholders on dividends received from the REIT are as follows:

Individual resident unit holders	- 0% to 28%
Individual non-resident unit holders	- 28%
Corporate resident unit holders *(other than a company with paid-up capital in respect of ordinary shares of not more than RM2.5m at the beginning of the basis period for a year of assessment)*	- 28%
Corporate non-resident unit holders	- 28%

In Singapore, both resident and non-resident individual unitholders are exempt from tax on dividends received. Dividends received by non-resident institutional investors are subject to withholding tax of 10% instead of the corporate rate of 20%.

Proposal

To promote the REIT industry and to attract foreign investors, the following measures are proposed -

(a) resident and non-resident individual unitholders be exempt from tax on dividends received from the REIT for a specific period of time.

(b) non-resident institutional investors be subject to a reduced withholding tax of 10% instead of 28%. The withholding tax rate should be at par with the other payments subject to withholding tax such as interest and royalties.

(c) regulators need to work together to expedite the process in relation to the setting up of and the operation of REITs. The SC has indicated that the approval process should take 2 months provided all documentation is in order. However, this does not take into account the State Authority approval that may be required. Under the National Land Code, it appears that State Authority approval is required where land is transferred to a trust and any one of the beneficiaries is a non-citizen or a foreign company. State approval can certainly take a long time.

(d) more foreign equity should be allowed for the management company (currently limited to 49%) so as to encourage more expatriates/fund managers to work in Malaysia, as Malaysian expertise in this area is limited. This will allow REITs to develop quickly and provide good alternative investment sources to investors.

5. Healthcare Sector

To encourage the growth of this sector, more incentives are needed.

Proposal

To upgrade the health services and quality of these services, the following measures are proposed-

(a) Double deduction on expenses incurred for improving skills and expertise of the medical profession (overseas and local training etc);

(b) Double deduction on expenses incurred by hospitals to obtain accreditation status such as hospital accreditation, laboratory accreditation, etc. and other clinical accreditation status to ensure that high standards of care delivery that is comparable with international organizations;

(c) Double deduction for expenses incurred for the promotion of wellness programmes as this will assist the Government in promoting a healthy society and quality of life. These may include promotional expenses for example, marketing expense, discount given, health campaign ,tc. Wellness program include Annual Medical Check Up, Executive Screening Program, Health Screening, Patient & Public Education Seminar/Conference, Health Talk etc.

To encourage the public to undergo regular health screening program, an additional personal allowance is proposed for the expenses that they incur.

(d) Tax incentives for the usage of specialized equipment used for clinical diagnostic purposes and hence create a competitive edge for the health tourism business in Malaysia for example, accelerated capital allowances could be granted for such equipment;

(e) Reinvestment allowance is proposed for high end and niche services e.g. bone marrow studies and transplant, liver transplantation services, etc.

6. Education and Training Sector

--Double Deduction for Approved Training

It is noted that a company will be given double deduction on training if it is conducted by approved training institutions. However, only a small number of training institutions have been granted such status and the courses offered are limited in scope. Manufacturing companies with less than 50 employees which undertake in-house training or send their employees for training in an institution other than the approved training institutions will have to apply for approval before the training expenses are given double deduction. Furthermore, only training courses for certain manufacturing skills are identified for the incentive.

The Government has been giving greater emphasis to human resource development in the manufacturing sector. In line with the Government's strategy to develop the services industries into a key economic sector, more incentives should be provided to encourage the services industries to invest in their human capital. The services sector accounted for 57% of the country's GDP in 2004.

Proposal

The Institutes suggest that the double deduction incentive be extended to training programmes undertaken by firms involved in professional services such as accountancy, engineering, architecture and law. Accounting firms have been actively involved in the training of new graduates to become qualified professional accountants as well as in continuing professional development of their qualified staff.

It is also proposed that the double deduction incentive be extended in respect of expenses incurred in approved training to a wider range of training courses and a larger number of training organisations including:

- Education and training programmes conducted by professional bodies such as the MICPA and the MIT which lead to the attainment of a professional qualification.
- Continuing professional development programmes organised by professional bodies such as MIA, MIT, MAICSA, MICPA and other scheduled bodies under the Accountants Act, 1967.

7. Research and Development Sector

• Research & Development Company

Currently, a research and development (R & D) company carrying out research and development projects for its related companies enjoy Investment Tax Allowance (ITA) of 100% of qualifying capital expenditure incurred within a period of 10 years. The allowance is abated against 70% of the statutory income for each year of assessment.

Under Section 34B (2) of the Act, where the R & D company has been granted and is claiming ITA under the PIA its related companies are not allowed to claim double deduction for the qualifying revenue expenditure they incurred on the use of its R&D services. The related companies may only claim double deduction for the qualifying revenue expenditure if the R & D company opts not to claim ITA.

Proposal

It is proposed that the ITA be allowed against 100% of statutory income of the R & D company to promote R&D and encourage the utilisation of a research company's services to improve the quality of products and services.

• In-House R & D Activities

Currently, a company carrying out in-house R & D activities is given an ITA of 50% on qualifying capital expenditure for a period of 10 years. The allowance is abated against 70% of the statutory income for each year of assessment.

Proposal

It is proposed that the ITA be increased to 100% and to be allowed against 100% of statutory income of the company. Whether a particular research and development is carried out in-house or by external research institutes, the objective remains the same. Therefore, the incentive given under both circumstances should be equal. There are also compelling reasons for companies to conduct research in-house, for example the confidentiality of trade secrets or patented technology processes. The above proposal will further encourage companies to conduct in-house R & D activities.

8. Property Sector

- **Tax Relief for Interest on Housing Loans**

Tax relief for three years of assessment until year of assessment 2005 is granted on interest payments to new buyers of completed houses and first-time owners of houses costing between RM100,000 to RM180,000. This provision applied to houses purchased from 1 June 2003 to 31 May 2004.

Proposal

To further stimulate the property sector and ownership of houses, the above relief should be continued with the maximum cost of RM180,000 removed but with a maximum relief capped at a certain threshold. This will assist, in some way, the average income earners to own houses and also assist in stimulating the property sector.

9. Franchising

The development of SMEs has been identified as an important component of future economic growth. One of the methods of developing entrepreneurship is to encourage franchising. However, apart from the availability of soft loans for SMEs, there is no other tax benefit or tax break for franchisees to lower their overall cost of investment.

Besides capital investment in fixed assets, a franchise also requires an upfront payment of franchise fees as well as training fees. In addition, there are royalty fees on sales and also rental and security deposits. The total initial investment for a franchisee is quite substantial.

Proposal

In order to promote franchising activities and reduce the cost of investment to the franchisee, it is proposed that for the purposes of ascertaining the adjusted income of a franchisee, the lump sum payment of the franchise fee by the franchisee be tax deductible over a 5 year period (i.e. an amount equal to one-fifth of the total initial cost of investment by the franchisee for that year of assessment and for each of the four following years of assessment be tax deductible), in line with the deduction for cost of acquisition of proprietary rights which is available to the manufacturing sector.

10. Reinvestment Allowance (RA)

Over the years, the Government has offered a wide range of incentives to the manufacturing sector, with greater emphasis on specific industries such as the high technology industry and food production industry. Specific incentives are also offered to promote activities or products and to companies located in promoted areas to trigger growth in these activities/areas.

To encourage expansion of production capacity, modernisation and diversification in the manufacturing sector, the RA incentive has been constantly improved to ensure that it remains attractive to investors. The 2002 Budget extended the RA period from 5 years to 15 years whilst the 2003 Budget allowed a company enjoying pioneer status, which intends to undertake reinvestment before the expiry of its pioneer status to claim RA on condition that the pioneer status is surrendered for cancellation.

Currently, RA is granted to manufacturing companies and producers of promoted food products on capital expenditure incurred on a factory, plant or machinery used in Malaysia for the purposes of any qualifying project, i.e. a project undertaken by the company for the expansion, modernisation, automation or diversification of its existing business. Such expenditure does not include capital expenditure incurred on plant or machinery which is provided wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff.

In a recent Technical Dialogue, the IRB indicated that if a company invests a huge sum of money in capital expenditure to expand its production capacity of the factory, the actual production output should also increase accordingly. If the actual output does not increase, the company would have to prove that it is not merely replacing old assets but the situation is caused by unforeseeable market conditions.

In this regard, the Institutes would like to propose the following issues for the Government's consideration:

(a) To avoid any ambiguity in the Act, clear definitions and interpretation should be established. For example, capital expenditure incurred on a factory, plant and machinery used for the purpose of a qualifying project is not defined in Schedule 7A (Reinvestment Allowance) to the Act. This has given rise to ambiguity as to what constitutes capital expenditure for a qualifying project. Hence, the definition in Schedule 3 (Capital Allowances and Charges) for capital expenditure incurred for the provision of machinery or plant used for the purposes of a business should be adopted in the context of interpreting provisions relating to RA.

(b) There is also ambiguity about the interpretation adopted by the IRB in disallowing a company to claim RA incurred on an expansion project say in October 2005 after the incentive [Pioneer Status (PS) or Investment Tax Allowance (ITA)] had expired on say 30 June 2005. A pioneer company is excluded from claiming RA for the period in which the company has been granted a pioneer certificate in respect of any promoted activity/product. As the word 'period' is not defined under the Act, it would be reasonable to interprete it as being the tax relief period. As such, capital expenditure incurred for purposes of a qualifying project (as defined in Paragraph 8, Schedule 7A) after the expiry of the tax relief period (during the basis period) should be eligible for RA.

(c) The claim for RA and PS or ITA should be based on products rather than on the company as a whole. For example, a company which enjoys PS in relation to product A should be allowed to claim RA in relation to product B where the RA criteria are met. Further, steps should be taken to widen the scope of RA for the agriculture sector.

(d) Certain business operations are situated in remote areas such as plantations in Sabah, where accommodation needs to be provided to employees as there is no public transportation available for going to work. The construction of housing units for employees is part and parcel of an expansion programme. In addition, buildings used for providing accommodation to management staff do not qualify for capital allowance. This is a disadvantage to the company as there is no other avenue for claiming this business related cost. To encourage reinvestment, the Government should extend the qualifying expenditure to include accommodation provided to staff as the expenditure is part and parcel of an expansion or diversification programme.

(e) To stay competitive, a business must undertake, on an on-going basis, investment in new plant, machinery and technology that enhance automation of its production process and increase productivity. Such capital expenditure should continue to qualify for RA. The time limit for the RA incentive should be removed so as to encourage companies to undertake regular investment in modernisation and automation activities to increase productivity and hence competitiveness.

11. Investment Tax Allowance

In accordance with Section 29 of the PIA, a company which has been granted ITA for an activity or product shall be given such allowance in respect of capital expenditure incurred within five years from the date from which the approval of the ITA is to take effect.

In the case where ITA is granted for a huge project which is developed in phases, the total qualifying expenditure may not be incurred within five years from the effective date of the ITA. Consequently, the company is unable to enjoy the full benefit of the ITA.

Proposal

In view of the above, it is proposed that different commencement dates for the ITA should be allowed for each phase of the project so as to enable the company to enjoy the full benefit of the incentive. This will also encourage the company to continue with the investment until the completion of the whole project.

12. E-Commerce

Currently, there are no specific provisions in the Act that deals with e-commerce. With rapid globalisation in the business world, the use of e-commerce is inevitable. Taxpayers need to understand the tax treatment resulting from e-commerce transactions – the basis of taxation, double tax implications as well as the withholding tax implications on payments for internet services, electronic transactions, software payments, etc.

The IRAS has issued a circular dated 28 February 2003 to provide clarification on payments for digitised goods and the use of or right to use information. Included in the exemption from taxation are payments for digitised goods (eg. music videos, logos) and the use of information (eg. Information obtained from Bloomberg, Forrester and Lexis-Nexis). A circular was also issued by the IRAS on 23 February 2001 to assist taxpayers to understand the tax treatment for e-commerce transactions.

Prior to that, the IRAS issued a circular on 29 December 2000 (reissued on 23 February 2001) to exempt withholding tax on four categories of software payments, namely, shrink-wrap software, downloadable software for end-users, site licence and software bundled with computer hardware.

Proposal

In view of the uncertainty surrounding the tax treatment of various activities relating to e-commerce, it is proposed that specific provisions/guidelines be introduced to provide clarity. This would provide taxpayers with more certainty and assist the Government to achieve its objective to promote electronic commerce and the use of information communication technology in business operations.

13. Investment Holding Company

Following the 2006 Budget, a new Section 60FA has been inserted and Section 60F of the Act, has been amended. Under Section 60F, an investment holding company (IHC) is defined as a company whose activities consist mainly in the holding of investments and not less than 85% of its gross income (whether exempt or not) is derived therefrom. Section 60F(1A) of the Act further provides that income of an IHC which is from the holding of investments shall not be treated as income from a source consisting of a business; and income other than income from the holding of investment shall be treated as gains or profits under paragraph 4(f) of the Act.

As provided under Section 60FA(2), for an IHC which is a company resident and listed on the Bursa Malaysia in the basis period for that year of assessment, income of that IHC from the holding of investments in that basis period shall be treated as gross income of that IHC from a source or sources consisting of a business for that year of assessment. However, unabsorbed tax losses and unutilised capital allowances are not allowed to be carried forward to the future years.

Based on the new definition as stated above, rental income received will be treated as investment income if a company solely owns and manages its buildings or complexes even though it provides ancillary or support services/facilities such as security guard service, escalators and lifts, cleaning or housekeeping, etc which actually means that the company is carrying on a business. Under the new provision in the Act, the said company would not be able to carry forward its tax losses and unutilised capital allowances. Non-listed companies that are presently (YA

2005 and before) treating the rental income as a business source under the Public Ruling 1/2004 would not be allowed to carry forward the unabsorbed tax losses and unutilised capital allowance.

The Institutes are of the view that listed and non-listed IHCs should not be discriminated and treated differently. The above inconsistency in tax treatment is not fair to taxpayers and creates tax compliance and administrative issues. In addition, the above restriction on the carry-forward of unabsorbed tax losses and unutilised capital allowances for IHCs listed on the Bursa Malaysia may hinder foreign investors from investing in our share market.

Pursuant to Section 60F, permitted expenses refer to expenses incurred by an investment holding company in respect of secretarial, audit and accounting fees, telephone charges, printing and stationery costs and postage.

Proposal

In this regard, the Institutes propose the following:-

(a) the tax treatment for an IHC should be based on the fundamental fact of determining whether the source of income is a business or non-business source. If a company owns and manages buildings and provides ancillary or support services/facilities, it should be treated as a business source and the tax losses and unutilised capital allowance should be allowed to be carried forward. Section 60F should only be applied to companies which derive passive income from its investments.

(b) Section 60F should be amended to include tax fees and also bank charges as part of the permitted expenses as these expenses are necessarily incurred in the business of holding investments.

14. Companies Limited by Guarantee

Companies formed under Section 24 of the Companies Act 1965 are limited by guarantee and their main objects are the promotion of commerce, industry, art, science, religion or other objects useful to the community. Such companies are non-profit making and derive their income from members' subscriptions, interest, dividends, rental (of excess space), etc. These companies are required to apply their income in advancing the interests of a trade or profession and their members and are prohibited from making any payment of dividends to their members. Currently, the income of such companies is subject to tax at the flat rate of 28%, similar to that for companies with share capital.

Many of these companies play similar roles as that of trade associations. The latter organisations have been granted exemption from tax in respect of subscription fees received determined by a prescribed formula. With effect from year of assessment 2005, the statutory income from members' subscription fees that is exempted is calculated according to the attributable method by taking into consideration actual expenditure incurred.

Proposal

The tax treatment for trade associations is proposed to be extended to companies limited by guarantee which are membership based. Therefore, the income should be taxed at scale rates rather than at the flat rate of 28%. This will enable such companies to accumulate more funds to play a more active role in promoting their objects.

15. Foreign Associations

Currently, foreign associations registered in Malaysia are subject to tax on their profits derived from Malaysia. Some of these associations are not profit-motivated and are essentially set up to maintain international affiliation. Generally, these associations can register as companies limited by guarantees. However, this can be administratively cumbersome.

Proposal

The Government should consider providing favourable treatment for foreign organisations which may decide to set up their office or secretariat in Malaysia. The necessary law should be amended/improved so as to allow easier registration of associations with large number of members who are based overseas. This can encourage more activities such as conferences, etc being held in Malaysia. Conferences could then assist in providing economic benefits to the country via tourism, etc.

16. Local Leave Passages

As stated in the Public Ruling No. 1/2003: Tax Treatment of Leave Passage, leave passage cost means cost of fares.

Proposal

To better reflect the current packaging of tours by tour agencies i.e. a packaged tour which includes air fares, accommodation and meals, the Institutes propose that the definition of leave passages should not be confined to cost of fares. Leave passages should include the costs incurred on packaged tours for the benefit of employees. The Institutes propose that the cost of three local packaged tours given as benefits to employees be allowed as a deductible expense to the employer and be exempted in the hands of employees. In order to further boost domestic tourism, the Institutes propose that the costs incurred on employees for local leave passages be tax deductible for employers. This benefit is an essential component in the quest to enhance the productivity of staff.

17. Bilateral Credit

Presently, bilateral credit is only allowed to a person in respect of any foreign income which has suffered foreign tax.

In the case of a Malaysian resident company which provides technical services in a foreign country but has no permanent establishment in that country, the income may be deemed to be derived from Malaysia by virtue of Section 12(1) of the Act and subject to corporate tax in Malaysia. This income may also be subject to withholding tax in the foreign country.

Based on Schedule 7, the income from the technical services provided in the foreign country would not be eligible for tax relief under Section 132. Assuming the Technical Services Article is provided in the double tax agreement (DTA) between the two countries, the right to tax the income would be given to the country of source. However, the country of residence (Malaysia) also taxes that income based on the provisions of its domestic law but no relief is allowed for the foreign tax suffered resulting in double taxation which is contrary to the objectives of negotiating a DTA.

Proposal
It is proposed that the Schedule 7 of the Act be amended to allow a double tax relief for any income which has suffered tax abroad and which is also taxed in Malaysia.

18. Tax Residence Status of Individuals

One of the conditions for an individual to qualify for residence status for purposes of income tax is that the individual is required to be in Malaysia for at least 182 days in a basis year. The length of stay in Malaysia used to be ascertained by the IRB by reference to the immigration stamp on the passport. However, expatriates working in Malaysia and whose nature of work requires them to travel frequently are now issued with an "Expat Identification Card". This allows the expatriate to travel in and out of Malaysia without having to clear immigration. Consequently, the expatriate's passport will no longer be required to be stamped by the Immigration Officer. Whilst this is a practical measure undertaken by the Immigration Authorities to alleviate administrative burden, it creates an issue for determining residence status for purposes of income tax. The passport is relied upon by the IRB to ascertain the individual's presence in Malaysia in any particular year for purposes of establishing residence status. As the passport no longer captures all movements in and out of Malaysia, it is inadequate for purposes of verifying the number of days a person is present in Malaysia.

Proposal
In view of the above, the following are proposed:-

(a) any individual deriving income from Malaysia is to be deemed as a resident for purposes of income tax unless he is able to demonstrate otherwise.

(b) all Malaysian individuals and permanent residents enjoy the current resident income tax rates with a deduction for personal reliefs and rebates.

(c) the tax rates, personal reliefs and rebates be extended to foreigners, who have valid permits to work in Malaysia and where the period of the contract of employment or engagement is 6 months or more.

19. Islamic Wealth Management

In order to tap Islamic funds and to attract investors from the middle-eastern countries, there is a need to further enhance the tax treatment of Islamic instruments. More guidance is needed on the treatment of such investments. In fact, in order to attract such investors, a package may need to be made available, which could involve the tax treatment of companies and the treatment of zakat as well as other ways and means of tapping such a market. There may be a need to focus and consider this area of Islamic wealth management so that Malaysia can attract such investments.

E. DEVELOPMENT OF HUMAN CAPITAL

1. Deduction for Continuing Professional Education (CPE) courses

In order to sustain the quality and continuous improvement of the professionals' knowledge, skills, competence and professional values in providing services to clients, employers, regulators and other stakeholders, members of professional bodies (in particular, the accounting bodies) are required to complete a stipulated number of CPE hours within a specific time frame.

Proposal
In view of the fact that such expenses are incurred in the production of employment income, it is proposed that the cost incurred by an individual in attending CPE courses in order to fulfil the CPE requirements of the professional bodies be deductible against the employment income, in the same manner as professional subscription fees.

2. Incentive for Unemployed Graduates Training Scheme

It has been proposed in 2006 Budget that allowances given by listed companies to participants in the Unemployed Graduates Training Scheme during the period from 1 October 2005 to 31 December 2008 be given a double deduction. This scheme needs to be endorsed by the Securities Commission.

Proposal
The Institutes would like to suggest that the scope be widened to allow non-listed companies, including the professional firms which also participate in such scheme to obtain the double deduction. This would provide the graduates with wider opportunities to be trained and therefore, improving their skills and knowledge.

F. PROMOTING A CARING SOCIETY

1. Personal Income Tax Reliefs/Exemptions

- **Personal Relief for Child-Care Facilities for Working Parents**

Based on the 2000 Population Census, about 48% of the female population in the country was in the working age group of 15 to 64 years. However, the number of women currently involved in the country's work force only accounts for one-third of the total work force.

The Institutes wish to commend the Government for taking various measures and efforts to mobilise this available pool of resources, and therefore increasing the supply of labour and contributing towards enhancing the nation's output.

Proposal

In this respect, the Institutes propose that a relief of up to RM2,000 be allowed to working parents for the use of child-care facilities or kindergartens for their children. The above relief will encourage qualified or skilled individuals to engage professional people to attend to their children, and this will enable the "home-parents" (especially women) to return to the workforce and consequently increase the per capita income of the family.

- **Personal Relief for Insurance Premiums and Contributions to Approved Schemes**

The Government, in encouraging the growth of the life insurance industry, has increased the maximum aggregate amount of relief in respect of life insurance premiums and contributions to approved schemes to RM6,000 with effect from the year of assessment 2005.

Proposal

In view of the above, the Institutes propose that the current maximum aggregate relief of RM6,000 for life insurance premiums and contributions to approved schemes be granted as follows:

Category	Maximum Aggregate Relief (RM)
Life Insurance Premiums	6,000
Contributions to Approved Schemes	6,000

Apart from encouraging saving by individual taxpayers, the creation of separate categories for the above-mentioned personal relief would further sustain and encourage the growth of the life insurance industry. More approved pension and provident funds should be created to encourage employees to save for their old age.

- **Exemption of Compensation for Loss of Employment**

At present, the exemption of compensation for the loss of employment is only RM6,000 for each completed year of service with the same employer or companies in the same group. The retrenched staff is likely to face difficulties in getting a new job.

Proposal

In order to relieve the burden of retrenched and unemployed staff, the Institutes propose that the compensation for loss of employment should be fully exempted. This also makes for easier compliance and cuts down the cost of getting approvals from the IRB on the tax treatment of severance packages, etc.

2. Cost of Living Allowance

Following the recent 30-sen fuel price increase, there is increasing concern among consumers that they would have to spend a lot more on household expenses. The effects of the fuel price increase on consumer goods are inevitable. The 30 sen per litre increase in the price of petroleum products will burden every worker in the country.

Proposal

To lessen the financial burden of individuals following the increase in fuel price, the Institutes propose that the cost of living allowance be exempted in the hand of employees. To encourage private sector employers to provide such an allowance to their employees, it is proposed that a double deduction be given to companies which pay cost of living allowances to their employees.

3. Deduction for Gifts of New Personal Computers to Employees

An amount equivalent to the cost of new personal computers given by a company as gifts to its employees was allowed as a deduction to the company from year of assessment 2001 until year of assessment 2003.

Proposal

In view of rapid technological advances, the Institutes propose that the deduction for gifts of new personal computers to employees should be reinstated for the next three years of assessment to further encourage usage of information communication and technology and widen internet accessibility.

4. Perquisites from Employment

Based on the Public Ruling 1/2006: Perquisites from Employment, payment or reimbursement to an employee by the employer for educational assistance for the employee's children and long service awards are considered as perquisites from employment and hence, taxable in the hands of the employee.

Proposal

It is proposed that the provision of child education assistance should not be taxable for the low income employees as they require such assistance and taxing such assistance could place some of these employees into a taxable bracket. In addition, long service awards should not be taxed as such awards are given to encourage loyalty to the company thereby reducing business costs relating to staff turnover.

CONCLUSION

The Institutes wish to thank the Ministry for granting us the opportunity to present our views and proposals to the 2007 Budget.

We are prepared to meet with the Ministry to discuss/elaborate on these proposals.

Intangible Property - A Transfer Pricing Peril?

BY SERJIT SINGH CA

Background

The Organisation of Economic Co-operation and Development (OECD) in the year 2000 had released Guidelines on Transfer Pricing (OECD Guidelines)[1]. Issues surrounding Intangible Property (IP) had its fair share of discussions within the guidelines.

Paragraph 6.2 of the OECD Guidelines describes an IP as:

> *The term "intangible property" includes rights to use industrial assets such as patents, trademarks, trade names, designs or models. It also includes literary and artistic property rights, and intellectual property such as know-how and trade secrets. These intangibles are assets that may have considerable value even though they may have no book value in the company's balance sheet. There also may be considerable risks associated with them (e.g., contract or product liability and environmental damages).*

IP is further distinguished between trade and marketing intangibles, as these two types of intangibles have different features that lead to the creation of their respective values.

1 Please refer www.oecd.org

The treatment of IP can be one of the most difficult to apply both for tax advisors and administrators alike in transfer pricing (TP) practice and on a larger scale from a tax perspective. Even the Lembaga Hasil Dalam Negeri Malaysia (LHDNM) Transfer Pricing Guidelines (point 8 on page 25 of the guideline) is limited to general connotations in terms of how an IP should be treated from a TP perspective. This is not surprising, seeing that some of the problems encountered globally with IP are, but not limited to:

- Difficulty in discerning the precise nature of the transaction, especially when tangible and intangible components are bundled together;
- Searching for comparables seems to be a major hindrance, as the property may have unique characteristics; and
- Multinationals may, for entirely commercial reasons, structure their transactions in ways that would not be adopted by independent firms.

Therefore, the purpose of this article is to help ease the complications surrounding the treatment of IP from a TP perspective by sharing some insights into the research on the treatment of IP from a TP perspective.

Functional Analysis

TP practitioners commonly use the term "functional analysis". A sound functional analysis is an important step in applying the arm's length principle to IP. Functional analysis can help identify:

- Factors that have led to the creation of intangible value, and where those rewards might accrue;
- Who the owner of the intangible is;
- What the true nature of the property being transferred is; and
- The terms and conditions under which a related party is using an intangible (i.e. a license agreement or a contract distributor, for example).

The results of a functional analysis can identify those features of a transaction for which comparables ideally should be identified. It also enables a check that the price determined is consistent with the true nature of the property being transferred.

Ultimately, the area of TP relies heavily on the application of arm's length principles and this is achieved by using reliable comparables. For example, the arm's length price might be determined directly by reference to the transfer of similar IP in an uncontrolled transaction (a comparable uncontrolled price (CUP)), or by comparing the return to a manufacturing function incorporating equivalent IP (i.e. a cost plus approach).

The often unique nature of IP does mean, however, that applying comparables directly may not always be practicable. Further, even if an apparent comparable can be located, it would be erroneous to assume it can be usefully applied mechanically. The key issue would be whether the most reliable measure of an arm's length price has been determined, not whether a comparable has been identified and applied in the process.

Types of Intangible Property

As suggested earlier, the OECD guideline distinguishes between two broad types of IP, i.e. marketing and trade intangibles. An awareness of the distinction can be useful in identifying the factors contributing to an intangible's value, and aids significantly in applying the arm's length price correctly.

For example, a marketing intangible may have a very limited life unless supported by current marketing expenditure, i.e. if current marketing is eliminated, its value will quickly diminish. Such an intangible is likely to have little or no inherent value, and it would be inconsistent with the arm's length principle for the intangible to earn anything beyond a nominal return.

The table below provides some guidance as to how to distinguish between the two types of intangibles (Table 1):

Table 1

Trade Intangibles	Marketing Intangibles
Tend to arise from risky and costly R&D	Often cheap to create legally (such as trademarks and trade names) but very costly to develop and maintain value
Generally associated with the production of goods	Associated with the promotion of goods or services
Use of a patented trade intangible may result in a monopoly for a product	Competitors are able to enter the same market if products are differentiated
Any legal rights established (e.g. a patent) are likely to have a limited life	May have indefinite life if properly maintained

Consideration of these differences will be important in determining the nature of any IP that is applied in a transaction, and the type of comparables that might need to be identified to assess the value of that property. Thus it will be important in determining:

- The value of any IP transferred within a multinational; and
- The amount of income attributable to IP and how:
  - The income should be allocated between the parties if ownership of the property is shared; and
  - One party to a transaction should be compensated if it contributes to the value of IP owned by the other party.

Detailed emphasis need not be placed on classifying an IP into a trade or marketing IP. The distinction is crucial in so far as developing an awareness of factors that lead to the creation of value in IP of a different nature, and as a consequence the appropriateness of an effective arm's length price that can be readily considered for its transfer.

Before appraising whether the price for IP is at arm's length, it is necessary to ascertain what the transaction actually involves. This would help to identify what needs to be priced, ideally by reference to independent comparables.

Ownership of Intangible Property

A general rule of thumb is that IP is initially owned by the party that bears the expenses and risks associated with its development, whether incurred directly or indirectly by paying the entity who actually undertakes and does the work on its behalf. The owner of that property is then entitled to all of the income attributable to that intangible. The principle behind this is that, at arm's length, an independent party would not be prepared to incur such expenditure and assume such risk if it was not going to benefit from what is produced by the efforts of the other entity.

The initial owner of an intangible may choose to transfer some or all of the rights to exploit the intangible. However, an arm's length charge should be imposed for the transfer of those rights. The party to whom the rights are transferred will then be entitled to the income attributable to the intangible rights that are transferred.

It is possible however that legal ownership of an IP (such as a patent) does not vest with the party that has developed the property. In that case, the arm's length principle would treat the legal owner as being entitled to the income attributable to that intangible property, even though the legal owner has not contributed to its development. However, the developer of the IP would be expected to have received an arm's length consideration for its development services. This might, for example, take the form of:

- A cost reimbursement (with an appropriate profit element), if the developer is a contract developer; or
- Lump-sum compensation, if the developer bore all of the expenses and risks of development.

Whether or not the developer is a contract developer should be determined on the facts of the relationship between the parties during the development process. If the developer is a contract developer, it would seem reasonable to expect that at the outset of the development process, an arrangement would be in place for costs to be reimbursed during the process or a formal understanding already established that the developer will not own any IP produced.

There are two aims in identifying the nature of the IP being transferred.

Firstly, the key features of the IP that have led to the creation of its value are identified, giving an indication of the important factors that will need to be priced. This helps identify what it is that will give rise to the expected benefits, and to differentiate profit attributable to that intangible property, from the profit attributable to other factors, such as functions performed and other assets employed.

Second, if the IP is to be valued by reference to comparables, and it must be acknowledged that in many cases, this may not be readily possible, it will enable the true extent of comparability between the transactions being compared to be better ascertained[2].

Use of Standard International Royalty Rate

Once an appropriate arm's length price for an IP has been considered, the value of which can be extracted from that IP is usually passed on to the recipient by way of a royalty.

One question that is often posed is whether a royalty rate established at arm's length in relation to one member of a multinational will be accepted automatically by the LHDNM as also being arm's length in the Malaysia context. Consider the following example.

> A Japanese company licences technology to a number of subsidiaries around the world. A comprehensive analysis has been performed to support that an arm's length royalty rate for its Australian subsidiary is 7%. On the basis of this analysis, the company also charges the same royalty rate to all of its subsidiaries. The question arises as to whether the (LHDNM) will accept 7% as arm's length royalty rate for the Malaysian subsidiary?

The example seems to bring up a couple of issues. First, there is the question of whether the 7% is actually an arm's length royalty rate for the Australian subsidiary. Second, if it is an arm's length rate for Australia, are the economic features of the Malaysian and Australian markets sufficiently similar that the same royalty rate should be expected to apply in both markets? If 7% is an arm's length royalty rate for Australia, it is still necessary to examine the relative economics of the Malaysian and Australian markets to test whether 7% is also appropriate for Malaysia. If the differences between the markets were relatively small, 7% would be an appropriate royalty rate for Malaysia. However, if significant differences exist, adjustments could be made to reflect these differences, if they can be valued.

From an alternative perspective, even if 7% is not an arm's length royalty rate for the Australian subsidiary, it may still be an arm's length rate for the Malaysian subsidiary. For example, it might be determined that an arm's length rate for Australia is only 5%, but that a 2% premium is justified by the geographical or business climate differences between Australia and Malaysia.

From a high level perspective, there would be a case to be answered by the LHDNM should it attempt to substitute an alternative royalty, based solely on the above example.

Eli Lilly & Co v Commissioner[3]

This case dealt with transactions entered into between two related pharmaceutical companies in the 1971 to 1973 income years. The two companies were Eli Lilly & Co (Lilly) a US

2 Please refer to OECD Guidelines (paragraphs 6.20 – 6.24) and the United States section 482 regulations for a number of specific factors that may be particularly relevant when determining the nature of the IP being transferred.

3 *Eli Lilly & Co v Commissioner 84 TC 996 (1985).* Case background adapted from Julie Harrison's *Transfer Pricing Handbook (1999)*, a CCH New Zealand publication.

company engaged in the manufacture and distribution of pharmaceutical drugs, and its subsidiary Eli Lilly Inc (Lilly-PR) a Puerto Rican company engaged in the manufacture of pharmaceuticals under licence to Lilly. The IP transaction in dispute, amongst other things related to:

- The transfer by Lilly of all the manufacturing IP relating to "Davron" products (developed by Lilly) to Lilly-PR in 1966 in exchange for shares in Lilly-PR.

At issue was whether the transfer of the IP by Lilly was effective insofar as it allowed Lilly to allocate income arising from those assets to Lilly-PR and whether the price of the products transferred between the two companies was an arm's length price.

Eli Lilly Position

Following the transfer of the manufacturing intangibles to Lilly-PR, that company produced all Davron products for the US and Puerto Rican markets. Almost all raw materials were obtained by Lilly-PR from third parties and Lilly provided certain specialised services relating to engineering, manufacturing processes and R&D for which Lilly-PR paid set fees. The calculation of the goods was made by applying a profit split method as follows:

- Lilly identified a normal rate of return on the marketing activities (performed by Lilly) and the manufacturing activities (performed by Lilly-PR) and allocated the profit arising from the sales of Davron to each party on this basis; and
- The remaining profit was then allocated between the marketing intangibles (contributed by Lilly) and the manufacturing intangibles (contributed by Lilly-PR).

IRS Position

The Internal Revenue Service (IRS) argued that the transfer of the IP from Lilly to Lilly-PR was not effective to allow Lilly to allocate income arising from those assets to Lilly-PR. On this basis, income was reassessed such that all return relating to the IP (both marketing and manufacturing) was allocated to Lilly.

Court Decision

At the first hearing, the Tax Court found that the transfer of the manufacturing intangibles could not be ignored for tax purposes, contrary to the IRS's arguments. However, the Tax Court held that the transfer of the intangibles in exchange for the shares in Lilly-PR was not arm's length, as a third party would have insisted on some form of lump sum payment or royalty in respect of such a transaction. On this basis the court reallocated the income arising from the transaction. However, the Court of Appeal reversed this part of the Tax Court's decision and held that the transfer of the intangibles in exchange for the shares in Lilly-PR had to be arm's length as the value of the shares was by definition equal to the value of the assets (including the intangibles) owned by Lilly-PR.

The outcome of this case lends authority that if a transaction is based on commercially defendable grounds, then a tax authority's valiant attempts to restructure a taxpayer's legitimate business transactions would usually fall short of success. However, the case further strengthens the OECD's recommended approach when valuing and determining the appropriate arm's length price in relation to IP transactions. These approaches were discussed in earlier points in the paper.

Other cases that provide some guidance on arm's length IP issues relating to royalties, licence agreements and intangibles are *Bausch & Lomb, Inc v Commissioner* 92 TC 525 (1989) and *Sunstrand Corporation v Commissioner* 96 TC 226 (1991).

Summary

This paper has considered the following key points:

- IP poses some special difficulties in determining an arm's length price, particularly because of the complexity of some arrangements and the difficulties in identifying comparable transactions;
- Two particular areas where sufficient care is often not taken are:
  - A local operation is meeting costs for maintaining IP that an independent party would not be required to meet, while at the same time paying the same amount as the independent firm for property it acquires;
  - Analysis being based on what outwardly appear to be reliable comparables but that are not reliable, because the nature of the IP has not been considered adequately;
- Valuing IP based on realistic projections of future benefits may be an appropriate response to the limited availability of comparables in the Malaysian market, particularly in relation to determining arm's length royalty rates; and
- When dealing with marketing activities of firms that do not own the marketing intangibles, it is important to ensure that their compensation is commensurate with what independent entities would have accepted given the rights and obligations under the arrangement.

ACKNOWLEDGEMENT

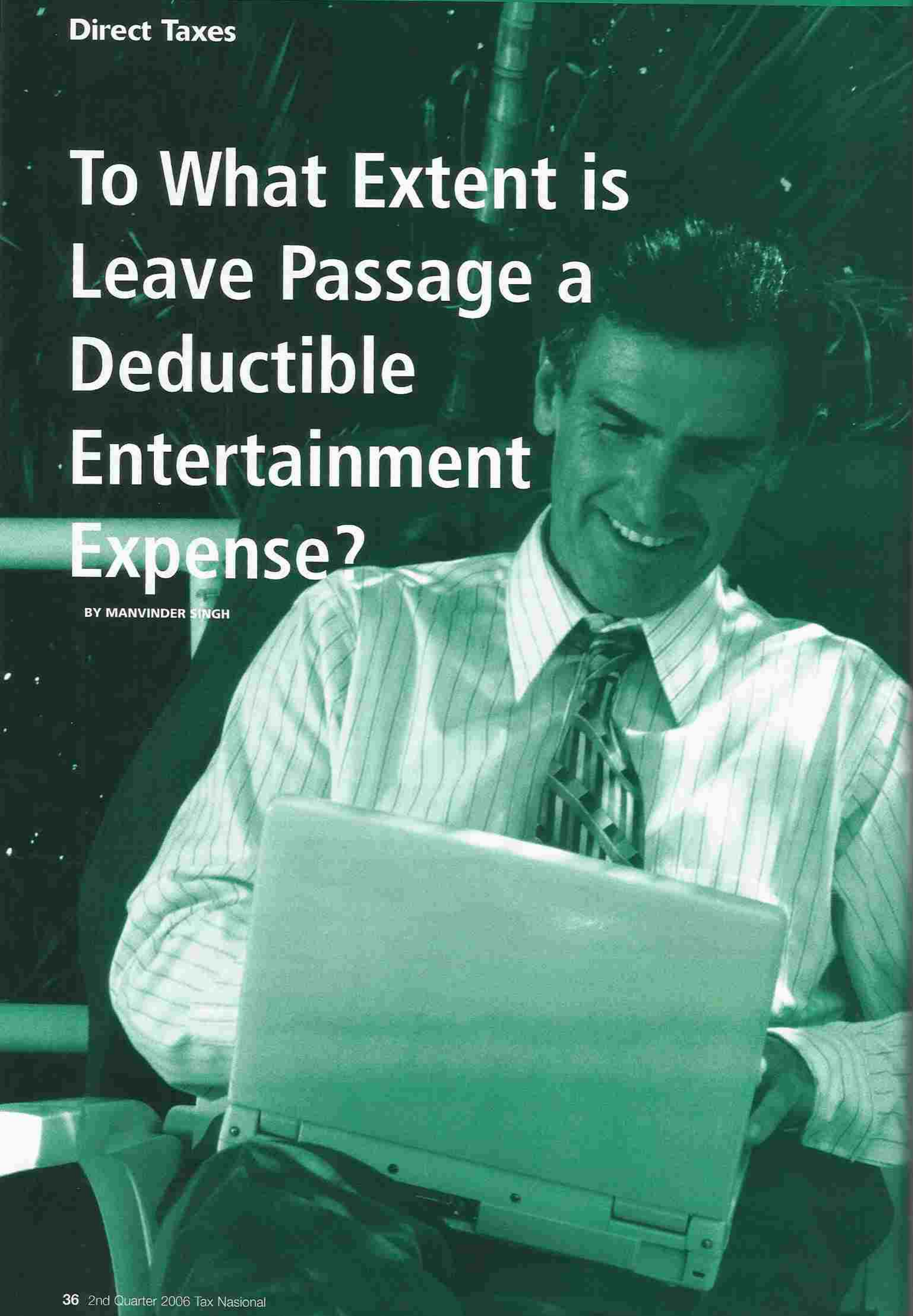
The author acknowledges the work of the OECD's Guidelines on Transfer Pricing (2000), the United States Internal Revenue Services Guidelines on Transfer Pricing and the New Zealand Guidelines on Transfer Pricing (2000), which have been researched and quoted extensively in the formulation of this paper. All references are available on the respective organisations websites.

The Author

Sergit Singh CA is currently pursuing a Masters in Taxation Studies at the University of Auckland, New Zealand. His current research interest includes the study of international tax structures and arbitrage, particularly the use of offshore jurisdictions and trusts as a tax planning tool. Serjit can be contacted on serjitm@gmail.com for any comments on the article.

To What Extent is Leave Passage a Deductible Entertainment Expense?

BY MANVINDER SINGH



Human capital has amongst others been a very crucial and important factor for an organisation's success. In line with this, human capital cost represents a significant portion of an entity's out flow. Of late, employers have been creative in remunerating its people. The traditional salary package which mainly consists of a base pay, allowances and bonus is now replaced with other perquisites such as discounted price on purchase of goods or services which are manufactured/built or produced by the employer, share option scheme, reimbursements of children education fees, reimbursements of rental, electricity and water, provision of company car, leave passage, etc.

This article intends to raise the issues pertaining to the deductibility of leave passage "related cost" and goes on further in providing some tax planning ideas in connection to individual leave passage claims.

Corporate Tax

Pursuant to Section 39(1)(m) of the *Income Tax Act 1967* (ITA), any expenditure incurred in the provision of a benefit or amenity to an employee consisting of a leave passage within or outside Malaysia is not tax deductible to the employer.

As provided in the ***Public Ruling No. 1/2003 – Tax Treatment of Leave Passage*** (PR 1/2003), leave passage cost is defined as cost of fares. It is also mentioned in the PR 1/2003, where leave passage cost given by the employer to the employee includes cost of food, accommodation and other incidental expenses, only the amount relating to fares is treated as leave passage cost. The ruling further provides that the cost of food and accommodation is deductible as entertainment expenses in arriving at the adjusted income of the employer. **However, the amount deductible is restricted to the amount spent on its employees only.**

Following from the above, the PR 1/2003 intends to restrict the deduction on the cost of fares only. www.dictionary.com defines "fare" as a "transportation charge". The cost of food and accommodation is treated as staff entertainment and deductions are allowed accordingly. However, the PR 1/2003 restricts the staff entertainment to its employees only. From the reading of the PR 1/2003, it appears that the cost of food and drinks for the employee's spouse and children is not deductible. Why is this cost looked at separately? Is this not a staff entertainment cost? The entertainment is for the staff and the cost attributable to the spouse and children would be incidental to entertaining the employee, thus, is this not akin to entertainment provided to employees?

To answer the above questions, we would need to scrutinize the definition of entertainment for staff and this is discussed in the ensuing paragraphs.

Section 39(1)(l) of the ITA provides that a sum equal to 50% of expenses incurred in the provision of entertainment is not allowed for entertainment expenses including amounts defrayed to an employee for payment of expenses incurred for entertainment purposes except in the following instances:

- Entertainment for staff except where the entertainment expense is incidental to entertainment of non-staff;

  Expenses incurred on annual staff dinners, staff refreshments and staff outings would be deductible (with the exception of cost of fares). However, where entertainment for staff is incidental to entertainment for client, the amount incurred would not be deductible, as the intention of the taxpayer is to entertain its clients.

- Entertainment incurred by a person who carries on a business which consists of or includes the provision for payment of entertainment to clients or customers of that business and that entertainment is provided for payment by the clients or customers in the ordinary course of that business;
- Expenses on promotional gifts at trade fairs or trade exhibitions outside Malaysia to promote exports from Malaysia;
- Expenses incurred on promotional samples of products of the business for that person;
- Entertainment for cultural or sporting events open to the public, for the purpose of promoting the business;
- Expenses on promotional gifts within Malaysia consisting of articles incorporating a conspicuous advertisement or logo of the business; and
- The provision of entertainment which is related wholly to sales arising from the business of that person.

It is provided in the ***Public Ruling No. 3/2004 – Entertainment Expense*** (PR 3/2004) the entertainment expenses incurred on employees are fully deductible. Examples of such entertainment expenses are expenses for free meals and refreshments, annual dinners, outings, family day, etc.

The following examples have been furnished in the PR 3/2004 and it could provide some guidance in understanding what type of entertainment expenses are tax deductible:

Example 1 as per the PR 3/2004

Active Sdn Bhd entertains its suppliers on 15 December 2004 and the cost is RM3,000. Some employees of Active Sdn Bhd are also present.

As the entertainment was principally for suppliers of Active Sdn Bhd an amount of 50% is disallowed and the balance is allowable.

Example 2 as per the PR 3/2004

Mestijaya Sdn Bhd entertains its employees at an annual dinner on 10 December 2004. Some suppliers are also invited to the dinner. The cost of the dinner is RM10,000.

As the entertainment to the suppliers of Mestijaya Sdn Bhd is only incidental to the provision of entertainment to employees, the full amount incurred of RM10,000 is allowable.

Example 3 as per the PR 3/2004

To foster family values among its employees, Warna Sdn Bhd provided a family day trip for its employees to Langkawi. The total cost incurred amounted to RM70,000 comprising of the cost of travel totaling RM40,000 and the cost of food, drinks and accommodation which amounted to RM30,000.

Warna Sdn Bhd is allowed a deduction for the cost of food, drinks and accommodation spent on its employees amounting to RM30,000. Warna Sdn Bhd is not allowed any deduction for the cost of travel of MR40,000.

As construed in the above examples, the PR 3/2004 and the ITA, entertainment incurred on the employee is deductible and the entertainment cost attributable to entertaining the suppliers and employee's family which is incidental to entertaining the employee is also deductible.

Given the above scenario, there is an inconsistency between the PR 1/2003 and PR 3/2004 pertaining to the deductibility of entertainment expenses incurred on the spouse and children of the employees.

It is a norm in practice that the relevant employees who are entitled to leave passage benefit make a claim for the leave passage by producing the relevant receipts to the company. Thereafter, the company would reimburse the respective employee accordingly.

The claim made by the employee may comprise all of the followings (which would also include the expenses incurred for the employees spouse and children):

- Cost of air fare;
- Cost of taxi fare;
- Cost of bus fare;
- Cost of car rental;
- Cost of ferry fare;
- Cost of toll;
- Cost of accommodation;
- Cost of food and beverages.

Since there is an inconsistency between the two public rulings, how do we treat the cost incurred on the employee's spouse and children? How do we segregate the cost of hotel accommodation and food for the employee's spouse and children?

One could argue that since the cost of accommodation and food incurred on the employees spouse and children are incidental to staff entertainment, the full amount should be deductible. Would this be acceptable to the Lembaga Hasil Dalam Negeri Malaysia (LHDNM)? If no, then based on the ITA, only 50% of the cost would be deductible.

Having said that, to segregate and analyse this would be time consuming. Further, in the event the LHDNM disagrees with the treatment taken (i.e. deduction claimed for cost of food and accommodation for spouse and children of the employee), the taxpayer may be subject to tax underpayment penalties. The taxpayer may then bring this case to the attention of the judiciary. These again have an additional cost attached i.e. lawyer fees, time spent by directors, etc.

In light of the above, it is recommended that the LHDNM provide clarification on the above issue as certainty is an important factor in the business world.

The cost of accommodation, food and drinks incurred for the employee's spouse and children, in my opinion should be fully deductible, whereas, the cost of fares for the employees and their spouse and children would not be allowable.

Individual Tax

Pursuant to Section 13(1) of the ITA, leave passage benefits provided by the employer would be taxable in the hands of the individual employees.

However, the leave passage benefit is not taxable as employment income if the following conditions are met:

- Leave passage for travel within Malaysia not exceeding three times in any calendar year; and
- One leave passage for travel between Malaysia and any place outside Malaysia in any calendar year, limited to a maximum value of RM3,000.

The exemption and benefit under the above section is confined only to the employee and members of his immediate family.

Based on the PR 1/2003, the definition of members of his immediate family is his wife or wives and his children or her husband and her children.

Members of his immediate family do not include parents, brothers, sisters or in laws. Therefore, any expenses claimed from the company on behalf of the above persons would be taxable to the employee.

Leave passage cost is defined to be cost of fares provided to employees during a period of absence or vacation from duty or employment.

As defined in the PR 1/2003, the taxable value of leave passage should only be equivalent to the cost of fares. Where leave passage cost given by the employer to the employee includes cost of food or accommodation, the public ruling clarified that only the amount relating to the fares is to be treated as leave passage cost. This is because the cost of food and accommodation is treated by the LHDNM as entertainment on staff. In summary, the taxable amount to the employee in respect of leave passage should only be confined to the cost of fares, subject to the exemptions mentioned above.

In the event that the above segregation cannot be identified, the LHDNM may consider the entire cost to be taxable to the individual employee (subject to the above exemptions).

As such, it is important that there must be sufficient documentation in place to substantiate the breakdown of the above costs, i.e. fares, accommodation, food, etc.

As far as possible, the employees should make a claim on food, drinks and accommodation to the maximum of their respective entitlement, thereafter, a claim should be made on cost of fares. In this instance, the tax liability on the employee and the company would be reduced.

If the employee is traveling overseas, the employee should limit its claim with regards to cost of fares thereof to a maximum of RM3,000 (in this instance, the leave passage benefit would not be taxable to the employee). Note that if the employee travels overseas for a second time in the same calendar year, the cost of fares claimed in connection to the second overseas trip will be fully taxable.

Please refer to the following example for further details:

Example 4

Mr Alfanso's employment contract provides for leave passage benefit of RM6,000 a year. He went to Dubai in January, Langkawi in March, Redang in April and Genting in December together with his wife. The expenses incurred for each trip are as follows:

	Amount RM
Dubai	
Cost of air fare for Encik Alfanso and spouse	6,000
Cost of hotel accommodation and food	2,000
Langkawi	
Transportaion cost (petrol, toll, ferry, taxi)	300
Cost of hotel accommodation and food	1,500
Redang	
Transportation cost (petrol, toll, ferry)	300
Cost of hotel accommodation and food	1,000
Genting	
Transportation cost (petrol, toll)	100
Cost of hotel accommodation and food	750

Mr Alfanso's entitlement for leave passage is RM6,000. He would be exempted on the 3 local leave passages claimed (which is RM3,950 in total). Mr Alfanso should thereafter claim the cost of hotel and accommodation in Dubai of RM2,000 and RM50 for cost of fares. Following from this, Mr Alfanso would not pay any taxes on his leave passage benefit (as the same is fully exempted).

On the contrary, if Mr Alfanso did not 'tax plan' i.e. he claimed all the RM6,000 in connection to the cost of fares to Dubai from the Company, he will be taxed on the cost of fares of RM3,000 [RM840 = RM6,000 - exemption of RM3,000 x 28% (assuming his remuneration is subject to the highest individual tax rate)].

In this example, the employee is entitled to claim the cost of food, accomodation and fares (all of which constitute leave passage benefit to him).

Therefore, if an individual wishes to be fully exempted from his/her leave passage benefit, he/she should ensure that the claim made from the company for foreign travel should not exceed RM3,000 and the balance of the leave passage claim should be made for local travel (up to a maximum of 3 times).

The total leave passage cost will be shown in the respective employee's Form EA. The onus is on the employee i.e. tax payer to prove that he/she qualifies for the exemption and make a claim in the tax return form i.e. Form B (individual with business income)/BE (individual without business income).

CONCLUSION

The main intention of the issuance of public rulings is to provide clarification on "grey areas". We have seen many rulings been issued by the LHDNM in recent years and this mammoth effort by them should be commended. However, when there are apparent differences in the public rulings, where does a layman fall back for guidance without incurring significant "consultancy / research cost"?

REFERENCES:

1. Veerinderjeet Singh (2005 – Revised 6th Edition) *Malaysian Taxation Administrative and Technical Aspects*, Pearson Malaysia
2. CCH Tax Editors (2003), *Malaysia Master Tax Guide*, 20th Edition, CCH Asia Ltd, Singapore
3. *Income Tax Act 1967*
4. www.dictionary.com
5. *Public Ruling No. 1/2003 – Tax Treatment of Leave Passage*
6. *Public Ruling No. 3/2004 – Entertainment Expense*

The Author

Manvinder Singh

Holds a Bachelor of Commerce and Management (Accounting) from Lincoln University, New Zealand. He is also a member of the Malaysian Institute of Taxation. Manvinder was previously attached to the tax practice of one of the Big 4 firms. He is currently the Head of Tax in a public listed company in Malaysia, PECD Berhad.

BENEFITS-IN-KIND vs PERQUISITES

BY LEE VOON SIONG

THIS ARTICLE IS CONTRIBUTED BY BDO BINDER TAX SERVICES

Presently, all benefits enjoyed by an employee in respect of having or exercising an employment unless specifically exempted from tax will have to be reported in his Statement of Remuneration (Form EA). Since individual taxpayers are now under the self-assessment system, the Lembaga Hasil Dalam Negeri Malaysia (LHDNM) has issued public rulings explaining what constitutes Benefits-in-kind (BIK) and perquisites. The public ruling on BIK was issued on 8 November 2004 to supercede the *Income Tax Ruling 1997/2* which was issued on 25 August 1997. This was followed by two Addendums which were issued on 20 May 2005 and 17 January 2006. The public ruling on Perquisites was issued on 17 January 2006.

What are BIK?

Subsection 13(1)(b) of the *Income Tax Act 1967* (ITA) provides that the gross income of an employee from an employment also includes any amount equivalent to the BIK provided to the employee by/on behalf of his employer to be personally enjoyed by that employee. BIK are benefits not convertible into money, even though they have monetary value. The phrase "not convertible into money" means that when the benefit is provided to the employee, that benefit cannot be sold, assigned or exchanged for cash either because of the employment contract or due to the nature of the benefit itself.

All BIK received by an employee are taxable except for:

(i) medical, dental or child-care benefit;

(ii) a benefit consisting of -

  (a) leave passage in Malaysia of not more than 3 times in one calendar year; or

  (b) overseas leave passage of not more than once in any calendar year limited to a maximum amount of RM3,000.

  The exemption of this benefit is only applicable if it is provided to the employee and members of his immediate family.

(iii) benefits used by the employee solely for the purposes of performing his employment duty.

However, in addition to the above, the following benefits are also regarded as not taxable:

(i) goods and services offered at discounted prices;

(ii) food and drink provided free of charge;

(iii) free transportation between pick-up points or home and the place of work (to and fro);

(iv) insurance premiums which are obligatory for foreign workers as a replacement to SOCSO contributions; and

(v) group insurance premium to cover workers in the event of an accident.

What are Perquisites?

Subsection 13(1)(a) of the ITA provides that the gross income of an employee in respect of gains or profits from an employment includes any wages, salary, remuneration, leave pay, fee, commission, bonus, gratuity, perquisite or allowance (whether in monetary form or otherwise) in respect of having or exercising the employment. This means that the gross employment income includes any perquisite or allowance, whether in monetary form or otherwise, received by an employee in respect of having or exercising the employment.

All perquisites are gross income under subsection 13(1)(a) of the ITA and are chargeable to tax under subsection 4(b) of the ITA. Perquisites have the following characteristics:

(i) Perquisites can be received regularly or casually.

(ii) Perquisites received can be in cash or in kind. If it is received in kind, such items must have monetary worth, and convertible into money. The phrase "convertible into money" means that when the items are provided to the employee, they can be sold, assigned, transferred or converted into cash.

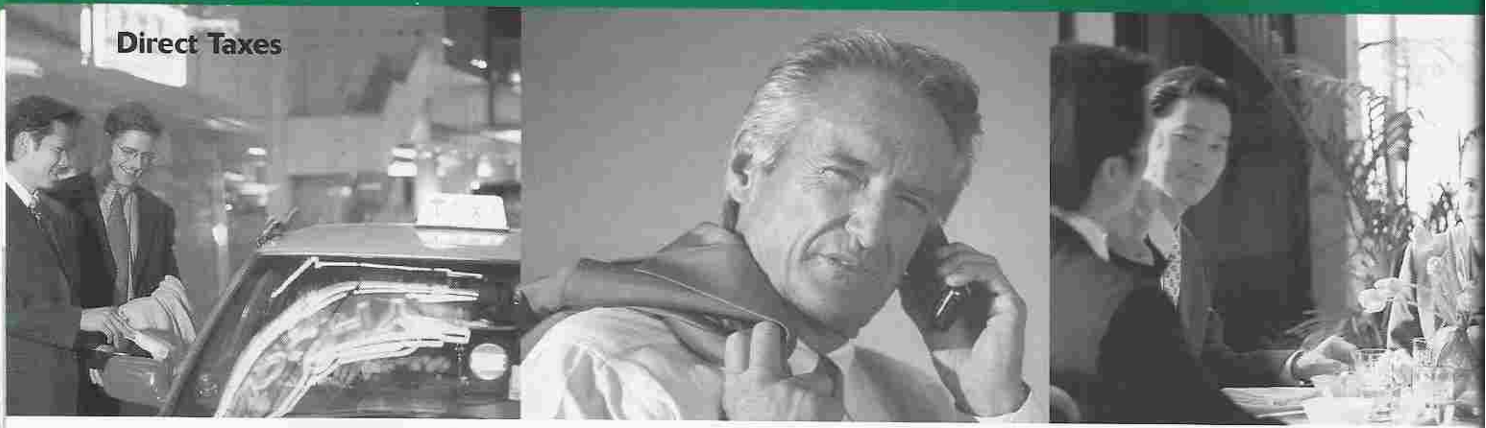
(iii) Perquisites can be received by an employee in respect of an employment contract entered into by him or is given by the employer or a third party, voluntarily. In the case of perquisites received from third parties, the employee must declare such income in the Income Tax Form BE or B.

(iv) Notwithstanding the above, a perquisite is subject to tax only if it arises in respect of having or exercising an employment.

The Distinction between Perquisites and BIK

Perquisites and BIK (including the value of living accommodation (VOLA)) are benefits arising from an employment. These benefits are gross income from employment under subsection 13(1) of the ITA and is taxable under subsection 4(b) of the ITA. However, there are differences between these benefits.

Perquisites are benefits in cash or in kind which can be converted into money received by an employee from his employer or from third parties in respect of having or exercising an employment. Perquisites are taxable under subsection 4(b) of the ITA as part of the gross income from employment under subsection 13(1)(a) of the ITA.



BIK are benefits which are not convertible into money provided for the employee by, or on behalf of the employer. These benefits are categorised as gross income from employment under subsection 13(1)(b) of the ITA.

VOLA is living accommodation benefit provided for the employee by or on behalf of the employer. VOLA is gross income from employment under subsection 13(1)(c) of the ITA. The tax treatment on VOLA is explained in detail in the *Public Ruling No. 3/2005 – Living Accomodation Benefit provided for the Employee by the Employer* dated 11 August 2005.

It is important for the employer to determine and categorise correctly whether a benefit otherwise than in money provided to the employee is a perquisite under subsection 13(1)(a) of the ITA or a BIK under subsection 13(1)(b) of the ITA. The distinction is important because:

(i) gross employment income under subsection 13(1)(a) will affect the computation of the VOLA; and

(ii) only perquisites are subject to the monthly schedular tax deduction.

Types of BIK/Perquisites and the Tax Treatment

An employer is required to report annually in the employee's Statement of Remuneration (Form EA) and in the Form E for employer all values of BIK/perquisites provided to his employees including benefits provided for wife, family, servants, dependents or guests of the employee.

For BIK, a claim for deduction can only be made in respect of the formula method. Any claim for deduction in respect of official use of any BIK must be made by the employee himself in his annual return. For the purpose of audit, records to support the claims must be kept for a period of 7 years.

In the case of perquisites, if the employee makes use of such amenities in the performance of his official duties, the amount chargeable to tax in respect of pecuniary liabilities paid by the employer can be reduced provided that such official duties can be substantiated with a certification by the employer.

BIK/perquisites normally form part of the remuneration package of an employee. However, there are instances where in the course of its business, an employer incurs expenditure which may give rise to a "benefit" to an employee. Any benefit which arose out of the expenditure incurred are only incidental. An employer is often confronted with the dilemma of whether to report such benefit in the Form EA, as any benefit enjoyed by the employee are often minimal or insignificant. Examples of such expenditure are:

a) Winter clothing

An employee is required by his employer to go overseas to undertake a project for a few months. As it is the winter season, the employee is allowed to claim the expenditure incurred on winter clothing up to certain amount. Is the employer required to report this "benefit"?

b) Per diem allowance

These allowances are normally paid to an employee when he is outstation or overseas and are basically to reimburse the employee for his meals, local travelling and phone calls. Is this "benefit" to be reported in the Form EA?

c) Overtime meal and transport allowance/reimbursement

These payments are normally made for overtime work done at night, on weekends or public holidays. Must an employer report this "benefit"?

If benefits such as the above are required to be reported in the Form EA, the burden will then be passed on to the employee to substantiate that they were used in the course of performing his official duties. It is often not easy for an employee to prove that there is no or minimal benefit enjoyed by him. Would a certification by the employer suffice?

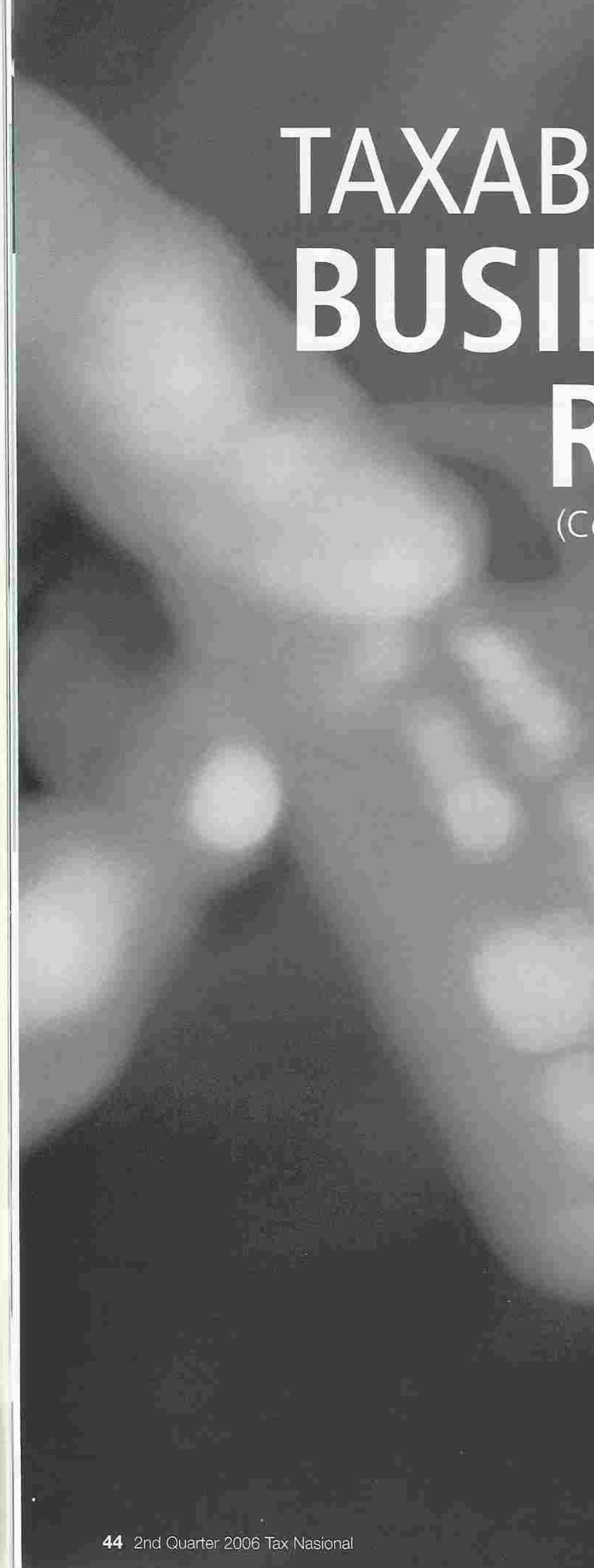
As the BIK/perquisites covered in the public rulings are not exhaustive and there are many practical difficulties encountered in determining the value of the benefits enjoyed by the employees, it would be good for the LHDNM to take a proactive role in calling for a dialogue and feedback from the various parties concerned such as the Malaysian Employers Federation, Federation of Malaysian Manufacturers, trade associations and even the general public. The LHDNM may in some circumstances need to make certain concessions to help taxpayers reduce their time and compliance costs. As we are now under the self-assessment regime, simplification of our tax rules and practices will help taxpayers comply with their tax obligations.

The Author

Lee Voon Siong is the Executive Director of BDO Binder Tax Services Sdn Bhd. He has been in tax practice for over 28 years and has extensive experience in tax planning and consultancy.

He is an Associate Member of the Malaysian Institute of Taxation (MIT) and is currently the Firm's International Tax Co-ordinator for all referral work. He serves in the Tax Practice Committee of the Malaysian Institute of Public Accountants (MICPA) and the Technical and Public Practice Committee of the MIT.

He is a regular speaker at tax conferences, seminars and workshops organized by the professional bodies.



TAXABILITY OF BUSINESS RECEIPTS
(Cont'd)

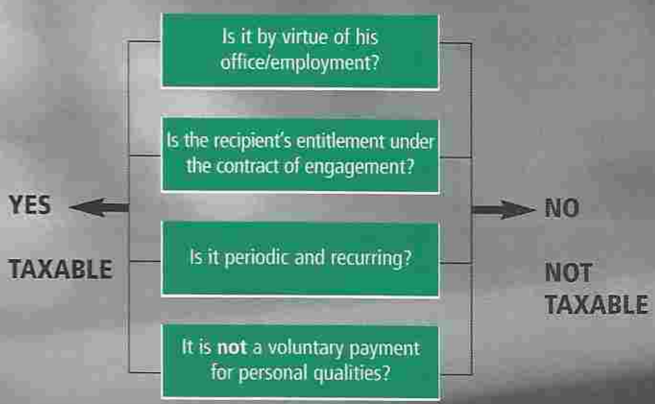
BY SIVA NAIR

In the last article we looked at areas of timing, recognition in the tax computation and valuation of business receipts. In this article, we shall analyse the taxability of voluntary receipts and government grants and assistance.

VOLUNTARY RECEIPTS/GIFTS

Students will remember that we discussed the taxability of gifts and testimonial payments in relation to employment income in an earlier article (*Tax Nasional 2nd Quarter/2002*). Just to recap what we had concluded earlier I have reproduced the summary as below.

General Principles relating to Taxability of Gifts and Testimonial Payments



Where such payments are received in respect of business income, we need to check whether the payment is attributable to the specific work carried out by the recipient, in which case it would be taxable. However, where the payment was made because the recipient deserved it or to mark a special relationship or by way of consolation for the termination of a contract, then it may escape the tax net.

Let's look at the taxability of such receipts in relation to business income by reviewing some of the relevant cases.

1. *Walker v Carnaby Harrower, Barham and Pykett [1969] 46 TC 561*

Facts of the Case

The taxpayers were accountants who acted as auditors to a group of companies. The reorganisation of the group took place and the taxpayers ceased to act as auditors. They received £2,500 as compensation for the loss of auditorship within the group.

Decision of the Court

The judge held that the payment was not assessable to tax.

The logic used by the judge was that the auditors had completed their final term of office. They had been adequately remunerated and had no legal claim of any description to receive any further payment from the companies. So what was this payment £2,500? The companies had proceeded to make the wholly voluntary payment to the taxpayer firm. By coincidence the amount resembled the fees payable to the auditors for the last year of office. Therefore, he concluded that a gift of that kind made by a former client cannot be reasonably treated as a receipt of a business which consists in rendering professional services.

2. *Murray v Goodhews [1978] 2 All E R 40*

Facts of the Case

The taxpayer carried on the trade of running licensed watering establishments. Many of these establishments were held by the taxpayer on tied tenancy agreements from a brewery company, with whom they enjoyed an extraordinarily good relationship. However, over a period of two years, the brewery company had taken back quite a number of properties from the taxpayer for development purposes and paid them ex gratia payment for the loss of the tenancies.

Decision of the Court

The Court of Appeal accepted that the ex gratia payments were not taxable. They could not be regarded as arising from the trade carried on by the taxpayer because:

- they were voluntary, wholly unexpected and unsolicited;
- they were made to acknowledge a long and friendly association;
- they were unrelated to any work done by the taxpayer; and
- they were NOT compensation for loss of profits.

3. *Simpson v John Reynolds and Co. (Insurances) Ltd. [1975] 2 All E R 88*

Facts of the Case

The taxpayers had for many years provided advice on insurance matters to a client company. Subsequently the client company was taken over by another company which required it to place its insurance elsewhere. The client company complied with this and then volunteered to pay £1,000 a year for five years to the taxpayers in recognition of past services.

Decision of the Court

The Court of Appeal held that this was not a taxable receipt because it was "a wholly unexpected and unsolicited gift" made "after the business connection had ceased" as "consolation for the fact that those remunerative services were no longer to be performed".

Generally, receipts which are "gifts" in nature, whereby the payer is not under a legal obligation to pay, would not be liable to income tax provided the following conditions are met:

- the payment must be unsolicited and unexpected;
- the business relationship (which existed between the payer and the recipient) has ceased, is not expected to continue and has been adequately remunerated;
- payment is not for past services nor a retainer or advance payment for future services; and
- payment is not compensation for loss of profits.

However, [*before any wily tax planner decided that this is an excellent loophole for tax avoidance!*] the judge did remark that:

"Gifts made or promised during the relevant connection may well be caught…for it may be part of the connection that such payments after its determination are to be expected".

What it means is if you are promised a sum of money or gift which is determined while the business relationship is still continuing, the gift or sum of money will be taxable when received, even if it is received after the termination of the business relationship. This is because the recipient already expected to receive such sum of money or gift.

Therefore, professionals cannot purposely try and mitigate their incidence to tax by camouflaging the payments due them at the tail end of their contracts as "voluntary payments". It would be obvious to the tax authorities that they have not been fully remunerated in respect of the services performed under the contract, and they have a legal claim to these amounts and therefore, it can hardly be deemed to be "unexpected". This can be well illustrated by looking at the following case:

Mc Gowan v Brown and Cousins [1977] 3 All E R 844

Facts of the Case

The taxpayers were estate agents who received an inadequate scale fee for negotiating the purchase of a certain piece of land. This was because they were harbouring the hope that they would be retained by the taxpayers as their letting and selling agent, as is normally the case. However, their client sold the land to another company which did not want to retain them as its selling agent. The client paid the taxpayers £2,500 as compensation for not being retained to let or sell the land when developed.

Decision of the Court

The judge opined that the important question is not who pays the gift but whether the taxpayers had earned the gift by virtue of work which had been carried out or whether they had deserved the gift. In this case the taxpayers earned the gift because it was basically "compensation for the loss of an opportunity to earn profits and the taxpayers were morally entitled to that opportunity because their past services as purchasing agents had been inadequately remunerated".

GRANTS AND SUBSIDIES

The Government sometimes provides grants or other forms of assistance to persons involved in selected businesses to ease their financial burden. This may be received at the commencement of or anytime during the carrying on of his trade.

The question of whether such a receipt would be taxable revolves around the fact as to whether it was received on account of income or capital. Generally where it is intended to assist the trader to conduct his business operations more profitably, it would be regarded as a trading receipt. Conversely, where the grants are made for the purpose of replacing a capital asset or upon premature termination of the income-producing capability of an asset, it would not be taxable.

Example of this can be seen in numerous tax cases as below:

(1) *Seaham Harbour Dock Co. v Crook [1931] 16 TC 333*
The House of Lords held that periodical grants received by the dock company to help with the extension of the dock were not taxable since they were grants given towards capital expenditure.

(2) *Watson v Samson Brothers 38 TC 346*

Facts of the Case

Farmers were paid acreage payments to assist them torestore the fertility of their land which had been flooded by sea water.

Decision of the Court

The General Commissioners decided that the receipt is of a capital nature and not subject to tax. The land was an income-producing asset of the farmer and since the flooding had eroded part of the land's capital value, therefore, the compensation and in consequence the restoration works were capital in nature. The higher courts did not want to disturb the findings of the Commissioners.

(3) *Dewan Perniagaan Bumiputra Sabah v KPHDN [1996] MSTC 3569*

Facts of the Case

The taxpayer was a registered society whose objects included developing, promoting and safeguarding the trading, commercial and industrial interests of Bumiputras in Sabah. They received monies arising from the imposition of a levy on timber exporters by the State Government. The receipts were treated as grants from the government and utilised to buy properties, invest in a joint venture housing project, provide loans and for administrative expenses.

Decision of the Court

The High Court in overturning the decision of the Special Commissioners, held that the grant was given primarily for the non-business or non-trading purpose of protecting Bumiputras and assisting the Government to achieve the New Economic Policy. Activities to achieve such objectives cannot be treated as being a business or trade carried on by the taxpayer. Therefore, the receipts were not subject to income tax.

Whereas in the following case, the outcome is different.

Burman v Thorn Domestic Appliances (Electrical) Ltd. [1982] STC 179

Facts of the Case

A company received an °∞interest relief grant°± from the Department of Trade and Industry as a contribution towards the interest charges which the company were liable to pay on a bank loan which it had taken to build a factory for the manufacture of freezers.

Decision of the Court

Since the grant was a contribution to the interest charges (rather than towards the repayment of the loan), the judge held that the grant was an income receipt.

Similarly, in the followings cases the grants received were held to be assessable to tax:

(1) *Higgs v Wrightson 26 TC 72*

A grant was provided for ploughing up grassland which was done by order of the Government designed to encourage or enforce the improvement of agricultural land. The judge held that it was a reimbursement of farming expenditure and therefore assessable to tax.

(2) *White v G. & M. Davies [1979] STC 415*

The judge held that a grant paid to a farmer when he changed from dairy cattle to beef cattle, was paid as compensation for the temporary loss of income which he would suffer for not being able to market milk and other dairy products. The grant was therefore, assessable as an income receipt.

(iii) *Smart v Lincolnshire Sugar Co. Ltd. 20TC 643*

Facts of the Case

The company was entitled to advances from the government which was being given to encourage the manufacture of sugar beet. The advances had to be repaid under certain circumstances but in others it was converted to a subsidy.

Decision of the Court

The House of Lords decided that the amounts represented trading receipts.

The judge said since the advances were given to enable the company to meet its trading obligation i.e. to pay the growers for the beet, they were intended artificially to supplement their trading receipts in order to enable them to maintain their trading solvency. Therefore, the advances should be accounted for in determining the company profits and gains.

However, the Malaysian Government has introduced a number of Orders specifically exempting various grants and allocations. In 2003, it released the *Income Tax (Exemption) (No. 4) Order 2003* whereby with effect from year of assessment 2002 any person is exempted from the payment of income tax in respect of his or its statutory income in relation to the sources of income derived from allocations given by the Federal and State Government in the form of a grant or a subsidy.

Further, a statutory authority is also exempted in respect of its statutory income in relation to the sources of income derived from any donation or contribution received or from the income received in respect of an amount chargeable and collectible from any person in accordance with the provisions of the *Income Tax Act 1967* regulating the statutory authority.

Relevant portions of the Order are reproduced below.

Income Tax (Exemption) (No. 4) Order 2003

The Minister exempts –

(a) any person from the payment of income tax in respect of his or its statutory income in relation to the sources of income derived from the allocations given by the Federal and the State Government in the form of a grant or a subsidy; and
(b) a statutory authority from the payment of income tax in respect of its statutory income in relation to the sources of income derived from –
   (i) the income received in respect of an amount chargeable and collectible from any person in accordance with the provisions of the *Income Tax Act 1967* regulating the statutory authority; or
   (ii) any donation or contribution received.

However, the person or the statutory authority is not absolved from complying with the requirement to submit any return or statement of accounts or to furnish any other information under the provisions of the *Income Tax Act 1967*.

NOTE TO STUDENTS

Where a person whose business is working a farm in Malaysia receives a government grant or other payment (e.g. a subsidy) which is intended directly or indirectly to relieve him of the burden of any capital expenditure incurred in the farm, from the Government, the State Government or statutory authority, it is treated as an agricultural charge for that year of assessment. Therefore, in his tax computation he will add the agricultural charge to his adjusted income before deducting any agricultural allowances.

We shall continue our discussion on other forms of business receipts in the next article.

REFERENCES:

Choong, K.F., *Malaysian Taxation - Principles and Practice* (2005, 11th Ed), Infoworld

Kasipillai, J., *A Comprehensive Guide to Malaysian Taxation under Self-Assessment* (2nd Ed), McGraw Hill.

Malaysian Master Tax Guide (2005), CCH Asia Pte. Ltd.

Singh, Veerinderjeet, *Malaysian Taxation: Administrative and Technical Aspects* (6th Ed), Longman.

Thornton, Richard, *Thornton Malaysian Tax Commentaries* (1st Ed), Sweet & Maxwell, Asia.

Yeo, Miow Cheng Alan, *Malaysian Taxation* (20th Ed), PAAC Sdn. Bhd.

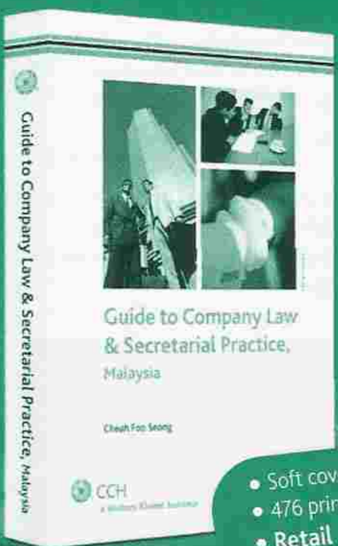
The Author

Siva Nair

holds an Honours Degree in Accounting and a MBA (Accountancy)from University of Malaya. He is a Chartered Accountant (Malaysia) and a fellow of the Malaysian Institute of Taxation. He has gained extensive experience in the field of taxation whilst being employed in one of the big four firms and again as a Senior Finance and Tax Executive in an established property development company. Currently he is a freelance lecturer preparing students for the examination of ACCA, ICSA, MIT, AIA and also tutoring undergraduates undertaking Accountancy Degree programmes in both local and foreign universities.

CCH
a Wolters Kluwer business

Guide to Company Law & Secretarial Practice, Malaysia



NEW

- Soft cover bound book
- 476 printed pages
- **Retail Price: RM145**

This **Guide to Company Law and Secretarial Practice** provides a concise yet clear explanation of the legal ramifications and principles of the Malaysian Companies Act 1965, including company secretarial practices that are involved in executing the law. It also contains guidelines and case references on the vital issues pertaining to interpretation of company law by the courts.

The objective of the book is to provide an insight of the provisions of company law and how they are applied in the commercial world. The law in this book stands as at 15 May 2006.

Guide to Company Law and Secretarial Practice will be very useful for students studying company law and secretarial practices of professional examinations, and higher institutions of learning whose syllabus is slanted towards applications and business solutions, rather than legal *per se*. Businessman, entrepreneurs, management personnel and professionals involved in corporate administration will also find this an extremely handy guide in understanding the legal and regulatory compliance aspects of companies as well as the internal procedures required to regularise business operations.

KEY FEATURES & BENEFITS

- Designed specifically to meet the needs of law, accounting and business students. Businessmen and management personnel in large corporations will also find this a useful guide
- Provides brief yet clear explanation on the following:
  - The formation of a company
  - The company's constitution (Memorandum and Articles of Association)
  - Directors' appointment, removal, duties and liabilities and the management responsibilities
  - Company registers, shares and shareholders, accounts and audit
  - Winding up and strike off based on the principles outlined in the Malaysian Companies Act 1965
- Additional Features included are useful tables such as changes requiring special resolutions, books or documents to be made available for inspection as well as checklists of things to be done before and after incorporation of companies, and directors' good practice checklist
- For easy reference, the Fourth Schedule to the Companies Act 1965 (Table A – Regulations for management of a company limited by shares) is reproduced in full

TOPICS COVERED

1. An overview of companies
2. Incorporation
3. Company's constitution
4. Company's shares
5. Directors' appointment, removal and resignation
6. Directors' duties and liabilities
7. Directors and the management of company affairs
8. Company registers
9. Shareholders and meetings
10. Minority protection
11. Accounts and audit
12. Borrowings and receivership
13. Winding up and Strike Off
14. Regulatory obligations of listed companies
15. Arrangements and reconstructions

WHO SHOULD PURCHASE?

- Law, business and accounting students
- Company secretaries
- Management personnel such as finance and administration departments
- Small to medium business
- Finance and accounting managers

ABOUT THE AUTHOR

Cheah Foo Seong is currently the Chief Technical Officer of PFA Corporate Services Sdn Bhd where he provides in-house corporate advice relating to corporate law and practice, governance and best practices, and rules and regulations to the corporate portfolio of clients of the company.

Mr Cheah was the first Technical Director of the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) where he assisted in the development of the Research, Training and Development Department. He also carried out research and training in corporate secretarial and company law practices, and had participated in law forums, seminars, workshops and conferences. Prior to his tenure with MAICSA, he was a corporate secretarial practitioner and business advisor for more than 20 years. Mr Cheah is a Council Member of MAICSA and Chairman of the Corporate Governance Committee and the Task Force for reviewing the Companies Act 1965.

Order by 30 August 2006 to enjoy promotional price at RM 137.75!
Hurry, do not miss out this offer!

CCH
a Wolters Kluwer business

Hurry! Order this BRAND NEW book now at special price!

Guide to Company Law & Secretarial Practice, Malaysia

Reply Slip

Toll Free Fax: 1-800-181-173 MA122

Order by 30 August 2006 to enjoy promotional price at RM 137.75!

Title	Code	Price (RM)	Promotional Price (RM)	Qty	Amt (RM)
Guide to Company Law & Secretarial Practice, Malaysia	1694M	145	137.75		

☐ For bulk purchase, please have a Sales Representative contact me

Payment Options

☐ I enclose a cheque made payable to " **Commerce Clearing House (M) Sdn Bhd"**

☐ Please send me an invoice

☐ Please debit my:

☐ Visa ☐ Master Expiry Date

Card Number

Card Holder's Name

Card Holder's Signature

Subscriber's Details

Mr/Ms/Mrs Name

Job Title

Company

Address

Country Postal Code

Email

Tel ( ) Fax ( )

No. of emplyees ☐ 1 - 4 ☐ 5 - 9 ☐ 10 - 19 ☐ 20 - 49 ☐ 50 - 99 ☐ 100 - 199 ☐ 200 - 499 ☐ 500 - 999 ☐ more than 1000

Inductry

Authorised Signature & Company Stamp

To Order

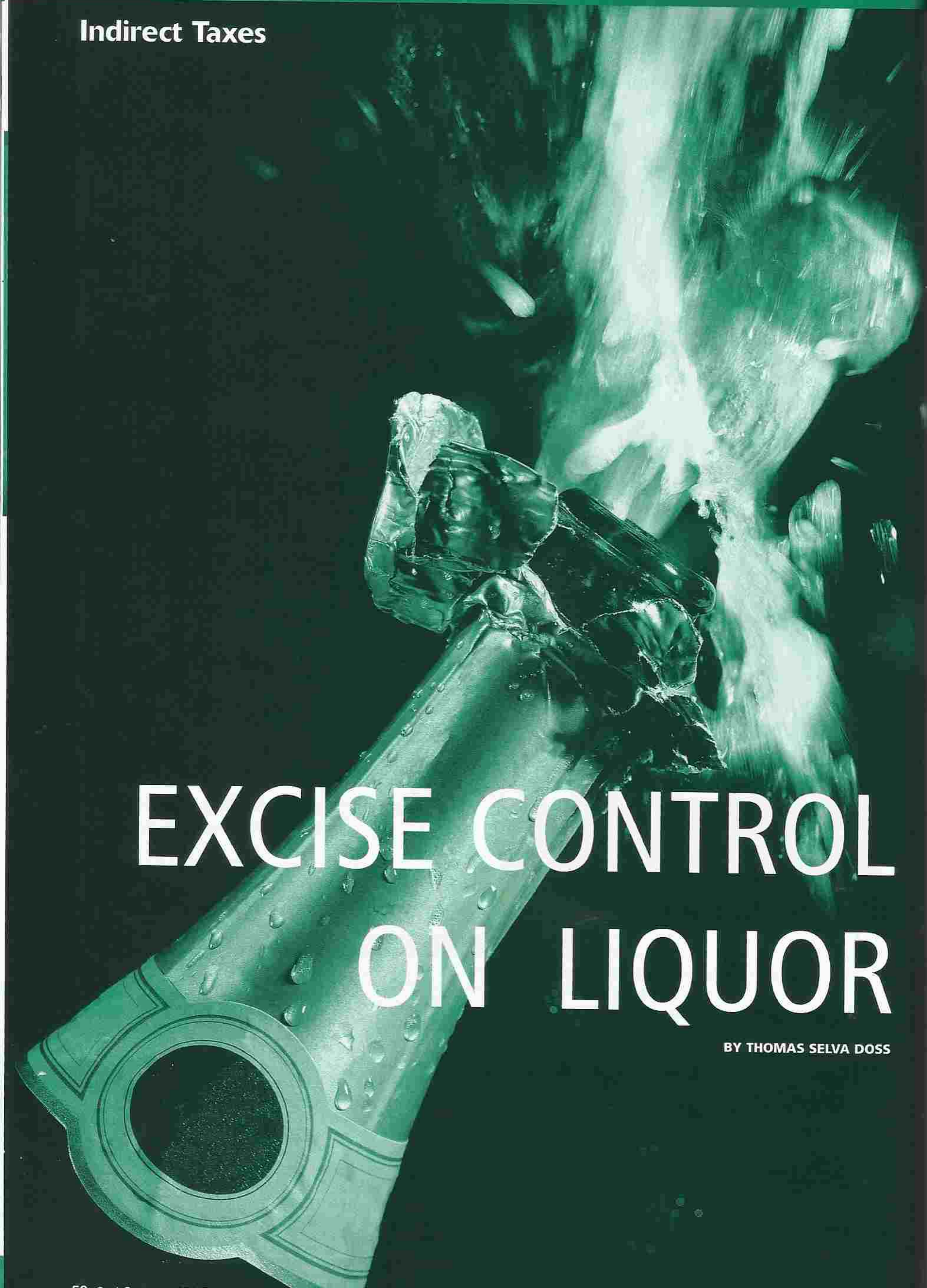
Complete the order form and fax it or mail it back to us at the contact details belows. Please read the terms and condition that apply to this promotion.

Commerce Clearing House (M) Sdn Bhd (216303-M)
Suite 9.3, 9th Floor, Menara Weld, No. 76, Jalan Raja Chulan,
50200 Kuala Lumpur, Malaysia.

Toll Free Customer Service Hotline	1-800-181-151
Toll Free Fax No	1-800-181-173
Web Site	www.cch.com.my
Email	support@cch.com.my

Terms and Conditions:

- This order is subject to acceptance by CCH.
- Price is valid in Malaysia only. Promotional price is only valid until ***30 August 2006.***
- Price is subject to change without prior notice.
- Books will only be delivered upon receipt of payment.
- Goods sold are not returnable.
- If the book is received in an unsatisfactory condition, it should be exchanged within a week of receipt.



EXCISE CONTROL ON LIQUOR

BY THOMAS SELVA DOSS

Alcoholic beverages have been widely consumed since prehistoric times by people around the world. They are being used as a component of the standard diet, for hygienic or medical reasons, for their relaxant and euphoric effects, for recreational purposes and other reasons.

In most countries the sale of alcoholic liquor is regulated by law. The original and principal object is to check the adverse effects arising from the immoderate use of such liquor; in the interest of public order; morality and health. A secondary object is to raise revenue from the sale of such liquor. The form and stringency of the laws passed for these purposes vary widely from country to country according to the habits of the people and the state of public opinion. The general tendency is towards increased stringency over the years.

The sale of liquor is usually controlled by the state by imposing licenses on establishments that offer the commercial sale of liquor. Licensing is by far the oldest and most widely adopted method. The great merit of the licensing system is its perfect elasticity, which permits adjustment(s) to all sorts of conditions and the varying demands of public opinion.

England was one of the earliest countries to begin the concept of liquor legislation. It adopted the licensing system in 1551 and has retained it until now. The English were notorious for their hard drinking centuries before licensing was adopted, and from time to time sundry efforts had been made to check it, but what eventually compelled the interference of the law was the growth of crime and disorder associated with the public houses. That was the beginning of the statutory control of the liquor trade. In subsequent centuries, many legislation were enacted and through successive enactments, the licensing system gradually evolved according to the requirements of the time to its present shape.

The Excise Licensing System

It would be appropriate at this point to explain the relationship between that part of the licensing system which is concerned with the conduct of the public and which falls under the jurisdiction of the civil and criminal laws and that part which has to do with taxation or revenue. The former is the more important branch of legislative interference touching on the individual right(s) to "imbibe". Its object from the beginning was the maintenance of public order and good conduct which had been impaired by the misuse of public houses. The excise licensing system has nothing to do with public order or the conduct of the business of the sale and purchase of liquor. Its object is simply to obtain revenue. For a long time the two systems were quite independent. But time and socio-economic changes brought them into contact and eventually they came to form two aspects of one unified system.

The Malaysian Excise System

The influence of the English system had a considerable effect on the drafting of the Malaysian excise law. The sale of liquor in England at that time was at the peak of regulation, and since the English influence was reflected in the Malaysian legal system, much of the terminology used in the Act corresponds to the Excise Act of England.

The Excise Control on Manufacturers

The *Excise Act 1975* started off with an ambitious plan of licensing a number of local manufacturers in Malaysia. The Excise duty, being an essentially domestic tax initially covered a number of goods such as beverages, air conditioners, ice cream, monosodium glutamate, toothpaste and motor vehicles. As time went on, the list of goods subject to excise duty became shorter and shorter until currently it affects only six items. Among the manufactured goods currently under its control, the Excise Act focuses particularly on the manufacturers of intoxicating liquor. The mere distilling, brewing, fermenting or bottling of intoxicating liquor including the blending, compounding and varying of intoxicating liquors falls under the definition of "manufacture" and these manufacturers need to be licensed. Once licensed, the licencees are to pay excise duty before removal of the liquor from the excise warehouse. The rate of excise duty on intoxicating liquor saw an increase from year to year until the current rate of RM8.00 – RM10.00 a litre.

The Excise Control on Wholesale and Retail

The *Excise (Licensing Boards) Regulations 1977* spells out the form of regulatory measures on wholesale and retail of liquor in Malaysia. No person shall sell by wholesale or retail any intoxicating liquor unless he is in possession of a licence issued by the Licensing Board. Intoxicating liquor according to Section 2(1) of the *Customs Act 1967* includes any alcohol or any liquid containing more than two per centum of proof spirit which is fit or intended to be or which can by any means be converted for use as a beverage.*

People often mistakenly believe "liquor" describes all alcohol beverages i.e. distilled spirits, beer and wine. The appropriate definition of "liquor" however is an alcohol beverage made by distillation rather than by fermentation. Beer and wine which are produced by fermentation are not included in this definition.

The Licensing Board of a particular area in Malaysia has the authority to issue licences to the following establishments.

i. Public Houses - for the sale by retail of intoxicating liquors for consumption on the premises where they are sold.

*Common alcohols include ethyl alcohol, also known as ethanol which is a spirit. The strength of the liquor is measured by proof spirit or 'spirits of proof strength'.
'Spirits shall be deemed to be at proof if the volume of the ethyl alcohol contained therein made up to the volume of the spirits with distilled water has a weight equal to that of twelve-thirteenths of a volume of distilled water equal to the volume of the spirits, the volume of each liquid being computed at a fifty-one degrees Fahrenheit.'

ii.	Beer Houses	- for the sale by retail of beer for consumption on the premises where they are sold.
iii.	Retail shops	- for the sale by retail of intoxicating liquors for consumption elsewhere than on the premises where they are sold.
iv.	Wholesale dealers	- for the sale by wholesale of intoxicating liquors.

The opening of a liquor business in Malaysia has always been a difficult one, especially the opening of pubs in public places. The application for a liquor licence often takes a few months to be approved by the Licensing Board. The proprietor has to first of all, place an advertisement in the local media that he wishes to open such an establishment in that area. After which, the approval(s) of the local authorities, the fire department and the police is to be forwarded to the Board.

The Licensing Board comprising of members from the various bodies will deliberate on the various applications put before it. All questions raised at the meeting(s) of the Board will be decided by a majority of votes. Once the application is approved, the senior officer of excise for that district will be notified and a licence under section 35 of the Excise Act will be issued. The licencee will then be bound by the provisions of the Excise Act and Regulations.

Persons who are licensed under the Excise Act are required to:

i. exhibit their licence at all times in a conspicuous place,

ii. maintain over the principal entrance, a legend, in the national language or English stating the name and the nature of the business transacted,

iii. keep books of account of all receipts and dispatches of intoxicating liquors,

iv. permit members of the licensing board or a proper customs officer to enter his licensed premises to inspect any intoxicating liquor or account kept in connection with the transactions.

Wholesale means either the delivery of intoxicating liquor in any quantity, to a person licensed or authorised to sell liquor by retail or wholesale, and the delivery of intoxicating liquors to any person in quantities of or exceeding twenty seven gallons in any one day. *Retail* refers to the delivery of intoxicating liquor in quantities of less than twenty seven litres.

Wholesalers and retailers are not allowed to deliver or sell intoxicating liquors between the hours of 9.00 pm and 7.00 am. Neither are they allowed to bottle, blend, compound or vary any intoxicating liquor. No intoxicating liquor is to be sold to any person under the age of 18 years. For public houses or beer houses, other than a hotel, a coffee house, a restaurant or a rest-house, the closing hours are spelled out under Regulation 12(1) of the *Excise (Sale of Intoxicating Liquors) Regulations 1977*:

Closing Hours

i. First class public house – between midnight and 10 am

ii. Second class public house – between 10 pm and 10 am

iii. Third class public house – between 9 pm and 10 am

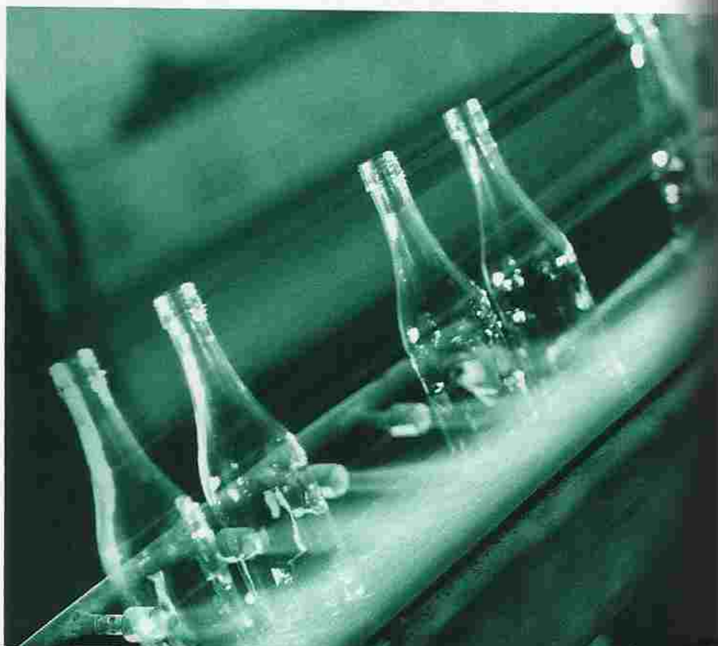
iv. First class beer house – between midnight and 10 am

v. Second class beer house – between 10 pm and 10 am

The licencee is required to keep his premises clean and maintain separate lavatory accommodation for the use of each sex. If he wishes to have live musical performances or other live entertainment open to the public, he has to obtain prior permission from the nearest police station. Also he must not allow any drunkenness, disorder or gambling on his premises. Once a person is drunk, the licencee should not sell any more liquor to the person.

Exemptions

However, chemists who sell alcohol or spirits for medical or scientific purposes need not apply for a licence but need to obtain a permit from Customs. The amount of alcohol or spirit sold should not exceed two gallons at any one time. Also, natives of Sabah and Sarawak may prepare and consume intoxicating liquors for their own consumption without applying for a licence. Individuals producing red wine for household consumption are also exempted but if they distill or ferment any alcoholic beverages at home, even for their own use, they are required to apply for a licence. Nevertheless many households in Malaysia have facilities for brewing beer for their own consumption or equipment for producing wines. Some even resort to selling these products to make a small profit. Although Customs is aware of these activities, it is difficult to identify the culprits as such activities as are carried out in the privacy of the individual home(s).



Toddy

The sale of toddy is a different story altogether. The *Excise (Control of Toddy and Toddy Shops) Regulations 1977* requires toddy shops, whether privately or government owned, which sell toddy by retail for consumption to be licensed.

The sale of and consumption of toddy is very closely regulated by Customs. The licencee is required to pay forty per cent of his total takings to the government every month. The toddy sold in the licensed shops is to be consumed in the premise and is not allowed to be taken out of the shop. In towns and villages, the toddy shops can only remain open from 10 am to 7 pm daily but in estates in rural areas they can only remain open from 3 pm to 6 pm daily. But on certain festive days such as 'Thai Pongal', 'Thai Poosam', 'Tamil New Year' and so on, the toddy shops in rural areas can remain open from 1 pm to 6 pm. All toddy sold must be paid for in cash and the toddy shop is not allowed to sell toddy to any drunken person or any person below 16 years of age or to any female. Even the method of storing the toddy is regulated by customs. The owner has to store the toddy in an earthenware vessel or container possessing a glazed inner surface. All toddy sold to a toddy shop must be sold or consumed in the premises during its opening hours. Toddy shops are to be kept clean at all times and no drunkenness or disorder is allowed. Customs inspectors frequently inspect the premises of these toddy shops to enforce these regulations. Any owner of the toddy shop found to be in non-compliance can be charged in a court of law.

Service Tax

The *Service Tax Act 1975* also requires all first class, second class and third class public houses as well as first and second class beer houses to be licensed under the Act. The sale of all food, drinks and tobacco products in these pubs as they are commonly known, as well as parking spaces provided by them are subject to a 5% service tax. The service tax charged and collected must be remitted to the customs once in two months in the CP3 form. These pubs do not have a threshold and as such are required to be in possession of a service tax licence on the day they start business. They are also subject to an audit by the service tax auditors from time to time.

Many pubs are currently operating without a service tax licence at present and the customs department carries out "operation(s)" from time to time to nab these offenders. A considerable amount of revenue is often lost due to these illegal operators who deliberately disregard the law.

The Goods and Services Tax

The goods and services tax (GST) which will be replacing the service tax will also require these manufacturers, wholesalers and retailers to be registered with the customs and to charge GST on the supply of any types of liquor. Those registered with customs have to remit the tax to customs on a regular basis. As for pubs, the supply of all types of food, drinks and any other items would be subject to GST. These operators will be allowed to claim the input tax credit on their inputs. Proper records must be maintained of all sales and purchases to be made available for the inspection of GST officers. It must be borne in mind that the imposition of GST is for the collection of revenue and the excise regulations are for the regulation of the liquor industry. The Excise Act and Regulations will continue to be enforced together with the GST and these operators would need to utilize software that can cater for both the excise and GST requirements.

Customs Enforcement

The control on the sale of liquor depends heavily on the effectiveness of the customs enforcement. Enforcement on manufacturers is relatively easy as they have to apply for an excise licence. Alternatively they can be easily detected at the time of purchase of raw materials or the sale of liquor. Once licensed, customs monitors their sales by the regular returns submitted by them. For wholesalers who purchase liquor from licensed manufacturers or import from overseas, customs already exercises control over them through their purchases and/or import declaration forms. As such they are easily kept under surveillance. However it is more difficult for customs officers to monitor the retailers such as pubs which start operations late at night. Most of customs enforcement is carried out during the day. To check the pubs would require considerable logistical planning and the deployment of officers after office hours. This would be time consuming, as the pubs are scattered intermittently over a large area and physical movement would mean many man hours lost in traveling. Also the enforcement officers are often not remunerated or compensated for their over time effort(s) and need to report for work early the next morning. Night enforcement is also greatly hampered by the overwhelming risks encountered by these officers especially being confronted by "bouncers" who would endeavour to restrict their entry. As a result of this, customs enforcement in the evening is only carried out periodically after much planning and consideration.

REFERENCES:

1. *The Excise Act 1975*
2. *The Excise (Licensing Boards) Regulations 1977*
3. *The Excise (Sale of Intoxicating Liquor) Regulations 1977*
4. *The Excise (Control of Toddy and Toddy Shops) Regulations 1977*

The Author

Thomas Selva Doss

is a customs consultant with Dossnett Consulting Sdn. Bhd. providing customs advisory services to clients in Malaysia and Singapore. He was a Senior Officer of Customs in the Royal Malaysian Customs Department for 13 years and is trained in Customs Audit, Custom Investigation and Anti-smuggling procedures. He holds a Bachelor Degree in Economics and Certificate in Customs Procedures from the Malaysian Customs Academy. He can be contacted at e-mail : customs@streamyx.com.

The Nature and Effect of an Agreement Determines the Taxability of Sum Received

By a joint venture agreement ("JVA") dated 4 September 1990, the taxpayer entered into a joint venture with Syarikat Perniagaan Selangor Sdn Bhd ("SPSSB") to carry out a development project involving two plots of land belonging to SPSSB. SPSSB's contribution was two plots of land, valued at RM5.3 million and the taxpayer's contribution was by way of services for obtaining the approval of the appropriate authorities for the conversion of the use of the two plots, the extension of their leasehold period, and their subdivision into parcels as provided in the layout plan. The taxpayer's contribution was valued at RM4.8 million. It was therefore provided that SPSSB and the taxpayer's equity in the project was 52% and 48% respectively, and the contribution of the paid-up capital for the project to be RM520,000 and RM480,000 accordingly, although no contribution was actually made.

Owing to disagreements between the parties, the JVA was cancelled by a letter dated 28 December 1992. The letter provided that SPSSB would pay the taxpayer RM6.4 million "as compensation to terminate the JV Agreement ...". The amount was paid on 29 December 1992. The amount of RM2.1 million was also paid by SPSSB to the taxpayer as reimbursement of expenses and outgoings incurred in connection with the project. The taxpayer was then placed under members' voluntary liquidation on 11 November 1993.

By a notice of assessment dated 24 September 1994 for year of assessment 1994, the taxpayer was assessed to tax in the sum of RM2.048 million on the amount of RM6.4 million. The taxpayer contended that the sum of RM6.4 million was either capital withdrawn from the partnership constituted by the JVA upon its dissolution or compensation for the loss of all rights under the JVA and therefore was not chargeable to tax. The Revenue, on the other hand, contended that it was either payment for services rendered or compensation for loss of income as a result of the termination of the contract, which, in either case, would be taxable under the *Income Tax Act 1967*. The Special Commissioners and High Court both confirmed the Revenue's assessment, hence this appeal before the Court of Appeal.

The Court of Appeal dismissed the appeal.

1. The vital question for the alternative contention of the taxpayer was whether the JVA related to the whole structure of the taxpayer's profit-making apparatus. If it did, and only if it did, the payment was capital. Otherwise, it was income. This did not, however, mean that the termination or cancellation of the agreement must result in the destruction of the profit-making apparatus of the taxpayer-company. The test is whether the agreement that is cancelled or terminated "is related to the whole structure of the company's profit-making apparatus" which is a test of the nature and effect of the agreement and not a test of the consequences of its cancellation or termination.

2. In this case, there was no evidence that the JVA related to the whole structure of the profit-making apparatus of the taxpayer. It was incorporated in 1981 and obtained a licence to conduct real estate business in 1987. In 1990, it entered into the JVA. It, therefore, was not incorporated to implement the JVA. Looking at the JVA from the standpoint of what the taxpayer had to do under it, it was a contract for the provision of service and therefore a disposal agreement, not a framework agreement. It was an ordinary commercial contract made in the course of carrying on their business.

Suasana Indah Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

Court of Appeal, Putrajaya. Civil Appeal No W-01-102-1998

Judgment delivered on 9 December 2005.

Arjunan Subramaniam (Orzanul Izwan Othman with him) (M/s Geraldine Yeoh, Arjunan & Assoc) for the appellant.

Abu Tariq Jamaluddin (Zaleha Adam with him) (Inland Revenue Board) for the respondent.

Before: Mokhtar Sidin JCA, Abdul Aziz Mohamad JCA and Raus Sharif J.

An Executor is Assessable and Chargeable to Tax on Deceased's Estate

The Appellant had obtained judgment in the High Court for the sum of RM290,918.17 being tax due for the relevant Years of Assessment 1984 and 1985 against the Respondent, the widow. She appealed to the Court of Appeal which allowed her appeal on the ground that the Appellant had failed to comply with the provisions of O 15 r 6A of the Rules of the High Court 1980. The issue in this instance was therefore whether, in view of the provisions of the *Income Tax Act 1967* ("the Act"), O 15 r 6A of the Rules of the High Court 1980 was applicable to an action or proceeding raised under sec 106 of the Act in relation to an assessment in the name of an executor as defined in the Act.

The deceased had died intestate on 12 January 1984. The widow did not apply for the grant of letters of administration. Notices of Assessments for the Years of Assessment 1984 and 1985 were posted to the widow's last known address and she duly completed and returned the forms. However, she did not pay the tax which then became payable. Accordingly, the Appellant commenced proceedings against her for the recovery of the tax due in her capacity as the "Wakil Sah Kepada Harta Pesaka [the Deceased's name]". The widow contended that she was not the wakil sah of the deceased and it was therefore not her responsibility to make the payment to the Appellant.

The Federal Court allowed the appeal.

1. The object of O 15 r 6A was to provide a remedy where there was no person in law who could be sued for the estate of a person who had died before the commencement of an action. It was therefore superfluous to state that even where no grant of probate or of administration had been made to the estate of a deceased, O 15 r 6A would have no application if there was, in law, a person which could be sued. An executor de son tort was such a person.

2. In matters relating to the assessment and chargeability to tax of the estate of deceased persons, sec 64(1) and sec 74(1) are specific provisions in the Act to make the executors liable. It was therefore clear that the person assessable and chargeable to tax in the case of the estate of a deceased person was his executor. Proceedings could therefore be commenced against an executor for the recovery of tax due and payable.

3. It is a general rule of construction that in construing Acts of Parliament, words must be taken in their legal sense unless a contrary intention appears. In sec 2 of the Act which defines "executor", the reference to "executor" and "administrator" in the definition, being persons who are legally appointed, suggests that the "person administering or managing the estate of a deceased person" was not one who was so appointed. The Act has therefore given an extended meaning to the word "executor" by this inclusion. As the definition was clear and unambiguous, it could not be ignored.

4. The reference in sec 64 and sec 74 of the Act to an "executor" includes a person who is administering or managing the estate. Such a person is assessable and chargeable to tax and is therefore a person who can be sued in law. The corollary is that O 15 r 6A will have no application to proceedings under the Act against such a person.

Kerajaan Malaysia v Yong Siew Choon
Federal Court, Putrajaya. Civil Appeal No. 01-5-2004(W)
Judgment delivered on 14 October 2005.
Abu Tariq Jamaluddin (Hazlina Hussain with him) for the Appellant.
Jagjit Singh (M/s Jagjit Singh & Co) for the Respondent.
Before: Pajan Singh Gill FCJ, Rahmah Hussein FCJ and Augustine Paul FCJ.
(Contributed by *CCH Malaysia and Singapore Tax Cases* Editor)

Professional PRO Examinations

Be Among The Best

The principal objective of the Malaysian Institute of Taxation (MIT) is to train and build up a pool of qualified tax personnel as well as to foster and maintain the highest standard of professional ethics and competency among its members.

One avenue of producing qualified tax personnel is through professional examinations. As such, MIT conducted its first professional examinations in December 1995. To date, the MIT has successfully conducted eleven examinations. The professional examination also seeks to overcome the present shortage of qualified tax practitioners in the country.

How to Register

You can contact the Institute's Secretariat for a copy of the Student's Guide. The Guide contains general information on the examinations. Interested applicants must submit a set of registration forms as well as the necessary documents to the Secretariat.

Entrance Requirements

a) Minimum 17 years old
- At least 17 years old
- At least two principal level passes of the HSC/STPM examination (excluding Kertas Am/Pengajian Am) or equivalent
- Credits in English Language and Mathematics and an ordinary pass in Bahasa Malaysia at MCE/SPM

b) Degrees, diplomas and professional qualifications (local/overseas) recognised by the MIT to supersede minimum requirements in (a)

c) Full Members of local and overseas accounting bodies

Exemption

Exemption from specific papers in the professional examinations is available and the exemptions granted will depend on qualifications attained and course contents as determined by the MIT Council.

Exemption Fees (per paper)

Foundation	RM 50.00
Intermediate	RM 60.00
Final	RM 70.00

Examination Fees (per paper)

Foundation	RM 50.00
Intermediate	RM 60.00
Final	RM 70.00

Examination Structure

The professional examinations are currently held annually and comprises of three levels:

Foundation Level
- Taxation I
- Economics & Business Statistics
- Financial Accounting 1

Intermediate Level
- Taxation II
- Taxation III
- Company & Business Law

Final Level
- Taxation IV
- Taxation V
- Business & Financial Management
- Financial Accounting II

MIT Professional Examinations

CALENDAR FOR YEAR 2006

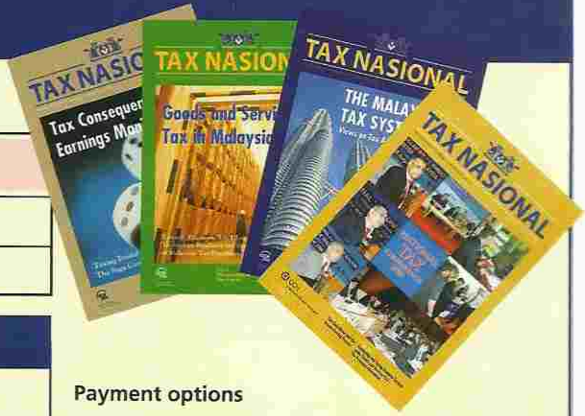
January 1	Annual Subscription for 2006 payable.
February	Release of the 2005 Examinations results. Students are notified by post. No telephone enquiries will be entertained.
March 31	Last date for payment of annual subscription fee for the year 2006 without penalty (RM50).
April 30	Last date for payment of annual subscription for year 2006 with penalty (RM100).
	Question & Answer Booklets are available for sale.
September 1	Closing date for registration of new students who wish to sit for the December 2006 examination sitting.
September 15	Examination Entry Forms will be posted to all registered students.
October 15	Closing date for submission of Examinations Entry Forms. Students have to return the Examinations Entry Form together with the relevant payments to the Examinations Department.
November 30	Despatch of Examinations Notification Letter.
December 18 - 22	MIT Examinations.

Malaysian Institute Of Taxation

TAX NASIONAL

Official Journal of The Malaysian Institute of Taxation

Tax Nasional Subscription Form 2006



2006 Subscription Rates (per annum)	
MIT Member/MIT Student/CCH Tax Subscriber	RM137.00
Non MIT Member/Non CCH Tax Subscriber	RM152.00

Please complete this form and fax to your nearest CCH office.

Please rush this order to:

Date: ....

Company: ....

MIT Membership No./CCH Customer No.: ....

Mr/Mrs/Ms: ....

Address: ....

.... Postcode: ....

No. of Employees: .... Nature of Business: ....

Email: ....

Tel No.: ....

Fax No.: ....

Signature & Company Stamp

Payment options

❏ Cheque amount of RM.................................... payable to the nearest CCH office

❏ Please invoice me ....

Commerce Clearing House (M) Sdn Bhd (216030-M)
Suite 9.3, 9th Floor, Menara Weld
76, Jalan Raja Chulan 50200 Kuala Lumpur
Toll Free Customer Service Hotline: 1800 18 1151
Toll Free Fax No.: 1800 181 173
Email: support@cch.com.my

CCH Asia Pte. Limited
11 Keppel Road, #11-01, RCL Centre
Singapore 089057
Toll Free Customer Support Hotline: 800 616 2161
Toll Free Fax No.: 800 6162 176

CCH
a Wolters Kluwer business

Terms & conditions: Order subject to acceptance by CCH. Price valid in Malaysia only. Price subject to change without prior notice. Subscribers to Malaysian CCH Tax subscription titles will receive one copy of Tax Nasional as part of their subscription package.

Malaysian Institute Of Taxation

To:
Secretariat
Malaysian Institute of Taxation
Unit B-13-2, Block B, 13th Floor
Megan Avenue II,
No. 12 Jalan Yap Kwan Seng,
50450 Kuala Lumpur.

Pilot Papers, December 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 & 2004 Examinations Question and Answers Booklet Order Form

Full Name Mr/Mrs/Ms: ____________________

Address : MALAYSIAN INSTITUTE OF TAXATION 225750-T

____

Student Registration No: ____________________ Tel. No: ____________________

MIT Registered Students & MIT Members only

Year	Cost/Level		
	Level I	Level II	Level III
2004 Examinations Booklet	RM6.00	RM7.00	RM11.00
2003 Examinations Booklet	RM6.00	RM7.00	RM11.00
2002 Examinations Booklet	RM6.00	RM7.00	RM11.00
2001 Examinations Booklet	RM6.00	RM7.00	RM11.00
2000 Examinations Booklet	RM6.00	RM7.00	RM11.00
1999 Examinations Booklet	RM6.00	RM7.00	RM11.00
1998 Examinations Booklet	RM6.00	RM7.00	RM11.00
1997 Examinations Booklet	RM6.00	RM7.00	RM11.00
1996 Examinations Booklet	RM6.00	RM7.00	RM11.00
1995 Examinations Booklet	RM6.00	RM7.00	RM5.50
Pilot Papers Booklet	RM6.00	RM7.00	RM11.00

Non-MIT Registered Students & Non-MIT Members

Year	Cost/Level		
	Level I	Level II	Level III
2004 Examinations Booklet	RM8.00	RM9.00	RM13.00
2003 Examinations Booklet	RM8.00	RM9.00	RM13.00
2002 Examinations Booklet	RM8.00	RM9.00	RM13.00
2001 Examinations Booklet	RM8.00	RM9.00	RM13.00
2000 Examinations Booklet	RM8.00	RM9.00	RM13.00
1999 Examinations Booklet	RM8.00	RM9.00	RM13.00
1998 Examinations Booklet	RM8.00	RM9.00	RM13.00
1997 Examinations Booklet	RM8.00	RM9.00	RM13.00
1996 Examinations Booklet	RM8.00	RM9.00	RM13.00
1995 Examinations Booklet	RM8.00	RM9.00	RM 7.50
Pilot Papers Booklet	RM8.00	RM9.00	RM13.00

I enclose a Cheque/PO/MO no. ____________ for RM ____________ payable to **Malaysian Institute of Taxation.**

Student's Signature : ____________ Date : ________ *Please note a postage fee of RM0.70 will be charged for every booklet.*

HASiL
LHDN MALAYSIA
LEMBAGA HASIL DALAM NEGERI MALAYSIA
http://www.hasil.org.my

Malaysian Institute Of Taxation
http://www.mit.org.my

National TAX CONFERENCE 2006

Premier Tax Event of the Year

22 & 23 August

Putra World Trade Centre (PWTC), Kuala Lumpur

25 CPD hours

Moving Forward, Managing Changes

YB Tan Sri Nor Mohamed Yakcop, Finance Minister II will officiate the Conference

For further information on the Conference please contact:

Malaysian Institute of Taxation
Contact Persons:
Ms. Nur / Ms. Latha
Tel: 03-2162 8989 ext 106/108
Fax: 03-2162 8990
E-mail: **ntc@mit.org.my**
Website: www.mit.org.my

Highlights

- Impact of FRS on Taxation
- LHDNM's Perspective
- E-Services in Tax Administration
- Legal Issues
- New Sector Focus - Biotechnology
- Real Estate Investment Trusts (REITs)
- Supply Chain Management
- Investment in Emerging Markets
- Recent Developments on Transfer Pricing