Malaysian Institute Of Taxation

Tax Nasional

Official Journal of The Malaysian Institute of Taxation

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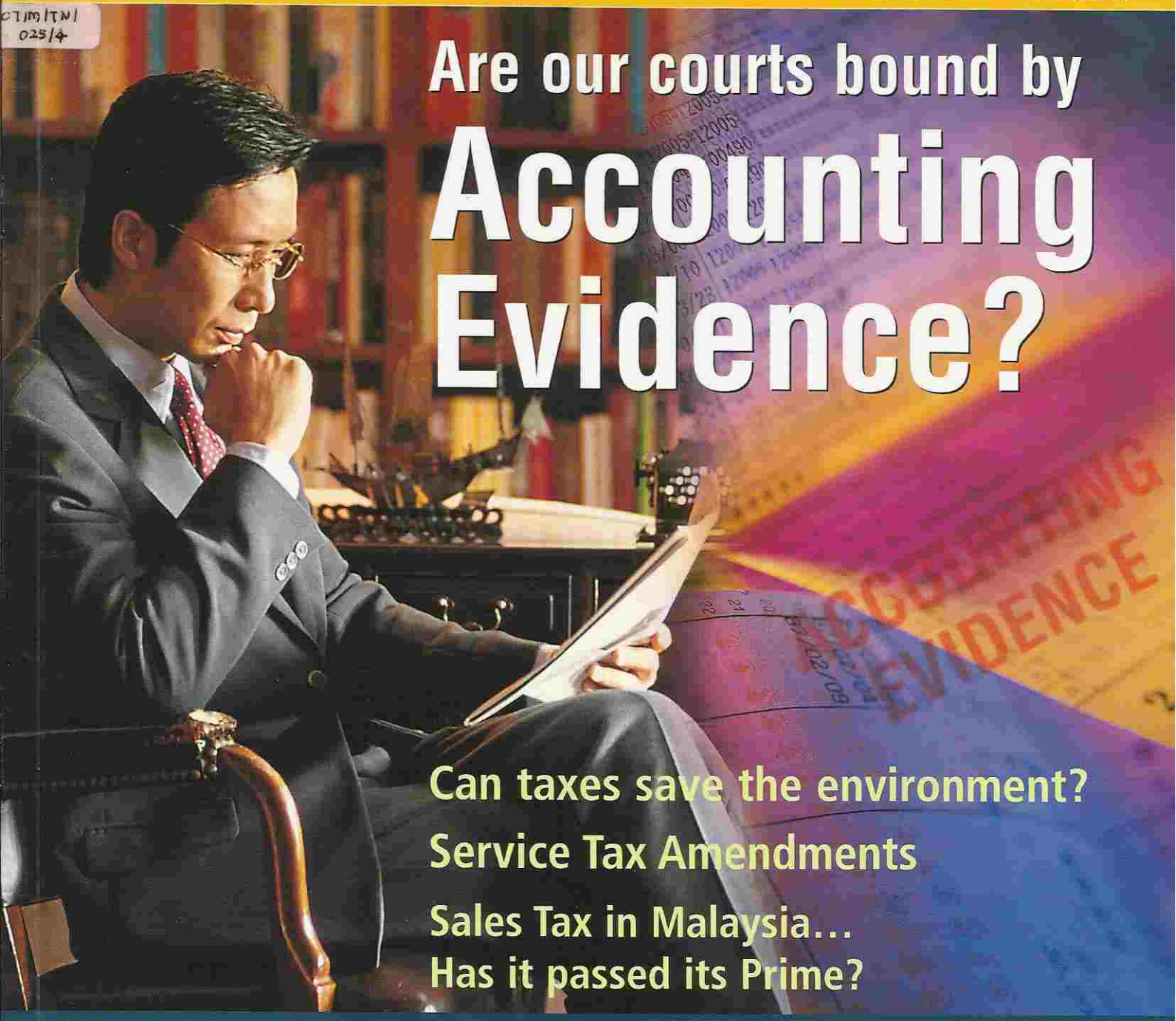

Are our courts bound by Accounting Evidence?

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Service Tax Amendments

Sales Tax in Malaysia...
Has it passed its Prime?

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How to become a member of the Malaysian Institute of Taxation

Benefits and Privileges of Membership

The Principal benefits to be derived from membership are:

1. Members enjoy full membership status and may elect representatives to the Council of the Institute.
2. The status attaching to membership of a professional body dealing solely with the subject of taxation.
3. Supply technical articles, current tax notes and news from the Institute.
4. Supply of Annual Budget Booklet and 4 issues of Tax Nasional per annum.
5. Opportunity to take part in the technical and social activities organised by the Institute.

Qualification Required for Membership

There are two classes of members, Associate Members and Fellows. The class to which a member belongs is herein referred to as his status. Any Member of the Institute so long as he remains a member may use after his name if the case of a Fellow the letters F.T.I.I. and in the case of and Associate the letters A.T.I.I.

Associate Membership

1. Any person who has passed the Advanced Course examination conducted by the Department of Inland Revenue and who has not less than five (5) years practical experience in practice or employment relating to taxation matters approved by the Council.
2. Any person whether in practice or in employment who is an advocate or solicitor of the High Court of Malaya, Sabah and Sarawak and who has had not less than five (5) years practical experience in practice or employment relating to taxation matters approved by the Council.
3. Any Registered Student who has passed the examinations prescribed (unless the Council shall have granted exemptions from such examinations or parts thereof) and who has had not less than five (5) years practical experience in practice or employment relating to taxation matters approved by the Council.
4. Any person who is registered with MIA as Registered Accountant and who has had not less than two (2) years practical experience in practice or employment relating to taxation matters approved by the Council after passing the examination specified in Part I of the First Schedule or the Final Examination of The Association Of Accounts specified in Part II of the First Schedule to the Accountants Act, 1967.
5. Any person who is registered with MIA as a Public Accountant.
6. Any person who is registered with MIA as a Licensed Accountant and who has had not less than five (5) years practical experience in practice relating to taxation matters approved by the Council after admission as a licensed accountant of the MIA under the Accountants Act, 1967.
7. Any person who is authorised under subsection (2) (6) of Section 8 of the Companies Act, 1965 to act as an approved company auditor without limitations or conditions.
8. Any person who is granted limited or conditional approval under Sub-section (6) of Section 8 of the Companies Act, 1965 to act as an approved company auditor.
9. Any person who is an approved Tax Agent under Section 153 of the Income Tax Act, 1967.

Fellow Membership

1. A Fellow may be elected by the Council provided the applicant has been an Associated Member for not less than five (5) years and in the opinion of the Council he is a fit and proper person to be admitted as a Fellow.
2. Notwithstanding Article 8(1) of the Articles of Association, the First Council Members shall be deemed to be Fellows of the Institute.

Application of Membership

Every applicant shall apply in a prescribed form and pay prescribed fees. The completed application form should be returned accompanied by:

1. Certified copies of:
   a) Identity Card
   b) All educational and professional certificate in support of your application.
2. Two identity Card-size photographs
3. Fees

	Fellow	Associate
a) Admission Fees	RM300	RM200
b) Annual Subscription	RM145	RM120

Every member granted a change in status shall thereupon pay such additional fee for the year then current as may be prescribed.

The Council may at its discretion and without being required to assign any reason reject any application for admission to membership of the Institute or for a change in the status of a Member.

Admission fees shall be payable together with the application to admission as members. Such fees will be refunded if the application is not approved by the Council.

Annual Subscription shall be payable in advance on and thereafter annually before January 31 of each year.

Malaysian Institute Of Taxation

The Malaysian Institute of Taxation ("MIT") was established in 1991 and this year mark's a decade of our existence. We are proud to announce that we currently have over 2000 members comprising of accountants, licensed tax agents, lawyers and qualified tax practitioners. Since its inception, the Institute has been actively involved in promoting the tax profession to ensure the country's demand for qualified and trained tax practitioners are met.

As the body responsible for matters concerning taxation in this country, we are obliged to ensure that our members are well informed and have their information base constantly updated by attending Continuing Professional Development Programmes. As a national taxation body, MIT also participates in numerous dialogues and meetings organised by the relevant authorities namely Inland Revenue Board and the Royal Customs and Excise Department. The role of a tax practitioner in business has undergone numerous changes. It is, therefore extremely important that we make continuous learning a part of our professional life to keep abreast with the current changes.

The year 2001 is marked as a remarkable year for MIT. Within the 1st six months of the year the Institute successfully co-organised the National Tax Conference 2001 with the Inland Revenue Board. The Conference was attended by a record breaking 600 participants in total. Without doubt, the success of this conference is as a result of the successful partnership between the parties involved Also an event of such magnitude has certainly proved that MIT has a strong existence in the taxation industry in Malaysia. This is just the beginning of a successful story. Henceforth MIT will be organising activities which will benefit its members.

As for the official journal of the Institute, known as Tax Nasional, the year 2001 will see the journal go through radical changes. After deliberating on the issue, the Council decided that in line with the Institute's undertaking to provide better services to its members, the Council has engaged CCH Asia Pte. Ltd. to undertake the publishing of this journal. This 2nd Quarter issue is the 1st issue pursuant to the joint collaboration between the Institute and CCH. An Editorial Advisory Board has been set up to oversee the publication of this journal. The Editor and members of the board have great plans for this journal and will work closely with CCH to systematically improve the quality of the journal.

The Institute is about to embark on a new era.

The Institute has undertaken numerous measures to achieve its vision of giving its best to the members. In short, MIT is the voice of the future where Malaysian taxation matters are concerned.

I must say with some excitement that the future holds great things for the Institute.

Ahmad Mustapha Ghazali
President of the Malaysian Institute of Taxation

Malaysian Institute Of Taxation

The Malaysian Institute of Taxation ("the Institute") is a company limited by guarantee incorporated on October 1, 1991 under Section 16(4) of the Companies Act 1965. The Institute's mission is to enhance the prestige and status of the tax profession in Malaysia and to be the consultative authority on taxation as well as to provide leadership and direction, to enable its members to contribute meaningfully to the community and development of the nation.

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Tax Nasional has evolved.

Dear Readers,

Welcome to the 2nd Quarter Issue of Tax Nasional.

I have been the editor of Tax Nasional for the past seven and a half years. Throughout this period I have seen this Journal grow from strength to strength. The Editorial Committee has sought ways to improve the quality of the Journal. To this end, the Institute has today forged a partnership with CCH Asia Pte. Ltd. wherein CCH has been appointed as the official publisher of the journal.

This is the inaugural issue of this journal pursuant to the partnership. As the Editor I worked very closely with the CCH editorial team to produce this journal. In fact members of the Institute's Editorial Advisory Board provided their comments and support in this new venture. We hope that with the new partnership the quality of the information in journal will continue to improve. We also hope that members of the institute will lend their support by contributing to the journal. It is after all our journal.

For this inaugural issue, the main feature article is on the topic of "the Role of Accounting Evidence in Tax Practice". The article is written by our council member Dr. Arjunan Subramaniam. This has always been a grey area for tax practioners, lawyers and accountants. In this article Dr. Arjunan takes us through the numerous cases in which this has been raised as an issue and provides us with opinions of the presiding judges, some of which he concurs with.

For those concerned with the environment, we have an article by the another of our council members, Dr. Jeyapalan Kasipillai. Dr. Jeya's article considers the possibility of utilising tax as a measure to control pollution of the environment.

As for indirect taxes we have 2 articles contributed by Mr. Boon Oon Seang and by Mr. Bong Sesh Chin. Whilst Mr. Boon considers the Sales Tax Amendments passed in the year 2000, Mr. Bong considers whether the Service Tax in Malaysia should be amended and how it can be amended.

Under Regulatory Issues we have listed out recently gazetted P.U.(A)'s for Income Tax and Promotion of Investment, for the convenience of practioners. But this is just a summary for the full citation please refer to the P.U.(A) published by Percetakan Nasional Malaysia Berhad.

For our students, Mr. Siva Nair has written an article especially for them entitled "A Students Guide to Tax: Basic & Scope of Charge". This is the 1st in a series of articles which will be published in Tax Nasional.

As for recent tax decisions, the Special Commissioners in the case of FSB have held that guarantee fee is not tax deductible. This decision conflicts with the decision in FCD.

The High Court hearing in the *Multipurpose Holding Sdn Bhd* case on whether service tax is applicable to management services rendered by an investment holding company is still on going. Final submissions are being made and a decision is expected later this year.

Harpal S. Dillon
Editor of Tax Nasional

Tax Nasional welcomes original an unpublished contributions which are o interest to tax professionals, lawyers an academicians. It may cover local o international tax development.

Articles contributed can be written in Englis or Bahasa Malaysia. It shoul be between 2,500 and 5,000 (double spaced, typed pages). They should b submitted in hardcopy and diskette (3. inches) form in Microsoft Word.

Contributions intended for publication mus include the writer's name and address, eve if a pseudonym is used.The Editor reserve the right to edit all contributions based o clarity and accuracy of expressions require

Contributions may be sent to the Editor o Tax Nasional, Malaysian Institute o Taxation. For further information, pleas contact The Secretariat, Malaysian Institut of Taxation.

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Malaysian Institute of Taxation

Malaysian Institute Of Taxation

9th Annual General Meeting

Over 60 members attended the Malaysian Institute of Taxation's 9th Annual General Meeting held on 19th May 2001 at the Selangor Room, Shangri-La Hotel, Kuala Lumpur. Although it was a critical time for many as the dateline to submit tax returns was fast approaching, this did not deter members of the Institute from attending the annual function.

MIT members during the tea-break at the AGM.

Office bearers during the AGM. From left: Mr Quah Poh Keat (VP), Mr. Michael Loh (DP), Encik Ahmad Mustapha Ghazali (P), Mr. Chow Kee Kan (HS), Tuan Haji Abd Hamid bin Mohd Hassan (VP).

The new millennium brought many changes to the Institute. The President, En Ahmad Mustapha Ghazali in his opening address said that the most significant change mooted and unanimously endorsed by the members attending the Extraordinary General Meeting on 14th October 2000 was the amendments to the Institute's Memorandum and Articles of Association. The issues ratified in the said EGM reflected the member's confidence and belief. In short, the amendments adopted empower the Institute to chart its own affairs and objectives.

Further on the Institute's plans for the future the President had this to say "The Institute is now embarking on a new era of development, whereby, our main focus in the coming years will be to provide " Quality & Efficient " services to members of the Institute. This move towards value added services for the members can be seen from the numerous projects. The Institute will undertake the following events for our members, such as CPD courses, upgrading of Tax Nasional, 48 hour replies to tax queries by MIT members, a MIT website and e-mail service to members, latest tax updates and information"

On the other hand, it was a sad moment for the institute when it saw the resignation of council member Mr. Chuah Soon Guan. Mr. Chuah has been the Institute's Honorary Secretary since it's inception and one of the persons behind the success of the Institute.

Mr. Chow Kee Kan a council member, was appointed by the institute as the new Honorary Secretary and Mr. Alvin Richard Thornton was elected as the new council member.

As a conclusion to his presidential address, the President urged individuals interested in the field of taxation to join the Institute to fulfill the Institute's fundamental vision of being recognised as the national taxation body authorised to represent the taxation profession in Malaysia.

MIT members listening to the presidential note.

Graduation and Prize Giving Ceremony

Dr. Jeyapalan Kasipillai (Examinations Committee Chairman) delivering his opening address.

In keeping with tradition, the Malaysian Institute of Taxation held its 6th Graduation and Prize Giving Ceremony on the 19th May 2001 at the Kedah Room, Shangri-La Hotel, Kuala Lumpur. The year 2000 saw 18 students completing the Foundation Level, 27 students the Intermediate Level and 9 students the Final Level.

The Graduation ceremony was attended by over 50 people comprising council members, students, parents, friends and well-wishers

The Institute started conducting professional exams in taxation in 1995. The Institute was and still is the only organisation in Malaysia to conduct such a professional examination. The Institute takes its role in conducting this examination very seriously. The Examination Committee Chairman, Dr Jeyapalan Kasipillai, in his opening address said that this professional exam is intended to produce more qualified tax professionals and to provide opportunities for persons who are in the tax profession to earn a professional qualification. It also serves as a vehicle to admit into the Institute, persons who do not have the relevant qualifications which are currently recognized for direct admission as members of the Institute.

Since the official launching in 1994, the Institute is proud to acknowledge that it has 500 registered students. This indicates a growing awareness of the role and function of the Institute among the public.

A proud moment for the Institute. From left: Dr. Jeyapalan Kasipillai (Examinations Committee Chairman), Encik Ahmad Mustapha Ghazali (President), Mr. Ter Leong Guan (Student), Mr. Michael Loh (DP).

The performance of the students in the MIT examinations in December 2000 was encouraging. Prizes were given to students on the basis of specific criteria set by the Examinations Committee. Only candidates who had achieved a specific level of excellence were awarded prizes.

The prize winners for the December 2000 examination are as follows :

Taxation 1	Ms Mak Sheau Tsuey
Taxation II	Mr Manvinder Singh Ajeet Singh
Taxation IV	Ms Hong Mei Lain @ Mei Yan

The prize for best overall performance in the foundation level was awarded to Ms Eng Siew Hoon.

The prizes were sponsored by Deloittes Kassim Chan, Pricewaterhouse Coopers, KPMG, Arthur Andersen, Atarek Kamil Ibrahim & Co as well as the President. En Ahmad Mustapha Ghazali and Deputy President, Mr Michael Loh Last year's examination marked a new beginning for the Institute as it witnessed a student, Mr Ter Leong Guan, successfully completing all levels of the professional examination. It was a proud moment for the Institute when its President awarded Mr. Ter with a Certificate of Graduateship.

In conclusion students represents the future voice of the Institute. Students who have successfully completed the MIT professional examinations will be the guardians of the tax profession in the coming years. Hence, MIT is under a duty of care to its members and to the tax profession, to become stewards of the future, by guiding and maintaining standards.

The attendees of the Prize Giving Ceremony during the tea-break.

The Role of Accounting Evidence in Tax Disputes

By Dr. Arjunan Subramaniam

In computing total income for income tax purposes, the net profit in the accounts is taken as the starting point. In other words adjustments are made to the commercial net profit by an application of income tax laws to arrive at an artificial figure of "income".

In such adjustments disputes often arise in a number of areas. Some of these are:

i. whether an item of expenditure is attributable to Revenue or Capital;

ii. whether an item sold forms stock in trade;

iii. basis of valuation of stock in trade or work in progress;

iv. whether trading stock consumed by the taxpayer must be credited with market value or cost price in the accounts; and

v. whether "market price" means a retail market or a wholesale market.

In the above instances the Courts have often examined how the item under appeal is treated in the accounts. Such an examination may have a number of functions. One is to ascertain if the treatment accorded in the accounts conforms with established commercial accounting practice. Another is to ascertain the character of a given payment or receipt – whether it is capital or revenue. A third might be to establish the motive of a taxpayer – whether a piece of land was acquired with an intention to resell or trade in land or as an investment.

Accountancy evidence might also be introduced to show that what was done (valuation of stock for instance) was done to conform with tax laws.

Does the treatment in the accounts conform to established accounting practice?

As mentioned above one of the purposes of accountancy evidence is to substantiate that the treatment conferred in the accounts is in accordance to established accounting practice. If this is so, and further, if it does not conflict with a statute, some authorities suggest that that is the end of the matter. In *Odeon Associated Theatres,*[1] *Salmon*, L.J put it thus:

> "where, however, there is evidence which is accepted by the Courts as established a sound commercial accounting practice conflicting with no statute that normally is the end of the matter. The Court adopts the practice, applies it and decides the case accordingly."

In *Duple Motor Bodies Ltd. v. Commissioners of Inland Revenue*,[2] Lord *Simonds* expressed a similar idea without using the word "statute". His Lordship said:

> *"... the ordinary principles of commercial accounting must as practicably be observed, and ... the law relating to income tax must not be violated..."*[3]

The significance of not using the word statute is that while income tax law is mainly a result of statute, there are areas where the statute is silent. In these instances it is not always true to say that "established accounting practice is the end of the matter if it does not conflict with the statute". *Salmon*, L.J's statement quoted above was in fact construed by some authorities as upgrading the value of accounting evidence. It led to the view that the Courts had abdicated in favour of the accountants. An attempt was made by Lord Denning in *Heather v. P.E Consulting Group Ltd*[4] to correct this impression in the following terms:

> "And Mr. Bates submitted to us that the Odeon case had upgraded the evidence of accountants so that the Commissioners and the Courts were bound by their evidence to the greater degree than they had been in the past. I cannot agree with that for a moment. It seems to me that the case does not add

1. *48 T.C 257 at page 283*
2. *39 T.C 537*
3. *39 T.C at page 566*
4. *48 T.C*

to or detract from the value of accountancy evidence. The Courts have always been assisted greatly by the evidence of accountants. Their practice should be given due weight; but the Courts have never regarded themselves as being bound by it. It would be wrong to do so. The question of what is capital and what is revenue is a question of law for the Courts. They are not to be deflected from their true course by the evidence of accountants, however eminent." [5]

Lord *Denning* has reiterated what has long been agreed: that issues in income tax such as revenue expenditure as opposed to capital expenditure, basis valuation of trading stock and the like are questions of law. What then is the role of accountancy evidence?

Accounting Evidence in determining the characteristics of a payment or receipt

It is submitted that all accountancy evidence must be confined to the role of mapping out the characteristics of an expenditure or receipt. Lord *Salmon's* statement quoted above must be taken with some reserve. Accountancy evidence may establish a sound accounting practice from the point of view of accountants but not from the point of view of judges. *Strick v. Regent Oil Co*[6] is a case on point. In this case auditors and accountants gave evidence to the effect that a sum paid as premium for a lease was properly attributable to revenue on sound accounting principles. But this view was rejected by Lord *Wilberforce* who observed:

> "There is one other argument on which some observation is necessary, namely, that based on accountancy considerations..."

All that the Commissioners say is this:

> "Auditors accountancy advisers of Regent who gave evidence before us took the view that such payments were made to preserve turnover, that no fresh asset was acquired as a result of such payment and that accordingly such payments were properly chargeable to revenue.
>
> This is either irrelevant or wrong: it is irrelevant that the expenditure was made to preserve rather than to create turnover; wrong to say that no fresh asset was created; the contrary is clearly the case: this evidence does not deal with the question of transience at all. So I cannot obtain any guidance from accountancy considerations." [7]

Further, it will be re-called that in *Sharkey v. Wernher* 36 T.C 275 it was held that where a trader transferred stock in trade to his personal use, the proper figure to be brought into the accounts in respect of the transferred stock was the market value and not the cost.

Such a ruling was first given in 1942 in the case of *Watson Bros. v. Hornby.*[8] At that time it was not a settled rule or an established accounting practice to use the market value. In fact, one authority[9] is of the opinion that the ruling in *Sharkey v. Wernher* (*supra*) was against established accounting principles, which is, that the cost price should have been taken in place of market value.

Again, in *B.S.C Footwear Ltd. v Ridgway,*[10] an established and accepted accounting practice of valuing stock at the end of an accounting period, at its replacement value, was rejected. In this case, the law required valuation to be at cost or market value whichever was lower. Accountancy evidence suggested that "replacement value" may be taken as a "market value" but this was rejected on the premise that so long as there is a retail market, the term "market" in the concept "market value" must refer to the retail market and not to a wholesale market. It will be noted here that though the established and accepted method of accounts did not conflict with a statute, it was not followed since it did not align itself with

5. 48 T.C at page 322
6. 43 T.C 1
7. Ibid at page 60
8. 24 T.C 506
9. See H.C Edey, Valuation of Stock in trade for income tax purposes [1956] British Tax Review at page 23 where he wrote: " These decisions are of particular interest because in each case the judgement invalidated a long standing accounting practice." Thelearned writer was referring to Sharkey v. Wernher and Minister of National Revenue v. Anaconda American Bross. Ltd.[1956] 1 All E.R 20
10. 47 T.C 495

a legal analysis of the problem for income tax purposes. Then, in *Duple Motor Bodies v. Ostime,*[11] there were two competing methods of valuing work in progress. The accounting profession approved both methods. But a close reading of the judgements of their Lordships in the House of Lords, leaves no doubt that the decision in that case was not based upon the opinion of accountants but upon a legal analysis of the problem. Lord *Guest* based his decision on the fact that in valuing work in progress the direct cost method was the more appropriate one in comparison to the on cost method. His Lordships' decision was not based upon the reasoning that the accounting evidence suggested both methods to be correct but on the fact that an application of the on cost method would "produce some absurd results". His Lordship explained the absurdity of that system as follows:

> "If the overhead expenses are to be allocated to the work in progress it will follow that, if trade is slack during any given year, a greater proportion of the overheads will be allocated to the work in progress: and, as the cost of the work in progress is to appear as an item of profit, this will swell the profits of the business. So this absurd result will follow, that when trade is slack the trader's profit on the goods sold will be low as his expenses are high, but his profit in respect of work in progress will be increased." [12]

A similar opinion was expressed by Lord Reid when his Lordship observed:

> "...for a year in which trade is slack, the profits for Income Tax are inflated by the on cost method because an unusually large proportion of factory overheads is attributed to work in progress in the end of the year, and its cost is therefore greater that it would have been if the factory had been busy." [13]

Thus, even in *Duple Motors* (*ibid*) it is not accounting practice which prevailed, but a legal analysis of the problem.

In recent times accountancy evidence has been given greater significance. Thus, in *Johnston v. Britannia Airways* (1994) STC 763 it was held:

"Where accounts were prepared in accordance with accepted principles of commercial accountancy the court would be slow to accept that they were not adequate for tax purposes as a true statement of the taxpayer's profits for the relevant period. In particular, it would be slow to find that there was judge-made rule of law which prevented accounts prepared in accordance with the ordinary principles of commercial accountancy from complying with the requirements of the tax legislation."
See also *Gallagher v. Jones* (1993) STC 537 where it was held:

> *"No judge-made rule could override the application of a generally accepted rule of commercial accountancy."*

It follows from the decision in *Britannia Airways* (*supra*) and *Gallagher v. Jones* (*supra*) that accountancy evidence not in conflict with statute law is relevant and must be evaluated by the Courts in relation to the issues and circumstances of the case. See also the Court of Appeal decision in *S. Leasing Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* (2000) MSTC 3,830, 3 MLJ 163 in respect of the relevance of the accounting method used in the leasing industry in apportioning common expenses.

In view of the consensus of opinion that the determination of profits for income tax purposes is a question of law and in view of the authority in *Strick v. Regent Oil* (*supra*) and *Sharkey v. Wernher* (*supra*), it is submitted that the statement to the effect that where there exists an established accounting practice not in conflict with any statute the accounting practice must prevail, needs some qualification or restatement as follows:

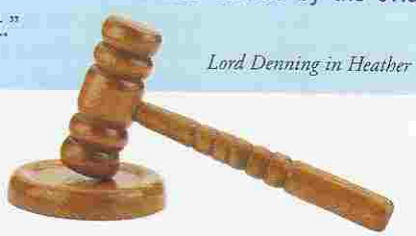
> *"an established accountancy practice not in conflict with a statute may prevail provided it does not produce absurd results and thereby conflicting with a legal analysis of the problem for purposes of income tax."*

Does Accounting Evidence establish the motive or intention of taxpayer?

Quite apart from playing a role in establishing the character of a payment or receipt, accountancy evidence also has the role of establishing the motive or intention of a taxpayer in determining whether a taxpayer is trading or not. In *I. Investment Ltd. v. Comptroller-General of Inland Revenue,* the Special Commissioners[14] reviewed the presentation of the asset sold in the balance sheet and found that prior to its sale and in the course of construction the asset was described in the balance sheet as "work in progress". In other words the asset sold was shown in the balance sheet as a current asset as opposed to a fixed asset. The Special

"The Courts have always been assisted greatly by the evidence of accountants. Their practice should be given due weight; but the Courts have never regarded themselves as being bound by it. It would be wrong to do so. The question of what is capital and what is revenue is a question of law for the Courts. They are not to be deflected from their true course by the evidence of accountants, however eminent."

Lord Denning in Heather v. P.E Consulting Grout Ltd



11. *39 T.C 537*
12. *39 T.C 575*
13. *39 T.C 572*
14. *[1975] 2 MLJ 208. The decision of the Federal Court was upheld by the Privy Council.*

Commissioners rejected the view of the appellant's counsel that such a representation was a mistake. The Special Commissioners held that the entry was deliberate and in conformity with the Appellant's intention to trade in land and properties. The significance of such a finding is not that the entry in the balance sheet as stock in trade is conclusive but that this fact taken with the other surrounding circumstances of the case, established, in the opinion of the Special Commissioners, that the Company intended to trade.

Accounting treatment is vital in establishing "intention". In *Simmons v. I.R.C* (1980) 1 W.L.R 1196 it was held:

> *"Intentions may be changed. What was first an investment may be put into trading stock and I suppose, vice versa. If findings of this kind are to be made precision is required, since a shift of an asset from one category to another will involve changes in the company's accounts."*

Indeed, the importance of accountancy evidence depends on the nature of the issue to be decided. In cases where the question is whether an asset is trading stock or a capital asset, accountancy evidence is crucial in the determination of the issue. Where in the accounts the asset is consistently classified as a fixed asset but there are surrounding circumstances to support or indicate that the intention was to keep the asset as a capital asset, such accounting evidence should not be ignored. The surrounding circumstances could be:

i. the asset was capitalized in the accounts;

ii. board of directors' resolution indicates that the asset was bought as an investment;

iii. the principal activities of the company are both investment and trading;

iv. Memorandum and Articles of Association also support investment and trading (but this is not crucial. What matters is what the company actually did) and;

v. The reason for sale or disposal by way of acquisition by Government for instance or disposal was other than trading as a forced sale.

That accounting evidence may be used to indicate an intention was recognized also in *Harvey v. Caulott*.[15] In this case accounting evidence was adduced to show that two properties sold were never part of trading stock by illustrating that the said two properties were removed from the trading accounts and kept separately for the past twenty years. Donovan, J. accepted such evidence as an indication that the properties were investments and not trading stock.

The importance of such accounting evidence may be gauged by a comparison of *Harvey* (*supra*) with

Oliver v. Fransworth.[16] In *Oliver* (*supra*) a partnership of builders retained one of a number of houses built in 1929 and sold it in 1952. A claim that the profits on the sale were from a realization of an investment was rejected by Danckwarts, J. in a very brief judgement on the ground that there was no evidence to suggest that the house sold was not part of the trading stock. This case drives home the point that once an item is trading stock, it is difficult to later argue that it is not trading stock unless there is evidence, accounting or otherwise, to corroborate the claim.

Conclusion

In summary, the role of accountancy evidence may be outlined as being useful in (i) mapping out character of a receipt or payment, (ii) revealing intention or motive of a taxpayer and (iii) establishing that a method adopted in the accounts conforms to law. Accountancy practice does not determine the law. But where a statute is silent, accountancy practice should prevail if it does not produce absurd results.

15. 33 T.C 159
16. 37 T.C 51

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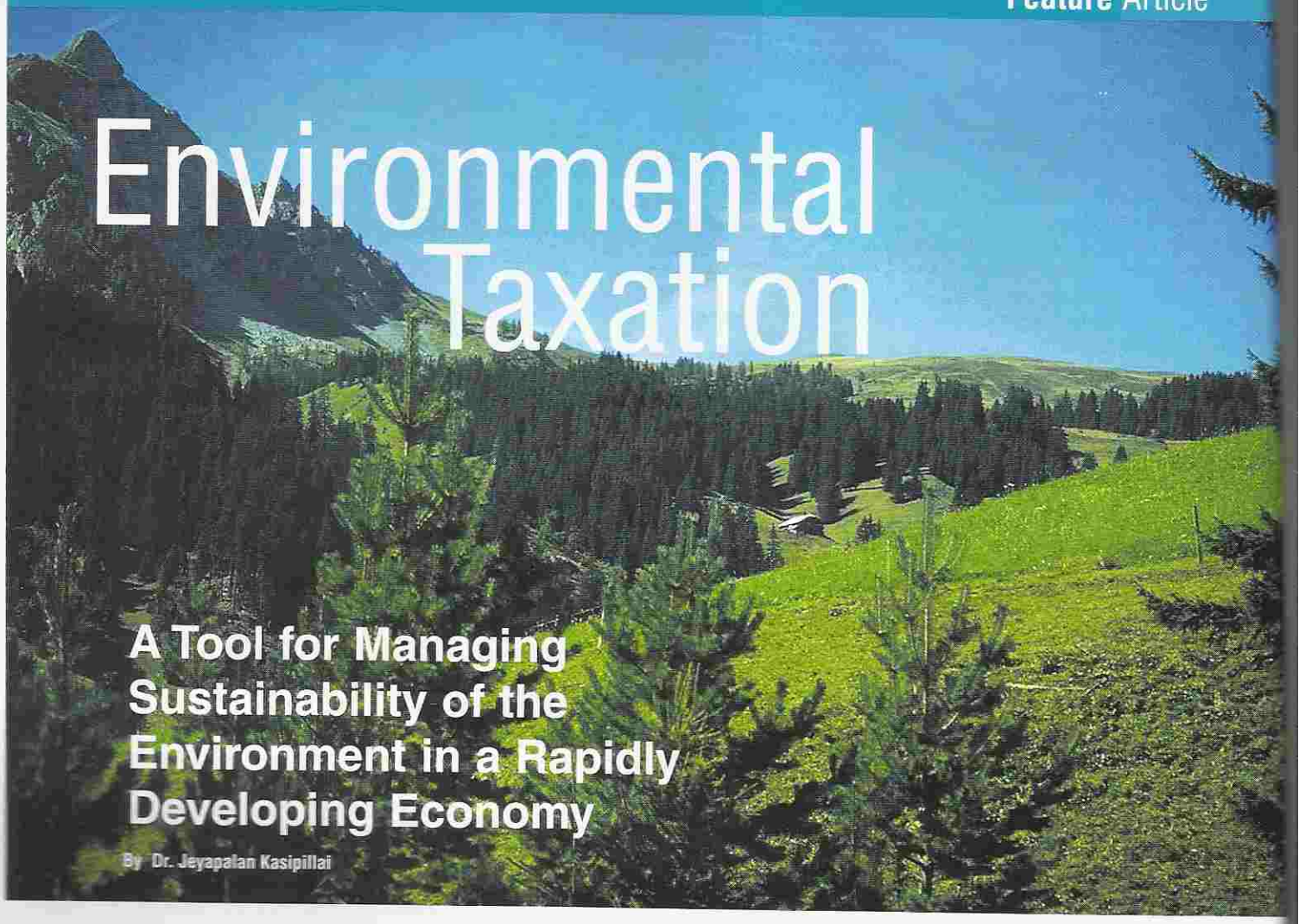

Environmental Taxation

A Tool for Managing Sustainability of the Environment in a Rapidly Developing Economy

By Dr. Jeyapalan Kasipillai

In recent years, the use of taxation tools to curb environmental abuse is seriously being considered by Malaysian policy makers. Environmental degradation such as air and water pollution, deforestation, soil erosion, overuse and misuse of pesticides, and global warming have been posing new challenges to most countries and such a problem is not alien to Malaysia. There is also a silent 'environmental revolution' in the mainstream policy-making level of several countries with growing awareness towards environmental sustainability. Numerous countries have chalked out national environmental strategies and programmes addressing environmental issues, varying from industrial pollution and coastal zone management to bio-diversity conservation. An environmental tax that is popular in advanced countries is carbon tax. Since carbon dioxide (CO^2) represents a large part of all greenhouse gases emitted, most policy objectives focus on carbon taxes. Globally, the first four advanced countries that have implemented some form of carbon taxes are Finland in 1990; Norway and Sweden in 1991; and Denmark in 1992. In Malaysia, there is no carbon tax but the government provides incentives in the form of subsidies for the use of unleaded petrol. Special tax allowances are also given for the use of natural gas by motor vehicles.

Besides the implementation of carbon taxes, other taxes that have been implemented in advanced countries include:

a) environmental damage taxes (Norway, Sweden, and the U.S.A)

b) fuel storage taxes (in some EC countries)

c) taxation of road transport (Finland, Greece, Netherlands and Norway)

d) taxes on agricultural fertilizers and pesticides Austria (1986), Denmark (1987), Finland (January 1990), the Netherlands, Norway (1988) and Sweden (1984).

e) Water resource charge (France, 1966)

Rationale for the Use of Environmental Taxes

In the last couple of years, there has been a remarkable increase in awareness and concern for improved environmental management. The government recognising the severity of the issue is taking various measures to counter the reckless exploitation of resources undertaken by the business community that is bent on making instant profits. Taxation tools are increasingly being used by the government to provide incentives for both consumers and producers to promote the use of environmentally-friendly resources; activate innovation and structural change; and encourage greater compliance with rules and regulations.

Pollution is a result of reckless industrial economic activity in any economy, whether developing or advanced. It implies a social cost which

is never directly borne by the producer or consumer of the product. An important rationale for the use of environmental taxes is its potential to provide environmental benefits by raising the prices of environmentally damaging activities, contributing to the implementation of the polluter-pays-principle, and thereby reducing levels of pollution-prone activities. Revenue collected from environmental taxation can be used to pay for the external or social cost of industrialisation. Presently the external cost of industrial operation is actually borne by the society rather than the enterprise or users of the product. For instance, when an oil palm mill belches out smoke from its plant, the air surrounding the area is polluted. A linked-effect is the cost to the residents in the vicinity in terms of increased medical expenses and also expenses incurred in purchasing air-purifying equipment, for which no claim is ascertainable and payable directly to the residents, by the mill. This, in economic jargon, is referred to as negative externality or as the external cost of industrial operation which is actually borne by the society rather than the enterprise or users of the product.

Environmental degradation causes damage to human health, lowers economic productivity and leads to a loss of amenities that is, what humanity would have benefited in an unspoiled environment. Within a market-oriented mixed economy as in Malaysia, intolerable environmental destruction is rooted both in market and policy failures. When this happens, over-consumption and excessive depreciation of environmental assets occur which in turn may endanger the ecological balance and sustainability of development. Effective remedial policies are urgently needed to compensate for such failures.

Environmental Problems in Malaysia

There are several major environmental problems in Malaysia and they include the following:

i) The logging rate in Malaysia during the last decade has been around 800,000 acres per annum. The ecological outcome of deforestation include soil erosion, silting of rivers and floods, climatic change, loss of fauna and flora and disruption to the lives of rural farmers;

ii) Soil erosion resulting from deforestation, construction projects and land development activities has silted ponds, lakes and rivers, causing frequent floods and depletion of valuable topsoil. Cutting of hills and felling of trees on undulating land has also caused destruction of headwaters and silting of rivers. As a result, there is a destruction of watersheds leading to reduction of water supplies in reservoirs;

iii) With the phasing out of traditional systems of agriculture, there is uncontrolled use of pesticides;

As a result, there is the problem of contamination of the topsoil;

iv) There have been continuous losses of bio diversity, in terms of species of animal, fish and plant life;

v) Atmospheric pollution by industries and vehicles.

Tax Structure and Environmental Policies

The existing tax structure in Malaysia offers a range of possible fiscal changes that could be used to pursue environmental sustainability. The conventional method of pollution control is based on regulating the choice of technology or the levels of emission. In pursuing environmental sustainability, both direct and indirect taxes should be re-examined to accommodate new tax variants that could be used to curb the environmental problems whilst allowing for continued economic development in Malaysia.

- **Direct taxes**

  Direct taxes can be used to provide individuals with incentives to perform specific one-off acts, for example, encouraging households to invest in energy-efficient equipment. Expenditure on energy-saving equipment should be wholly deductible against the taxable income of individuals. Companies too may be given accelerated depreciation allowances if they invest in energy-saving technology. However, it should be noted that the use of direct taxes normally requires extra administrative mechanism for the enforcement and verification of the individual's entitlement to the incentives.

- **Indirect taxes**

  The use of the indirect tax system provides an alternative route for the introduction of market-based incentives for pollution control. The cost of implementation will be lower because the existing administrative procedures and apparatus available to the Royal Customs and Excise Department in Malaysia may be used. For example, the use of coal with high content of sulfur causes acid rain.

A tax on the use of coal by industries will discourage its use, but will not prevent its use by industries unwilling to invest in technology that will cause a minimal amount of pollution. It is anticipated that by levying a tax on the use of coal it will ultimately lead to an increase in its price, and users may then be inclined to find a cheaper substitute.

Barrier to environmental taxes

There are, of course, barriers to the imposition of environmental taxes. A question frequently raised regarding all taxes, particularly environmental taxes, is whether they would undermine the competitiveness of the domestic industry. Environmental taxes would not severely impose a competitive disadvantage if imposed on the household sector or on that portion of the business sector that does not export its products or services. There are numerous other barriers to the introduction of environmental taxes. These include the political will to introduce unpopular taxes that do not directly benefit consumers and producers; impact of taxes on maintaining employment levels in some sectors; burden of taxes on low-income groups; and maintaining revenue.

Recommendations

The following environmental improvement strategies recommended:

• A Case for Carbon Tax

Road transportation is recognized as the most polluting industry in Malaysia. According to the Environmental Quality Report (1997) covering the years 1993-1997, motor vehicles contributed to 81% of the country's air pollution. In numerous countries, the pattern of imposing tax on energy sources differs broadly between different forms of energy. One option for a developing country like Malaysia is to introduce carbon tax. The tax is tied-up to the carbon content of different energy sources and is intended to reflect the use of the specific energy source that discharges carbon dioxide into the atmosphere and thus contributes to the greenhouse effect which inevitably results in global warming.

If the users of motor vehicles had to pay taxes in their daily life, for example carbon tax, it is expected that there would be a decrease in air pollution caused by carbon dioxide as users of motor vehicles would strive to use alternative fuel to avoid paying taxes. Further, it is hoped that this will eventually create in the users an awareness of the negative effects the use of carbon dioxide has on the environment. The tax rate should initially be low and increased gradually over the years. Individuals can use the initial period when the tax rates are minimal to prepare themselves and to take measures to prevent against the introduction of high rates.

• Industry-Targeted Tax Relief

The negative effects of environmental taxes are that they precipitate the incorporation of the costs of environmental services and damages directly into the prices of the goods, services or activities which causes them. On the other hand, the positive effect is that taxation tools can be used as a mechanism to provide incentives for both producers and consumers to cause a change in their behaviour towards a more "eco-efficient" use of resources, to stimulate innovation and structural changes; and to reinforce compliance with regulations. Likewise, industry-targeted tax relief can be designed to preserve the incentive to invest in new technology and to substitute labor and capital for energy. Moreover, carefully targeted relief can eliminate competitive impacts with lower revenue loss.

• National accounting system needs to be reformed

There is a lack of regulation prescribing environmental practices and/or requirements for corporations such as the need to disclose environmental and social issues in their financial reports. By adopting specific accounting experiences of other advanced countries, the practical indicators of the use of resources and environment should be defined in some key areas on a step-by-step basis, and be integrated into the existing national accounting system. This is to make sure that the national accounting system will be in line with sustainable development and it could be gradually perfected. Environmental problems are management issues and as such accountants must be encouraged to ascertain and allocate environmental costs so that products are priced on true cost.

• Application of marginal cost principle

Environmental taxes should be levied on all enterprises that cause pollution, and the tax levied should be based upon the cost of damage caused by pollution. In order to reduce management costs involving environmental taxation, other ways of raising environmental tax should be explored. The marginal cost principle should be used to price electricity, water conservancy, urban pipeline gas, centralized heating supply, use of solar heater, waste-water and garbage treatment, and transportation infrastructure construction. Taxation incentives or special funds should be set up to encourage investment in energy-efficient factories and facilities.

Conclusion

This article highlights the severity of environmental issues in a developing country such as Malaysia. It would be a costly mistake if governments ignore the impact of environmental degradation on economic sustainability. Punitive regulation alone will be less effective than when combined with collaboration with the public sector actively setting standards and guidelines, monitoring itself, and establishing fair and efficient enforcement systems.

Extensive research is needed to device alternative taxation tools to deal with the varying problems of protecting and enhancing the environment. Naturally, to safeguard the interest of current and future generations, it is crucial that every effort should be made to protect the environment while pursuing a strategy of sustainable development. A comprehensive taxation policy should be pragmatic with recognition that environmental issues are cross-sectoral and complex. Within the next two decades, corporate leaders as well as policy makers would, perhaps, be unable to say whether or not a particular industry is "sustainable" or not, but they would become increasingly sophisticated in terms of their ability to assess whether or not it is moving in the right direction. Unlike financial reporting where reporting developments are often resisted, environmental taxation remains an active area of experimentation and innovation, particularly in the context of sustainable development.

The author, **Dr. Jeyapalan Kasipillai** is an Associate Professor and Director of the Institute of Taxation Research, Universiti Utara Malaysia. Prior to this the author was with the Inland Revenue Board where he served in their Assessment Branch for 5 years and the Investigations Unit for another 11years. His final appointment was as Assistant Director (Tax Investigations). Currently Dr. Jeyapalan is a Council Member of the Malaysian Institute of Taxation, a Tax Consultant to the Multimedia Development Corporation (Malaysia); Consultant Editor of ANALYSIS. Dr. Jeyapalan also serves on the Editorial Committees of Tax Nasional & Akauntan Nasional.

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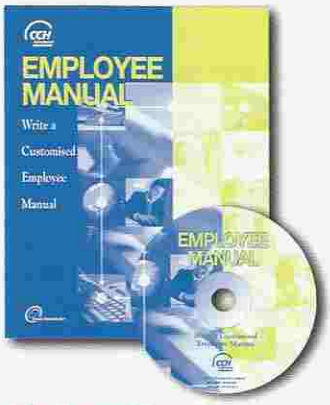

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Sales Tax in Malaysia...

Has it passed its prime?

By Bong Sesh Chin

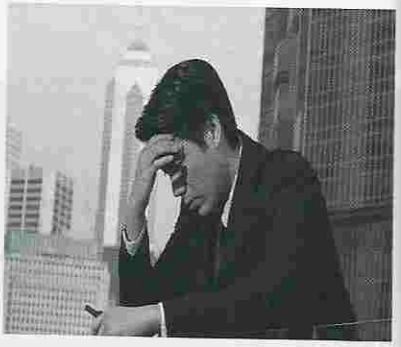
The *Sales Tax Act 1972* was singled out for reform in both the 1989 and 1993 Budget speeches delivered by Minister of Finance. In tabling the 1989 Budget, the Minister admitted to the existence of weaknesses in the present *Sales Tax Act*. He said:

> "The reduction in direct taxes I am proposing will lead to substantial losses in revenue, and the increases in expenditure, there is no alternative but to strengthen our sources of revenue. In this context the sales tax in its existing form is limited in scope and has a number of inherent weaknesses which has resulted in the Government losing revenue."

Again in 1992, when tabling the 1993 Budget, the Minister of Finance spoke of the weaknesses. On this occasion, though the Minister made reference to consumption taxes, it is obvious that he was referring to the sales tax and service tax. The relevant part of his speech is quoted as follows:

> "The structure of the present consumption taxes contains several weaknesses that make it inefficient. Furthermore, the revenue yield does not commensurate with the growth of the economy. I therefore intend to integrate and restructure the existing sales and services taxes into a consolidated tax to be called Sales and Service tax or SST. This integration will help overcome several weaknesses such as tax-pyramiding, transfer pricing, bias towards imports and other abuses. As the tax is imposed on consumption, and not on capital, it will stimulate greater savings and investments."

As such, it need not be over-emphasised that the current sales tax is less efficient as a revenue generating fiscal instrument because of the weaknesses in the present system which, as stated by the Minister, include the narrow base of the tax system, tax-pyramiding, transfer pricing, and bias towards imports.



Weaknesses in the present sales tax

Narrow base of sales tax

Sales tax is charged and levied on all goods manufactured or imported into the country, unless specifically exempted. Goods which are exempted are specified in Schedule A of the *Sales Tax (Exemption) Order 1980.* Presently there are about 4,500 types of goods, representing approximately 75% of goods manufactured locally, which are exempted from sales tax. This reflects the narrow tax-base for sales tax.

The tax base shrinks further when the sales tax on locally manufactured goods is imposed only at the manufacturers' level at the time of sale, or disposal otherwise than by sale, by such manufacturers. No sales tax is further imposed when the transactions on the goods proceed to the wholesale and retail levels. In addition to this, manufacturers having annual sales turnover of taxable goods of less than RM100,000 are exempted from sales tax under Schedule A of the *Sales Tax (Exemption from Licensing) Order 1972.* Sales tax is not charged and levied on taxable goods manufactured by these manufacturers.

The present sales tax disadvantages exports

Under the current sales tax regime, raw materials used in the manufacture of taxable goods are free from sales tax. To maintain the single stage concept of the tax, various facilities, such as the ring system, credit system and refund system, are provided to the licensed manufacturers to obtain tax free raw materials and components for use in the manufacture of taxable goods.

However, other inputs such as materials used for the construction of the factory building, office equipment, furniture and vehicles are subject to sales tax. Obviously, the sales tax element on such inputs would be included into the price of the finished goods. In addition, certain non-taxable inputs, used in the manufacture of taxable goods, contain elements of sales tax as the manufacturers of these non-taxable inputs are required to pay sales tax on their taxable input.

When goods are exported, the current sales tax legislation only allows exemption of sales tax on such goods. There is no provision under the present sales tax legislation for the refund of sales tax paid on inputs such as building materials, furniture etc. Similarly, there is no mechanism that removes the cascading of tax on non-taxable inputs into the final cost of the taxable goods. As such, the exported goods are not completely free from sales tax, hence reducing the competitiveness of our goods in the global market. To compete effectively, merchandise exports should not be taxed either explicitly or implicitly.

The situation was made worse when service tax was levied on certain professional services such as accounting, consultancy, legal services etc. These services are primarily business services required by the manufacturers. As there is no mechanism for input tax credits, manufacturers are required to pay service tax on such services. The service tax paid on such professional services is imputed into the cost of production, inflating the selling price of the exported goods.

Evasion of sales tax

As sales tax is a single-stage tax at the manufacturer's level, in order to generate the revenue required, the government has no alternative but to prescribe a high rate of tax. This undoubtedly encourages manufacturers to evade tax.

While no one knows for certain the degree of sales tax evasion in Malaysia, the revenue collection for 1982 and 1983 may provide an indication. The revenue from sales tax in 1982 amounted to RM787.6 million. This figure rose to only RM1,280.60 million in 1983 despite the fact that the rate of sales tax was increased two-fold from 5% to 10%. Whilst one would expect the revenue to double correspondingly, the sales tax collected only increased by 63%. This is indicative that tax evasion is extensively practised in Malaysia.

If this is not convincing, the recent statement by the Director General of Customs, while launching the *"Kempen Kesedaran CD"* ("Awareness campaign on internal taxes"), may provide a further indication of the degree of tax evasion in the country. It was reported in a Malaysian daily that the loss of revenue due to tax evasion amounted to RM3 billion and 60% of the businesses visited by the Authorities during the recent *"OPS KESAN"* failed to comply with the requirements under the *Sales Tax Act 1972* and *Service Tax Act 1975*. From this, it can be fairly deduced that there is widespread sales tax evasion, which ultimately results in a drop in revenue.

Transfer pricing

Since sales tax in Malaysia is imposed at the manufacturer's level, the wholesale and retail stages of the distribution chain are not subject to tax. When goods are taxed at the early stage of production, but not for the stages preceding the retail stage as well as the retail stage, a manufacturer, in order to minimise taxes to be paid would, shift the tax base to the wholesale or retail stages, where no tax will be levied.

It is not uncommon, for larger manufacturers to split their operations distinctly into two entities carrying out separate functions of manufacturing and marketing. This provides these manufacturers with opportunities to pass part of the manufacturing cost to the marketing companies, which are outside the ambit of sales tax. In short, the scope for evading tax liabilities through "transfer pricing" is abundant.

"The structure of the present consumption taxes contains several weaknesses that make it inefficient... I therefore intend to integrate and restructure the existing sales and services taxes into a consolidated tax to be called Sales and Service tax or SST. This integration will help overcome several weaknesses such as tax-pyramiding, transfer pricing, bias towards imports and other abuses."

Minister of Finance, when tabling the 1993 Budget

One may argue that the implications of "transfer pricing" are not significant as there are provisions under the *Sales Tax Act 1972* to determine the sales value of goods on which sales tax is to be computed. This is set out in sec. 7(1)(a) and (b) of the *Sales Tax Act, 1972* and reads as follows:

"For the purposes of this Act the sales value of goods shall be:

(a) in the case of goods sold by a taxable person to a person independent of him, the price for which the goods are actually sold,

(b) in the case of goods sold otherwise by a taxable person, the price at which such goods would have been sold if they had been sold in the ordinary course of business to a person independent of the taxable person."

Though sec. 7(1)(b) provides a basis for the Authorities to utilise the concept of an "arm's length transaction" to determine the sales value of goods between related parties, the lack of skilled manpower who have the necessary technical expertise has restricted the ability of the Authorities to detect abuses through "transfer pricing", which is normally carried out in a systematic manner.

Abuse of exemption facilities

The current sales tax allows licensed manufacturers to purchase and import tax-free all raw materials and components used in the manufacture of taxable goods by way of the CJ5 facility (also called the ring system). This is essential in order to maintain the single-stage concept of the sales tax.

The ring system is open to abuse as tax-free raw materials and components may be disposed by the licensed manufacturers without payment of sales tax. Such abuse may only be discovered by a detailed audit conducted by skilled personnel possessing the necessary expertise.

In addition, the present sales tax system provides exemptions to over 100 categories of taxpayers, as stipulated in Schedules B and C of the Sales Tax (Exemption) Order 1980. It is difficult, if not impossible, to monitor and ensure that this exemptions provided are being enjoyed only by those who are entitled to them.

High compliance cost

Under the current sales tax system, manufacturers are subject to extensive bureaucratic control. The manufacturers need to fill forms when applying for sales tax licences and when applying for tax-free raw materials or components. Even the small manufacturers are not spared either. They are required to apply for the certificates of exemption from licensing which are to be renewed annually.

In the course of exercising control over the manufacturers, the Authorities have created additional administrative bureaucracy. For instance, manufacturers who wish to renew CJ5 approvals are required to fill a minimum of 3 administrative forms, in addition to the prescribed CJ5 form. Not only is this a cumbersome process but it also subjects them to bureaucratic discretion. This would certainly translate into higher cost of doing business. Furthermore, a high degree of bureaucratic control has also led to unnecessary and unproductive work for the Authorities.

Burden to the manufacturers

A licensed manufacturer is legally obligated to charge and levy sales tax on taxable goods sold or disposed otherwise than by sale. He is to recover the sales tax from the customers and to remit the sales tax to the Authorities within the specified period. The relevant provisions are found in sec. 17(3) and 22(2), and read as follows:

> **"Section 17(3):** The amount of sales tax payable shall be recoverable by the taxable person from the purchaser in addition to the price and any other amount due by the purchaser in respect of the goods"
>
> **"Section 22(2):** Any sales tax chargeable under paragraph (a) of sec. 6 which falls due during any taxable period shall be payable within twenty-eight days from the expiration of that taxable period."

It is clear from the above provisions that a licensed manufacturer is allowed a grace period of twenty-eight days to pay the sales tax "recovered" from the customers. Unlike the service tax, sales tax is due to the Authorities within the specified period, even though payment of sales tax has not been received from the purchasers.

In practice, most business transactions are concluded on credit terms, where the terms range from 3 months to 6 months and sometimes even beyond this. Consequently, the licensed manufacturer has no other alternative but to pay the sales tax to the Authorities out of his own coffers to avoid incurring a penalty and prosecution under sec. 24 and sec. 43 respectively under the *Sales Tax Act 1972*. As the sales tax, at the rate of 10 percent, is high, payment of sales tax, which has yet to be recovered from the purchasers but has already been remitted by the manufacturers, to the Authorities causes erosion of the manufacturers working capital, posing serious implications to the manufacturers business operations. The present sales tax therefore is a burden to the licensed manufacturer.

Cascading of tax

There is no mechanism in the present sales tax to eliminate "tax cascading" which arises from two factors:

- Under the present legislation for sales tax, inputs are taxed when they are used for the manufacture of exempt goods. Tax cascading arises when these exempt goods are used as raw material or components to manufacture taxable goods;
- In the course of doing business, a licensed manufacturer may require taxable services that are subject to service tax. In this case, services tax paid on such taxable services is incorporated into the production cost of taxable goods.

Owing to this cascading effect, sales tax imposed on taxable goods has caused the prices of goods to be higher, by a margin greater than the tax rate.

Mutiple taxation

As for multiple taxation, under the current sales tax, cigarettes and tobacco, intoxicating liquors and certain food and drinks are subject to sales tax at various rates. Such goods are further taxed under the *Service Tax Act 1975* when sold in any prescribed establishment.

Biasness towards imports

The present sales tax shows a biasness towards imported goods. This is clearly illustrated by considering for instance the case of exempt goods. Whilst locally manufactured exempt goods are subject to tax on their raw materials and component parts, imported ones are not. This inadvertently causes the imported goods to be cheaper than the locally manufactured competing product.

Ambiguity

Domestically, sales tax is imposed on taxable goods manufactured in the country. It is mandatory, as provided under the Act, for a person who manufactures taxable goods in the course of his business to apply for a sales tax licence. It is also the responsibility of the Authorities to bring such manufacturers into the tax net.

In short, a person falls within the ambit of the tax if:

- he caries on manufacturing in the course of his business;
- the goods manufactured are subject to sales tax.

From the above, it appears a simple task to determine whether a person is liable to sales tax. However, in practice, this is not the case. Due to the wide definition, the question of what falls under the term "manufacturing" and what does not, itself, presents many serious problems. For instance, the production of mineral water was once classified as a manufacturing operation. It is only recently that the Authorities decided otherwise.

In practice it is not uncommon that a manufacturer produces a wide variety of goods, which include goods that are taxed, goods that are taxed at different rates and goods that are not taxed at all. The task of determining which goods fall under which category presents problems to the manufacturers, as well as the Authorities who would have to carry out an audit of the manufacturer's accounts to ensure that the right amount of tax is paid.

Conclusion

Despite various measures being taken to overcome the above weaknesses, it is believed that the current sales tax, in its present structure, will continue to be an inefficient revenue generating mechanism due to the fundamental inadequacy of the tax structure itself.

As such, it appears that tax reform is long overdue and it is appropriate to replace the present sales tax with a new one, which is capable of meeting the growing demands of the rapidly developing economy of this country.

About the author

Mr. Bong Sesh Chin worked in the Customs Department from 1981 up to 1996. After which he took up employment with PW as a Senior Consultant for indirect taxes. Subsequently he and his partner set up Top Tier Services Sdn. Bhd. Currently he holds the position of Director and is involved in rendering consultancy services in indirect taxes.

Service Tax Amendments 2001*

By Boon Oon Seang

In the 2001 Budget speech the Honourable Minister of Finance made the announcement that some of the taxable services were being studied to rationalise the administration of the tax and necessary amendments would be made to the *Service Tax Act 1975* and the relevant subsidiary legislation.

The result is the *Service Tax (Amendment) Regulations 2000,* which came into operation on 1 January 2001.

The Amendments:

Regulation 2

Regulation 2 of the *Service Tax Regulations* was amended by inserting two new definitions. They were *"bandwidth service"* and *"value added services."*

> *"bandwidth service"* has the meaning assigned thereto in regulation 2 of the *Communications And Multimedia (Licensing) Regulation 2000.*
> *"value added services"* means the services prescribed in the Fourth Schedule.

Golfing related taxes

Amendments were also made to the Second Schedule of the Regulation. Basically what the administrators did was to try and list down in detail what services they wanted to tax. Under the heading Taxable services in Group A, they inserted a new item which reads as follows:-

Provision of golf course, golf driving range or services related to golf or golf driving range, i.e. for:-

i. Green/season pass
ii. Caddy
iii. Rental of golf buggy/turfmate
iv. Rental of golf equipment
v. Guest
vi. Complimentary play
vii. Coaching
viii. Absence
ix. Competition entrance
x. Tournament
xi. Lighting for night golfing
xii. Night golfing
xiii. Practise range balls driving range balls
xiv. Rental of golf shoes
xv. Subscription

An examination of the list of services provided does not appear appropriate. Some of the services are in fact facilities and not provision of any service, examples are "absence", "lighting for night golfing" and "night golfing". It is also noted that some of the services are repetitive. If a person were to go to a golf club and he is not a member and he is allowed to play a round of golf he only pays the green fees. If he is a member of another club that has a reciprocal arrangement with the club he is visiting he is allowed to play without paying any green fees. In view of these technical glitches the list needs to be reviewed.
Prior to this amendment basically private clubs that provided golfing facilities came within the ambit of the tax, but with this amendment Resort Hotels that provided golfing facilities and golf driving ranges now come within the ambit of the tax.

A question that I am sure is on everyone's mind is why is it that only golfing activities are taxed and not other forms of sporting and recreational activities? Simple, golf has always been perceived as the game of the wealthy!

Public Houses & Beer Houses

The next amendment was made to the taxable persons in Group D. Prior to this amendment only First Class Public Houses and First Class Beer Houses came under the ambit of service tax, but with this amendment all Public Houses and Beer Houses come within the ambit of the service tax. From the view of tax administration this is a good move, as the registration of all the public houses and beer houses, will to a great extent curb avoidance or evasion of the tax. However to efficiently enforce this will definitely be a problem.

The only difference between the 1st class, 2nd class and 3rd class licences (incidentally approved by different Authorities and under a different legislation – *Excise Act 1976*) is the time when these beer houses can be opened for business and the time they should be closed. To make sure that there is no abuse one has to literally sit in the premises to ensure that the conditions of the licence are complied with and the tax collected. The administrative cost has to be weighed against the tax collected.

Another practical difficulty would be to licence operators of such establishments. Most of them are operating without a public house licence or a beer house licence. The licences for Public Houses and Beer Houses are approved by a different Authority, which is actually the Licensing Board established under sec. 31 of the *Excise Act 1976.* A

person maybe operating a Public House, without a Public House licence and if he were to apply to the Customs for a service tax licence he would not be given one because he has no Public House licence, and it is an offence to levy and charge service tax without a service tax licence. If he does not collect the tax from the customers, he is committing an offence and if he does he is committing another offence.

Fortunately the operators of similar establishments in East Malaysia do not face this problem as the are not required to be licensed for service tax. Another inconsistency here!

Perhaps a closer look needs to be made into the administrative/practical requirements to ensure equity in the implementation of this tax.

Telecommunication Services

The third major amendment was made to the telecommunication services. Item 2 in Group G under the heading for "Taxable Person" now reads:-

> "Any person providing communication services who is registered under the *Communication And Multimedia Act 1998* (*Act 588*) or licensed under the *Communications and Multimedia (Licensing) Regulations 2000*".

Now taking into consideration the definition of taxable person and the definition of "bandwidth services" the net becomes very wide. This I am certain, was the intention of the amendment as the provision of satellite services including the provision of infrastructure would fall within the net. The authorities have however explained to the industry that companies providing infrastructure would not be taxed. For the time being the authorities only want to collect service tax on the following bandwidth services.

(a) leased lines,
(b) Integrated Services Digital Network (ISDN),
(c) Data Transmission Network.

The Customs has also informed the industry that telecommunication companies providing leased lines as infrastructure or for internet services would be exempted from the tax but they would have to apply to the Minister under sec. 6 of the *Service Tax Act 1975* for the exemption to avoid any form of double taxation. In fact the Customs have administratively for a very long time approved such applications to avoid the imposition of double taxation which goes against the principles of taxation. The Customs should carry on this practice as it saves a lot of time and afterall since it is the Customs who implement the tax, they can best gauge whether there is double taxation in any given transaction.

With regards to value added services, in order to be more transparent the authorities have come out with a very comprehensive list of value added services which include to name a few auto call back, call barring, call divert, call forwarding. The whole list can be found in the Fourth Schedule of the Regulations. There are 41 items in all. In spite of the list there are still uncertainties on some issues.

Fowarding Agents

Finally, lets look at the amendments made to the provisions relating to forwarding agents. Prior to the amendments only forwarding agents that had an annual threshold of taxable service amounting to RM 150,000.00 came within the ambit of the tax. Because of the threshold there has been some amount of abuse. Having any form of a threshold has always been a problem to tax administration. This is not something new. For example, in Korea rather than have a threshold, the Korean tax administrators of the Korean VAT have the *"forfait"* system in place whereby every enterprise pays the tax. The smaller enterprise pays the tax but at a lower rate but they do not enjoy any credit for their input. The smaller enterprises therefore do not get any benefit by remaining small.

With the current amendments,

(a) Any person who is given permission to act as an agent for transacting business relating to the import or export of any goods or luggage under sec. 90 of the *Customs Act 1967*; and.
(b) Any person who is licensed under sec. 65 or 65E of the *Customs Act 1967* and who is also given permission to act as an agent for transacting business relating to the import or export of any goods or luggage that is stored in the licensed warehouse or inland clearance depot.

now becomes a taxable person.

This means that a person who is given permission to act as a forwarding agent, or holds a public bonded warehouse licence or inland clearance depot would now come within the ambit of the tax as all three categories of persons provide the same service. This amendment is very transparent unlike the ones made for the golf clubs/driving ranges and the telecommunication services.

Conclusion

I believe that my discussions above of the service tax amendments 2001 illustrates the numerous problems encountered in its implementation. The authorities should seriously look into reviewing legislation related to service tax. Any amendments made should be transparent and clearly understood by the effected tax payers.

Further, before any amendments are made the legislators/authorities should not shy away from taking into consideration the opinion of the tax payer, especially on the implementation aspects which could be ascertained by dialogues with the representatives of the effected tax payers.

* *The Service Tax (Amendment) Regulations 2000 were passed in the year 2000 but implemented only on 1st January 2001.*

About the author

Mr. Boon Oon Seang is presently [illegible] specialising in indirect taxes. Prior to this appointment Mr. Boon spent 32 years with the Customs Department and retired as the Director [illegible] and Training. Mr. Boon is currently the Deputy Chairman of the Federation of Malaysian Manufacturers Logistics Committee.

Dialogue between Operations Division of Lembaga Hasil Dalam Negeri and Malaysian Institute of Accountants, Malaysian Institute of Taxation & Malaysian Association of Certified Public Accountants on 2 April 2001

The Chairman of the dialogue, Encik Saian bin Haji Ridzuan welcomed the representatives from the Malaysian Institute of Taxation (MIT), the Malaysian Association of Certified Public Accountants (MACPA), Malaysian Institute of Accountants (MIA) and other bodies to the dialogue.

The meeting then proceeded to discuss the various issues raised.

1. Filing Programme For 2001 – Non Company Cases

The professional bodies would like to seek IRB's confirmation that there are no changes to the filing programme and that extension of time for filing of tax returns for year of assessment 2001 will be allowed as follows:-

i. Application for extension of time to file return forms after May 31, 2001 must be made on or before **April 15, 2001.**

ii. No extension of time beyond **May 31, 2001** will be allowed for the following cases:
- All partnership **(D)** cases
- All salary **(SG)** cases

iii. For all other cases, application for extension of time will be allowed up to **July 31, 2001** in the ratio of 50% for June and 50% for July.

The Inland Revenue Board (IRB) have confirmed the above and consented to allow bulk application's for extension of time by an approve tax agent, to be submitted on or before 31st April 2001.

2. Submission of Tax Returns

2.1 Extension of Time for Filing Returns

Section 77(1A) requires a company to submit its tax return within six months from its financial year end. For year of assessment 2001, the IRB has allowed companies to file their tax returns within 8 months after the financial year end.

It is suggested that the IRB consider extending this concession indefinitely on the following grounds:

i. For majority of the companies, the audited accounts are normally available in the 5th or 6th month after the close of the financial year. Thus, there is practical difficulty in submitting the tax return within six months from the financial year end.

ii. As there has been significant changes in the tax legislation and tax compliance procedures, taxpayers should be given flexibility in terms of reasonable extension of time in meeting the new requirements.

The IRB requested that the professional bodies refer this matter to the Ministry of Finance.

2.2 Change of Accounting Date Paragraph 3.5.1 of Public Ruling No. 3/2000 provides that where the accounts normally end on December 31 and there is a change of the accounting date, the basis period in the year of change is the year ending December 31.

For example:

Normal accounting year ends on December 31.

There is a change in accounting date to June 30 and accounts are prepared for January 1, 2001 to June 30, 2001, and subsequently to June 30 each year. The basis period for year of assessment 2001 is January 1, 2001 - December 31, 2001.

The basis period for year of assessment 2002 is July 1, 2001 - June 30, 2002.

In accordance with section 77(1A), the tax return is to be filed within six months from the date following the close of the accounting period which constitutes the basis period for the year of assessment.

Clarification is sought on the deadline for filing the return for year of assessment 2001, i.e. whether it should be filed within 6 months from June 30, 2001 or December 31, 2001.

The Ruling is in the process of being amended.

3. New Tax Return for Companies

3.1 Submission of Form C

It is understood under the self-assessment system, only the tax return form is required to be submitted to the IRB (with effect from year of assessment 2001). All supporting schedules and documents are to be kept and maintained by the taxpayer.

The professional bodies would like to seek confirmation on the new filing procedure.

The IRB have confirmed the above as accurate unless the company is expecting a tax refund for the year pursuant to Section 110 of the Income Tax Act, 1967.

3.2 Availability of Tax Return Forms on LHDN Web Site

As the Internet has become a common tool of communication, it is suggested that the tax return forms be posted on IRB's web site for downloading by taxpayers/tax agents for completion. This will result in significant saving by the Government in terms of the cost of printing and mailing print copy of the return forms to the taxpayers. It will also enable the tax agents to complete their clients' return forms electronically (instead of manually), thus improving the efficiency of tax compliance work.

The IRB will be convening a meeting with the professional bodies to discuss the above.

The IRB in principle have agreed to allow taxpayers to use a digital version of the Form C but will need to explain the "formats" required by the scanning system to the professional bodies.

3.3 Centralised Submission of Returns

It is also understood that the IRB intends to centralise the submission of tax returns to "Pusat Pemprosesan" in Kuala Lumpur.

The professional bodies would like to seek confirmation that the IRB will continue to give due consideration to representations made by taxpayers on late submission of return forms due to unforeseen circumstances.

The IRB have confirmed that future submission of the Form C will be centralised in Kuala Lumpur.

The IRB have also clarified that, they will deem the "postage date" of the envelop (enclosing the Form) as the date of submission of the Tax Return for the year.

As for the date of the "deemed" Notice of Assessment under the self assessment tax regime, the IRB have confirmed that they will be accepting the date on the Form C as the date of the Notice of Assessment.

3.4 Tax Agent Information

It is noted that the new Form C 2001 requires the approval number of the tax agent to be stated and Form C signed by the preparer/tax agent.

Kindly clarify the rationale for the new requirement.

The IRB have clarified that the new requirements for information of tax agents under Section R1 of the year of assessment 2001 Form C is to establish some form of accountability under the self assessment tax regime.

The IRB have further clarified that if the Tax Return is completed "in-house", (by the employee's of the taxpayer) then "Section R" of the Form C is not required to be completed.

Whereas for approved tax agents/practising accountants, the IRB have taken the position (for the first year of implementation) that the "signature" requirement (after Section R6), could be in the firm's name.

i.e. If the tax agent's name is "ABCD TAX SERVICES SDN BHD", the IRB will accept under Section R, the signature of the company's name, e.g. "ABCD TAX SERVICES SDN BHD".

The IRB also clarified that if the said tax agent has a tax agent's approval number/audit licence number, then "Section R4" should be completed, if not, to leave it blank.

At this juncture, the professional bodies reiterate their opinion that there is no reason to require the tax agent to complete Section R of the return, as tax agents are already under some form of legal obligation under existing law, as well as, the IRB would be able to source the agent responsible for a return from the letters/ correspondences by the respective agent.

3.5 Tax Return Form to be bilingual

It is noted that Form C is issued in Bahasa Malaysia only and that the English translation of Form C is available at the LHDN web site (presumably for reference).

It is suggested that the official Form C be bilingual for the convenience of the Malaysia branch or subsidiary company of a foreign corporation. This would add to the condusiveness of Malaysia a centre for direct foreign investment.

The IRB have noted the issue and confirm that an English translation of the Form C and the attachments will be made available on their web site in due course.

Lastly, the IRB have agreed to conduct future dialogues on the Form C, if the need arises.

4. Estimate of Tax Payable

4.1 Notification of Revised Estimate of Tax Payable

With effect from year of assessment 2001, every company is required to furnish to the Director General an estimate of the tax payable not later than 30 days before the beginning of the basis period for that year of assessment.

For companies with January year end, the estimate of tax payable for year of assessment 2002 (based on the estimate of tax payable for year of assessment 2001) must be submitted before January 1, 2001. However, the company is allowed to revise its estimate of tax payable for year of assessment 2001 even in the 12th month of the basis period (i.e. January 2001).

Assume that the company's revised estimate of tax payable for year of assessment 2001 has increased say, from RM100,000 to RM200,000. Clarification is sought on the following matters:

a. whether the company is required to notify the IRB of the revised estimate of tax payable for year of assessment 2002 based on the revised estimate of tax payable for year of assessment 2001 and if so, when the notification should be made (i.e. immediately or in the 6th month of the basis period);

b. how the notification should be made - by submitting an amended Form CP 204 or a letter would suffice;

c. that no penalty will be imposed if the revised estimate of tax payable is notified accordingly.

The IRB have confirmed that the company should inform the IRB of the revised estimate, as soon as the company is aware of the revision.

Under such circumstances, no penalties ought to be raised by the Board.

4.2 Refund of Tax Overpaid under Section 107C

In accordance with section 107C(7), a company may in the sixth month of the basis period for a year of assessment revise its estimate of tax payable and:

i. where the revised estimate exceeds the amount of instalments that have been paid for that year, the difference is payable in the remaining instalments in equal proportions; or

ii. where the amount of instalments that have been paid exceeds the revised estimate, the remaining instalments shall cease immediately.

A situation of substantial overpayment of tax could arise where a company's revised estimate of tax payable is much lower than the original estimate.

Clarification is sought on the procedure for refund of overpayment of tax. It is suggested that the IRB should refund the overpayment of tax as soon as a request is made by the company concerned since the company will be subject to a penalty under section 107C(10) if the tax payable under an assessment exceeds the estimate or revised estimate of tax payable by a certain proportion.

The IRB have clarified that, any possibility of refund/set-off from the overpayment of taxes must be first and foremost, preceded with the submission of a tax return. The rationale being that the IRB would need to confirm the actual tax due for a year of assessment before acquiescing to a refund/set-off. Nonetheless, upon receiving the tax return the IRB will endeavor to refund/credit the overpaid taxes to the taxpayers as soon as practical.

4.3 Concession for Revision of Estimate of Tax Payable

Section 107(C) allows a company to revise its estimate of tax payable in the sixth month of the basis period. For year of assessment 2001, the IRB as a concession has allowed a company two further revisions of the estimate, to be undertaken in March, September or December.

As the IRB would appreciate, it is difficult for companies to make an accurate estimate of their future income, and therefore the tax payable, as their performance is affected by many uncontrollable factors. Also, in allowing the revisions, the IRB would still retain overall control over the amount of tax collectable as the concession to revise the estimate of tax payable is based on "application - subject to approval" basis.

It is, therefore, suggested that the IRB consider granting the concession for year of assessment 2002 and subsequent years.

The IRB requested that the professional bodies kindly refer this matter to the Ministry of Finance.

5. Appeal Procedure under Self-Assessment System

5.1 Notice of Appeal

Section 90(1A) states that where a company has furnished a return to the Director General for a year of assessment, the return shall be deemed to be a notice of assessment and is deemed to have been served on the company on the date the return is furnished.

Paragraph 3.1.4 of Public Ruling No. 3/2001 (Appeal Against an Assessment) states that in the case of a deemed assessment where a person, in the course of making a self-assessment, has complied with a ruling which he does not agree, the notice of appeal should be filed together with the return. Clarification is sought on the following matters:

a) Whether it is acceptable to the IRB if the objection to the assessment is set out in the covering letter accompanying the tax return, or a separate letter of objection is required to be lodged.

b) A taxpayer has submitted a return and made a claim for an expense which he is of the opinion should qualify for tax deduction. The said expense has previously been disallowed by the IRB for which the appeal is still pending.

What action should the taxpayer take in the context of the above-mentioned Public Ruling?

The IRB have clarified that if a tax payer disagrees with a particular stand/opinion of the Board, and/or has not complied with any Public Ruling, the taxpayer should submit a "letter" with the tax return indicating the disagreement in interpretation and the rationale for such a disagreement.

The IRB will then immediately issue a Notice of Additional Assessment (on the issues in dispute) and the taxpayer will have a 30 day period to lodge an appeal.

In the event, a different tax position is adopted by the taxpayer and no notice/letter is submitted indicating the difference, any subsequent tax audit will result in the issuance of a Notice of Additional Assessment and penalties will be imposed for non-compliance with existing tax rulings.

The professional bodies wish to remind our members that a Public Ruling is still legally non binding and is merely the IRB's interpretation of existing tax legislation.

5.2 Appeal for Reduction of Tax

Under the self-assessment system, when a company submits its tax return, the return is deemed to be a notice of assessment served on the company on the day the return is submitted to the DGIR.

If a company subsequently wishes to seek a reduction in the tax payable, the company would need to appeal against its earlier tax computation under section 131 of the Income Tax Act for relief. However, section 131 relates specifically to relief in respect of an error or omission, it does cover all situations. For example, a request for tax reduction may arise as a result of a recent court decision or change in IRB's practice rather than an error or omission.

It is felt that new appeal provisions are necessary under the self assessment regime. There should also be provisions allowing voluntary filing of a revised tax return in the light of new information/facts obtained, which may give rise to an increase in assessment. A taxpayer should not be penalised for revising an assessment upward so long as there is no intent to defraud or evade tax in the first instance.

The professional bodies would also like to seek clarification on the appropriate procedures for revision of tax assessment pending the introduction of new appeal provisions suggested above.

The issue was noted.

Nonetheless, the IRB have advised that if any taxpayer disagrees with any current position or stand of the Board, it would be practical for the taxpayer to lodge an appeal/objection on the position to be taken.

6. Form CP 205 (Notice of Instalment Payments)

6.1 It is noted a significant number of Form CP 205 were received by taxpayers/tax agents in the last week before payment of the first instalment is due, leaving the taxpayers insufficient time to appeal if the Form CP 205 is not in line with the estimate of tax payable submitted.

The professional bodies would like to seek IRB's co-operation to expedite the issuance of Form CP 205 so that there is sufficient time for appeal where necessary.

This is no longer an issue as of year of assessment 2002, the Form CP 205 will not be issued and the tax instalments payable will be based on the Form CP 204 submitted by the taxpayer.

However, the IRB have also confirmed that for year of assessment 2002 onwards, if the Form CP 204 is submitted on an estimation that is below the preceding tax payable, the IRB will issue a "Director General's Directive" (in the form of a Form CP 205) based on the lower estimation submitted.

6.2 There have been instances when the instalment payments (Form CP 205) issued by the IRB are not in line with the estimate of tax payable submitted in Form CP 204. In one particular case, the taxpayer has a tax repayable arising from section 110 set-off for year of assessment 1999 and hence, a "NIL" estimate of tax payable for year of assessment 2001 was submitted. The IRB, however, issued a Form CP 205 based on the tax payable without taking into account the set-off.

It is suggested that the IRB should issue Form CP 205 based on the estimate of tax payable submitted in Form CP 204 since the taxpayer will ultimately be held responsible for any under-estimation of tax.

The IRB have requested that under such circumstances, the taxpayer/tax agent inform the IRB.

6.3 A company's estimate of tax payable for year of assessment 2001 was say, RM120,000 and the instalment payments commenced in May 2000 at RM10,000 per month.

In the 9th month (i.e. December 2000), the taxpayer submitted a revised estimate of tax payable for RM70,000. As the total instalments paid up to that month amounted to RM80,000 (8 x RM10,000), no instalment payment was made in January 2001.

The IRB issued a revised Form CP 205 in January 2001 for RM90,000 (i.e. incorporating the instalment payable for January 2001) instead of the revised estimate of tax payable submitted.

The IRB officer had verbally indicated that since the revised Form CP 205 was only issued after the due date for payment of the January 2001 instalment and no payment was made by the taxpayer for that month, a 10% penalty would be imposed automatically by the computer system on the January instalment.

Kindly advise on IRB's practice with regard to the issuance of Form CP 205 in instances where a revised estimate of tax payable is submitted.

It is suggested that in the above case, the IRB should issue Form CP 205 based on the revised estimate of tax payable submitted and that no penalty should be imposed on the January 2001 instalment which should not be payable.

The IRB have reiterated that taxpayers are required to maintain their existing instalment payments until such time the taxpayer is "informed" otherwise by the Board, as the 12th month revision is not automatic but is subject to either approval/rejection by the DGIR.

6.4 The professional bodies would also like to seek clarification on whether there has been any change in the procedure for issuing Form CP 204 and Form CP 205 for year of assessment 2001.

Kindly confirm that Form CP 205 will not be issued if the estimate of tax payable for year of assessment 2001 submitted in Form CP 204 is based on the preceding year's estimate.

With effect of year of assessment 2002, the Form CP 205 will no longer be issued as the tax instalments payable will be based on the Form CP 204 submitted by the taxpayer. Thus, a taxpayer is required to make the instalment payments based on the Form CP 204 submitted.

7. Form CP 207 (Instalment Payment Slip)

It is noted that there has also been a delay in the issuance of Form CP 207. This has resulted in practical problems being encountered by taxpayers in making instalment payments according to the due dates.

It is suggested that taxpayers be allowed to print their own instalment payment slips according to the format prescribed by the IRB.

The LHDN have informed that taxpayers have the option to either "photocopy" the instalment payment slips or "download" the instalment payment slips from the IRB's web site.

8. Deduction of Tax under Section 107A

It was suggested at the dialogue with the IRB held in February 2000 that the tax deducted from contract payments to non-resident contractors under section 107A be used for setting off the company's tax instalment payments.

The IRB had indicated that the set-off would be allowed on a case-by-case basis.

It is noted that the set-off is not allowed by the IRB officers. Clarification is sought on this matter.

The set-off will be allowed on a case to case basis.

9. Withholding Tax

9.1 Tax Reference Numbers for Withholding Tax Payments

IRB's letter dated December 18, 2000 (Ref: LHDN/WHT) requires both the payer and recipient of any income subject to withholding tax to apply for a tax reference number from the Assessment Branch. In making payments of withholding tax, the tax reference numbers of both the payer and recipient must be indicated in the form (CP 37A/CP 37/CP 37D).

It is understood that the above requirement *does not* apply to withholding tax payments made by East Malaysian tax residents (i.e. Sabah & Sarawak). If this is so, kindly explain the rationale for the new requirement.

The IRB have clarified that they are in the process of implementing a new payment system under self assessment.

To ensure a smoother transition, the system was first implemented in West Malaysia, whereas, East Malaysia initiated the new system on 1st April 2001. Hence, the above requirement for the a tax reference number (for withholding tax payments) is now applicable for East Malaysia, as indicated in the attached letter from the IRB dated 16 March 2001.

9.2 Verification of Existing Tax Reference Numbers

According to the current procedure, a payer remitting withholding tax payments is required to enquire from the Collection Branch as to whether the non-resident recipient has an existing tax reference number. If not, an application for a reference number must be made by the payer on behalf of the non-resident recipient.

The professional bodies would like to seek IRB's co-operation to provide the tax reference numbers within the same day that an application is submitted so as to minimise the amount of time and effort incurred by both the tax agents and IRB in this process.

The IRB have requested that the taxpayers do not apply for a tax reference number from the IRB at the last possible date, as taxpayers have a 30 day period to remit the withholding tax to the IRB.

The IRB have clarified that if all pertinent details are submitted to the IRB, they would be able to issue a tax reference number, within 3 to 7 days of the application, depending on urgency.

The IRB have also confirmed that, the IRB would require the following minimum information for the issuance of a tax reference number to a non-resident recipient:-

i. Name
ii. Address

If any other information so required is not available to the Malaysian taxpayer, then duly inform the IRB and leave it blank.

9.3 Issuance of Tax Returns to Non-residents

The Collection Branch in previous discussions with the professional bodies has confirmed that the tax reference numbers obtained for the purpose of withholding tax payments under sections 109 and 109B will "generally" not be used for issuing tax return forms to the non-resident recipients.

However, it appears that certain non-resident recipients have been issued tax return forms based on the applications made for tax reference numbers. The professional bodies would again like to seek confirmation from the IRB that applications for tax reference numbers would not result in the issuance of tax returns to the non-resident recipients as this would create more compliance issues and result in time and effort being utilised inefficiently.

The IRB acknowledged the issue and confirm that the tax return forms were not suppose to be issued to the non-resident recipients.

10. Verification of Tax Residence Status

The introduction of electronic scanning of passports at the major entry/exit points in the country has eliminated the stamping of passports by immigration officers. This has given rise to the problem of providing evidence to substantiate the period of a taxpayer's stay in Malaysia for the purpose of determining the tax residence status.

Clarification is sought on whether the IRB has in place a procedure for confirming the date of entry/exit of the taxpayer.

The IRB are aware of the changes in the passports and in the interim, the IRB are willing to accept the (non-Malaysian) Arrival/Departure "dates" or "stamps" of the passport.

Where, the "date" or "stamp" in the passport (of an Arrival/Departure) is not made due to immigration policy of the country visited, the IRB will instead accept any other written confirmation or evidence of the date of Arrival/Departure, i.e. a written confirmation from the employer, airline tickets, etc.

On the issue of "days in transit", the IRB have assure the professional bodies that they will be flexible on the issue.

11. Tax Agent's Reference

There have been instances where correspondences from the IRB could not be attended to promptly as only the name and reference number of the taxpayer are indicated.

The professional bodies would like to seek IRB's co-operation to include the reference of the tax agent in its correspondences so as to the assist the tax agent in taking appropriate actions promptly.

The IRB have noted the issue and will inform their respective Branches.

12. Co-operation between IRB and the Professional Bodies

a) The professional bodies would like to commend the IRB on its current policy of greater flexibility and transparency in the implementation of the tax law and regulations, especially relating to the new tax system. IRB's willingness to consult with the professional bodies in the development of new regulations and guidelines proved to be highly beneficial to both the tax practitioners and the revenue authority. The professional bodies believe that this is a step in the right direction for the successful implementation of the self assessment tax regime.

However, it is noted that certain official publications (i.e. guidelines, orders) are being issued by the IRB without any prior consultation with the professional bodies. It is felt that the consultation process is useful in minimising potential confusion or practical difficulty in compliance with the new requirements.

b) The professional bodies would also like to seek the IRB's co-operation to inform the professional bodies promptly of any changes to its policies, guidelines or procedures so that the information can be disseminated to the members and their clients. Taxpayers generally do not object to any change in policy by the IRB but they are often unaware of such changes.

c) It is understood that the IRB is currently looking into the legislative changes necessary for the implementation of the next phase of self assessment for sole - proprietors, co-operatives and partnerships in year 2003.

The professional bodies would like to offer their assistance in the implementation process.

The IRB have noted the issue and thank the professional bodies for their continual support.

13. Tax Payments

The IRB have confirmed that under the new payment system, the Collections Division will request that separate cheques be issued for each year of payment. i.e. 1 cheque for year of assessment 2001 and another cheque for year of assessment 2002, etc.

Where a payment has been credited for the wrong year of accessment, the IRB request that the taxpayer duly inform the IRB and they will adjust the credit to the relevant year. The IRB reiterated that, the "bonus" deduction (under PCB) remitted should be issued under a separate cheque and a separate Form CP 39.

14. Certification of Section 108 account

The IRB have requested that for taxpayers seeking a confirmation of the Section 108 Account and Tax Exempt Account, kindly submit their computation of the Section 108 Account and Tax Exempt Account balances to the IRB, as to assist the IRB to make a comparison of their computations and the taxpayers balances.

15. Tax Return Forms

The IRB have received a Tax Return Form issued to one taxpayer, but having been completed by another taxpayer, with the tax reference number and address being replaced.

The IRB have advised that all Tax Return Forms issued by the Board are registered under the name of the taxpayer requesting the Tax Return and cannot be used by any other taxpayer.

The professional bodies have noted the issue.

The dialogue ended with a note of thanks to all parties and participating bodies.

Tax Deductions for Timber Licence

The Special Commissioners have for the 1st time applied the decision in *Margaret Luping & 2 Ors v. KPHDN* to a case with similar facts.

The taxpayer was the holder of a Timber Licence issued by the State Government of Sabah. One of the requirements of the licence was that the taxpayer should pay the State Government sums of money described as "nett proceeds" to be kept in a trust account known as the "Land Alienation Deposit Account" in the joint names of the Government and the taxpayer for identification purposes. If the taxpayer undertook an approved project, it could apply to the State Government for the release of a part or all of the nett proceeds for the approved project. This was the State Government's policy meant to encourage development on the land where the timber was extracted.

The taxpayer paid approximately RM2.7 million, but was refunded a quarter of the amount. The taxpayer claimed the payment of the nett proceeds as a deduction but the *D.G. of IR* disallowed the taxpayer's claim.

The taxpayer then appealed to the Special Commissioners of Income Tax who held that they were bound by the decision of the Court of Appeal in *Margaret Luping & 2 Ors v. KPHDN* (2000) MSTC 3804. In that case the Court of Appeal held that the payments were deductible. In making this decision the Court of Appeal held that it first had to determine whether the payments were allowable deductions under sec. 33(1) and if they were, then whether they would be disallowed by sec. 39(1).

MRD Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri. Special Commissioners of Income Tax. Rayuan No PKCP (R) 1/99. 18 April 2000. (2001) MSTC 3,248.

A Tax Deductible Holiday

Holiday Air Tickets provided to employees as part of their service contract were deductible by the employer.

The taxpayer entered into service agreements with three of its directors. The service agreements entitled the directors and their families to leave passage once in every two years. The taxpayer incurred expenses of leave passages for years 1983, 1984, 1985 and 1986 and claimed the expenses for those years. The D.G. of I.R. disallowed the claim and raised additional assessments accordingly.

The Special Commissioners dismissed the taxpayer's appeal. The taxpayer then appealed to the High Court and argued that the expenditure was not prohibited by sec. 39 and was wholly and exclusively incurred in the production of income under sec. 33(1).

The D.G. of I.R. argued that the air passages were referred to as "private and vacational" in the contract of service and as such the cost of it was not wholly and exclusively incurred in the production of gross income of the taxpayer.

In allowing the taxpayer's appeal the High Court judge held that the question for the court to consider was not whether the leave passage contributed to the production of income, but whether the services rendered by the employees contributed towards the production of gross income. In this case the free leave passage was a reward for services rendered; it was a cost to the employer in respect of services rendered.

KHK Advertising Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri
High Court, Kuala Lumpur —
Civil Appeal No R1-14-4-99.
15 November 2000. (2001) MSTC 3,845, (2001) 1 AMR 463

Are consultancy and retrenchment expenses deductible?

Consultancy and retrenchment expenses incurred immediately before liquidation were held to be non-deductible.

The parent company of the taxpayer commissioned a company to conduct an efficiency study of its subsidiaries, including the taxpayer. Consequently, the taxpayer and another subsidiary were amalgamated and the taxpayer was placed in voluntary liquidation. In addition, a number of the taxpayer's staff were retrenched by the taxpayer. The taxpayer applied to have the costs of the study and retrenchment deducted against income.

The Special Commissioners allowed the appeal of the taxpayer. They found that the efficiency study increased the speed time in production, reduced non-productive time and improved plant maintenance. The costs of the efficiency study, and retrenchment was held by the Special Commissioners as incurred in the production of income and deductible. The D.G. of I.R. appealed to the High Court.

The High Court allowed the appeal of the D.G. of I.R. and held that it was impossible to accept the contention that the efficiency study was meant for the benefit of the taxpayer, whose business was taken over by a related company with the taxpayer being voluntarily liquidated soon thereafter. As regards the retrenchment costs, from the facts it was concluded that the retrenchment exercise was done for the benefit of the successor company of the taxpayer. The timing of the retrenchment exercise was very close to the take-over of the business of the taxpayer and the liquidation of the taxpayer. Further, the application to the Foreign Investment Committee to amalgamate the three related companies was made in 1985, indicating that the efficiency study and the retrenchment exercise were meant more to facilitate the take-over of the taxpayer's business. As such, the costs of the retrenchment exercise were similarly not incurred in the production of income.

Ketua Pengarah Hasil Dalam Negeri v. IF Sdn Bhd **High Court of Malaya Civil Appeal No R2-14-9-98.**

5 June 2000. (2001) MSTC 3,835.

Land purchased for business subject to income tax

The intention for purchasing property must be clearly noted in the accounts as it determines whether the land is subject to income tax or real property gains tax.

The taxpayer purchased land to build flats and apartments. However, the project was deferred due to economic downturn and no work was done. The land was shown as stock in trade in the taxpayer's accounts for 10 years. There was no company resolution or minutes of meeting to note the change of intention to convert the land from stock-in-trade to an investment. The land was sold and the taxpayer paid real property gains tax on the grounds that it was a realisation of an investment. The D.G. of I.R. rejected the payment and determined that the gains were subject to income tax.

The taxpayer appealed to the Special Commissioners. In dismissing the taxpayer's appeal the Special Commissioner held that the original intention of the taxpayer was not that of investment but to acquire the land for resale. It was immaterial that the transaction was an isolated transaction. A developers licence was not necessary to carry on a trade in land. The fact that the taxpayer held the land for 11 years before sale did not, in any way give it the character of an investment.

Further the Special Commissioner held, an isolated transaction could amount to business if it had the attributes of an adventure or concern in the nature of trade because the definition of "business" under the Income Tax Act included an adventure or concern in the nature of trade.

As such, the gains realised were not investment gains but income from a business being an adventure or a concern in the nature of trade and thus taxable under sec. 4(a) of the *Income Tax Act*.

GW Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri.

Special Commissioners of Income Tax. Rayuan PKCP (R) 93/99.

13 January 2000. (2001) MSTC 3,248.

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Topics Covered

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Part IV: What are the limits of the Ampat Tin Dredging principle?

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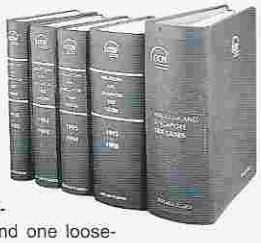
Malaysia and Singapore Tax Cases



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A students guide to TAX

Basis and Scope of Charge

By **Siva Nair**

The concept of taxation has baffled people for years. Every year the receipt of the annual return form or even a simple letter from the tax office sends shivers down the spines of the recipients. The cure for this century old ailment is to have a basic understanding of taxation in Malaysia, the purpose of which is the fundamental objective of this series of articles to be published under Learning Curve.

SO WHAT IS TAX?

Remember the story of Robin Hood, who helped the poor people who were subjected to heavy and unreasonable taxes by Prince John! Yes, tax has been there for many years. Since the dawn of civilisation taxation has existed in various forms. It is defined in the Oxford dictionary as

"a contribution levied on persons, property or business for the support of government"

In simple terms it basically means a part of our earnings is contributed (not optionally unfortunately!!!) to the Government to enable them to meet expenditures for the benefit of the people, such as the construction of roads, schools, hospitals and undertaking other development projects.

WHAT IS THE DIFFERENCE BETWEEN DIRECT & INDIRECT TAXES?

Direct taxes are those taxes that are paid directly to the Revenue authorities.

- Income tax) is ***Inland Revenue Board***
- Real Property Gains Tax) paid ***Inland Revenue Board***
- Stamp Duty) to ***Collector of Stamp Duty***

Eg. If you are employed, you will have to fill up a return form annually and submit it to the IRB who will then assess your tax and indicate the amount payable in a notice of assessment which you will have to pay to the IRB within a stipulated time

Indirect taxes are generally paid to another person who then transmits the tax to the Revenue authorities.

- Sales tax
- Service tax
- Customs duties
- Excise duties

collector will pay to → ***The Malaysian Royal Customs and Excise Department***

Eg. When you park your car or use telecommunication facilities you are imposed service tax, which is collected by the provider of the service (the parking or telecommunication company), who then relays the amounts collected to the Director General of Customs.

WHY HAVE TAXES?

1. To raise revenue for the government

Revenue	Direct taxes RMB	%	Indirect taxes RMB	%	Non-tax Revenue RMB	%	Total
1999	27.25	46	18.10	31	13.33	23	58.68
2000*	29.81	47	18.70	29	14.99	24	63.50
2001**	33.90	48	19.88	29	15.93	23	69.61

* Estimate ** Forecast

2. Stimulating economic growth and maintaining stability. Tax is the fundamental tool in effecting a fiscal policy. Lowering taxes leads to increased disposable income available for consumption and investment, which in turn rejuvenates the economic cycle which is in a recessionary trough. Tax incentives play an active role in attracting foreign investments.

3. Regulating the distribution of income and wealth. Our country has a progressive tax rate for income tax. An additional ringgit earned by a taxpayer currently in the RM 2,500 and RM 150,000 taxable income brackets will be taxed at 1% and 29% respectively, thus injecting an element of equity and fairness to the administration of the tax system.

HOW DO WE DETERMINE WHAT IS TAXABLE?

Is every sen of revenue taxable? Does Malaysia tax only Malaysian income? The boundary of taxability is determined by the scope of charge which can be divided into three categories:-

✣ **Territorial Scope**

- only income derived from that tax jurisdiction will be taxed.
- foreign income is not taxable irrespective of whether it is remitted and subsequently received in that country
- e.g. Hong Kong

- **World Income Scope**
  - income derived from that country will be taxed PLUS
  - income derived overseas will be taxed irrespective of whether it is remitted and subsequently received in that country
  - e.g. USA, Japan, Australia & New Zealand

- **Derived and Remittance Scope**
  - Locally derived income is taxable **PLUS**
  - Foreign income is taxable ONLY IF it is received in that country
  - e.g. Malaysia, Singapore & Brunei

To determine whether a receipt is taxable or expenditure reference must be made to the governing authority. In Malaysia, our source of reference comprises the following:

1. STATUTE LAW

The subject of income tax needs to be studied in a manner which unites the legal and the computational aspects i.e. the tax computation is the simple and elegant computation which most clearly illustrates the established principles.

The distinguished Mr. Awther Singh writes:

However generally the lawyers confine themselves to the law while the accountants prefer voluminous and intricate computations. In fact no understanding of income tax is possible without a through knowledge of the law and the practise i.e. the numbers which the accountants juggle are puppets which dance a legal tune. Absent the tune, the sterile manipulation of computations is a joyless exercise pursued only under the compulsion of an examination, without the joy and intellectual excitement which comes with dealing with a unitary discipline, which has its theories and its laws that are demonstrated to a satisfactory climax in the numbers upon which the tax system feeds, lives, has its being and nourishes the revenue needs of the State.

There are other revenue legislation in Malaysia, some of which we will refer to throughout this series. The statute relating to taxability of income in Malaysia is the *Income Tax Act 1967* (as amended) ("the Act"). This Act contains 156 sections and 9 schedules.

Section 3 of this Act deals with the scope of charge. It reads:

SUBJECT TO AND IN ACCORDANCE WITH THIS ACT, A TAX TO BE KNOWN AS INCOME TAX SHALL BE CHARGED FOR EACH YEAR OF ASSESSMENT UPON THE INCOME OF ANY PERSON ACCRUING IN OR DERIVED FROM MALAYSIA OR RECEIVED IN MALAYSIA FROM OUTSIDE MALAYSIA.

WHEN DO WE PAY TAXES?

This is basically referred to as the ***Basis of Assessment.*** Currently in Malaysia we are on a current year basis of assessment i.e. the taxable gains for the basis period for a year of assessment is taxed in that year of assessment.

Year of assessment **(YA)** means the calendar year i.e. 1st January to 31st December. **The Basis Year (BY)** is the year of assessment.

Basis period **(BP)** means the period for which the taxable gains are subjected to tax for a YA. Normally it is the calendar year but may be different for business income.

WHO IS TAXABLE?

The word "person" is defined to include:

- company
- body of persons
- corporation sole

The Concise Oxford Dictionary (5th Edition) states that the meaning of the word "person" includes an individual. An individual is defined under the Act as a natural person.

WHAT IS INCOME?

The word "income" is not defined in the Act, but judges have shed some light on its meaning while delivering judgments on tax and non-tax related cases. Some features are illustrated below:

- Fruit and tree analogy
  the tree remains throughout the years producing fruits seasonally (or even perennially) but the fruits are either collected or drop and rot whereas the tree remains for a very long time, continuously producing the fruits. So, the fruits represent income and the tree, capital.
- Fixed and circulating capital

Therefore, **generally** revenue gains are periodical, regular and recuring whereas capital gains are a one-off lump sum payment. This is not a conclusive test but merely a persuasive consideration. Capital gains are NOT taxable under the Act but may be taxable under another legislation.

Accrued/Derived

- generally the same meaning (although lawyers have endeavoured to differentiate). I guess accrued is more passive for e.g. income earned from interest and dividends are accrued whereas derived is more active for e.g. employment income is derived.
- there are deemed derivation provisions from Sections 12 to 17 whereby income is deemed to be derived from Malaysia although generated outside Malaysia. We will look at these in future articles as we cover each of the different types of income.

Received

- Mere book entries are not received - *Gresham Life Assurance Society Ltd. v. Bishop.*

  Foreign credit sales transactions recorded in Malaysian books of accounts do not constitute a receipt of foreign income
- Cross entries in accounting records constitute received even though no money is remitted - *Scottish Mortgage Company Of New Mexico v. McKelvie*

  Offsetting of amounts due to and due from accounts between a local and foreign business entity would be

"...In fact no understanding of income tax is possible without a through knowledge of the law and the practise i.e. the numbers which the accountants juggle are puppets which dance a legal tune..."

Mr. Awther Singh

construed as the foreign income being received by the local business entity.

- Received differs from remitted
  The date of remittance is irrelevant. The income is taxed in the year of assessment of receipt.

WHAT ARE THE DIFFERENT CLASSES OF INCOME SUBJECT TO TAX?

SECTION 4

a) gains or profits from a business for whatever period of time carried on
b) gains or profits from an employment
c) dividends, interest or discounts
d) rents, royalties or premiums
e) pensions, annuities or other periodical payments not falling under any of the foregoing paragraphs
f) gains or profits not falling under any of the foregoing paragraphs

SECTION 4A - SPECIAL CLASSES OF INCOME

a) amounts received by a non-resident in consideration of services rendered by a non-resident or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, that non-resident
b) amounts received by a non-resident in consideration of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme
c) rent or other payments made under any agreement or arrangement for the use of any moveable property

SECTION 11 - OCCUPATION OF PREMISES FOR NON-BUSINESS PURPOSES

If a person occupies premises in Malaysia otherwise than solely for the purposes of a business that person is deemed to have a source of income.

WHAT CONSTITUTES MALAYSIA?

- the land of Malaysia
- the continental shelf - 200 nautical miles

2. CASE LAW

- interpretation of the statues by the courts
- can use some foreign case precedents because common traits exist in the tax legislation of Malaysia, Singapore, Australia, New Zealand, India and South Africa
- persuasive authority though not binding on the Malaysian courts

3. IRB PRACTICE

- rulings/guidelines/regulations
- expression of administrative opinion & not binding neither the courts nor the Director-General

WHERE DO WE PAY THE TAXES?

- at the Revenue office
- through an agent (liability is still on the taxpayer)
- At Bumiputera Commerce banks

Is Section 3 conclusive?

No, there are other provisions and gazette's (P.U. Orders), which effect the operation of Section 3. These include:

a) Paragraph 28 of Schedule 6
For non-residents, foreign income received in Malaysia will be exempt.

b) Income Tax (Exemption) (No. 48) Order 1997 Exemption of foreign income received by:

i. **resident companies** excluding those in the business of:

- insurance)
- sea & air transport) **specialised industries are taxed on a world scope basis**
- banking)

ii. **unit trust**

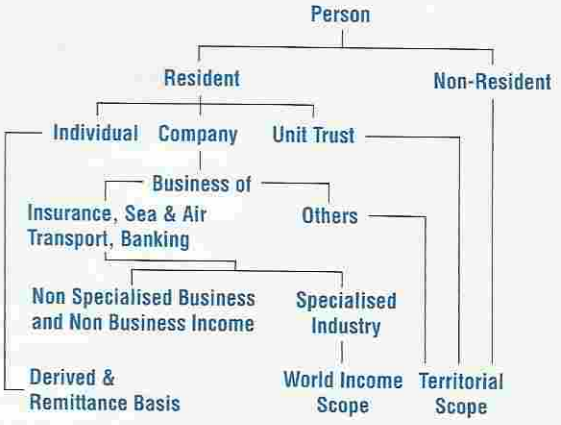
and that's not all!

1. The amount of income exempted goes into an exempt account
2. From the account they can pay tax exempt dividends to their shareholders
3. If the shareholder is a company, then the dividends received goes into that company's tax exempt account
4. That company can now pay a second tier of tax exempt dividends to its own shareholders

c) Section 3B

- income from an offshore business activity
- carried on by an offshore company
- is exempt from income tax (but may be taxed under Labuan Offshore Business Activity Tax Act!!)

So that's an introduction to Malaysian tax and the diagram below attempts to illustrate the concepts described earlier figuratively. Once you have understood the principles well, have a go at the tutorial questions to consolidate your understanding. The answers will be published in the forthcoming issue.



Practical Exercises

Q1 Mr. Plantax (a Malaysian resident for 2001), completed his engineering course in New York and returned to Malaysia on 21/12/2000. In his final year of study he undertook some consultancy work in UK, earning the equivalent of RM10,000 which he placed in fixed deposit with a US bank. He commenced work in Malaysia on 1/2/01 earning RM3,000 p.m. His US fixed deposit matured on November 2001 and the principal alone was remitted to Malaysia on 17/11/01.

Determine his taxable income for year of assessment 2001.

Q2 Collapse Construction Sdn. Bhd. (a Malaysian resident for 2001) is a housing developer and is owned by Encik Jatuh and Runtuh Sdn. Bhd. in the ratio of 40:60. It has a chargeable income of RM52,000 for the year of assessment 2001. In addition, it accrued for foreign income from a branch of RM25,000 of which RM17,000 was received on 8/9/01.

Advise Collapse Construction Sdn. Bhd. on its tax implications for the year of assessment 2001.

Q3 Hydrophobia Shipping Express (a Malaysia resident for 2001), conducts the business of sea transportation and has Malaysian chargeable income of RM100,000 and income from the shipping business in Singapore of RM90,000 which was not remitted to Malaysia. It also conducted a trading business in Thailand from which it received RM 50,000 in 2001.

Determine his taxable income for year of assessment 2001.

Q4 Robmisun Bank Ltd. (a non-resident for 2001) generated Malaysian income of RM250,000 for 2001 and received RM45,000 from its branch in Japan.

Determine his taxable income for year of assessment 2001.

Q5 The Malaysian income of Sinful Unit Trust (a non-resident for 2001), for the year of assessment 2001 is RM500,000. It also received investment income from China amounting to RM85,000 in 2001.

Discuss the tax implications for Sinful Unit Trust for the year of assessment 2001.

Q6 Mr. Lovetax (a Malaysia resident for 2000 but non-resident for 2001), has taxable income of RM32,000 each for both the years. He earned RM5,000 while working in India in 1999 and brought back quarter of the money to Malaysia in 2000 and the balance in 2001.

Determine his taxable income for year of assessment 2000 and 2001.

Q7 Greentree Sdn. Bhd. an plantation company resident in Malaysia, produced taxable income of RM4 million for the basis period ended 31/12/01. During the year it sold fixed assets at a gain amounting to RM38,000. Also it received RM20,000 per month for three months from a railway company. This constituted compensation for the loss of revenue since a portion of the plantation was inaccessible due to track laying activities.

Determine his taxable income for year of assessment 2001.

Q8 Dyefast Assurance Sdn. Bhd. (a Malaysia resident for 2001), made profits chargeable to tax of RM10 million for 2001. It also received rental income from the lease of a factory in Jakarta amounting to RM12,000.

Determine his taxable income for year of assessment 2001.

Q9 ICEAW Sdn. Bhd owns 70% shares in ACCA Sdn. Bhd which in turn owns 60% shares in CIMA Sdn. Bhd. MACPA Sdn. Bhd was incorporated with its three shareholders being ICSA Sdn. Bhd, ACCA Sdn. Bhd and CIM Sdn. Bhd holding 30%, 13% and 57% respectively. All the companies are resident in Malaysia and involved in the business of retailing. MACPA received foreign dividends of RM1 million for the year 2001.

a) Would MACPA Sdn.Bhd be taxed on the foreign dividends?

b) Can the shareholders of ICEAW Sdn.Bhd. enjoy tax exempt dividends?

c) However can you resolve their dilemma?

Guidelines for application of approval under Section 44(6) of the Income Tax Act 1967

1. These Guidelines serve to explain the types of institutions, organisations or funds which may be considered for approval under Section 44(6) of the Income Tax 1967 and the various steps/procedures involved in the submission of applications for approval and the other related matters.

2. **Types of Institutions, Organisations Or Funds which Can Apply For Approval Under Section 44(6)**

   The following institutions, organisations for funds which is not aperated or conducted primarily for profit may be considered for approval under Section 44(6):

   Institutions

   a) a hospital;
   b) a public or benevolent institution;
   c) a university or other educational institution;
   d) a public authority or society engaged in research or other related activities connected with the cause, prevention or cure of human disease; or
   e) a Government - assisted institution engaged in socio - economic research.

   Organisations/Funds

   a) a public or private fund established or held for the sole purpose of:
      i) the establishment, enlargement or improvement of an educational institution in Malaysia; or
      ii) the provision of scholarship, exhibition or prize for and individual for educational work or research work in an institution in Malaysia.
   b) a public fund established for the relief of distress amongst the Malaysian public;
   c) a fund established and held solely for the construction, improvement or maintenance of a building in Malaysian which is to be used exclusively for the purpose of religious worship or advancement of religion;
   d) An organisation established for maintaining a zoo, museum, art gallery or similar undertaking;
   e) an organisation engaged in or in connection with the promotion of culture or the arts; or engaged in or in connection with the conservation or protection of animals;
   f) a Government - assisted organisation engaged solely in addressing problems relating to industrial and commercial development and promoting and enhancing the relationship between the public sector and the private sector; or
   g) a Government - assisted organisation established and maintained exclusively to administer and augment a fund established or held solely for promoting national unity.
   h) an organisation established exclusively for the conservation or protection of the environment.

3. **Criteria For approval Under Section 44(6)**

   a) The institution, organisation or fund should serve or benefit Malaysian irrespective of race, creed or relegation. The benefits should not be confined to a specific group only.
   b) The institution or organisation must be a non-profit institution or organisation. Where fees are charged for services (e.g. Hospital) there must be provision for reduced fees or waiver of such fees in respect of the poor and the low income group.
   (c) Institution/organisation which meet the definitions as specified in Paragraph 2 as above may be considered for approval.

4. **Who Can Submit In An Application For Approval?**

   The President or Secretary of an association, foundation, organisation or building committee and the Headmaster of a school in the case of a school-building fund submit an application for approval.

5. **Procedures And Requirements For Application**

   There is in special form to submit an application for approval under Section 44(6) except in the case if school building funds whereby appendix A. The application can be made through a letter with complete particulars. The procedures and requirement for an application are as follows:

   5.1 **Institution Or Organisation**

   The institution or organisation must clearly state its objectives in its application and submit the following particulars and documents:

   a) **An Institution Which Is A Company Limited By Guarantee**
      i) a copy of the certificate of registration from the Registrar of Companies:
      ii) a copy of the certificate issued under Section 24(2) of the Companies Act 1965;
      iii) a copy of the Memorandum & Articles of Associations; and
      iv) a copy of Form 49 (detailed information on Board of Directors/Boarding Trustee)

   b) **Other Organisation And Institutions**
      i) a copy of the certificate of registration from the Registrar of Societies;
      ii) a copy the constitution/rules; and
      iii) a list of the committee members stating the name, full address, identity card number, occupation and the post held in the committee.

   c) **Specific Fund Established Under A Trust Deed**
      i) a stamped copy of the Trust Deed; and
      ii) a list of the board of trustees stating the name, full address, identity card number, occupation and the post held in the Board.

5.2 **Building Fund**

i) **School Building Fund**

a) **For Fully-Aided Government and Non Government Schools**

The application for approval for the above school building fund must be submitted to the Department of Inland Revenue through the State Education Department. 1 (one) copy of the application form 'Lampiran A' (which can be abstained from the State Education Department) must be completed and submitted with the required documents to the State Education Department.

The State Education Department will submit the application to the Director General Of Inland Revenue.

b) **For Private Schools**

The application for approval for the above school building fund must submitted to the Department of Inland Revenue through the Ministry Of Education. 1 (one) copy of the abstained from the State Education (obtained from the State Education Department) must be completed and submitted with the required documents to the State Education Department.

The State Education Department will submit the application to the Ministry of Education which in turn will forward it to the Director General of Inland Revenue.

It should be noted that if the application for school building fund is not recommended by the respective authorities, then the application will not be considered for approval under Section 44(6).

ii) **Building Fund For Mosque, Temple and Church**

Particulars and documents in respect of both the organisation which set up the building fund and the building fund itself must be furnished as follows:

a) **In Respect Of The Organisation Which Sets Up The Building Fund**

i) a Copy of the certificate of registration from the Registrar of Societies;

ii) a copy of the constitution, rules or bye-laws of the organisation as approved by the Registrar of Societies; and

iii) a list of the committee members of the organisation stating the name, full address, identity card number, occupation and the post held in the committee.

b) **In Respect Of The Building Fund Itself**

i) total estimated cost of the proposed building;

ii) if the collection of public donation has already commenced, state the date on which the first donation was made and the amount collected to date;

iii) total donation from the Government or other agency which have been received or pledged, if any;

iv) a resolution or minutes of the meeting in which the establishment of the building fund was decided upon;

v) rules and bye-laws of the building fund committee. The rules/by-laws should incorporate inter-alia the name, objectives, control and management of finance, auditing and accounting, appointment and responsibilities of the committee members, amendments to the articles and dissolution of the fund;

vi) a resolution and minutes of meeting in which the rules and by-laws were approved.

vii) a commended letter from the Majlis Agama Islam Negeri where the application is in respect of a mosque - building fund;

viii) a copy of the plan approved by the local authority; and

ix) a list of the building committee members stating the name, full address, identity card number, occupation and the post held in the committee.

6. ***To Whom Should The Application Be Addressed/Submitted***

The application for approval under Section 44(6) Income Tax Act 1967 should be addressed/submitted to:

Penolong Ketua Pengarah,
Unit 35, Bahagian Teknikal,
Lembaga Hasil Dalam Negeri,
Tingkat 14, Blok 11,
Kompleks Bangunan Kerajaan,
Jalan Duta,
50600 KUALA LUMPUR.

7. **Requirement Of An Approved Institution/Organisation/Fund**

7.1 **General Requirements**

a) Official receipts for all donations received must indicate the following:-

i) name of the organisation;.
ii) serial number if official receipt;
iii) reference number if the approval i.e. file reference number;
iv) duration of approval; and
v) gazette notification number;

b) a copy of the audited accounts (i.e. audited by a public auditor) must be sent by 30 April annually to the above mentioned address (see para 6).

c) any amendments to the constitution/rules/ by-laws shall not come into effect unless prior written approval of DGIR has been obtained.

7.2 **Specific Requirements**

a) **Institution/Organisation**

At least 70% of the income and donations received must be spent yearly in carrying out the objectives of the institution/organisation. Failure to meet this condition, steps will be taken by the Department to withdraw the exemption status.

b) **Building Fund**

i) The building fund must be untilised solely for the construction of the building mentioned in the application for approval.

ii) All donations received must be utilised solely for the construction of the building. Expenses for purchase of equipments and fittings are not allowed. After the construction of the building has completed the remaining donations (if any) should be donated to any institutions/organisation approved by DGIR.

iii) Total estimated building cost and a confirmation letter from registered Architect /Contractor.

iv) an approved pan from relevant authority.

v) The building must be completed within 3 (three) years or such further period as may be allowed by the Director General Of Inland Revenue, Malaysia.

vi) Separate accounts should be maintained for the building fund and submitted annually to the above mentioned address (see para 6).

viii) a report on the completed project must be submitted to the Technical Division of Inland Revenue. (address see para 6)

c) **Other Funds Which Are Not Building Funds.**

An organisation which has been approved in respect of its scholarship fund or fund for the relief of distress shall maintain separate accounts for the approved fund and submit mentioned address (see para 6).

8. **Tax Deduction And Exemption**

a) **Tax Deduction**

Donors who make donations to an institution organisation of fund approved under Section 44(6) will qualify for deduction in respect of their donations in computing their taxable aggregate income. However, it should be noted that only cash donations supported by official receipts will qualify for tax deduction. Donation in kind (e.g. Food, clothing, computers, property, shares and building materials) will not qualify for tax deduction.

b) **Tax Exemption**

Building funds approved under Section 44(6) will automatically qualify for tax exemption under Para 13 Schedule 6 in respect of any interest income derived from fixed deposit accounts. Any institution or organisation approved under Section 44(6) must make a separate application for approval under Para 13 Schedule 6 if it wishes to seek exemption in respect of its income.

UNIT 35, BAHAGIAN TEKNIKAL,
LEMBAGA HASIL DALAM NEGERI,
MALAYSIA
tf/g.lines/s. 44(6)

OCTOBER 1999

Guidelines on Application for Double Deduction

For Research And Development Expenditure Under Section 34A Of The Income Tax Act 1967

1. Objective

The objective of these guidelines is to provide explanation on criteria for eligibility, allowable expenses, and general procedure in applying double deduction incentive on Research & Development (R&D) expenditure from Inland Revenue Board (IRB).

2. Background

Double deduction incentive for R&D expenditure was introduced with effect from Assessment Year 1987. Until 31.12.1996, applications for the incentive were processed by two separate government agencies namely Malaysian Industrial Development Authority (MIDA) which processed applications for approval of research project/activity by the Minister of Finance and IRB which processed application for allowable expenses. From 1.1.1997, the Minister of Finance has directed IRB to also process and approve applications for research projects/activities.

3. Application For Approved Research Project/Activity

3.1. Criteria for eligibility

3.1.1. The definition of research for the purpose of this application is as follows:

"Research means any systematic or intensive study carried out in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes but does not include:

i) quality control of products or routine testing of materials, devices, products or produce;

ii) research in the social science or the humanities;

iii) routine data collections;

iv) efficiency surveys or management studies; and

v) market research or sales promotion."

3.1.2. The research undertaken must be in accordance with the needs of the country and bring benefits to the Malaysian economy.

3.1.3. Foreign researchers may be employed. However, the company should endeavour to train Malaysians.

3.1.4. Activity which only involves testing a product to conform its properties to the required standards for compulsory registration of the product as required by any laws in Malaysia (such as for agricultural chemicals and pharmaceutical products) is not considered as R&D project/activity for purpose of claiming double deduction.

3.1.5. It is encouraged that all R&D activities be undertaken in Malaysia. Please refer to restrictions on allowable technical services expenditure in paragraph 4.2.3. of these guidelines.

4. Guidelines On Allowable Expenditure For Double Deduction

4.1. Non-Allowable Expenditure:

4.1.1. capital expenditure incurred on plant and machinery, fixtures, land, premises, buildings, structure or works of a permanent nature;

4.1.2. expenditure on alterations, additions or extensions of items in paragraph 4.1.1. above;

4.1.3. expenditure on acquisition of any rights in or over any property.

4.2. Allowable Expenditure:

4.2.1. **Raw materials used in research**

Excluding the purchase of fixed assets used in the research.

4.2.2. **Manpower in the research project**

Only expenditure on basic salary of employee directly involved in the research project is eligible for double deduction. Expenditure such as EPF, **SOCSO**, bonus, medical fees, benefits in kind etc. will not be considered for double deduction. If an employee is not involved in the research project on a full time basis, expenditure claimed should be apportioned according to the time spent by that employee on research.

4.2.3. **Technical Services**

Inclusive of

i) Consultancy fee paid to a particular research organisation or individual for obtaining information/advice pertaining to the research being undertaken.

ii) Payment to a particular organisation for use of testing equipment such as those available in SIRIM, FRIM and universities.

iii) Payment to a particular organisation or individual for analytical services and data evaluation processing.

The above payments will be subjected to the following restrictions:

a) If 30% or more of the allowable expenditure for a particular research project is for technical services undertaken in Malaysia, then the expenditure for the technical services will be allowed for double deduction.

b) If more than 70% of the allowable expenditure for a particular research project is for technical services undertaken outside Malaysia, then the expenditure for the technical services will not be allowed for double deduction. However, ordinary allowable expenditure incurred locally such as raw materials, travelling, transportation etc. will be allowed for double deduction.

c) For technical services obtained from overseas but undertaken in Malaysia, the expenditure for the technical services will be allowed for double deduction.

4.2.4. **Travelling cost**

i) Travelling cost by research employees related to visiting research stations. Allowable expenditure include travelling cost and daily allowance. Daily allowance is restricted to RM400.00 per person or the actual cost incurred, whichever is lower. This allowance includes the cost of food and lodging.

ii) Travelling cost by research employees related to attending courses/seminars relevant to research projects, locally or overseas. Allowable expenditure include travelling cost and daily allowance and course/seminar fee. Daily allowance is restricted to RM400.00 per person or the actual cost incurred, whichever is lower. This allowance includes the cost of food and lodging. In the case of air travel, only economy class rate will be allowed.

4.2.5 **Transportation cost**

Cost of transporting materials used in the research.

4.2.6. **Maintenance Cost**

i) Motor vehicles,
ii) Buildings,
iii) Equipment and machinery

which are directly used for the research project.

4.2.7. **Rental**

i) Motor vehicles,
ii) Buildings,
iii) Equipment and machinery

which are directly used for the research project.

4.2.8. **Other Expenditure**

Claims for expenditure other than those categorised under paragraph 4.2.1. to 4.2.7. above can be made as long as it is not against the principle of allowing double deduction under section 34A of Income Tax Act 1967. Detailed information on the types of expenditure and their relevance to the research project should be furnished.

5. Application Procedure

5.1. From 1.1.1997, applications for approved R&D projects/activities and for allowable expenses thereof for the purpose of claiming double deduction will be processed by Technical Division, Inland Revenue Board, Kuala Lumpur. However applicants have to claim the double deduction on **Income Tax Return Forms** to be submitted to the relevant IRB branch office after receiving the above approval from the Technical Division, IRB Headquarters.

5.2. Application must be made for each assessment year on Form **DD1/RD/1997** and submitted with relevant supporting documents to:

Chief Executive/Director General
Inland Revenue Board,
Technical Division,
14th, Floor, Block 11,
Jalan Duta,
50600 Kuala Lumpur.

5.3. Form DD1/RD/1997 can be obtained from the Technical Division IRB Headquarters, Kuala Lumpur or any IRB branch office. Applicants may reproduce the form. A copy of the form is attached with these guidelines for your ease of reference.

5.4. Application forms should be submitted within six (6) months from the end of the financial year in which the R&D expenditure is incurred.

5.5. Applicants are required to make a declaration in the application form that the project/activity for which the application is made is a R&D project/activity.

5.6. Applicants are required to give permission in the application form for officers of IRB and accompanying experts to examine documents relating to the R&D project/activity and the expenditure claimed thereof at the applicant's business premises or at locations where the research is undertaken.

5.7. Declaration by applicant in the application form must be made by a director of the company. However expenditure on approved R&D project/activity for which the double deduction is claimed must be verified by Certified Auditors.

5.8. Applicants are advised to furnish correct information as required in the application form. If the information furnished is later found to be incorrect or false, IRB will immediately withdraw the approval for double deduction claims. In addition, in appropriate cases, IRB will take legal action as provided under Sections 113 and 114 of the Income Tax Act 1967 against the applicant.

5.9. If the application is made for more than one R&D project, then the information as required in Part B and C of form must be provided for each individual R&D project. (In cases where numerous R&D Projects are undertaken concurrently under a specific research programme, please specify the programme and the overall objective).

5.10. A holding company which undertakes R&D project/activity at its Research Centre for companies within its group may submit an application for approved R&D project/activity and for allowable expenses thereof on behalf of its subsidiary companies. However, the details for each company should be separately and clearly stated.

5.11. For R&D project/activity which has been approved by the Minister Of Finance for three (3) years and the period has not expired, the applicant can directly claim double deduction using Form DD1/RD/1997 without reapplying for the particular approved R&D project/activity. However, applicants are required to furnish basic information as required in questions 2 and 3.7 of part B and to state the period and reference of the approval in the application form.

5.12. The Technical Division, IRB will issue a letter of approval or rejection as the case may be to the applicant and a copy will be sent to the relevant IRB branch office. Approvals given will be subjected to the terms stated in the letter.

5.13. Appeals on application rejected must be made to IRB **within 30 days** from the date of the rejection letter.

5.14. For further information, applicants may contact the following officers at the Technical Division, IRB Headquarters, Jalan Duta, Kuala Lumpur:-

	Tel. No.
Puan Siti Rosnah	62003260
Puan Rokiah	62003427
Cik Nor Hany	62003114
Encik Pang Say Hin	62003162

Unit 35, Technical Division,
Inland Revenue Board, HQ,
Kuala Lumpur.

April 2001

Guidelines on the stamping of share transfer instruments for shares that are not quoted on the Kuala Lumpur Stock Exchange

1. Introduction

The purpose of this guideline is to ensure consistency in practice by all stamping units in relation to the valuation of ordinary shares of companies that are not listed on the Kuala Lumpur Stock Exchange. The basis of valuation as set out below is to be adopted.

2. Legislation

2.1. The instruments of transfer on sale of any stock, shares or marketable securities is subject to duty under item 32(b) of the First Schedule Stamp Act 1949 as follows:

"On sale of any stock, shares or marketable securities, to be computed on the **price** or value thereof on the date of transfer, whichever is the greater -

For every RM1,000 or fractional part of RM 1,000 RM3.00*

*This new rate is effective from 1 January 2001.

2.2. For shares that are not quoted on the Kuala Lumpur Stock Exchange, the basis for determining the value of the share is as set out in paragraph 3.

3. Basis of valuation

3.1. For cases where the sale of shares requires the approval of the Securities Commission ("SC"), the price/value per share as approved by SC may be accepted for the purpose of valuation of such shares. A copy of the letter from SC must be submitted as evidence.

3.2. For cases of companies incurring losses, the Par Value or Net Tangible Assets ("NTA") or sale consideration whichever is the highest is to be used for the purpose of computation of the stamp duty payable. The formula for computing the value per share based on NTA is as follows:

$$\text{Net Tangible Asset per share} = \frac{\text{Shareholders' Funds*}}{\text{Issued Share Capital}}$$

*Shareholders' Funds = Total Assets - Total Liabilities

Please refer Example I in Appendix 1

3.3. For cases other than that mentioned in paragraphs 3.1 and 3.2 above, a comparison is to be made between Net Tangible Assets ("NTA"), Price Earning Multiple/Price Earning Ratio ("PER") and sale consideration whichever is the highest. For the purpose of computing the value based on "PER", the minimum "PER" as extracted from the "Guidelines for the new issue of securities and the valuation of public limited companies" issued by The Capital Issues Committee, Ministry of Finance for certain economic sectors may be used as indicated below:-

Sector	PE Multiple
Property	3.5
Services	4.0
Trading	4.0
Transportation	4.0
Contracting and construction	4.5
Tourism (including hotels)	4.5
Insurance	5.0
Manufacturing	5.0
Agriculture	5.0
Gaming	6.0
Finance companies	6.0
Stockbroking companies	6.0
Plantations	7.5
Utilities	8.0
Banks	8.5

The formula for computing the value per share based on "PER" is as follows:-

$$\text{Value per share} = \frac{\text{Profits after tax}}{\text{Issued share capital}} \times \text{PER}$$

Please refer Example II and III in Appendix 2 and 3.

4. A copy of the form PDS 6 Pind. 01 (Appendix 4) should be completed and submitted by the transferee.

5. This guideline is effective from the date of issue.

6. The Inland Revenue Board reserves the right to withdraw or amend this guidelines if deemed necessary.

Unit Duti Setem.
Bahagian Teknikal.

s.k. Fail. LHDN. 01/35(S)/42/68 Klt. 3

Example I

XYZ Sdn. Bhd. (an investment holding company) has an issued share capital of **RM200,000.** A total of **150,000** shares were sold on 1.3.2001 for a sale consideration of **RM75,000**. The particulars as per audited accounts for the year ended 31.12.2000 (Appendix 1A and 1B) are as follows:

Net loss for the year	(RM 2,275)
Issued share capital	RM200,000
Shareholders' Funds	RM181,950

A) Par Value of shares transferred **RM150,000**

B) Net Tangible Assets ("NTA") Value per share

$$= \frac{\text{Shareholders' Funds}}{\text{Issued share capital}}$$

$$= \frac{\text{RM181,950}}{\text{RM200,000}}$$

= RM0.91

Value of shares transferred = RM0.91 x 150,000
= **RM136,500**

C) Sale consideration **RM75,000**

A comparison between Par Value, "NTA" and sale consideration shows that the value of shares based on par value is the highest. The stamp duty payable is, therefore, calculated based on par value i.e. RM150,000.

Stamp duty payable = $\frac{\text{RM150,000}}{\text{RM1,000}}$ x RM3.00
= **RM450**

Appendix 1A

XYZ SDN. BHD.
(Incorporated in Malaysia)
BALANCE SHEET AS AT 31.12.2000

	RM
FIXED ASSET	133,900.00
CURRENT ASSET	
Non-trade debtors	–
Amount due from directors	45,000.00
Cash in hand & at bank	3,050.00
	48,050.00
LESS: CURRENT LIABILITIES	
Amount due to a director	300.00
Non-trade creditors & accruals	3,500.00
Provision for taxation	–
	3,800.00
NET CURRENT ASSETS	44,250.00
EXPENDITURE CARRIED FORWARD at cost	
Preliminary expenses	3,500.00
Pre-operating expenses	300.00
	3,800.00
	181,950.00
Representing,	
SHARE CAPITAL	
Authorised : 300,000 shares of RM1.00 each	300,000.00
Issued & paid up : 200,000 of RM1.00 each	**200,000.00**
ACCUMULATED LOSS	(18,050.00)
	181,950.00

Appendix 1B

XYZ SDN. BHD.
(Incorporated in Malaysia)
PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDED 31.12.2000

	RM
INCOME	3,000.00
LESS: EXPENDITURE INCURRED	
Accountancy & secretarial fees	1,500.00
Audit fee	1,000.00
Bank charges	100.00
Filing & declaration	150.00
Postages, printing & stationery	200.00
Service tax	25.00
Telephone charges	300.00
Bad debts written off	2,000.00
	5,275.00
Net loss for the year	(2,275.00)

	RM
LESS: TAXATION	–
Loss after taxation and before extraordinary item	(2,275.00)
LESS: EXTRAORDINARY ITEM, net of tax 5	–
Loss after taxation & extraordinary item	(2,275.00)
Accumulated loss brought forward	(15,775.00)
Accumulated loss carried forward	(18,050.00)

Example II

ABC Sdn. Bhd. (a housing developer) has an issued share capital of **RM250,000. All the shares** were sold on 1.2.2001 for a sale consideration of **RM500,000**. The particulars as per audited accounts for the year ended 30.9.2000 (Appendix 2A and 2B) are as follows:

Profits after tax	RM200,000
Issued share capital	RM250,000
Shareholders' Funds	RM925,000

A) Net Tangible Assets ("NTA")

Value per share = Shareholders' Funds / Issued share capital
= RM925,000 / RM250,000
= RM3.70

Value of shares transferred = RM3.70 x 250,000
= **RM925,000**

B) Price Earnings Ratio ("PER")

Value per share = Profits after tax / Issued share capital x PER
= RM200,000 / RM250,000 x 3.5
= RM2.80

Value of shares transferred = RM2.80 x 250,000
= **RM700,000**

C) Sale consideration **RM500,000**

A comparison between "NTA", "PER" and sale consideration shows that the value of shares based on "NTA" is the highest. The stamp duty payable is, therefore, calculated based on "NTA" value i.e. **RM925,000.**

Stamp duty payable = RM925,000 / RM1,000 x RM3.00
= **RM2,775.00**

Appendix 2A

ABC SDN. BHD.
BALANCE SHEET AS AT 30.9.2000

	RM
Current Assets	
Development work-in-progress	100,000.00
Trade debtors	700,000.00
Cash and bank balances	1,400,000.00
	2,200,000.00
Less: Current liabilities	
Trade creditors	280,000.00
Other creditors, accruals and provision	700,000.00
Provision for taxation	300,000.00
	1,280,000.00
Net current assets	920,000.00
Fixed assets	5,000.00
	925,000.00
Financed by:	
Share capital	**250,000.00**
Unappropriated Profit	675,000.00
	925,000.00

Appendix 2B

ABC SDN. BHD.
PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDED 30.9.2000

	RM
Turnover	1,500,000.00
Profit before Taxation	300,000.00
After charging:	
Auditors' remuneration	5,000.00
Depreciation	1,500.00
And crediting:	
Interest received	75,000.00
Taxation	100,000.00
Profit after Taxation	**200,000.00**
Accumulated profit brought forward	475,000.00
Unappropriated profit carried forward	675,000.00

Example III

PQR Sdn. Bhd. (a company providing secretarial services), has an issued share capital of **RM500,000.** A total of 200,000 shares were sold on 1.4.2001 for a sale consideration of **RM200,000**. The particulars as per audited accounts for the year ended 31.12.2000 (Appendix 3A and 3B) are as follows:

Profits after Tax	RM2,250,000
Issued Share Capital	RM 500,000
Shareholders' Funds	RM2,725,000

A) Net Tangible Assets ("NTA")

Value per share = Shareholders' Funds / Issued share capital
= RM2,725,000 / RM500,000
= RM5.45

Value of shares transferred = RM545 x 200,000
= **RM1,090,000**

B) Price Earnings Ratio ("PER")

Value per share = Profits after tax / Issued share capital x PER
= RM2,250,000 / RM 500,000 x 4.0
= RM18.00

Value of shares transferred = RM18.00 x 200,000
= **RM3,600,000**

C) Sale consideration **RM200,000**

A comparison between "NTA", "PER" and sale consideration shows that the value of shares based on "PER" is the highest. The stamp duty payable is, therefore, calculated based on "PER" value ie. **RM3,600,000.**

Stamp Duty Payable = RM3,600,000 / RM1,000 x RM3.00
= **RM10,800.00**

Appendix 3A

PQR SDN. BHD.
BALANCE SHEET AS AT 31.12.2000

	RM
CURRENT ASSETS	
Other Debtors	3,500,000.00
Cash and bank balances	75,000.00
	3,575,000.00
CURRENT LIABILITIES	
Other creditors and accruals	1,400,000.00
Provision for taxation	5,000.00
	1,405,000.00
NET CURRENT ASSETS	2,170,000.00
INVESTMENT IN ASSOCIATED COMPANIES	555,000.00
	2,725,000.00
FINANCED BY:	
SHARE CAPITAL	**500,000.00**
UNAPPROPRIATED PROFIT	2,225,000.00
	2,725,000.00

Appendix 3B

PQR SDN. BHD.
PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDED 31.12.2000

	RM
Operating Revenue	3,500,000.00
Operating Costs	(50,000.00)
Profit/(Loss) before taxation	3,450,000.00
Taxation	(1,200,000.00)
Profit/(Loss) after taxation	**2,250,000.00**
Accumulated loss brought forward	(25,000.00)
Unappropriated profit	2,225,000.00

Appendix 4
(PDS 6 Pind. 01)

Permohonan untuk menyetemkan suratcara pindahmilik syer bagi syer yang tidak tersenarai di Bursa Saham Kuala Lumpur.

Bahagian I : (Untuk diisi oleh penerima pindahmilik)

1. Penerima pindahmilik
   Nama penuhnya : .....
   No. Kad Pengenalan/ : .....
   No.Pendaftaran Syarikat .....
2. Pemberi pindahmilik
   Nama penuhnya : .....
   No. kad Pengenalan/ : .....
   NoPendaftaran Syarikat .....
3. Balasan : RM .....
4. Tarikh suratcara disempurnakan : .....
5. Bilangan syer-syer/unit saham dan % yang dipindahmilikkan : .....
6. Nama syarikat bagi syer yang dipindahmilikkan : .....
7. Tertakluk/tidak tertakluk kepada kelulusan Suruhanjaya Sekuriti ..... Sesalinan surat kelulusan yang berkenaan hendaklah disertakan. (sekiranya berkaitan).
8. Didahului/tidak didahului oleh surat perjanjian jualbeli : .... Sesalinan surat perjanjian yang berkenaan hendaklah disertakan. (sekiranya berkaitan).

..... Tandatangan
..... Tarikh

UNTUK KEGUNAAN PEJABAT SAHAJA

Duti yang ditaksirkan RM .....
.....
(Penaksir)

Bayaran tunai/cek, draf no. .....
sebanyak RM ..... diterima.
.....
(Kesyer)

Setem-setem bernilai RM ..... dicopkan
.....
(Operator Mesin)

Bahagian II (Untuk diisi oleh Setiausaha Syarikat atau Pendaftar)

Saya ..... (Nama dan No. Kad Pengenalan) sebagai Setiausaha/Pendaftar bagi ..... (Nama Syarikat) membuat perakuan seperti berikut:-

a) bahawa Syarikat ini ditubuhkan pada ..... dan aktiviti utamanya ialah .....

b) bahawa keluaran modal yang terakhir telah dibuat oleh .... (Nama Syarikat) pada ..... (tarikh syer dikeluarkan).

c) bahawa modal berbayar seperti berikut telah dibuat dengan harga premium .....(1)...

d) bahawa pada ..... (tarikh keluaran syer yang terakhir), modal berbayar syarikat terdiri daripada .....(2)...

e) bahawa syer-syer tersebut iaitu ..... (bilangan dan kelas syer mengikut suratcara pindahmilik syer) yang dipindahmilikkan oleh ..... (Nama Penjual dan No. Kad Pengenalan) kepada ..... (Nama Pembeli dan No. Kad Pengenalan) adalah merupakan .....% daripada jumlah syer kelas berkenaan yang dikeluarkan.

f) bahawa Dana Pemegang Syer *syarikat pada .....(3).. adalah RM .....

* Dana Pemegang Syer = Jumlah aset - Jumlah liabiliti

g) bahawa keuntungan selepas cukai syarikat pada .....(3).. adalah RM .....

Catatan:

1) Sekiranya keluaran syer telah dibuat dengan bayaran premium pada tarikh ia dikeluarkan, kelas-kelas syer yang dikeluarkan dan harga premium hendaklah dinyatakan.

2) Nyatakan kelas syer ("Founder/Director/Ordinary/Preference" dll), jumlah unit dalam kelas yang berkenaan dan nilai parnya.

3) Maklumat yang dikehendaki adalah berdasarkan kepada angka-angka dalam kunci kira-kira bagi tahun kewangan yang terakhir sebelum tarikh pemindahan syer. Sesalinan akaun beraudit yang berkenaan hendaklah disertakan.

Subsidiary Legislation

P.U. (A) No.	Amending Subsidiary Legislation	Effective Date	Amendments
P.U. (A) 2	Income tax (Returns by Employers) Order 2001		1. Every employer shall prepare and deliver to the Director General within thirty days immediately following the date of the publication of this Order in the Gazette, a return in the prescribed Form containing the names and places of residence of the following classes of persons who were employed by him for the year 2000 (whether or not for the full year) and the full amount of the gross income falling within section 13 of the Act paid, payable or provided by him or on his behalf in the year 2000 to those persons in respect of their employment: (a) every person (including a widow or a married woman) whose gross income exceeds RM16,650 per annum; and (b) notwithstanding paragraph (a), every person employed by him for any period in the year 2000 who was also engaged for any period in the year 2000 in some other gainful occupation (for example, a company director who was at any time in the year 2000 also engaged in business on his own account, or who for any period in the year 2000 held other directorships) 2. The completed return Form shall be delivered to the Director General at the address specified in the prescribed form. *Forms* 3. The prescribed Form may be obtained on application at any branch of the Inland Revenue Board of Malaysia.
P.U. (A) 67	Income Tax (Exemption) Order 2001	1 January 2001	*Exemption* 1. The Minister exempts a Malaysian citizen and his or her spouse who have been approved by the Special Committee from the payment of income tax in respect of income arising from sources outside Malaysia and remitted into Malaysia within a period of two years from the date of arrival in Malaysia. 2. The individual and his or her spouse is not absolved or deemed to have been absolved from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the provisions of the Act.
P.U. (A) 80	Income Tax (Approved Food Production Projects) Order 2001	Y/A 2001	*Approved food production projects* 1. The projects listed in the Schedule are the food production projects approved by the Minister for the purposes of Schedule 4c. Projects 1. Planting of- *a) kenaf; b) vegetables; c) fruits; and d) spices;* 2. Aquaculture; and *3. Rearing of- a) cattle; b) goats; and c) sheep.*
P.U. (A) 81	Income Tax (Deductions for Investment In an Approved Food Production Project) Rules 2001	Y/A 2001	*Application* 1. A company making investments in a related company, which is undertaking an approved food production project, shall be entitled to the deduction described in rule 4, in ascertaining the adjusted income of that company. *Deduction* 2. For the purposes of ascertaining the adjusted income of a company incorporated under the Companies Act 1965 [Act 125], and resident in Malaysia, from a business for the basis period for a year of assessment, there shall be given as a deduction, the amount equivalent to the amount of investments made in a related company in the basis period for a year of assessment for the sole purpose of financing the approved food production project for which the related company has been given approval.
P.U. (A) 82	Income Tax (Accelerated Capital Allowances) (Conversation of Energy) Rules 2001	Y/A 2001	*Application* 1. These Rules shall apply to a company in respect of qualifying plant expenditure incurred in the basis period for a year of assessment on the provision of plant or machinery as certified by the Ministry of Energy, Communications and Multimedia as plant or machinery used exclusively for the conservation of energy. *Non-application* 2. These Rules shall not apply to a company- a) for the period during which the company has been granted any incentives except for deductions for promotion of exports under the *Promotion of Investments Act 1986 [Act 327]*; or b) for the period during which the company has been given reinvestment allowance under Schedule 7a of the Act.
P.U. (A) 154	Income Tax Exemption (No. 2) Order 2001	*Items 1–11 of the Schedule: 1 January 1998*	*Exemption* 1. The Minister exempts a person resident in Malaysia from the payment of income tax in respect of income derived from the export of qualifying services specified in the Schedule in the basis period for a year of assessment, in an amount and manner prescribed in paragraph 4.

P.U. (A) No.	Amending Subsidiary Legislation	Effective Date	Amendments
		Items 12 & 13 of the schedule: Y/A 2001	*Amount of income to be exempted* 2. i) The amount of income referred to in paragraph 3 shall be equal to 10 per cent of the value of increased exports. ii) Where an amount of income equivalent to 10 per cent of the value of increased exports has been determined for a year of assessment, so much of the statutory income of the business of that person for that year of assessment as is equal to that value of increased exports (or to the aggregate amount of any such value of increased exports as the case may be) but not exceeding 70 per cent of the statutory income shall be exempted from tax.
			Insufficiency of income 3. Where, by reason of the restriction of 70 per cent of the statutory income or of an insufficiency or absence of statutory income from a business of the person for the basis period for a year of assessment, effect cannot be given or cannot be given in full to the amount of the determined value of increased exports to which the person is entitled under paragraph 4 for that year of assessment, then so much of that amount or the aggregate amount as cannot be given for that year shall be given to the person for the first subsequent year of assessment for the basis period for which there is statutory income from that business, and subsequent years of assessment until the person has received the whole of the amount or the aggregate amount to which the person is so entitled. *Non-application* 4. This order shall not apply to a person: a) for the period during which the person has been granted any incentives (except for deductions for promotion of exports) under the Promotion of Investments Act 1986 (Act 327); b) For the period during which the person has been granted an exemption under paragraph 7b of the Act; and c) For the period during which the person has been granted an exemption under paragraph 127(3)(b) in respect of an approved service project. *Application of paragraphs 5 & 6 of Schedule 7A* 5. Paragraphs 5 & 6 of Schedule 7A to the Act apply mutatis mutandis to the amount of income exempt under paragraph 4. **Schedule of Qualifying Services** *1. Legal* *2. Accounting* *3. Architecture* *4. Marketing* *5. Business consultancy* *6. Office Services* *7. Construction management* *8. Building Management* *9. Plantation Management* *10. Private healthcare* *11. Private education* *12. Publishing services* *13. Information technology and communication services (ICT)*
P.U. (A) 185	Income Tax (Deductions For Promotion Of Export Of Higher Education) Rules 2001	*Y/A 1996 and subsequent years of assessment*	*Company eligible for deduction* 1. i) Every company which carries on the business of providing higher education in Malaysia and resident in Malaysia for the basis year for a year of assessment shall be eligible for the deduction under these rules for that year of assessment. ii) A company which is eligible for a deduction under these Rules shall not be eligible for a deduction under the Income Tax (Deductions for Promotion of Export of Services) Rules 1999 [P.U.(A) 193/99]. *Deductions* 2. i) Subject to these Rules, for the purpose of ascertaining under the Act the adjusted income of a company from its business for the basis period for a year of assessment, there shall be allowed as a deduction any outgoing and expenses of the kind described in subrule 4(2) which were incurred – a) by that company during that basis period with respect to that business; and b) primarily and principally for the purpose of promoting the export of higher education. ii) the outgoing and expenses referred to in subrule 4(1) are- a) expenses incurred in respect of market research for the purpose of the export of higher education; b) the cost of tender preparations for the purpose of the export of higher education; c) the cost of preparing technical information for the export of higher education; d) expenses by way of fares in respect of travel to a country outside Malaysia by a representative of the company being a travel necessarily undertaken for the promotion of export of higher education or participating in fairs for the purposes of promoting the export of higher education which are held outside Malaysia and approved by the Ministry of Education Malaysia and actual expenses subject to a maximum of two hundred ringgit per day for accommodation and a maximum of one hundred ringgit per day for sustenance for the whole of the period commencing with the representative's departure from Malaysian and ending with his return to Malaysia; e) expenses directly incurred for participating in education fairs for the purpose of promoting the export of higher education approved by the Ministry of Education Malaysia other than those expenses specified in paragraph 4(2) (d); f) Expenses for the cost of maintaining sales office overseas for the purpose of promoting the export of higher education; and g) Expenses incurred in respect of publicity and advertisement in any media outside Malaysia for the promotion of the export of higher education. 3. The deduction allowed under these Rules shall be in addition to any deduction allowable under section 33 of the Act. 4. No deduction shall be allowed under these Rules in respect of any outgoing, expenses or other payments which are- a) of the kind mentioned in subsection 39(1) of the Act; or b) incurred by a company having a place of business and subject to tax in the country where such outgoing and expenses were incurred.

P.U. (A) No.	Amending Subsidiary Legislation	Effective Date	Amendments
			5. Where the amount of any outgoing and expenses, the whole of which would have been allowable as a deduction under these Rules but for this paragraph, exceed the amount which in the opinion of the Director General would reasonably be expected to be incurred in the ordinary course of the business with respect to which those outgoing and expenses were incurred, the Director General may to the extent of that excess disallow that amount as a deduction under these Rules. 6. For the purpose of subrule 4(1), where two basis periods overlap, the period common to both shall be deemed to fall in the first basis period only.
P.U. (A) 50	Promotion of Investments (Determination Of Assets Under Section 29b In Respect Of MSC Status Companies) Order 2001	25 October 1996	*Application* 1. This Order shall apply to a MSC status company whose activities or products which are of national and strategic importance to Malaysia have been deemed to be promoted activities or promoted products under section 4A of the Act, and all references to promoted activities or promoted products in this Order shall be construed as references to promoted activities or promoted products under that section. *Determination of assets* 2. For the purpose of subsection 29B(7) of the Act, the following are determined to be assets for which capital expenditure incurred in respect thereof are capital expenditure for purposes of investment tax allowance under section 29B of the Act: a) multimedia and peripheral equipment (software and hardware) which are used by a MSC status company within the designated Cybercities for the conduct or development of the promoted activity or the production or development of the promoted product; b) the purchase, construction or renovation of a building, or part of a building, or any combination or those activities, located within the designated Cybercities where the building or part of the building is solely used by a MSC status company for the conduct or development of the promoted activity or the production or development of the promoted product; c) plant and machinery used by a MSC status company within Malaysia for the conduct or development of the promoted activity or the production or development of the promoted product; or d) the landscaping and greening of the surrounding premises of the building of a MSC status company within Cyberjaya, where the building is solely used by such MSC status company for the conduct or development of the promoted activity or the production or development of the promoted product, in line with the MSC physical planning guidelines and Cyberjaya urban design guidelines.
P.U. (A) 156	Promotion of Investments (Promoted Activities and Promoted Products) (Amendment) Order 2001	1 January 2001	*Amendment of the First and Second Schedules* 1. The Promotion of Investments (Promoted Activities and Promoted Products) Order 1995 *[P. U. (A) 31/95]* is amended by substituting for the First and Second Schedules. Please refer to P.U. (A) 156 for a complete list of the amended schedules.

Tax Exemption on Payment Made for Shrink-Wrap Software

1. The Income Tax (Exemption of Royalties and Other Payments for Economic and Technological Development) Notification 2001 was gazetted on 23 February 2001.

   Payment made for shrink-wrap software in the nature of income referred to in sec. 12(7) of the Income Tax Act accruing in or derived from Singapore on or after 1 January 2001 by any non-resident person will be exempt from withholding tax, provided:

   - the payment is for software distributed only in the form of compact discs or floppy diskettes in wrapped boxes accompanied by shrink-wrapped licences granting the purchaser the right to use the software under the following conditions:

     a) the purchaser only receives the right to use the software but is not permitted to modify it in any way;

     b) the purchaser is not licensed to reverse engineer, de-compile, or disassemble the computer program; and

     c) the purchaser may resell his copy of the software as long as the other copies he has made are destroyed and the same conditions of the licence are imposed on the subsequent purchaser; and

   - the payment is made to a non-resident person where the income:

     a) is not derived by that person from any trade or business carried on or exercised in Singapore; and

     b) is not effectively connected with any permanent establishment in Singapore.

IRAS Guide on Exemption for Software Payments

2. A new IRAS Guide entitled "Exemption of Software Payments from Withholding Tax" was issued on 23 February 2001 to replace the Guide entitled "Exemption of Shrink-wrap Software Payments from Withholding Tax" last updated on 29 December 2000.

   The Minister for Finance announced in his Budget Statement that with effect from 23 February 2001, the following payments to non-resident persons for the following categories of software payments are also exempt from withholding tax:

   - downloadable software for end-user;
   - site licence; and
   - software bundled with computer hardware.

   As an administrative concession, the Comptroller of Income Tax has decided to waive the requirement to withhold tax on payments on:

   - shrink-wrapped software;
   - downloadable software for end-user;
   - site licence; and
   - software bundled with computer hardware,

   if the non-resident person carrying on or exercising trade, business, profession or vocation in Singapore, who receives such payments, declares or continues to declare such payments as income in his annual tax returns.

   There is also a new edition of "Income Tax Guide on E-Commerce" issued on 23 February 2001 which incorporates the exemption from withholding tax on payments for shrink-wrapped software, downloadable software for end-user, site licence and software bundled with computer hardware.

   The Guides can be downloaded from the IRAS website @ www.iras.gov.sg

New Corporate Tax Regime

3. The IRAS issued a circular on 23 February 2001 on the New Corporate Tax Regime. A summary is set out below.

Effective from Y/A 2002

1. **Reduction in corporate tax rate**	From 25.5% to 24.5%	
2. **New partial tax exemption***	Partial tax exemption for up to $100,000 of a company's chargeable income (Note: The exemption excludes Singapore Dividends)	
	Chargeable Income	**Exemption from tax**
	Up to first $10,000 of chargeable income	75% tax exemption (Up to $7,500 will be tax exempt)
	Up to the next $90,000 of chargeable income	50% tax exemption (Up to $45,000 will be exempt)
		Maximum amount of chargeable income which will be exempt from tax $52,000.

*Does not apply to:
- concessionary chargeable income; and
- income earned by a non-resident company which is subject to a final tax (interest, royalties).

A company with income chargeable to tax at the normal tax rate and at the concessionary tax rate, can enjoy the partial tax exemption on the income chargeable to tax at the normal tax rate.

The reduced tax rate of 24.5% with effect from Y/A 2002 applies to:

- tax for non-residents;
- tax for trustees (other than trustees for incapacitated persons) and executors;
- rate of withholding tax (other than the 15% final withholding tax);
- rate for deduction of tax from dividends paid on or after 1 January 2001.

Taxation of bodies of persons (clubs or trade associations)

Current	With Effect from YA 2002
A body of persons such as a club or a trade association is taxed on its income based on the rates in Part B of the Second Schedule, which ranges from 6% to 55%. However, where the effective tax rate exceeds 25.5%, the rate of tax applicable on every dollar of its income is limited to 25.5%.	The rate of tax applicable on the income of a club or a trade association will be limited to the effective company tax rate, if this is lower than its effective tax rate determined based on the rates in Part B of the Second Schedule. The effective company tax rate is: $\frac{A}{B}$ Where: A - Tax chargeable at prevailing company tax rate on chargeable income after deducting exempt amount as if it were a company B - Chargeable income before deducting the exempt amount

Examples of tax computations for the following can be downloaded from the IRAS website (http://www.iras.gov.sg/):

- company with Singapore dividend, normal chargeable income excluding Singapore dividends <$100,000;
- company with both normal chargeable income, including Singapore dividend and concessionary chargeable income, normal chargeable income excluding Singapore dividend <$100,000;
- company with normal chargeable income including Singapore dividend, donation, investment allowance and trade loss;
- company with normal chargeable income, including Singapore dividend and the company has concessionary loss;
- company with normal loss and concessionary income;
- company with normal chargeable income, including foreign dividend, further tax deduction of expenses and investment allowance; and
- body of persons.

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

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- Taxation III
- Company & Business Law

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

MIT Professional Examination

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January 1	Annual Subscription for 2001 payable.
February 18	Release of the 2000 Examinations results. Students are notified by post.
March 31	Last date for payment of annual subscription fee for the year 2001 without penalty (RM50).
April 30	Last date for payment of annual subscription for year 2001 with penalty (RM100).
April 30	Question & Answer Booklets available for sale.
September 1	Closing date for registration of new students who wish to sit for the December 2001 examinations sitting.
September 15	Examinations 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	MIT Examinations.

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- Business Unusual... It's about Time ☐
- Customer Relationship Management: A Strategic Business Issue ☐

CONCURRENT B : INFORMATION COMMUNICATION TECHNOLOGY

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- The Future of Better Business: Through End-toEnd e-Business ☐
- Why is E-Commerce Audit so Special? ☐

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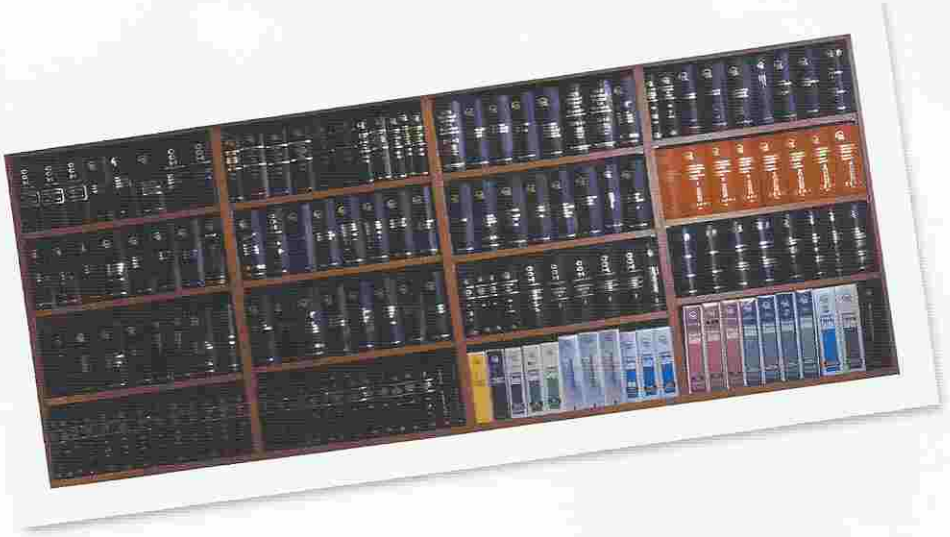

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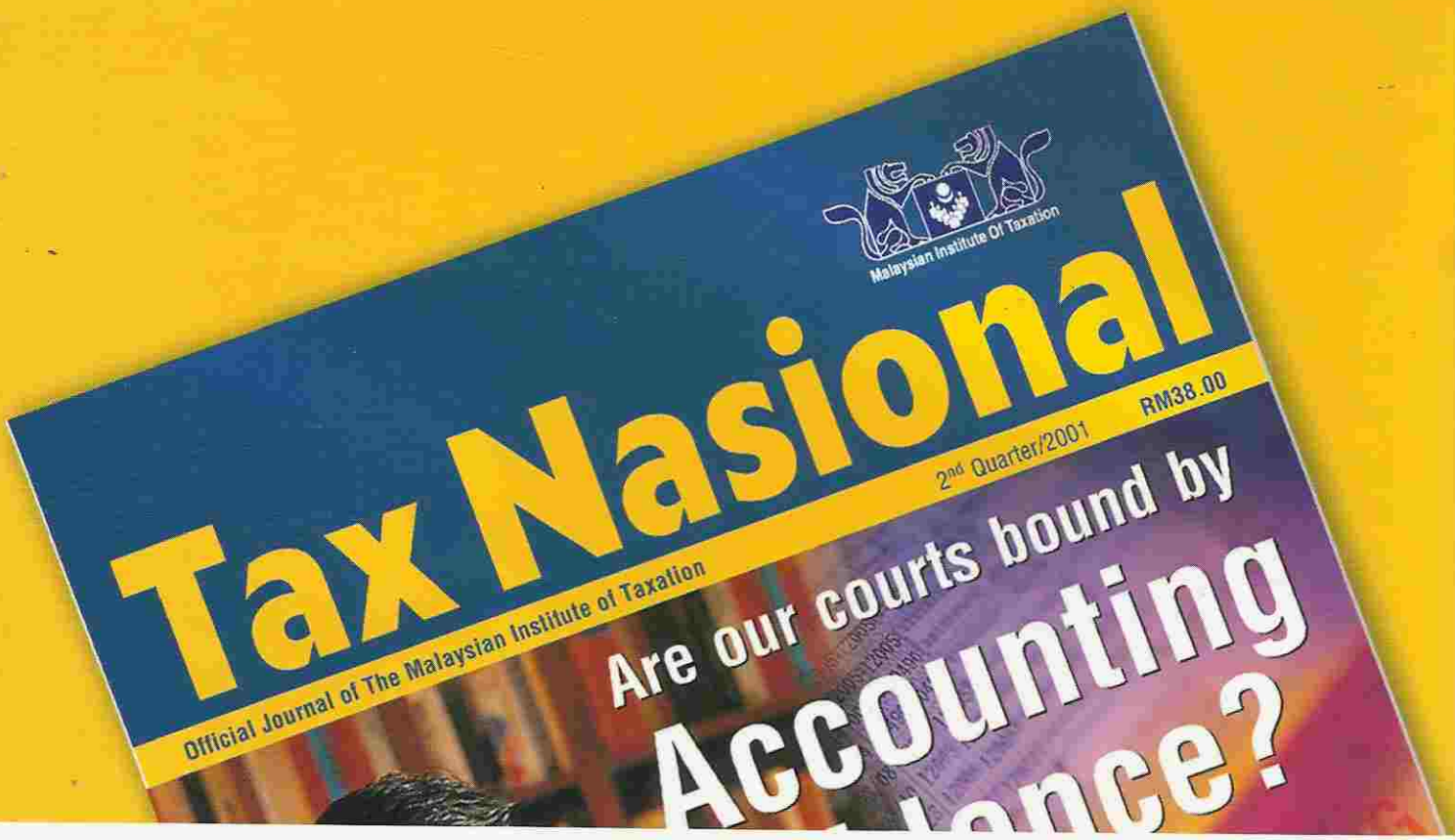

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