Malaysian Institute Of Taxation

# Tax Nasional

Official Journal of The Malaysian Institute of Taxation

3rd Quarter/2001 RM38.00

In conjunction with the tabling of Budget 2002 by the Finance Minister this October, the Malaysian Institute of Taxation and the Malaysian Institute of Accountants will conduct a budget hotline centre to handle enquiries, as well as to clarify matters pertaining to the changes proposed in the upcoming budget. The budget hotline service will be operating on Saturday, 20 October 2001, from 9.00am to 12.45pm. The number to call is 03.2274.5055.

## The Malaysian Self-Assessment System of Taxation:

# Issues and Challenges

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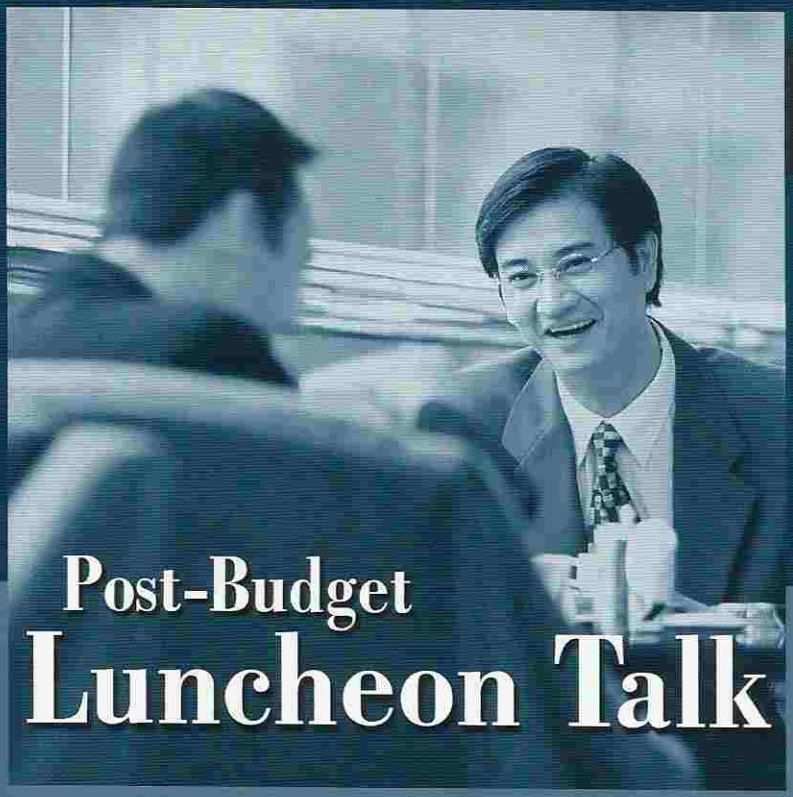

Date : 23 October 2001, Tuesday
Venue : Nikko Hotel, Kuala Lumpur
Time : 11.00am - 2.30pm

# Post-Budget Luncheon Talk 2002

by Puan Kamariah Binti Hussain

## Significant Coverage

On 19 October 2001 our Finance Minister Datuk Seri Dr. Mahathir Mohamad. will present to the Dewan Rakyat the Year 2002 Malaysian Budget. In conjunction with that, the Malaysian Institute of Taxation (MIT) proudly presents an informative Luncheon Talk lead by Puan Kamariah Binti Hussain, Head of the Tax Analysis Division, Ministry of Finance, to provide you with in-depth analysis of key issues contained in the Year 2002 Budget Proposals and other recent tax developments in Malaysia. Representatives from the Inland Revenue Board (IRB), the Royal Customs & Excise Department (RCED) and MIT have also been invited to be panelists in the Open Forum Session. Do not miss this opportunity to listen to these experts analysing the tax changes.

## Important Notes

**Fee** (inclusive of lunch)
Member and Member Firms' Staff of MIT : RM100.00
Non-Member : RM150.00

**Enquiries**
Contact Ms. Ng or Ms. Helen
Tel: 03.2274.5055 Fax: 03.2273.1631
E-mail: secretariat@mit.org.my

**Address**
Malaysian Institute of Taxation,
Level 3, No. 2 & 3,
Jalan Tun Sambanthan 3,
Brickfields 50470 Kuala Lumpur

**CPD Hours**
All participants will be presented with a Certificate of Attendance upon successful completion of the programme for use in registering CPD hours.

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Please substitute an alternative delegate if you wish to avoid cancellation penalties.
Cancelled unpaid registrations will also be liable for full payment of the course fees.

**Disclaimer**
Malaysian Institute of Taxation reserves the right to change the speakers, date and to cancel the programme should unavoidable circumstances arise.

## Programme

| | |
|---|---|
| 11:00am | Registration |
| 11:30am | Welcome speech by the Malaysian Institute of Taxation |
| 11:40am | Lunch |
| 12:45pm | Talk on the 2002 Budget<br>Speaker : **Puan Kamariah Binti Hussain**<br>*Head of the Tax Analysis Division, Ministry of Finance* |
| 1:30pm | Open Forum - Panelists<br>• A Representative from IRB<br>• A Representative from RCED<br>• A Representative from MIT |
| 1:50pm | Q & A Session |
| 2:30pm | End of programme |

REGISTRATION FORM

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Date: 23 October 2001, Tuesday • Venue: Nikko Hotel, Kuala Lumpur • Time: 11.00am - 2.30pm

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Malaysian Institute Of Taxation

# 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

EVERY YEAR, THERE COMES A TIME WHEN TAX AGENTS AND CONSULTANTS HOLD THEIR BREATH ~ THE ANNUAL BUDGET. IT IS A PERIOD WHERE EACH TAX CONSULTANT WILL LOOK INTO HIS RESPECTIVE "CRYSTAL BALL" AND HOPE THAT THE BEST WILL EMERGE.

On a macro point, the Malaysian economy will face greater challenges as a result of increasing globalisation and liberalisation as well as, the rapid development of the information and communications industry. The forthcoming budget must give priority to increasing the supply of quality manpower, enhancing research & development efforts and accelerating the development of certain growth sectors.

Much emphasis will also be given towards strengthening positive values among Malaysians, to promote a unified and equitable society.

On a micro platform, the Institute hopes that the Ministry of Finance will reconsider their stand of not extending the current concession to allow companies to revise their tax estimate an additional 2/3 times a year. I am of the view that based on the current global economy, most companies will not be able to estimate their tax liability for the coming 12 months with some degree of certainty and confidence.

To summarize, this year's budget should propose prudent macroeconomics management measures to ensure the optimumand efficient utilisation of resources as well as to increase efforts to strengthen the resilience of the financial and monetary system of the nation. At the same time, emphasis will also be given to enhance the quality of life through the provision of better social services including health and educational facilities, adequate and affordable housing and administrative services.

**Council Members**

At the Institute's 9th Annual General Meeting, Council Members were duly elected for the year 2001. Below is a photograph of some of the Council Members.

Standing (left to right)

Venkiteswaran Sankar
Harpal S. Dhillon
Dr. Veerinderjeet Singh
Lee Yat Kong
Teh Siew Lin
Dr. Ahmad Faisal

Seated (left to right)

Quah Poh Keat
Michael Loh
Ahmad Mustapha Ghazali
Chow Kee Kan
Tuan Haji Abdul Hamid

Council Members not in the picture are:

Dr. Jeyapalan Kasipillai
Atarek Kamil Ibrahim
Richard Thornton
Seah Cheoh Wah
SM Thanneermalai

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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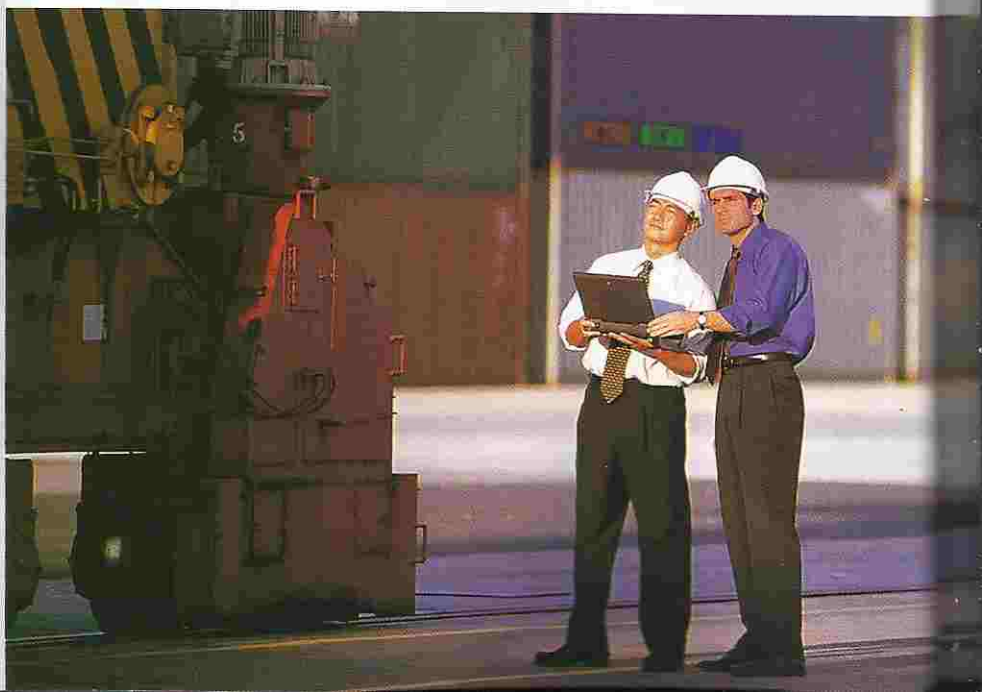
3rd Quarter 2001







## Dialogue

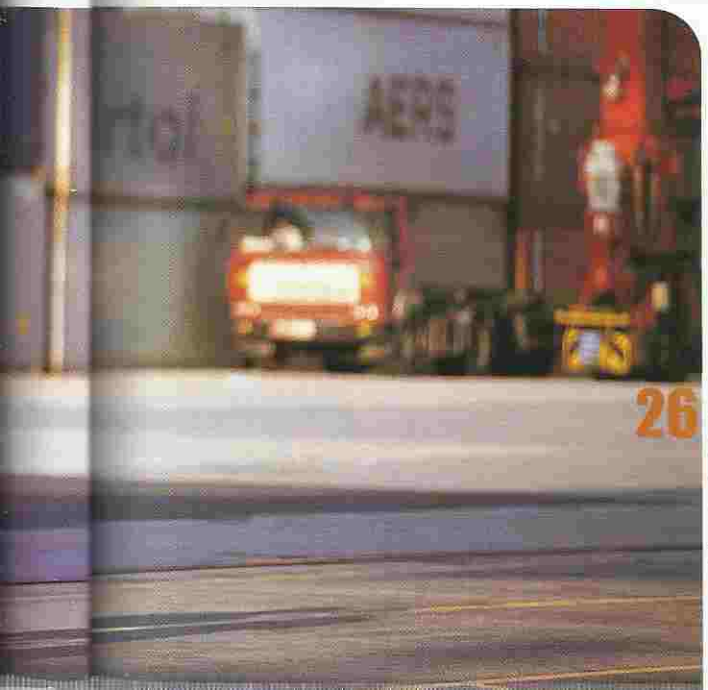


## Learning Curve



## Regulatory Watch







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# Budget 2002 19th October 2001

I am curious to find our what the Minister of Finance will say on Friday, 19 October 2001. Will the Tax authorities take into account suggestions put forward by the Tax Agents over the past year via the various dialogues and meetings held with the Tax Officials?

In any event, Taxpayers are anticipating a reduction in corporate and personal tax rates. It is also expected that the self-assessment program for sole proprietors/ individuals will be announced during this parliament session. Self-assessment for the sole proprietors/individuals is targeted for year of assessment 2003. In view that some businesses have an early year end, it will be necessary to make the announcement this year.

**Interest Restriction & MPHB**

The Revenue lost their appeal to the High Court, in the case of **Multi-Purpose Holding Bhd** (MPHB). Although the High Court's decision in **Pernas Securities** (PS) was only persuasive and not binding on the High Court, Justice Vohrah agreed with the decision in PS. It is expected that the Revenue will appeal the MPHB case to the Court of Appeal as the case will determine whether the PS principle is overturned. It could be some time before we know what the law is on this issue.

I must say that the Multi-purpose group has contributed a lot to the development of Malaysian Revenue Law. Credit goes to particularly the Companys' Group Tax Manager, Mr. Lim Beng Hin and the relevant persons concerned, who have taken the time and cost to assist in the development of Revenue Law. If we had more people prepared to make such sacrifices, it would be good for the development of the Self Assessment regime in Malaysia. We could have our own Common Law System, instead of depending on the development of the law in other commonwealth countries.

Credit also goes to the Revenue, who have professionally handled numerous appeals lodged with them and have in many ways assisted the taxpayer in enhancing the self-assessment system.

**The following are some cases that have been stated to the High Court for its opinion:**

- **S133 Credit For Malaysian Source Employment Income**

  In the case of LCC, the Special Commissioners of Income Tax have allowed section 133 credit for Malaysian source employment income. The Revenue's appeal has been withdrawn from the High Court.

  As such, the **new interpretation** of the law is that where **foreign tax has been suffered on Malaysian source employment income, double tax credit is available**. A number of Malaysian income tax books will have to be rewritten as a result of this case.

- **Sale Of Express Bus Tickets In Singapore For A Journey To Malaysia By A Malaysian Bus Company**

  The Special Commissioners of Income Tax have held in the case of AKE that where a Malaysian express bus company sells tickets in Singapore for a trip to Malaysia, the source of the income for the whole journey is outside Malaysia.

- **Does LCW apply when the taxpayer has not decided?**

  The issue of whether the LCW principle was applicable to the case of MHSB recently arose for the consideration of the Special Commissioners of Income Tax. An appeal has been lodged by the Revenue to the High Court. The issue for the consideration of the High Court is, when a taxpayer **has not decided** on whether the land is a fixed asset or stock-in-trade, is the LCW principle applicable?

*For details of these cases please see Case Digest.*

**IRB Offensive Against Errant Employers**

During the economic slowdown, certain employers have used the IRB as a source of funding. By holding back on tax deductions from employees, the money can be used for other purposes. Under the law, all deductions have to be paid within 10 days of the following month.

The amount in uncollected tax remittance from errant employers is quite substantial and the IRB will not hesitate to take them to court. Special investigative teams have been sent to all the 35 IRB branches nationwide to weed out the problem. The maximum penalty is RM1,000 per month and not RM1,000 per employee per month as recently reported in the newspapers. In addition, there is a provision for a six months imprisonment. However, to date no one has been sent to jail. If the number of employees were large, it would appear that the penalty is lower than the cost of borrowing.

Even in this situation, it is legally difficult to prove criminal breach of trust. The IRB is correct in taking such a serious stand on this issue as the tax has already been deducted from the employee's salary and should be paid over to the Revenue. As the one time cost of unauthorised borrowing is only RM12,000 per year, it is quite an attractive alternative to costly borrowings from other resources. We can expect the Revenue to close this loophole.

**Collections Task Force**

The Collections Branch of the Revenue has formed a Special Task Force to collect over RM6 billion in outstanding collectable taxes. The targeted taxpayers are Companies. In order to avoid unnecessary court action, it is advisable for taxpayers with outstanding taxes to make arrangements with the Collections Branch. Certain incentives are being offered for early payment.

**Harpal S. Dillon**
Editor of Tax Nasional

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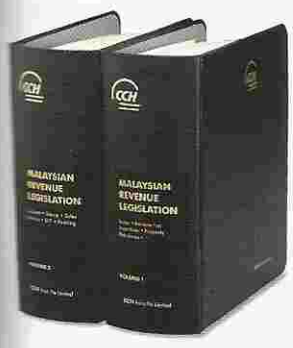


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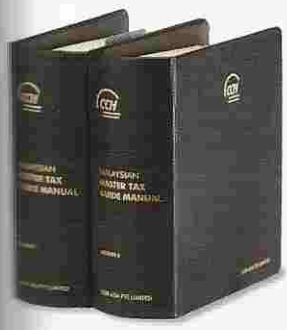

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# National Tax Conferen

The President in his address at the 9th Annual General Meeting stated in no uncertain terms that the Institute was embarking on a new era of providing value-added services to its members.

In fulfilment of this and in line with the Institute's vision of being the main tax body in Malaysia, the Malaysian Institute of Taxation and the Inland Revenue Board co-organised the National Tax Conference on 3rd July 2001 at the Palace of the Golden Horses, Kuala Lumpur.

The National Tax Conference was graced by Yang Berhormat Dato' Chan Kong Choy, the Deputy Minister of Finance.

It was a momentous step for the Institute as the conference attracted more than 600 participants nationwide, consisting of practitioners, consultants and tax agents. The theme of the conference was "Self-Assessment: Towards Good Governance" and was based on the need for a change in the mindset of both practitioners and IRB officers, under the new self-assessment tax regime. The purpose of the conference was to initiate the establishment of cohesion, clarity and certainty among taxpayers and Inland Revenue Board officers under the new tax regime.

The event commenced with a welcome address by the President of MIT, Encik Ahmad Mustapha Ghazali who stressed the need for tax practitioners to comprehend and accept their new roles under STS. The President went on to express his gratitude to the speakers for taking the time and effort to prepare for the conference as well as, to the IRB for their invaluable contributions to the conference.

The President ended with a quote from *Alvin Toffler* "***Change is the progress by which the future invades our lives***". Which goes to prove that progress in the implementation of STS is only attainable once a change in the mindset of both taxpayers and tax practitioners is achieved, that will pave the way towards meeting the objectives of STS and eventually lead to the successful implementation of the country's tax policies.

Following the welcoming address, the Director General of the Inland Revenue Board (DGIR), Dato' Zainal Abdin bin Abd. Rashid gave the opening address of the conference. The DGIR raised pertinent issues that are currently affecting tax practice and called on practitioners, taxpayers and officers to embrace the new challenges under the self-assessment system. The DGIR is adamant of practising the three "M's – *Mesra, Membantu & Memuaskan*", in the Board's quest to provide value-added services to all. The DGIR accepts that the new tax system may appear daunting at times, but stresses that the system was implemented at the behest of the taxpayers and also as a vehicle to smoothen current tax collection.

**Throughout the conference, there were numerous opportunities for interaction between participants and the panelists.**

The keynote address was given by Yang Berhormat Dato Chan Kong Choy, the Deputy Minister of Finance, which touched on a myriad of issues fundamental to self-assessment.

Throughout the conference, there were numerous opportunities for interaction between participants and the panelists. The conference was a medium for the exchange of ideas and issues between the taxpayers and the Board. Without doubt, participants left the conference fully understanding the basic principals as well as the mechanics and rationales behind the self-assessment tax regime.

The conference ended with a discussion by the last panel on the issue of the "Next Leap Forward", or simply, what do we do next?

**Following the keynote address, Yang Berhormat Dato' Chan Kong Choy duly struck the ceremonial "gong" which marked the commencement of the 2001 National Tax Conference.**

# ere 2001


A welcome address by the President of MIT, Encik Ahmad Mustapha Ghazali

The panel consisted of the Secretary General of the Ministry of Finance, Y. Bhg. Tan Sri Dr Samsudin bin Hitam, the Director General of the Inland Revenue Board (DGIR), Dato' Zainal Abdin bin Abd. Rashid and the Deputy President of the Institute, Mr Michael Loh. The panelists spoke on their expectations for the next phase of self-assessment. In short, for the effective implementation of self-assessment tax regime all parties must accept and embrace their new responsibilities under self-assessment and the door for dialogues must remain open.

On a point, Mr Michael Loh raised an interesting issue concerning the need for the Ministry to recognize MIT as the main tax body in Malaysia to safeguard the interest of Malaysian tax practitioners in the light of globalization.

Although there were certain inconveniences caused by logistics, the National Tax Conference 2001 in its totality was a significant success. The success of the conference is indeed a significant step for the Institute as it firmly entrenches the Institute's position of being the paramount body on tax matters in Malaysia.

Ex-secretariats and ex-council members with office bearers

# Farewell Lunch

A farewell lunch was hosted by the Malaysian Institute of Taxation at Bukit Kiara Equestrian & Country Resort on 7 August 2001 in honour of Mr Chuah Soon Guan and Ms Teh Siew Lin who have since resigned as council member of the Institute. Mr Chuah Soon Guan had served as the Institute's Honorary Secretary since 1995 and Ms Teh Siew Lin was the Chairman of the Government Affairs Committee and both had actively contributed in various other committees of the Institute.

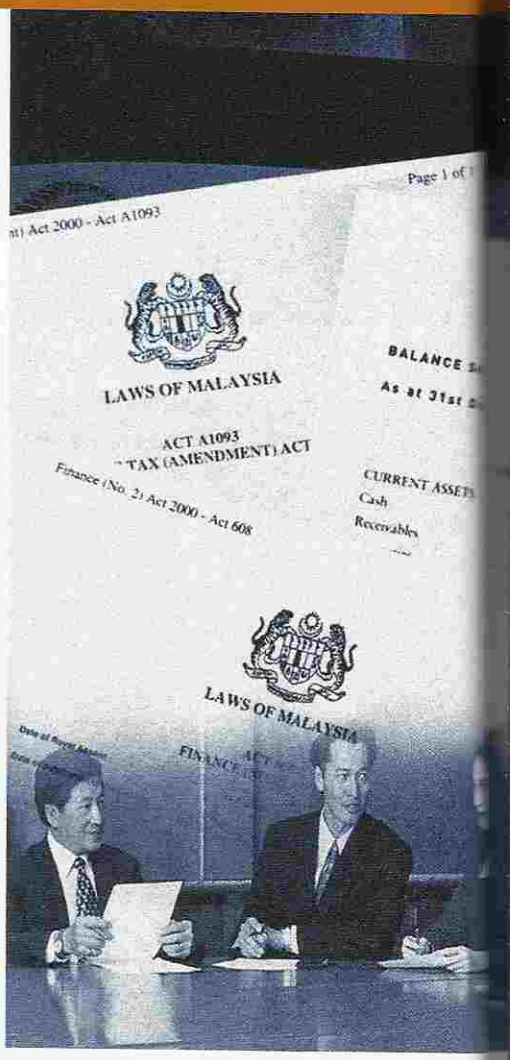
Without a doubt, their presence and experience will be deeply missed by all in the Institute.

Although the gathering was filled with laughter, one could not disregard the sombre atmosphere as the Institute bid farewell to two of its founding pillars of MIT. As a small tribute to their unselfish services and contributions towards the developments of the Institute, the President presented mementos to Mr Chuah Soon Guan and Ms Teh Siew Lin. In his speech, En Ahmad Mustapha Ghazali, reiterated that the Institute values their support and sacrifices and hopes that they will continue to support the Institute although they are not with us officially.

In concurrence with the farewell lunch, the Institute also took the opportunity to express its deepest gratitude to the staff of the Malaysian Institute of Accountants who were instrumental to the day to day operations of the Institute in the past. A token of appreciation was presented by the President, En Ahmad Mustapha Ghazali to Ms Ho Foong Moi, (Executive Director of MIA), Ms Jeow Foong Leng, Ms Ho Foong Chin, Ms Florence Kanista Rani, Puan Norzainah Mokhtar and Ms Amanda Zoe Nathaniel.

In the end, all good things must came to an end. With sadness we depart, hopefully not from the heart...

The Institute would like to wish the above all the best in their future endeavours and wish to remind them, that they have left a legacy in the Malaysian Institute of Taxation.




# The Malaysian Self-Assessment System of Taxation : ISSUES AND CHALLENGES

By Dr. Veerinderjeet Singh and Renuka Bhupalan

**The self-assessment system of taxation is operative in Malaysia for companies with effect from the year of assessment 2001. The system will be introduced gradually to cover different categories of taxpayers, including individual taxpayers in the year of assessment 2004.**

The self-assessment system in simple terms means that taxpayers will assess their own tax liabilities and that the tax authority will accept this as correct. This is in contrast with the traditional assessment system which requires the tax authorities to check and verify all tax returns. The tax authorities will, however, carry out routine tax audits on taxpayers to ensure that they are complying with the tax law.

Several countries globally, and indeed in the Asia-Pacific region have implemented this system of taxation. The broad rationale for the self assessment system of taxation would include the following factors:

- To improve compliance by taxpayers;
- To speed up the assessment process;
- To reduce compliance costs; and
- To facilitate collection of taxes

Clearly, these objectives are applicable to the Malaysian context. Each of the objectives above naturally follow from the other. Where taxpayers are tax compliant, this would invariably result in a swifter assessment process, which would in turn reduce both the taxpayers' and tax authorities' compliance and administrative costs. The end result would facilitate swifter and easier collection of taxes by the authorities.

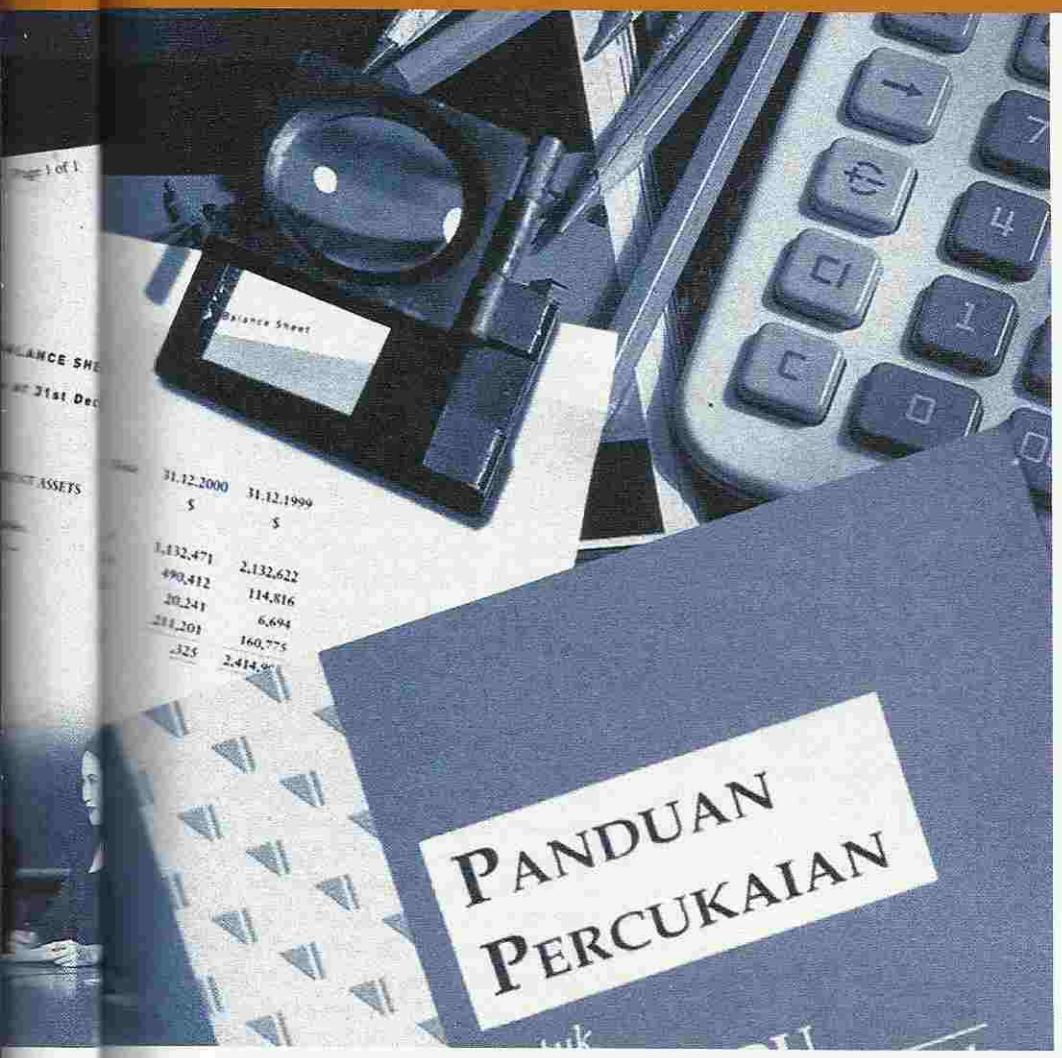
Malaysian companies have already started filing tax returns on the self-assessment basis for the year of assessment 2001. The key question is whether the tax authority in Malaysia, i.e. the Inland Revenue Board (IRB), and Malaysian taxpayers are ready for this. This article addresses some of the challenges that will be faced by the IRB and taxpayers in Malaysia in the process of implementing the self-assessment system.

It is without doubt that a starting point in working towards the successful implementation of the self-assessment system is by improving taxpayer compliance .

## Tax Compliance

Traditionally, tax authorities have only recognised two policy variables in attempts to achieve taxpayer compliance. These variables, namely penalties and increasing the probability of detection, are called on each time non-compliance is perceived to be increasing. Revenue enforcement activities are only one of the options a government has in achieving taxpayer compliance. Compliance is a "behavioural matter" and compliance in the long run is likely only to be achieved with the co-operation of the taxpayers as well as tax agents/advisers, although corrective action by the authorities is necessary from time to time. Individual non-compliance might be reduced/prevented by heavy-handed methods adopted by tax authorities, but this is not advisable at the initial phase. Overall, compliance is likely to be best achieved when taxpayers accept the tax system, which brings up the age-old question of the fairness of the tax system. Steps that may be taken to improve compliance by taxpayers are as follows:

- Informing and educating the public on all aspects of tax administration including new laws and compliance activities through good public relations;
- Providing assistance to first time taxpayers and perhaps starting an education programme for students in their final year of school to prepare them for the self-assessment system when they enter the work force;




- Evaluating existing tax forms to see whether there are better means of eliciting honest responses from taxpayers;
- Elevating services offered to the taxpayer to a higher organisational status within the tax administration so that servicing the taxpayers gets top priority;
- Improving the training given to staff providing assistance to taxpayers;
- Instituting public campaigns designed to foster compliance ethics; and
- Improving the quality of tax audits.

Acceptance by the taxpayers and respect for the tax system are the key ingredients for maximum voluntary compliance. Further, the tax authorities must offer taxpayers adequate services. In that way, taxpayers will understand the system better and not become victims of it by paying more than they should. To encourage voluntary compliance, the tax authorities should:

- Enforce a tax system that is user friendly and easy to comply with;
- Use tax audits and/or tax investigations to detect non compliance with the system; and
- Administer the law consistently, courteously, professionally and promptly.

A fairly efficient system of self-assessment will develop over several years, if these steps are carefully implemented. The end result of an efficient self-assessment system would enable the IRB to collect taxes in a cost effective way for the nation.

## The Role of the IRB

Structurally, the IRB has, through corporatisation, evolved into an entity with some form of autonomy and decision-making authority. It needs to adapt to this role and to the changes in the assessment system swiftly. The role of the IRB today can be effectively summarised (see diagram on next page) to encapsulate five key aspects — Laws, Systems, People, Service and Enforcement.

The IRB has a corporate vision to be "an organisation of people equipped, trained and committed to helping taxpayers and other clients carry out their responsibilities under the law".

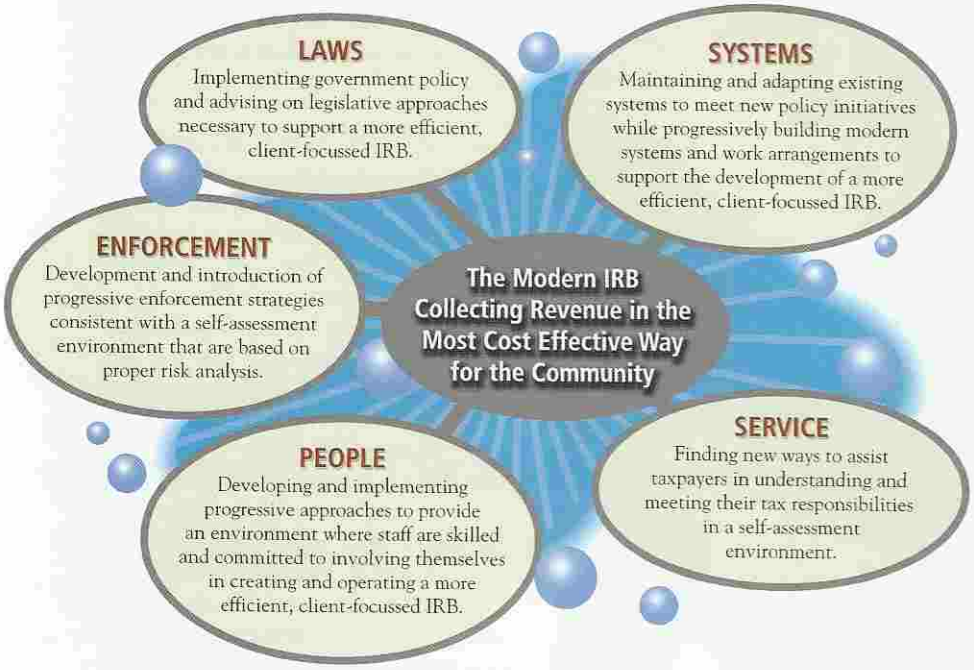
Is the IRB ready to do this? It is clear from recent developments, which will be discussed in more detail later, that the IRB is taking steps to ensure that it is able to implement its corporate vision. However, there are particular areas, which need to be focused upon by the IRB. Listed below are some of the challenges that the IRB will face in achieving its corporate vision:

### Understanding taxpayers

Arguably, it would be reasonable to state that most taxpayers are not focused on evading taxes and indeed are likely to want to comply with their obligations to the best of their ability. Where possible, they would engage tax professionals (i.e. tax agents) to assist them in this regard. Therefore, it is important that there be a level of mutual respect between the IRB and the taxpayer and/or the tax agent. The IRB needs to always be approachable and to welcome queries constructively such that taxpayers feel they can seek clarification from the IRB as and when they need to do so. In essence, the IRB must be more service orientated. In assisting taxpayers, the IRB should also endeavour to have an understanding of the taxpayers' needs and businesses and to accept that each taxpayer is different. This does not mean that different taxpayers should be treated differently, but instead that the tax treatment of transactions could be different depending on the business of the taxpayer.

### Education

In order for taxpayers to understand their obligations and to file their returns accurately, they need to be more informed. To this end, the IRB needs to disseminate information to taxpayers, be it in the form of booklets or other such publications or dialogues, whereby taxpayers are made aware of recent case law decisions, the IRB's interpretation of statutory provisions (in respect of provisions that are ambiguous), etc. The Public Rulings that have been issued by the IRB over the last year are very much appreciated and it is noted that these rulings have assisted taxpayers in a better understanding of some aspects of the Malaysian tax legislation.




Further, the IRB's web-site from which the taxpayer is able to access general information is both useful and user-friendly. Of course, the IRB should endeavour to ensure that information is placed on the website on a more timely basis. In order to ensure that taxpayers and indeed the IRB's work force adopt the same position on tax issues, the IRB should also develop the practice of issuing practice statements (as is done by some other revenue authorities in jurisdictions which operate a self-assessment system) or revenue concessions, where applicable.

The IRB must take steps to ensure that its own workforce is equipped with the necessary knowledge and expertise to assist taxpayers effectively. The need for a knowledge database accessible to IRB staff is an absolute necessity in the context of a K-Economy so that all levels of staff in the IRB are aware of guidelines, rulings, concessions, etc. It is also suggested that a joint committee be set up comprising of senior officials of the IRB and tax professionals to assist in advising the IRB on taxpayer assistance and education.

## Responsiveness

For the self-assessment system to operate effectively, responsiveness to issues and concerns raised by taxpayers, the tax profession and industry sectors is extremely important. The IRB has attempted in recent years to consult the tax profession on problems and concerns regarding several matters. This is appreciated and it is hoped that the tax profession and the IRB will continue to work closely together. However, aside from awareness, timeliness in dealing with such issues and concerns is vital to ensure the smooth operation of the self-assessment system. Steps need to be taken now in relation to developments that are affecting businesses globally as well as in Malaysia, for example, the taxation of e-commerce transactions. The Inland Revenue Authority of Singapore recently issued two guides/statements entitled "Income Tax Guide on E-Commerce" and "Exemption of Software Payments from Withholding Tax". The contents of these guides/statements are relevant to Malaysia given the increasing trend of e-commerce transactions and usage of technology. To date, the Ministry of Finance and the IRB have been silent on this area, which leads to a level of uncertainty as to how e-commerce transactions should be taxed in the Malaysian context.

In dealing with such matters, it would be useful to have joint advisory committees set up comprising the IRB, tax professionals and representatives from relevant sectors of the economy. Such committees would be in a better position to address business and industry developments and to look into tax related issues. In Canada, for example, a joint advisory committee has been set up on international tax issues.

## Technical Matters

As with all legislation regardless of the jurisdiction, there will always be areas of uncertainty as to what the correct "technical" interpretation of the law is. To this end, the IRB should take an active role and provide taxpayers with clear guidelines as to how the IRB interprets these areas of uncertainty. Clearly, any such interpretation would have to be supported by the written law and case law precedents. As mentioned above, the recent Public Rulings issued by the IRB have been informative and helpful. It is hoped that the IRB will continue to issue such rulings to avoid the indiscriminate application of the law, and to create a greater awareness amongst taxpayers of the law, and where applicable, the IRB's concessions. It should be noted however that there are several areas where technical positions have not been documented. Some of theses areas are highlighted below:

- The issue of interest restriction and the attribution of restricted interest expense. To-date, the cases decided (*P Securities Sdn. Bhd. v. Ketua Pengarah Jabatan Hasil Dalam Negeri*[1] and *MP Holdings Sdn. Bhd. v. Ketua Pengarah Hasil Dalam Negeri*[2]) contradict the IRB's guidelines;

- For the leasing industry, the issue of the allocation of common expenses between leasing and non-leasing activities. Again, case law in this area (*DL Sdn. Bhd. v. Ketua Pengarah Hasil Dalam Negeri*[3]) contradicts the IRB's practice;

- For the financial services industry, the issue of the treatment of the amortisation of premiums/accretion of discounts on securities remains uncertain;

- Transfer pricing methods – although this is an area that the IRB is focusing on more regularly in tax audits and investigations, guidelines on acceptable transfer pricing policies have yet to be issued.

Footnotes:
1. (1995) 2 MSTC 2,256(SC)
2. (2000) 3,115(SC)
3. (2000) MSTC 3,823(HC) (1997) MSTC 2,854(SC)

Given that some companies have filed and others will soon be filing their first self-assessment returns, certainty as to the application of the law is vital.

The introduction of an advance ruling system is one that merits serious consideration by the IRB. To achieve this, the IRB should explore the possibility of outsourcing the relevant background research and drafting of rulings, in view of the lack of adequate manpower resources in the IRB. In Australia, the Australian Tax Office outsources the preparation of rulings with regard to the Goods and Services Tax.

### Administrative matters

Aside from the above, effective administration of the system is vital to ensure maximum voluntary compliance by taxpayers. To start with, the return form itself should be user-friendly and easy to access via the IRB's website together with the relevant explanatory notes.

It is noted that in designing the return forms for the self-assessment system, due consultation was sought. The IRB has provided a soft copy version of the return form, but not for the work-sheets nor the attachments required to be completed and maintained under the self-assessment system. Given the intention to move towards electronic filing of returns in the future, it is important that the soft copy version of the work-sheets and attachments be made available to enable taxpayers to prepare the returns efficiently. While these documents may not actually require filing with the IRB, these are nonetheless required to be kept by taxpayers. In addition, the Form R (the form for monitoring taxpayers' dividend franking balances) should also be available in this manner.

Before the administration can move to the eventual proposed electronic filing of tax returns, it is essential that the matters set out above be addressed. Having a soft copy version of all the relevant forms would reduce compliance costs in the future.

### Appeals and "back-log" cases

Under the self-assessment system, the responsibility for assessing tax liabilities rests with taxpayers. However, taxpayers would have difficulty in accurately computing their tax positions where they have outstanding appeals with the IRB in relation to earlier years of assessment. Indeed, there are many cases where the IRB has not yet been able to review returns for earlier years of assessment, which would commonly be referred to as "back-log" cases. It is, of course, noted that with respect to outstanding appeals, taxpayers are also to be blamed for occasions when they have been slow in responding to the IRB's queries and in lodging detailed appeals. However, the IRB too, due to the lack of resources or other factors, is at times slow to deal with such appeals, and "back-log" cases. It is essential that such appeals and "back-log" cases are dealt with speedily to allow both the IRB and taxpayers to focus on the successful implementation of the new tax system. Settlement of outstanding matters on a timely and reasonable basis is essential to encourage voluntary compliance.

**Compliance is a "behavioural matter" and compliance in the long run is likely only to be achieved with the co-operation of the taxpayers as well as tax agents/ advisers...**

In attempting to settle such matters and to reach resolutions, the IRB should endeavour to have an understanding of the overall facts and the prevailing business scenario. Taxpayers in turn need to be reasonable and to provide information promptly and accurately if they wish to see outstanding matters resolved. With self-assessment, taxpayers must realise that in the event of a tax audit, they would need to have information available immediately upon request by the IRB, and accordingly should ensure that supporting documentation and information is easily available and accessible at all times.

### Enforcement policies

In order to ensure that taxpayers voluntarily comply with the law, and for the self-assessment system to function effectively, proper enforcement is vital. The system therefore has to include an audit process as well as a penalty regime. The manner in which audits are carried out and penalties enforced must be both transparent and consistent.

Further, enforcement policies and strategies must be clear and should be communicated to taxpayers and tax professionals alike.

It is clear that the IRB has a crucial and significant role to play in implementing a successful and efficient self-assessment system. However, this responsibility also extends to tax professionals and taxpayers.

## The Role of Tax Professionals

### Exercising care

Tax professionals have a significant role in assisting taxpayers ("clients") in understanding their statutory tax obligations and meeting these obligations. The self-assessment system does not change the role of tax professionals per se, as tax professionals should at all times assist their clients in a professional and ethical manner. With the introduction of the self-assessment system, a new provision has been introduced in the *Income Tax Act*, 1967 which effects tax professionals and taxpayers alike. This is the much debated sec. 114(1A). This provision imposes significant penalties on *"any person who assists in, or advises with respect to, the preparation of any return which results in an understatement of the liability for tax of another person ... unless he satisfies the court that the assistance or advice was given with reasonable care ..."*

This provision, apart from setting out the penalties, formally documents that tax professionals basically have a duty of care to their clients. Arguably however, this duty of care has always existed under common law, and tax professionals would exercise reasonable care in the course of providing their services. The Public Ruling 8/2000 on "Wilful Evasion of Tax and Related Offences" spells out this duty in the form of various examples, but does not define what is meant by the term "reasonable care". The question of whether or not sec. 114(1A) imposes a burdensome duty on tax professionals and the question of what is "reasonable care" is not discussed in this article. Instead the focus here is that tax professionals must provide assistance to their clients by exercising due care. This would entail advising clients soundly

as to the tax treatment of income, expenditure, incentives, and so on. This would also include reviewing documentation and questioning clients appropriately to ensure that reasonable and supportable tax positions are taken.

### Professional Conduct

The importance of tax professionals observing a professional code of conduct and ethical rules is necessary to ensure the successful operation of the self-assessment system. This clearly applies to the IRB as well as to tax professionals. To this end, it is desirable that a single professional or regulatory body be set up to regulate its members (i.e. the tax professionals). Such a step would ensure that there is consistency in the interpretation and application of the ethical guidelines/code of conduct. This body should have representation from the IRB, the Ministry of Finance and the tax profession. It should look into and govern matters of ethics, as well as matters concerning underlying qualifications required of tax professionals or tax agents. This would ensure that a certain level of quality is maintained and that taxpayers are represented effectively.

## The Role of Taxpayers

### Honest disclosure

The self-assessment system presupposes that taxpayers will be honest in preparing and filing their tax returns. If this basic premise does not exist, the system will not work. Taxpayers therefore have a duty to ensure that they provide full and honest disclosures in their tax returns.

### Education

Taxpayers will determine their own tax liabilities under the self-assessment system, and as mentioned above, in order to do this, they have to be well-informed. Ignorance of the law will not be an excuse in the event that the IRB discovers that returns have not been accurately filed. Therefore, taxpayers should make a concerted effort to ensure that they understand both their tax filing obligations and the law as it applies to them. Where necessary, they should seek the assistance of tax professionals.

### Timeliness

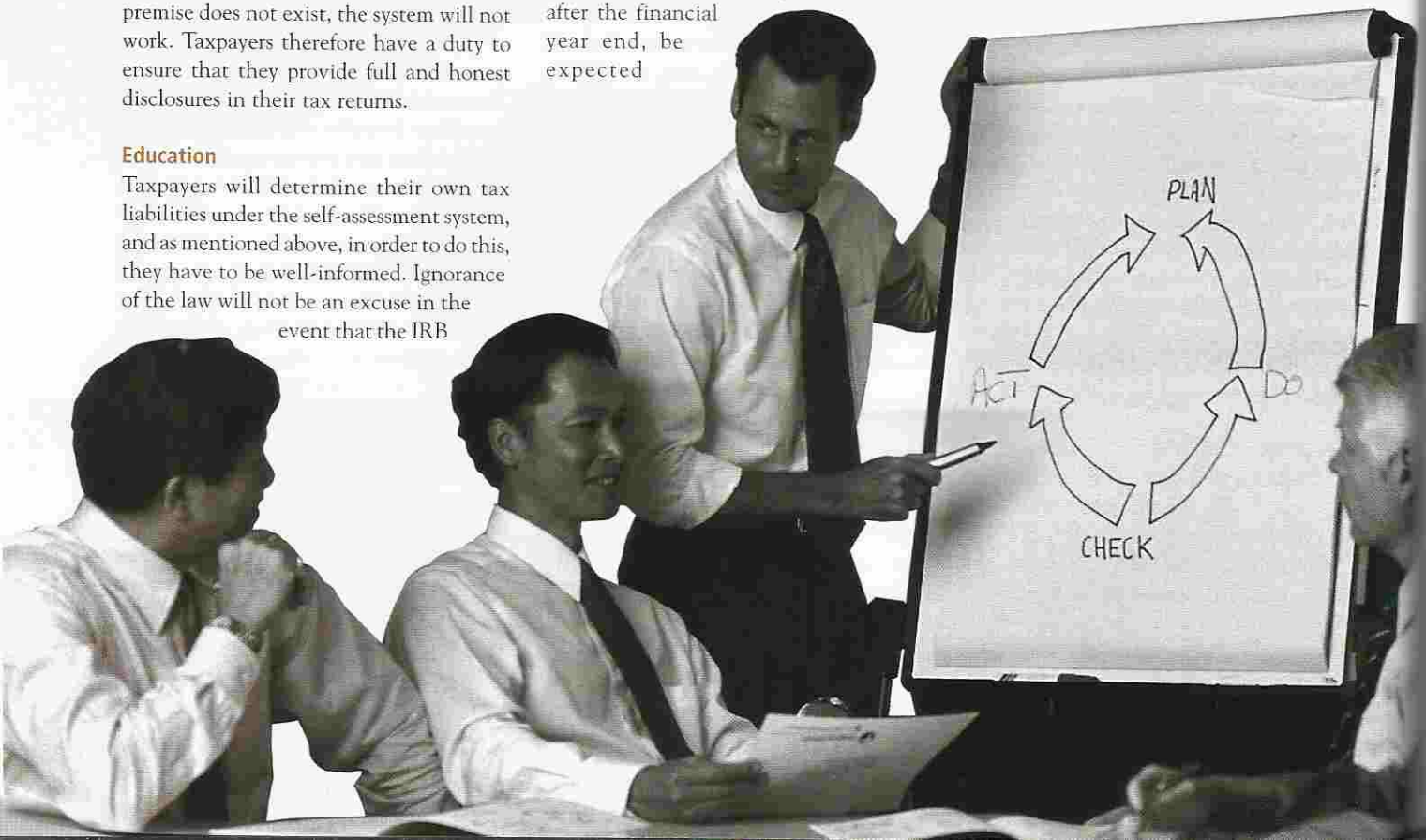
Compliance by taxpayers requires them to be timely in filing returns, submitting estimates, making payments, etc. Taxpayers must assist the IRB in this regard and adhere to the time frames within which they are required to meet their obligations. Where taxpayers are remiss in doing this, it would be both unfair and unrealistic to expect a speedier assessment process. Having said this, it should be noted that with a time period of six months after the close of the financial year to file tax returns, it is quite obvious that there will be situations where there will be non-compliance with the filing deadline. The IRB should realise that within six months of the year end, a company has to finalise the accounts, get the statutory audit completed, hold an annual general meeting to adopt the accounts, file the accounts with the Registrar of Companies (ROC) and then prepare a tax computation/return and submit it to the IRB. How can a company which has yet to finalise its accounts and which has obtained an extension of time from the ROC to file its audited accounts in, say, nine months after the financial year end, be expected to file a tax return (which has to be based on the audited accounts) within six months of the year end?

Finally, if tax instalments are being collected monthly, why is there an urgency to force the filing of tax returns with six months? Will tax audits be carried out on a timely basis and will taxpayers know for sure that their tax position has been finalised within six months (or a year) of filing returns?

### Accuracy

As part of the self-assessment system and mechanism for collecting taxes, taxpayers are required to provide the IRB with an estimate of the chargeable income and tax payable 30 days before the start of the relevant financial year. This requires taxpayers to forecast results with a reasonable degree of accuracy, which often may not be possible.

This requirement assumes that companies can forecast results with reasonable accuracy. In practice, this is often impossible. What is disturbing is that the estimate cannot be less than that of the preceding year of assessment. This seems to go against the very essence of self-assessment where taxpayers are empowered to determine their tax liabilities.



If the requirement that the estimated tax liability cannot be lower than the liability in the preceding year of assessment is to stay, then due cognizance of the following must be taken:

- not all companies make profits all the time. Some sectors of the economy are subject to external factors in terms of prices and currency fluctuations. As such, there must be a provision (administrative or otherwise) to allow a company to forward a nil or low estimate even though there was tax liability in the preceding year of assessment;
- a revision of the estimate should be allowed quarterly or at least twice a year (preferably within the first six months and the next six months of the financial year). This will allow companies to incorporate recent developments in their profit/loss situation;
- the need to forward estimated tax liability will increase tax compliance costs and as such, flexibility must exist in the system; and
- it is inequitable to force a taxpayer to pay tax instalments for six months when the taxpayer can estimate that there is unlikely to be any tax payable for that year of assessment (due to the fact that the taxpayer expects losses to be incurred for the relevant year).

### Adequate records

Tax audits will become routine and taxpayers need to adapt to this. Where tax audits occur, taxpayers will have to ensure that they have adequate records and documentation to support positions taken in their tax returns. The IRB has issued Public Rulings (Nos. 4/2000 and 5/2000) on "Keeping Sufficient Records". Taxpayers should ensure that they are familiar with the requirements as set out in the Public Rulings and adhere to these.

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Note: The views expressed in the article are the personal views of the authors.

## Conclusion

The self-assessment system should achieve its desired purpose if the above challenges are addressed and built upon. It is interesting to note that the Institute of Chartered Accountants of England and Wales launched a discussion document (on 20 October, 1999) which summarises a "ten point plan" towards a better tax system. These points, which are set out below are relevant to the successful implementation of the self-assessment system in Malaysia:

| | |
|---|---|
| **Statutory** | All tax rules must be enacted. |
| **Certainty** | Application of all tax rules must be certain. |
| **Simplicity** | Tax rules must be understandable and clear in their objectives. |
| **Easy to collect and calculate** | This would ensure minimal compliance and administrative costs. |
| **Properly targeted** | Anti-avoidance rules/legislation should be properly targeted to close specific "loop-holes". |
| **Constant** | There should be minimum changes to underlying rules. |
| **Consultation** | Adequate time should be given and full consultation sought to ensure that legislation is properly drafted. |
| **Regular Review** | Rules should be reviewed regularly to ensure their continuing relevance. |
| **Fair and Reasonable** | Powers should be exercised fairly and reasonably with appropriate rights of appeal. |
| **Competitive** | Taxes, while essential for raising funds for the government, must also be competitive in that these should be framed to encourage investment. |

All of the above points are important in ensuring the success of the self-assessment system. As a starting point however, certainty of the law is of utmost importance and is the hallmark of an effective self-assessment system. The responsibility for attempting to achieve the level of desired certainty should be spearheaded by the IRB but should not rest on the IRB alone. The tax profession has a role to play by working closely with the IRB, and lending support to the IRB where possible. For the profession to assist in this regard, the IRB should continue to actively seek input from the profession.

While the IRB, taxpayers and tax professionals all have roles to play in ensuring the success of the self-assessment system, arguably, the most important role rests with the IRB. As mentioned at the outset, the IRB has a corporate vision of being an organisation of people equipped, trained and committed to helping taxpayers and other clients carry out their responsibilities under the law. To achieve its corporate vision, the IRB has to move towards becoming a modern tax authority, which is service orientated and enforces tax laws and collects revenue in the most cost effective way for the community in the context of the tremendous strides being made in the use of information technology. Tax professionals and taxpayers must also share this responsibility and assist, where possible, in enabling the self-assessment system to function effectively — we have to get it right!

This article has been developed from the following sources:
a) Presentation by Dr. Veerinderjeet Singh at the National Tax Conference 2001 on 3 July 2001.
b) A chapter entitled "Issues Relating to Self Assessment in Malaysia" by Dr. Veerinderjeet Singh in a forthcoming book on Compliance Costs.
c) "Self-assessment System — Getting It Right" by Dr. Veerinderjeet Singh published by CCH in the Malaysian Tax Briefing, Issue No. 6, Jan/Feb 2000.

# Self Assessment Tax System

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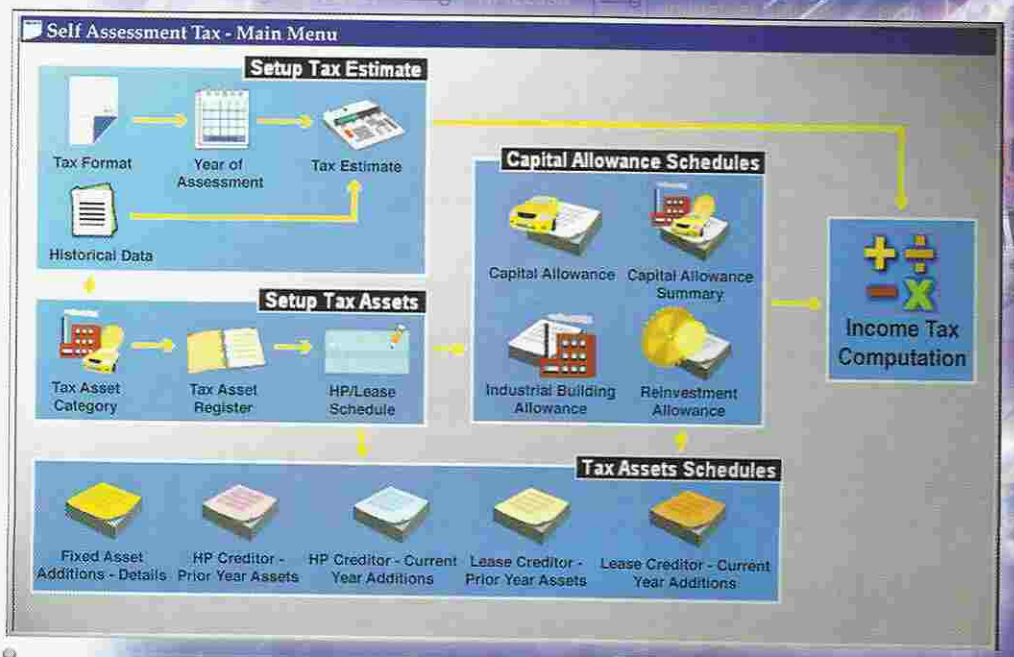


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# New Developments To The Form R For YA 2001

The cash flow advantage, which has been enjoyed by companies since 1967, is set to come to an end with the coming of Year of Assessment 2001.

In the past, a company would submit the old Form R and wait till the IRB issued a Form S to recover the shortfall in sec. 108 credit, whenever the tax portion on the dividends paid or credited are in excess of balance in sec. 108 account. In practice this could take years before the Revenue discovered the shortfall. Even then the companies were given 44 days grace period to make the payment without any penalty being levied.

This practice has come to an end with the New Form R, which is effective from Year of Assessment 2001. Now penalties will be levied for failure to account for the shortfall on time.

The Inland Revenue Board has gazetted a new Form R, which has to be submitted with the companies annual tax return i.e. Form C.

Companies resident in Malaysia, including those who elect under the Malaysia-Singapore tax treaty to be Malaysian tax resident are now required to submit the new Form R.

**Six Month Rule**

The new Form R has to be submitted within six months of the close of the company's financial year end. Failure to do so will expose the company to a fine of RM200 to a maximum of RM2,000. In addition 10% penalty is payable on the balance of the excess unpaid on the expiry of the sixth month.

Where no Form R is submitted and upon determination by the Director General there is an amount of excess due, the Director General may impose a penalty equal to the amount of the excess.

Where there is a change in the accounting date and two sets of accounts are prepared, that forms the basis period for that year of assessment, the Form R is to be submitted within six months of the end of the second set of accounts.

**Year of Assessment 2001 & Subsequent Years of Assessment**

The credit brought forward for the purposes of the new form is the balance in the sec. 108 account up to and including Year of Assessment 2000 current year basis.

If the first year of assessment is Year of Assessment 2001 then the balance brought forward is nil.

The credit for the basis period will be the amount of tax paid (excluding penalties) in the basis period including credit due under sec. 110 of the *Income Tax Act* ("The Act").

**Actual Payment For The Basis Period**

Only Actual payments and sec. 110 credit during the basis period are included into the new sec. 108 account. Previously it was tax payable.

For example:

A Berhad closes its accounts for the year ended 30th June 2001. The basis period is from 1st July 2000 to 30th June 2001.

Tax is payable at RM10,000 per month for 12 months under the instalment scheme. As only eleven instalments have been paid up to 30th June 2001, only RM110,000 will be included in the new sec. 108 account.

The last instalment paid on 30th July 2001 will be included in the sec. 108 account for the Year of Assessment 2002.

The amount paid under the pay and file regime is also taken into account when paid.

### Advance Payment In Investigation Cases

Where advance payments are required in cases that are under investigation and no notice of assessment has been issued, the payments are only brought into account when the notice of assessment is issued for the relevant year of assessment.

### Section 110 Credit

The amount of sec. 110 credit is after sec. 6B rebate and sec. 132 or sec. 133 credit. Section 6B rebate is in respect of tax rebate on loans to a small business. Section 132 credit is in respect of double tax agreements. Section 133 is for unilateral tax credit from double taxation.

### Section 110 Credit Subsequently Amended

Where the sec. 110 is subsequently amended and additional tax is payable, the additional payment is not credited to the new sec. 108 account. For example:

| | RM |
|---|---|
| Tax payable | 50,000 |
| Less sec. 110 credit | (56,000) |
| Tax Repayable | (6,000) |

If subsequently the assessment is amended, the revised computation will include the earlier repayment.

| | RM |
|---|---|
| Tax payable | 50,000 |
| Repayment | 6,000 |
| | 56,000 |
| Less amended sec. 110 credit | 52,000 |
| Tax payable | 4,000 |

The RM4,000 when paid is not to be included into the sec. 108 account as it had already been included before.

### Before Year of Assessment 2001

The Companies Branch is expected to confirm the actual amount of sec. 108 credit in the old account up to and including Year of Assessment 2000 current year basis. Taxpayers should follow up with the respective companies branches to ensure that the actual amount is ascertained.

### Certification

The new Form R has to be certified by directors, secretaries, managers or other principal officers of the company in Malaysia.

### Form R

A sample of Form R is attached below:

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The completed Form R has to be submitted to:

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Kompleks Bangunan Kerajaan
Jalan Duta
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50990 Kuala Lumpur

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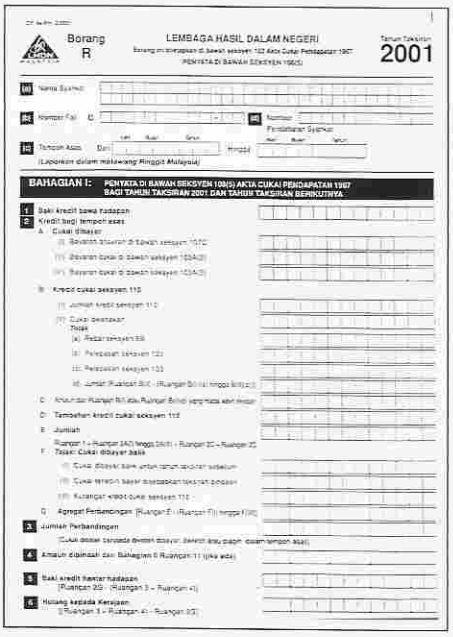
Borang R
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Tahun Taksiran 2001
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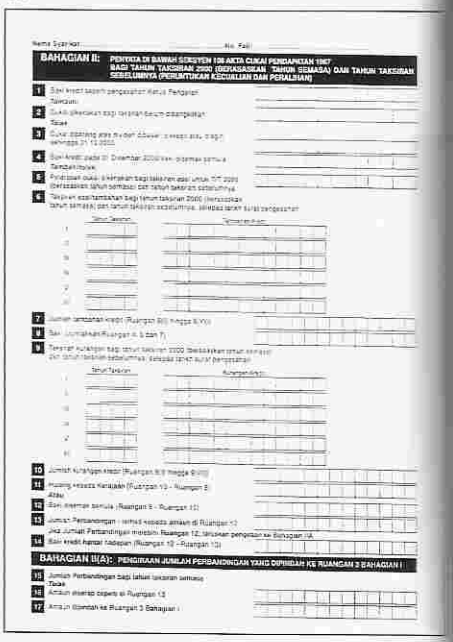
BAHAGIAN II: PENYATA DI BAWAH SEKSYEN 108 AKTA CUKAI PENDAPATAN 1967 BAGI TAHUN TAKSIRAN 2001 (SELEPAS KAJIAN) DAN TAHUN TAKSIRAN SEBELUMNYA (PERUNTIKAN KECUALIAN DAN PERALIHAN)

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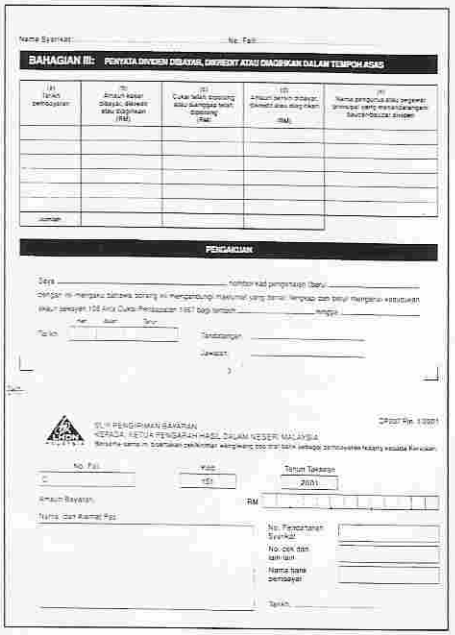
BAHAGIAN III: PENYATA DIVIDEN DIBAYAR, DIKREDIT ATAU DIAGIHKAN DALAM TEMPOH ASAS

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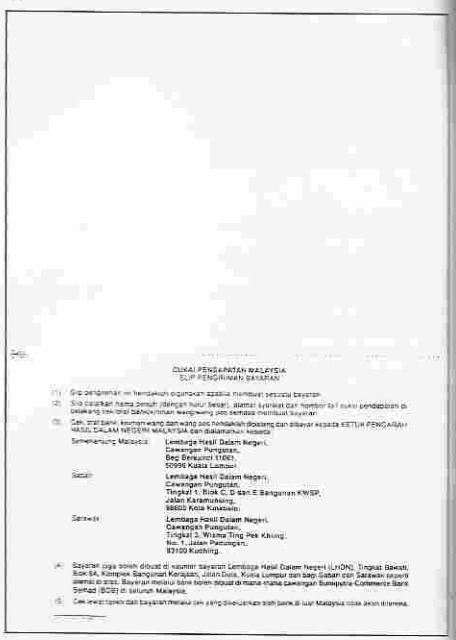
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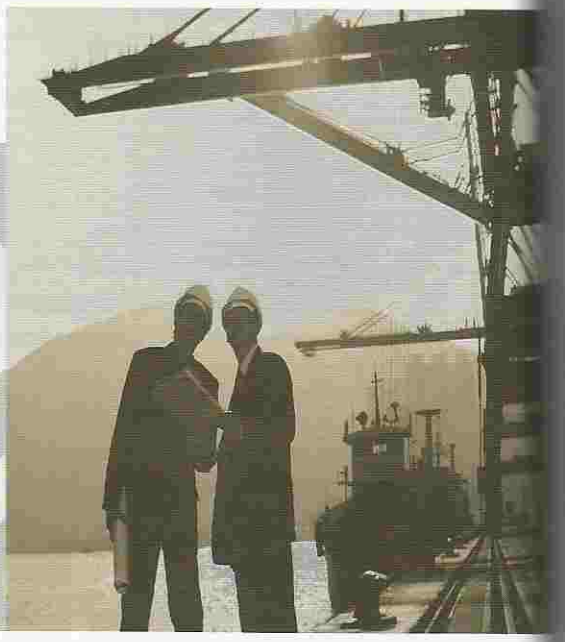
## Management Services and Service Tax

# The Case Of Sarawak Shell



By En. Mokhtar Mahmud

"Management Services" has long been an outstanding issue, not so much for the fact that there is no definition of the term in the Service Tax Act, 1975 ("STA") but more so for its generality, as viewed by the Service Tax authorities. According to the authorities, management services is all-encompassing, that anything done on behalf of any other person would appear to be management service. Since the time that "management service" was first characterised to be a taxable service in the Budget of 1998, attempts at clearing and defusing the confusion regarding the definition has been merely at discussion level.

As to why this has been such an issue may be attributed to the fact that many companies, especially multi-national corporations or localised Group of Companies, for reasons of business or economics, prefer to share cost for certain common services. For example, a joint venture (JV) consisting of a number of companies may operate in a way that appears to be providing management service (as seen by the tax authority) while in actual fact it is not. Such services which may be expensed appropriately among JV partners may run into fairly large sums of money. Hence the concern of both the business as well as the tax authority.

The tax authority has defined administratively that management services refer to services rendered in respect of managing the operations of businesses (of another person, company, etc.). Such services (and the scope is inexhaustible) include:

1. **Corporate Affairs Management**
   - Coordination of Group-Wide Strategic and Business Planning
   - Coordination of Group-wide Management Policies
   - Monitoring of Group-Wide Performance and Coordination
   - Mergers and Acquisitions
   - Privatization Proposal/Studies
   - Feasibility Studies

2. **Human Resource Management**
   - Management/Organization Studies
   - Compensation Structures
   - Group Key Manpower Planning and Control
   - Recruitment of Key/Senior Management Staff (Grade E2 and above)
   - Training Planning and Administration
   - Group Manpower Development and Planning (at Group Planning Center)

3. **Internal Audit**
   - Financial Audit
   - Management Audit
   - EDP Audit
   - Special Investigations

4. **Management Information Systems**
   - Group Management Information Services
   - Support in EDP System Development and Implementation
   - Office Automation

5. **Productivity & Quality Improvements**
   - Productivity Improvement and Control Programs
   - Quality Management
   - Customer Services Enhancement
   - Operational System and Control

6. **Administration/Secretarial**
   (secretarial services cover services provided by company secretaries, accountants, lawyers, etc)
   - Accounting
   - Liaison with Government/Other Agencies
   - Filing of Statutory Forms and Returns
   - Maintain and Update Statutory Records
   - Preparation of Agenda and Issue Notice of Statutory Meeting, and Board Resolutions
   - Attending to Share Registration

7. **Sales and Marketing Management**
   - Formulation of Marketing Plans/Strategies
   - Planning/Coordination of Promotion Materials
   - Set Up Sales Offices
   - Coordinate with Lawyers on Sale & Purchase Agreement
   - Assist in Billing/Debt collection

8. **Property Management**
   - High-Rise Building/ Condominiums
   - Business Centre/Shopping Complexes
   - Stadium/Sport/Exhibition Complexes

9. **Financial Management**
   - Prepare/Manage Accounting System and Reports
   - Tax Administration
   - Budgetary Controls
   - Prepare Payments, Banking Documents and Management of Cashflow
   - Monitoring Utilisation of Banking Facilities

10. **Asset Management**
    - Receivers
    - Liquidators

11. **Preliminary Development Services**
    - Feasibility Study/Investigation and Research
    - Recommendation/Proposal
    - Preparation of Agreement

12. **Project Management Services**
    - Management Facilities
    - Project Planning and Control
    - Project Implementation and Administration
    - Coordination with Relevant authorities — for approvals, certificates, etc.
    - Supervision
    - Regular report on work progress

13. **Construction Management Services**
    - Establish Tendering Procedures
    - Call for Submission of Tender Quotations
    - Coordination with Relevant Authorities for Inspection of Sites, etc.
    - Overall Administration of Progress and Collection of Contract Works
    - Monitoring Costing and Site Expenses
    - Control and Supervision at Site

### History

The *STA* was introduced as a means of empowering the collection of service tax as government revenue. Initially service tax was a tax imposed on certain services such as hotels and restaurants, but over the years the scope of the tax has been extended to a wider range of services. In a bid to extend the tax net, certain services such as "management services" have been included. It has been said by tax gurus that since tax is a revenue law it has to be specific, and adherence to strict interpretation of the law is the rule. The same cannot be said for service tax.

In the 1998 Budget, the definition of taxable services was expanded and it provided for all types of management services including project management or project coordination. This extension of the tax net, though probably well-intended led to much confusion, especially when such services were provided by a Group of Companies.

## The Sarawak Shell Case

The tax authority had maintained all along that such services provided by Group of Companies were subject to service tax while the service providers maintained otherwise. This issue however, has recently been argued and decided upon in the High Court in the landmark case of *Sarawak Shell Berhad & Sabah Shell Petroleum Company Limited v. Minister of Finance*.

### Background

In the said case, *Sarawak Shell Berhad & Sabah Shell Petroleum Company* ("the Applicant's") applied for an order of certiorari to quash the decision of the Minister of Finance that services provided pursuant to a Production Sharing Contracts were liable to service tax under the *STA*. The Applicants had earlier on appealed to the Customs, arguing that such services were not subject to service tax. The Customs rejected this appeal and informed the Applicant's that all types of management services provided to group companies in oil and gas exploration and production and under Joint Operating Agreements or Production Sharing Contracts were subject to service tax.

Briefly the facts of the case are as follows:

The Applicants were companies in the business of exploration and production of crude oil and natural gas, the refining of crude oil and the manufacture of petroleum products. Under a Production Sharing Contract, the Applicants and other joint venture partners would sign a Joint Operating Agreement which stipulated the rights and obligations of the parties involved. The joint venture partners of a Production Sharing Contract would also agree amongst themselves as to the services required by them and where the services were provided by the Applicants as operators of the Production Sharing Contract, the cost of those services were to be shared between the Production Sharing Contractors on a "no-profit no loss" basis and without any mark-up or profit levied. The purpose of such cost sharing initiatives were for cost reduction and efficiency.

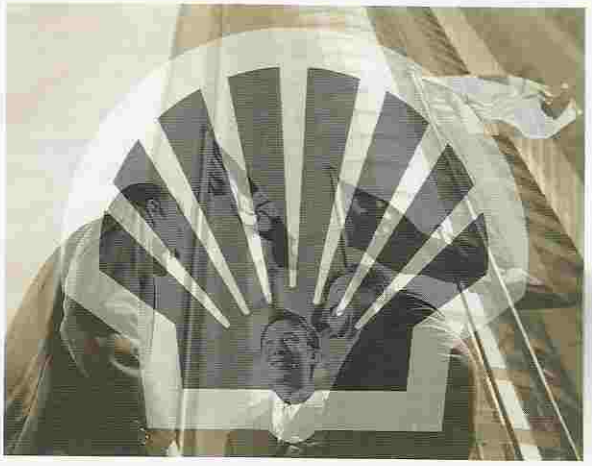
The Applicants had contended that in a production sharing contract, the costs of services were shared between the Production Sharing Contractors on a no-profit, no loss basis with no mark-up or profit levied. They were not in the business of providing management services and therefore such management services and project management provided to the other JV partners were merely services incidental to the Applicants' business of exploring and producing crude oil and natural gas.

### The Issues

The issues in this case center on two points, ie:

- The interpretation of sec. 7, *STA* which is the enabling provision that imposes a liability to pay service tax, and

- A specific chargeability within the scope of the enabling provision. Section 7 stipulates that service tax shall be charged and paid by any person who carries on a business of providing taxable service referred to in sec. 3(a) or selling or providing taxable goods referred to in sec. 3(b). (Note. sec. 7 was amended effective 1.1.2000 to read "Subject to this Act, service tax shall be charged on and paid by any taxable person who carries on business of providing taxable service referred to in Section 3". By virtue of an amendment to sec. 3 itself, sec. 3 reads "Service tax shall be charged and levied in accordance with this Act on any taxable service provided by any taxable person, except exported taxable service.")



**The Decision of the High Court**

The learned Judge remarked that the essential statutory requirement under the *STA* is that the Applicants must carry on the business of providing taxable service and it is for the Court to determine whether or not the Applicants carry on the business of providing taxable services. Citing several cases, he concluded that the Applicants were not carrying on the business of providing management services within the scope of sec. 7. His conclusion was based on the interpretation of sec. 7 and in particular the phrase "carries on business". The meaning of "business" and "carries on business" have been considered in various Malaysian cases. In the case of, *Dewan Perniagaan Bumiputra Sabah v. Ketua Pengarah Hasil Dalam Negeri* (1996) 2 AMR 2594, the learned *Ian H C Chin* J. interpreted the word "business" as follows:

"An essential element of business or trade within the meaning of the *Income Tax Act, 1967* is the expectation of a profit by the party involved in it."

In this case, the emphasis is on the expectation of making profits as being the main factor. In another cited case, *Haji Abdul Ghani Bin Ishak v. PP* (1981) 2 MLJ 230, the learned judge drew attention to the definition of business in the case of *Smith v. Anderson* which was held to be anything which occupied the time and attention and labour of man for profit.

The learned judge also referred to the case of *A Lewis and Company (Westminster), Limited v. Bell Property Trust, Limited* (1940) 1 Ch 345 where it was held that that the tea-shop does not carry on the business of a tobacconist or the business of selling tobacco, cigars or cigarettes any more than it carries out the business of retailing milk because in the course of its business, it sells milk. In the Lewis case the tea-shop sold cigarettes in the course of its business and the question was whether this was a breach of covenant in the lease that the premises could not be used for the business of selling tobacco, cigar and cigarettes.

Based on the interpretations given to the term "business" in the decisions cited above, the judge in this case held that the Applicants were merely providing incidental management services and as such, the Applicants were not carrying on the business of providing management services. The learned judge proceeded to set out four relevant factors in determining whether a company was carrying on a particular business for the purpose of triggering the application of sec. 7:

1. profit motive;
2. services provided to the public;
3. activities which are part of or in course of a business constitute separate business; and
4. principal or primary objects for which the companies are formed as set in the M&A.

## Conclusion

It is without doubt that the prerogative to tax belongs to the tax authorities. Nevertheless, due consideration showed be given to the principle of taxation. Musgrave and Musgrave in *"Public Finance, Theory and Practice"* (McGraw-Hill, Inc., 1989) postulates certain requirements for a "good" tax structure. Among others:

- Taxes should be disclosed so as to minimize interferences with economic decisions in otherwise efficient markets. This is to minimize "excessive burdens".
- Tax system should permit fair and non-arbitrary administration.
- Tax system should be understandable to the Taxpayer.

From this case – a valuable lesson is learnt, that in administering revenue law it is better to be narrow but specific rather than wide but ambiguous.

Editors note: The Minister of Finance has lodged an appeal to the Court of Appeal.

**The Author:** En. Mokhtar Mahmud worked in the Customs Department since 1973. Upon his optional retirement, he took up employment with PW as a Managing Consultant in the Indirect Tax Advisory Group in 1996. After 2 years with PW, he and his partner set up their own Indirect Tax Consultancy Practice (Top Tiers Services Sdn Bhd).

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*William Thien*, BSc (Hon), GDPM, is a human resource management trainer and consultant with Effective Outsource Networks, a human resource consultancy and training facility. Mr Thien has worked in the shipbuilding, construction and the hotel industries, carrying a wide variety of portfolios in the area of HR management & development. His work with EON reflects his wide and in-depth hands on experience in HR management, which includes the development and implementation of strategies in the areas of employee relations, compensation and benefits, performance management, recruitment and employee welfare.

Mr Thien is also the main author of **"The Hands on Guide HR Manager, Singapore"** and **"HR Letters Forms & Policies, Singapore"** published by CCH Asia Pte Limited.

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# Is the Definition of "Exported Services" in the Act Sufficient?

By Koh Siok Kiat

SERVICE TAX IS A CONSUMPTION TAX LEVIED ON CERTAIN SERVICES PRESCRIBED TO BE TAXABLE. TAXABLE SERVICES THAT ARE DEEMED TO BE EXPORTED ARE NOT SUBJECT TO SERVICE TAX.

Prior to 25 Oct 1996, there was no provision explaining the term "exported service". The test for whether services were exported was determined by the physical location of where services were *performed*. Services were deemed exported if they were performed outside Malaysia.

Through *Act 557 (Finance Act 1997)*, a definition was introduced for exported services. This definition contains two conditions wherein services are deemed exported. However in its treatment and implementation of exported services, the Royal Customs & Excise Department ("Customs") also considered where the services were *consumed*. The practice followed by the Customs is that services are deemed as exported if consumed outside Malaysia. This condition is not to be found anywhere in the legislation. Hence uncertainties and ambiguities arise as to when services are deemed to be exported.

This article intends to examine the ambiguities arising from the different approaches taken in the treatment of exported services, by the Customs.

### Extended Scope of Services

When it was first introduced in 1975, the service tax legislation only covered the provision of accommodation, food and entertainment.

As the government intended to increase its revenue from indirect taxes and also to eventually introduce a broader base Value Added Tax (VAT), the scope of service tax was extended to cover professional services in the 1992 Budget proposal.

The extended scope of services covered the services of accountants, lawyers, engineers, architects, surveyors and valuers, private hospitals, motor vehicle service centers, forwarding agents, insurance companies, consultancy firms and those dealing in or providing advertising services.

### Customs Guide Book – Service Tax Procedure

As a result of the scope of the service tax being extended to cover professional services, the Customs found it necessary to publish in April 1992 a guide book on service tax procedures ("guide book"). On the issue of the export of services, it was stated in this guide book that:

" The *Service Tax Act 1975* shall apply throughout Malaysia excluding Langkawi, Labuan and Free Zones. These excluded areas are therefore *free* from service tax. As such, any prescribed services provided by any person in these areas are not subject to service tax. Any prescribed services provided by any person from other parts of Malaysia to these areas will be regarded as *export* and *will not be liable to service tax*."

Hence it appeared that any taxable service provided to Langkawi, Labuan, Free Zones or any place outside Malaysia would not be liable to service tax, even though there was no definition of "export" whatsoever in the *Service Tax Act or Regulation 1975*.

### Interpretation by the Customs

Prior to 25 October 1996, there was no official definition of exported services. Administratively the Customs in determining whether services were exported or otherwise, based it on the *physical location* where the services were *performed*. Only services performed outside Malaysia were deemed to be exported. As such services provided for clients located in Langkawi, Labuan, Free Zones or overseas if performed by a service provider in other parts of Malaysia were still taxable. The explanation given by the Customs in support of its standpoint was as follows:

"Services being intangible cannot be equated to goods. For goods, the physical movement of import and export can be physically monitored and observed. Whereas services, for example accommodation in a hotel, medical treatment in a private hospital, accounting and auditing services, surveying services, litigation services in a court of law, servicing of motor vehicles etc., cannot be brought into Langkawi, Labuan, the Free Zones or any place outside Malaysia in a similar manner as goods. The provision of these services is *in situ*. It is provided in the place where it is performed and completed where it is performed and unable to be brought anywhere. Thus when it is mentioned that services brought into Langkawi, Labuan, the Free Zones or any place outside Malaysia were exported, it means they must be performed *physically* in these areas. In conclusion, only services physically performed in these areas are non-taxable."

The above treatment of exported services by the Customs, seems to be in contradiction of the guidelines set out in the guide book.

### Application of Service Tax Act 1975

Going back to the principle of the applicability of the *Service Tax Act 1975*, sec. 1 clearly states that *the Act shall apply throughout Malaysia, excluding Langkawi and Labuan*; and similarly sec. 2A provides that *a Free Zone shall be deemed to be a place outside Malaysia.* To this end, services performed in Langkawi, Labuan, Free Zones or outside Malaysia are not within the *jurisdiction* of the Act. The contention as to whether the services are exported or otherwise does not arise as service tax is not applicable.

The requirement for taxable services to be physically performed in Langkawi, Labuan, Free Zones or overseas in order to qualify as exported services is therefore irrelevant and inconsistent with the legislation.

Hence prior to 25 October 1996, the "export" service which is not liable to service tax remained just a concession by the Customs, which did not benefit the service receivers located in Langkawi, Labuan, Free Zones or outside Malaysia.

### Insertion of Definition for Exported Taxable Service

Realising the importance of reducing the cost of services provided to foreign parties by local companies and to be competitive against foreign corporations, the government officially introduced the definition of Exported Taxable Service through *Act 557, Finance Act 1997*.

The relevant amendments with effect from 25 October 1996, were as follows:

Section 2:
" 'exported taxable services' " means service supplied for and to a person in a country other than Malaysia (excluding Langkawi, Labuan and free zones), provided that the service is not supplied in connection with goods or land situated in Malaysia and the person is not in Malaysia at the time the service is performed;"

Section 3 :
Service tax shall be charged and levied in accordance with this Act on any taxable service provided by any taxable person, **except exported taxable service.**

### Conditions for Exported Taxable Service

With the above amendments, taxable services supplied for and to a person in Langkawi, Labuan, the Free Zones or outside Malaysia are deemed exported and therefore excluded from service tax if they satisfy the following conditions:

- service is not in connection with goods or land in Malaysia
- the recipient of service is not in Malaysia at the time the service is performed

Therefore in order for a service supplied for and to a foreign party to be deemed as exported, it is imperative to satisfy both conditions above.

### Briefing by Customs on Service Tax Implementation as Proposed in Budget 1997

A briefing/dialogue session was held at Customs Headquarters on 13 December 1996 to discuss the implementation of several changes, including the Exported Taxable Service, on service tax as proposed in the Budget 1997 *(Act 557, Finance Act 1997)*. The briefing/dialogue was conducted by the Service Tax branch of Customs Headquarters and attended by the various services industries representatives.

During the briefing/dialogue session, the Customs pointed out that an exported taxable service, which is performed locally (in the country) and *consumed* outside the country is not subject to service tax.

A question was raised as to whether advertising services for promotion of a local tourist location (say Pulau Pangkor) to audiences in the US should be subjected to service tax or otherwise since it is in relation to goods/land in Malaysia and the service was performed locally. The Customs replied that the above advertising service was not subject to service tax, as the service was *consumed*

outside Malaysia. *Nevertheless, strictly following the definition as provided in the legislation, the advertising service is taxable since it is in connection with goods/land in Malaysia.*

The Customs further elaborated that certain services supplied to foreign companies but in connection with goods and land in Malaysia, will not be regarded as exported and therefore subject to service tax, for example architectural services to design a building in Malaysia, surveying service to survey land in Malaysia, which are services *in situ*.

### Definition and The Legislation

It should be noted that the definition provided for Exported Taxable Service in particular and the service tax legislation in general, does not have any direct reference to the place where consumption of the service occurred.

Hence the Customs has taken upon itself to judge whether a service is exported or otherwise by introducing the concept of "*consumed outside Malaysia*".

### UK VAT Concept

In comparison, the UK VAT system has clear provisions to determine the place where the services are supplied. Services are treated as being supplied where they are physically carried out **(Services Supplied Where Performed)** or deemed to be supplied where the recipient is located **(Services Supplied Where Received).**

Services relating to land are deemed to be supplied where the land is situated. Other services such as, cultural, artistic, sporting, scientific, educational or entertainment; services relating to exhibitions, conferences or meetings are deemed to be supplied where the service is *performed*.

Services such as advertising, consultancy, legal, accounting, the supply of staff are deemed to be supplied where the *recipient* is located.

### SERVICE TAX (AMENDMENT) ACT 2001

An amendment was introduced recently to clarify the criteria for determining exported services in relation to insurance service and thus put to rest ambiguity surrounding it.

The amendment, with effect from 25 June 2001 is as follows:

"exported taxable service"

- in relation to insurance policies covering risks relating to the transportation of goods –
  - from a place outside Malaysia to a place outside Malaysia;
  - from a place within Malaysia to a place outside Malaysia; or
  - from a place outside Malaysia to a place within Malaysia,
- in relation to export credit insurance policies –
  - to cover risks outside Malaysia relating to the export of goods, services and investments.

To avoid any doubts a provision was included to state that for the purposes of the definition of the expression "exported taxable services", Labuan, Langkawi, the Joint Development Area and the Free Zones shall be deemed to be places outside Malaysia.

However the condition of "*consumed outside Malaysia*" remains undefined in the legislation.

## Conclusion

Since the concept of "consumed outside Malaysia" is not spelt out anywhere in the law, is it legally right for the Customs to implement the law as such? Moreover there could be cases of conflict when referring to the law and the administrative concept.

For example, a hotel operator in Langkawi places an advertisement in the media in Malaysia (newspaper or TV), the hotel operator will be charged with service tax following the consumption concept. However the advertising service should be deemed exported and excluded from service tax since it is provided to a person outside Malaysia and not in connection with goods/land in Malaysia. How about management service in respect of distribution of products in Malaysia provided by a local entity to its overseas principal? Is the service deemed exported due to its consumption by an overseas entity or not exported since the service is in connection with goods in Malaysia?

It is therefore timely for the Customs to re-examine the issue and to make changes where necessary to provide clear and unambiguous law for implementation.

**The Author:** Koh Siok Kiat is a Senior Manager of Ernst & Young, specializing in indirect taxes. Prior to this appointment, he served the Royal Customs and Excise Department for more than 10 years and has also worked in a local conglomerate. He is a member of the Indirect Taxation Working Group of MIT.

THE CHAIRPERSON OF THE DIALOGUE, ENCIK LIM HENG HOW WELCOMED THE REPRESENTATIVES FROM THE MALAYSIAN INSTITUTE OF TAXATION (MIT), THE MALAYSIAN INSTITUTE OF ACCOUNTANTS, THE MALAYSIAN ASSOCIATION OF CERTIFIED PUBLIC ACCOUNTANTS (MACPA) AND OTHER BODIES TO THE DIALOGUE.

The meeting then proceeded to discuss the various issues raised:

**1. Revised Section 108 Provisions**

**1.1 Definition of Compared Aggregate**

In accordance with the new subsection 108(5), "compared aggregate" is defined as the aggregate of the amount:

i) of the tax paid (if any) and an amount of tax set off under section 110 (if any), restricted to the amount of the tax on the chargeable income of the company, less any rebate under section 6B *(tax rebate on loan to a small company)* or any relief given for a year of assessment under section 132 *(double tax relief)* or 133 *(unilateral relief)*, less any tax refunded to the company under section 111 *(refund of overpayments)*; and

ii) the balance (if any) carried forward for the credit of the company in accordance with subsection (8).
*[Note : The words in italic are our addition.]*

The effect of the amendment is that the section 108 credit for the year is based on the actual tax paid instead of the tax chargeable. This is intended to prevent dividends from being distributed by the company, and the section 110 tax credit being claimed by and refunded to the shareholders of the company even if the company has not paid the tax for the relevant year.

However, the formula for calculating the "compared aggregate" appears to be incorrect. As the section 110 set off is equivalent to tax already paid, the restriction to the amount of tax charged and deducting the tax refund would amount to a double deduction in arriving at the compared aggregate.

Clarification is sought on the above matter.

**The amount of tax set-off under section 110 is restricted to the amount of tax on chargeable income for a year of assessment. The tax refund under section 111 is only pertaining to refund as a result of overpayment of instalments and reduced assessments where the discharged amount of tax has been paid by the company.**

**The IRB will be releasing a draft guideline on how to complete the Form R.**

**1.2 Section 108 Credit**

Clarification is sought on the section 108 credit position of a holding company which has received dividends from its subsidiary.

Kindly advise on whether the tax set off under section 110 is included as part of the company's "compared aggregate" at the time the dividends are received by the company from its subsidiary, or only upon the company submitting its tax return wherein the amount of chargeable income and the tax payable are reported.

**The IRB has confirmed that the tax set off under section 110 is included as part of the company's "compared aggregate" at the time the dividends are received by the company from its subsidiary up to the amount of tax on chargeable income. The amount of tax on chargeable income for a year of assessment should be known when the company submits its section 108 statement for a year of assessment.**

**1.3 Verification of Section 108 Balance**

a) The IRB has issued letters to inform the taxpayers of their unabsorbed loss and capital allowance brought forward, exempt income account and section 108 credit balance. However, in certain cases, the section 108 credit balance in the IRB's record differs from that of the taxpayer and request for reconciliation of the difference has not been attended to by the IRB.

It is suggested that the IRB provides a reconciliation of the difference speedily in view that the *Income Tax (Amendment) Act, 2000* requires the section 108 credit balance as at December 31, 2000 to be reported in the tax return for year of assessment 2001.

b) It is also suggested that the IRB provide a service to enable companies to verify or confirm the amount of their section 108 balance at any particular point in time.

This should help to pre-empt the necessity of having to invoke section 110(13).

**The IRB has requested that 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 own computations and the taxpayers balances.**

**1.4 Submission of Section 108 Statement**

The new sub-section 108(5) requires that a statement, in the prescribed form showing the compared total and compared aggregate of the company, be furnished to the Director General within 6 months following the close of the company's accounting period. This requirement is to take effect from year of assessment 2001.

The revised section 108 also provides that in relation to year of assessment 2000 on current year basis, the statement is to be submitted to the Director General within 3 months after the end of year of assessment.

a) The IRB at the dialogue held in November 2000 has confirmed that the extension of time of 2 months (from 6 months to 8 months from the accounting year end) for filing tax returns for year of assessment 2001 will be accorded to the submission of the section 108 statement.

b) The IRB has also indicated at the dialogue that it would issue a public ruling on the application of the revised section 108. Kindly advise on the status of the proposed public ruling.

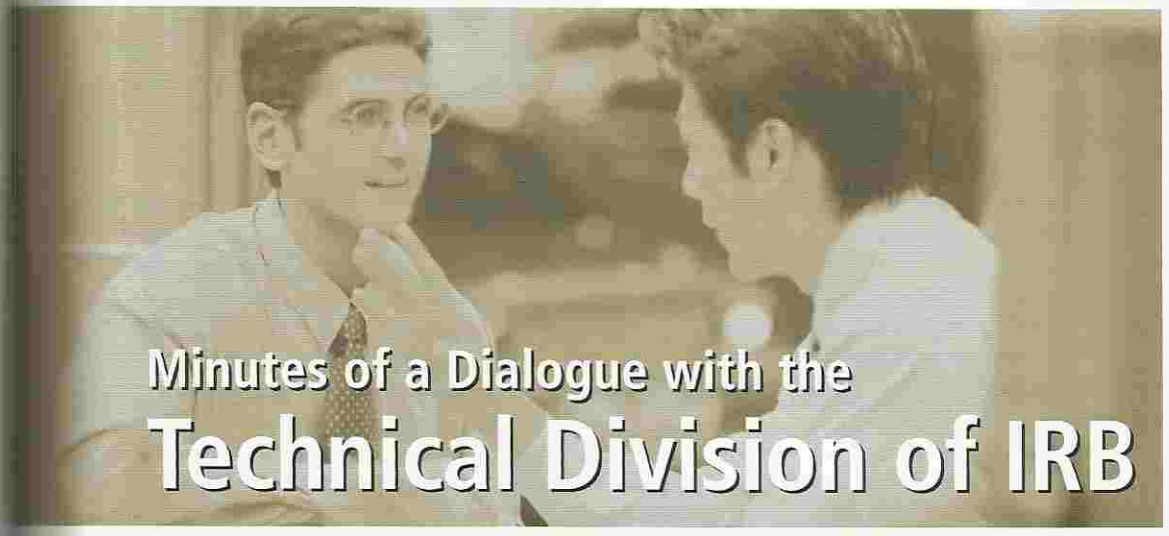
**The draft Form R with explanatory notes is in the process of being finalised. A Public ruling on the new section 108 provisions will follow suit.**

**2. Recovery of Section 110 Relief from Shareholders**

The new sub-section 110(13) empowers the Director General to recoup a company's taxes from its shareholders where the company has insufficient section 108 credit.

It is suggested that the IRB issues guidelines or public ruling on the exercise of such power by the Director General, having regard to its potential impact on shareholders.

It is also suggested that the Director General's power to recoup the tax shortfall should only be invoked after exhausting all other possible avenues to recoup the tax due.



# Minutes of a Dialogue with the Technical Division of IRB on 20 April 2001

It was also highlighted at the dialogue that companies with accounting period January 1 - December 31, 2000 may encounter problems in submitting the section 108 statement within 3 months after the end of the year of assessment. It was suggested that these companies be allowed to submit the section 108 statement together with Form C and the IRB agreed to look into the matter.

Kindly advise on IRB's decision on this matter.

**It was agreed that Section 108 Statement for year of assessment 2000 (current year basis) be submitted together with the Form C for companies that had not submitted its Form C. For companies that had submitted its Form C for year of assessment 2000 (current year basis), it has been agreed that section 108 statement be submitted by 31 May 2001.**

**The IRB is aware that the professional bodies are somewhat concern of the above "recoupment" powers under Section 110(13), but reassure the taxpayers and tax practitioners, that the Director General's power to recoup the tax shortfall from the company's shareholders will be used as a *last resort* measure.**

**3. Withholding Tax on Reimbursements**

Clarification is sought on whether reimbursements of out-of-pocket expenses (e.g. travelling expenses, meals and accommodation), made to a non-resident are subject to withholding tax.

For example, a non-resident consultant comes to Malaysia to perform work for a short term period of time (no PE arises and therefore section 109B applies). The consultant incurs air fare, taxi fare, hotel accommodation and meal expenses, etc. and these expenses are reimbursed by the local entity.

Kindly confirm that withholding tax under section 109B would not apply on the out-of-pocket expenses.

**The IRB has taken the stand that the reimbursements of out-of-pocket expenses made to a non-resident would be subject to withholding tax under Section 109B, as the IRB deems the expenses as being part of the total gross payments made for the services rendered.**

## 4. PROPOSALS IN 2001 BUDGET

### 4.1 Deduction for Donations to Approved Institutions [Section 44(6)]

It was proposed in the 2001 Budget that deduction for gifts of money made by a company to approved institutions is limited to 5% of the company's aggregate income in the relevant year.

The following suggestions have been submitted for IRB's consideration at the dialogue held in November 2000:

a) Limiting the deduction to 5% may curtail the total amount of contributions that the private sector may wish to make for charitable purposes. In addition, the 5% restriction may give rise to practical problems to certain entities/institutions which are under legal obligation (as prescribed in their memorandum and articles of association, etc.) to donate a minimum percentage of their total income for charitable purposes.

It was suggested that the deductible amount be increased, say to 25% of a company's aggregate income.

b) It was also suggested that in view of the substantial amendment to section 44(6), the IRB issue revised guidelines on application for exempt status under this section.

**The IRB wish to inform that the guidelines are being finalised.**

**Nonetheless, the IRB has also cordially invited the professional bodies to submit their own proposals on the above changes.**

The IRB indicated that it would consult with the Ministry of Finance regarding the 5% restriction. Kindly advise on the status of this matter and also item (b) above.

**The IRB has requested that the professional bodies refer this matter to the Ministry of Finance as it is a policy issue.**

### 4.2 Tax Incentives for Investment in Venture Companies

It is proposed in the 2001 Budget that investment in approved venture companies at startup, seed capital and early stage financing be given a deduction equivalent to the value of the investment. If the company does not have sufficient statutory income to offset the investment, the deductions will be allowed to be carried forward. This incentive is given provided the investor company does not dispose of its equity in the venture company until such time that the venture company is listed.

The professional bodies at the dialogue with the IRB held in November 2000 have expressed the view that the proviso for the incentive will reduce its effectiveness in encouraging investment in the high-risk sector wherein venture companies operate. Not all venture companies aim for listing. In addition, it does not make business sense to prevent a company from selling out its investment in a venture company to a synergistic buyer who is willing to pay a good price.

It was also suggested that the proviso be relaxed such that an investor company will qualify for the incentive on condition that its equity interest in the venture company is held for a prescribed period, say at least 3 years, rather than subject to listing on KLSE.

The IRB has indicated that the matter would be referred to the Ministry of Finance for consideration.

Kindly advise on the status of this matter.

**The matter has been referred to the Ministry of Finance. Treasury is of the opinion that the condition, as stated, be maintained.**

**The IRB has also confirmed that the VCC Orders and Rules are in the process of being finalised.**

## 5. Basis of Recognition of Profit for Property Developers (Property Development) and Contractors (Construction Contracts)

Property developers are required under approved accounting standards (MAS 7, *Accounting for Property Development Activities)* to recognise profit from property development activities using the percentage of completion method when the following criteria are met:

i. the sale of the building unit is transacted;
ii. building construction activities have commenced;
iii. the financial outcome of the development activities can be reliably estimated.

Similarly, in accordance with MASB 7 *Construction Contracts*, when the outcome of a construction contract can be measured reliably, the contract revenue and contract costs should be recognised using the percentage of completion method.

In both cases, the stage of completion is normally determined by the proportion that costs incurred for work performed to date bear to the estimated total contract costs.

Companies (housing developers/contractors) which adopt the above method of recognition of profits have frequently been asked by the IRB officers to change the basis of recognition to the "Progressive Profit Method" using the following formula:

$$\text{Progressive Profit} = \frac{\text{Total Progress Payment Received}}{\text{Total Estimated Revenue}} \times \text{Estimated Profit}$$

The basis of profit recognition under the "Progressive Profit Method". is not permitted under approved accounting standard. Both MAS 7 and MASB 7 state that progress payments and advances received do not reflect the stage of completion.

In addition, to change the basis of profit recognition from percentage of completion to the "Progressive Profit Method" would require a reconciliation of the tax computations between the two methods, which could cause unnecessary delay in the finalisation of the tax assessment.

It is suggested that the IRB accept the basis of profit recognition prescribed by approved accounting standards for tax purposes. Further, there is no loss of revenue to the IRB as the ultimate profit/loss will be fully recognised on completion of the development project or construction contract and tax duly assessed.

**The IRB has clarified that the guidelines issued, allow taxpayers to present alternative basis of recognising profits for property developers, as long as the methods presented by the taxpayers in the tax computations are fair, consistent and reflective of the profits of the property developer company for the year.**

**The IRB will also disseminate the above issue to its officers via minutes of this dialogue.**

## 6 Initial Allowances for Qualifying Expenditure

Paragraph 12 of Schedule 3 to the *Income Tax Act 1967* provides that a business can claim initial allowance in respect of qualifying building expenditure incurred for the construction of a building.

In recent years, it is common for small and medium-size enterprises (SMEs) to purchase completed factory units in an industrial estate rather than construct their own factories/ buildings. It is unfair that the SMEs are disallowed from claiming initial allowance on the expenditure incurred for the purchase of such factory units.

It is suggested that the provision in paragraph 12 of Schedule 3 be extended to qualifying building expenditure incurred for the purchase of a completed building.

**The IRB has considered the above proposal as a valid request and will be making necessary proposals to the Ministry.**

## 7 Corporate Debt Restructuring Scheme

### 7.1 Income Tax (Deduction for Corporate Debt Restructuring Expenditure) Rules 2000 - P.U. Order 46(A) 2000

P.U. Order 46(A) 2000 allows a tax deduction on any expenditure incurred in respect of a corporate debt restructuring scheme completed between October 30, 1999 until December 31, 2000. Hence, (based on the wording of the Order) it would appear that the tax deduction is restricted to companies which completed their debt restructuring schemes on or before December 31, 2000.

However, it is understood that the Corporate Debt Restructuring Committee (CDRC) has taken the view that the tax incentive apply to companies that have signed a Debt Restructuring Agreement (DRA) on or before December 31, 2000, but have yet to complete their debt restructuring schemes. CDRC has also indicated that it has written officially to the IRB on this matter.

Clarification is sought on whether the tax deduction would be extended to the cases described above.

**The IRB has referred the above matter to the Ministry of Finance and are currently awaiting instructions.**

### 7.2 Stamp Duty (Exemption) (No. 7) Order 2000 – P.U. (A) 47

The above Order grants exemption from stamp duty in respect of all instruments executed pursuant to a corporate debt restructuring scheme completed between October 30, 1999 until December 31, 2000 under the supervision of the CDRC, the Central Bank of Malaysia, or under Pengurusan Danaharta Nasional Berhad.

Clarification is sought on whether the exemption from stamp duty is applicable to companies that have signed a DRA on or before December 31, 2000 but the debt restructuring scheme is not completed yet.

**The IRB has referred the above matter to the Ministry of Finance and are currently awaiting instructions.**

## 8 Definition of Investment Holding Companies under Section 60F

In accordance with section 60F of the Income Tax Act, a company whose activities consist **wholly** in the making of investments and whose income is derived therefrom, is an investment holding company (IHC).

However, recently there have been cases where the IRB treated a company having both management services and investment holding activities as an IHC, under section 60F. The IRB has allowed a deduction of the expenses up to the amount of the management fee income earned.

The professional bodies are of the view that a company which is having both management and investment holding activities (i.e. the company is not one whose activities consist **wholly** in the making of investments), is not deemed

as an IHC under section 60F but is considered to be carrying on a business subject to tax under section 4(a) of the *Income Tax Act*.

Kindly confirm whether the above view is correct.

**The IRB is very concerned that certain taxpayers have undertaken both investment holding and management activities solely to avoid falling under the limiting provisions of Section 60F of the Act.**

**However, the IRB acknowledges that there are "genuine cases" where companies are truly undertaking both investment holding and management services as a commercial activity and will consider theses companies, on a case to case basis.**

**9 Tax Treatment of Interest-in-Suspense**

Loans outstanding for a period of 6 months or more are classified as non-performing loans and the interest accrued will be credited into the interest-in-suspense account. For years of assessment 1999 and 2000 (preceding year basis), a deduction of 50% of the amount in the interest-in-suspense account was allowed for income tax purposes. For year of assessment 2000 (current year basis), 100% of the interest-in-suspense was allowed as a deduction. The interest-in-suspense deducted will be taxed when realised.

Clarification is sought on whether the above tax concession will be extended to year of assessment 2001.

The IRB has confirmed that the above tax concession has NOT been extended.

**10 Double Deduction Guidelines for Research and Development**

The professional bodies wish to highlight that there appears to be some inconsistency between the wording of the Bahasa Malaysia guidelines issued and the English version issued. In particular the question of "research", where the Bahasa version limited the double deduction claim for travelling expenses to employees whereas, the English version did not.

The professional bodies request the IRB undertake the synchronizing of both guidelines as well as, to take the broader view and allow the claim for travelling expenses for individuals (i.e. research scientist, etc.) visiting research facilities in Malaysia for an exchange of ideas.

**The issue was noted and the IRB has release a revised Double Deduction guideline for Research and Development.**

**The revised guidelines has taken the Bahasa version of terminology.**

**11 Tax on Tax Issue for Employees**

Due to the change towards a current year tax system, employers are encountering difficulties in stating in the EA form, the total "benefit-in-kind (BIK)" received by employees whose taxes are paid by the company.

This is because, an individual (whose taxes are paid by the employer) would declare the amount of BIK received from the employer for the year and would include the taxes paid by the Company, i.e. a "tax on tax" payment. This "tax on tax" payment will indirectly give rise to a discrepancy in the BIK declared, as the amount of BIK would directly be increased by the "tax on tax" payment by the company in the year.

Hence as we are under a current tax system, the issue is whether the "tax on tax" is to be included as a Benefit-in-kind in the EA Form of the year.

As time is of the essence the IRB has agreed that in the interim, the employee should declared the actual tax paid (i.e. PCB payments made) in the year as the amount of BIK received from the employer.

**Nonetheless, the IRB will review the above issue and revert with their findings soon.**

**12 Guidelines on Section 44 (6) Applications**

Due to the recent changes of Section 44 of the ITA, the professional bodies have requested that the IRB issue some guidelines on the procedural/documentation requirements for a Section 44 (6) application.

**The IRB are currently in the process of finalising the above mentioned guidelines.**

**13 Confirmation of Positions taken in Dialogues**

The professional bodies raised the issue that sometimes, the decisions taken in the annual dialogues are not disseminated to the relevant individuals and this has resulted in much confusion and uncertainty between IRB and tax practitioner.

**The IRB has reassured the professional bodies that the minutes/issues of the dialogues held are always disseminated to relevant parties, yet there will always be isolated cases where an individual is not aware of a particular decision taken in a dialogue.**

**Nonetheless if there is confusion or uncertainty, the tax practitioner will always have the option of referring the issue to HQ for confirmation.**

**14 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 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 issue was noted.

Editorial Note: These minutes have been prepared by the Malaysian Institute of Taxation and approved by the IRB.

# Case Digest

## RPGT Chargeable For Sale Of Shares In A Real Property Company

THE ACQUISITION AND DISPOSAL OF SHARES IN A REAL PROPERTY COMPANY, WAS AN ACQUISITION AND DISPOSAL OF A CHARGEABLE ASSET, PURSUANT TO PARA. 34A(1) SCH. 2 RPGTA.

The taxpayer acquired shares in a real property company which was also a property developer. The acquired company intended to develop a particular piece of land ("the land") but was unable to obtain the consent of the owner of an access road to the land, to use the said road. As a consequence of this, shareholders of the real property company including the taxpayer, disposed of all their shares to the owner of the access road, who carried on and completed the development of the land.

The D.G. of I.R. was of the opinion that the disposal of shares was subject to the *Real Property Gains Tax Act 1976* (RPGTA) pursuant to para. 34A of sch. 2. The taxpayer thought otherwise and argued that the D.G. of I.R. ought to look at the activities of the acquired company to determine if real property gains tax was chargeable.

The Special Commissioners dismissed the appeal on the grounds that the acquired company was not the taxpayer and its business activities were totally irrelevant. The only relevant issue was the gain, which accrued to the taxpayer as a shareholder in the acquired company. The acquisition of shares by the taxpayer in the acquired company, a real property company, was an acquisition of a chargeable asset and the disposal of the acquired company shares was a disposal of a chargeable asset, pursuant to para. 34A(1) sch. 2 RPGTA.

BH Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri
Special Commissioners of Income Tax.
Rayuan No PKCP (R) 65/99
(2001) MSTC 3,295

Editorial Note: The High Court reversed the decision of the Special Commissioners. The Revenue has lodged an appeal to the Court of Appeal.

## Gain on Disposal of Land Not Taxable

WHERE THE TAXPAYER ACQUIRED LAND BY WAY OF AN INHERITANCE, THE MERE FACT THAT AN AGREEMENT WAS ENTERED INTO OR THAT THE LAND WAS DISPOSED OF FOR A RELATIVELY HIGH PRICE DID NOT MAKE THE TRANSACTION A TRADE OR ADVENTURE IN THE NATURE OF TRADE AND AS SUCH SUBJECT TO TAX

The taxpayer inherited land from the estate of his late father ("the land"). The taxpayer transferred the land to S Sdn Bhd in return for 20% of the total developed units to be built on the land. However, S Sdn Bhd failed to develop and construct the units. The taxpayer rescinded the agreement and the land was then transferred to another developer, LO, in return for which the taxpayer was entitled to receive 18% of the total units to be sold. The taxpayer attended the meetings of LO, to protect his interests and to use his marketing experience to ensure proper construction and sale of the units.

When the keys to the taxpayer's 18% were made available to him, the taxpayer sold about half of the units received, and kept the balance for investment purposes.

The D.G. of I.R. contended that the profits from the disposal of the units were profits from the taxpayer's trading activities and chargeable to tax under sec. 4(a) of the *Income Tax Act 1967*. The taxpayer argued that the sale proceeds were not taxable pursuant to sec. 4(a) as it was capital enhancement and not an adventure or concern in the nature of trade.

The Special Commissioners allowed the taxpayer's appeal. The Special commissioners held that the land was acquired by inheritance and not purchased for resale at a profit. The taxpayer's father held the land since 1954. The taxpayer did not have any organisation and did not enter into any transactions, nor alter the land, nor carry out any activity to render the land more saleable and no special exertion was made to find or attract purchasers. The mere fact that an agreement was entered into or that the land was disposed of for a relatively high price did not make the transaction a trade or adventure in the nature of trade. Further the terms of the agreement did not constitute a joint venture business within the meaning of the *Income Tax Act*. As the gains from disposal were not subject to tax, the relevant Year of Assessment was not an issue.

YMF v. Ketua Pengarah Hasil Dalam Negeri.
Special Commissioners of Income Tax.
Rayuan No PKCP (R) 55/99.
(2001) MSTC 3,257

## Compensation for Acquisition of Land Subject to Income Tax

THE COMPENSATION PAID BY THE GOVERNMENT TO THE TAXPAYER FOR ACQUIRING THE TAXPAYERS LAND IS TRADING PROFIT AND SUBJECT TO TAX.

The taxpayer was a property developer who purchased three lots of land. Part of the land was acquired by the Government and the taxpayer was paid compensation. The questions that arose for the consideration of the Special Commissioners was:

- Whether the gain which arose from the compulsory acquisition was a realisation of capital and therefore was not assessable to income tax or trading profit for which an assessment could be raised.
- Whether the gain should be assessed in the Year of Assessment 1998 or 1996 bearing in mind that the acquisition took place in 1997 and
- Finally, whether the principle in *DGIR v. L.C.W.* (1975) 1 MLJ 250, that whenever a capital asset is transferred to stock-in-trade and dealt with, the profits which are taxable must be determined by deducting from the sale proceeds the market value of the assets at the date of transfer, applied.

In dismissing the taxpayer's appeal, the Special Commissioners held that from the primary facts and the plethora of cases it was apparent that the property was acquired by the tax payer as trading stock and used as trading stock from the outset. As such, there was no issue as regards appropriation from fixed asset to stock-in-trade, and the principle in *D.G. of I.R. v. L.C.W.* was not applicable.

As for the year of assessment, the D.G.of I.R. correctly made the assessment in 1996 as the properties were stock-in-trade. Further the audited accounts indicated that the taxpayer had recognised the sum of RM2,084,449 as income accrued for the year ended 31 December 1995, which is the basis period for the Year of Assessment 1996.

PC Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri.
Special Commissioners of Income Tax
Rayuan No. PKCP (R) 60/99.
(2001) MSTC 3,278

Editorial Note: The High Court reversed the decision of the Special commissioners. The Revenue lodged an appeal to the Court of Appeal. That appeal has since been withdrawn. The decision of the High Court will be published in the forthcoming issue of Malaysian & Singapore Tax Cases.

## Date of Acquisition of Bonus Shares

WHETHER BONUS SHARES ACQUIRED PRIOR TO BUT DISPOSED SUBSEQUENT TO THE AMENDMENTS TO PARA. 34A(3) SCH. 2 REAL PROPERTY GAINS TAX ACT 1976 ARE SUBJECT TO THE TAX IMPOSED BY THE AMENDMENTS.

The taxpayer acquired 80,000 shares in a real property company. Subsequently, the taxpayer acquired 1,920,000 bonus shares in the company. Thereafter the taxpayer disposed of 2,000,000 of the company shares for RM2,000,000.

In respect of the 1,920,000 bonus shares, The D.G. of I.R. applied sec. 7(1)(a) read together with para. 4 and 34A(3) sch. 2 of the *Real Property Gains Tax Act 1976* and arrived at a chargeable gain of RM1,920,000 and raised an assessment of RM596,000 inclusive of a penalty of RM20,000.

The taxpayer argued that as the shares were acquired before the amendment was made to para. 34A(3) sch. 2 of the Act and as such there was an allowable loss of RM483,015.60 resulting in no chargeable gain.

The Special Commissioners dismissed the appeal and held that the amendment to para. 34A(3) sch. 2 of the Act was not retrospective and as such, would apply to all disposal of shares after the effective date of 17 October 1997, irrespective of the date of acquisition.

SYPM Sdn Bhd v.
Ketua Pengarah Hasil Dalam Negeri.
Special Commissioners of Income Tax.
Rayuan No PKCP (R) 59/99.
(2001) MSTC 3,268

Editorial Note: The taxpayers appeal to the High Court has been withdrawn.

## Bus Ticket Sold in Singapore for a Journey to Malaysia Not Taxable

THE SOURCE OF THE INCOME FOR A MALAYSIAN EXPRESS BUS COMPANY SELLING TICKETS IN SINGAPORE FOR A TRIP TO MALAYSIA, WAS OUTSIDE MALAYSIA.

The Taxpayer, a company registered in Malaysia operates an express bus service. For routes, which end at Johor Bahru, the Taxpayer had been granted permission by the Public Transport Council of Singapore to operate the buses in Singapore. For the entire journey from Singapore to Kuala Lumpur, Ipoh and Penang, passengers embarking the buses in Singapore bought tickets in Singapore paying in Singapore currency. The sales of tickets in Singapore were effected by agents of the Taxpayer. The Taxpayer was assessed in respect of income from the sales of the tickets in Singapore as well as income for the sales of tickets in Malaysia.

The Special Commissioners held that where a Malaysian express bus company sold tickets in Singapore for a trip to Malaysia, the source of the income for the whole journey was outside Malaysia.

AJE. v. Ketua Pengarah Hasil Dalam Negeri
Special Commissioners of Income Tax.
Rayuan No PKCP (R) 52/99.

Editorial Note: An appeal by the Revenue is currently pending in the High Court. This case will be reported in the forthcoming issue of Malaysian & Singapore Tax Cases.

## Taxpayer's Intention is Relevant

WHEN A TAXPAYER **HAS NOT DECIDED** ON WHETHER THE LAND IS A FIXED ASSET OR STOCK-IN-TRADE, IS THE LCW PRINCIPLE APPLICABLE?

The taxpayer was a company with its principal activity in property development. Pursuant to a joint venture agreement, a piece of land was injected into the accounts at a cost of RM25 million. The land was used as a car park until 1995. The land appeared as fixed assets in the annual accounts for the first 2 years. For the subsequent 3 years, the land was shown under current assets and for the final year, the land was again shown under fixed assets. All development expenditure was shown as current assets. There was no physical development on the land. There *were no resolutions or minutes of the* Board of Directors regarding the appropriation of the land from one category to another. Real Property Gains Tax (RPGT) returns were submitted in 1996 to show that the land was disposed, when it was transferred from fixed assets to current assets. In 1999, the Revenue raised income tax on the transaction and agreed to vacate the RPGT tax.

The Special Commissioners held that the Land was found to be stock-in-trade from the outset and there was no appropriation from fixed asset to stock-in-trade. Therefore, the question of market value as cost to the taxpayer did not arise.

In order to rely on the decision of LCW, the taxpayer is required to adduce evidence that the intention for acquiring the property was for investment purposes.

MHSB v. Ketua Pengarah Hasil Dalam Negeri
Special Commissioners of Income Tax.
*Rayuan No PKCP (R) 56/99.*

Editorial Note: An appeal by the Revenue is currently pending in the High Court. This case will be reported in the forthcoming issue of Malaysian & Singapore Tax Cases.

## S133 Credit for Malaysian Source Employment Income

THE TAXPAYER, AN EMPLOYEE OF A LOCAL COMPANY WAS SENT TO USA FOR TRAINING TO LEARN NEW TECHNOLOGY AND TO BRING BACK THE NEW TECHNOLOGY TO MALAYSIA FOR TEST PRODUCTION. HE WAS OUTSIDE THE COUNTRY FOR 302 DAYS. THE TAXPAYER WAS A TAX RESIDENT THROUGHOUT THE RELEVANT PERIOD. THE REVENUE USED SEC. 13(2) OF THE *INCOME TAX ACT 1967* AND TAXED THE INCOME FROM THE OVERSEAS DUTIES AS PART OF HIS OUTSIDE MALAYSIAN DUTIES **INCIDENTAL** TO THE EXERCISE OF HIS EMPLOYMENT IN MALAYSIA.

The Taxpayer contended that the phrase "income from an employment exercised outside Malaysia" in para. 15 sch. 7 of the *Income Tax Act 1967* refers to income in respect of an employment pursuant to which the employee performs duties outside Malaysia and thus he is entitled to unilateral credit.

The Revenue however contended that notwithstanding the double tax in respect of the Taxpayer's income, the phrase "income from an employment exercised outside Malaysia" refers only to foreign income thus, disentitling the Taxpayer to unilateral credit.

The Special Commissioners allowed sec. 133 credit for Malaysian source employment income.

LCC v. Ketua Pengarah Hasil Dalam Negeri
Special Commissioners of Income Tax.
Rayuan No PKCP (R) 86/99.

Editorial Note: The Revenue's appeal to the High Court has been withdrawn. This case will be reported in the forthcoming issue of Malaysian & Singapore Tax Cases.

Professional Examinations

# Be Among The Best

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

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

### How to Register

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

### Entrance Requirements

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

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

c) Full Members of local and overseas accounting bodies

### Exemption

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

Malaysian Institute Of Taxation

### Exemption Fees

| | |
|---|---|
| Foundation | RM 50.00 |
| Intermediate | RM 60.00 |
| Final | RM 70.00 |

### Examination Fees

| | |
|---|---|
| Foundation | RM 50.00 |
| Intermediate | RM 60.00 |
| Final | RM 70.00 |

### Examination Structure

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

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

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

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

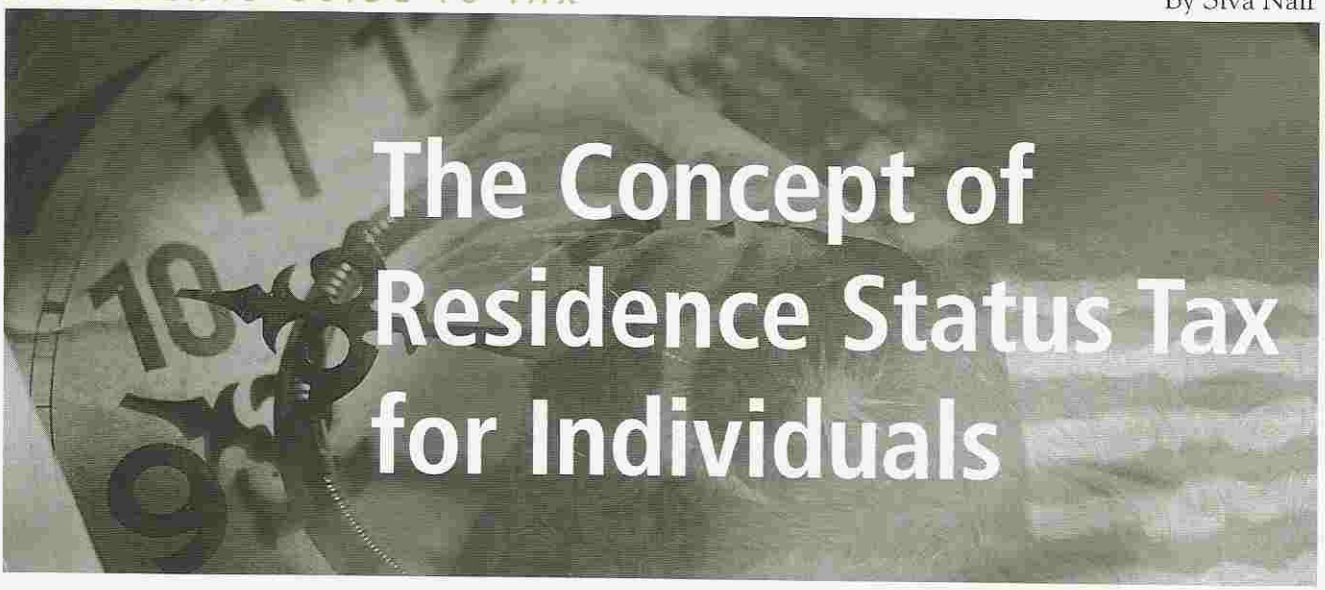
## MIT Professional Examination

### CALENDAR FOR YEAR 2001

| | |
|---|---|
| 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. |

A STUDENTS GUIDE TO TAX

By Siva Nair



# The Concept of Residence Status Tax for Individuals

We have seen in the earlier article that the concept of residence *is very important in the field of taxation. The scope of charge i.e. what income is chargeable to tax is dependent on the resident status of the person. In this article we shall confine ourselves to the study of determining the residence status of an individual.*

## WHEN IS AN INDIVIDUAL CONSIDERED RESIDENT IN MALAYSIA?

*The answer lies in sec. 7(1) of the Income Tax Act 1967. This subsection contains four paragraphs (a) to (d). The primary measure used is the number of days that an individual stays in Malaysia. The bonus is sec. 7(1A) specifically states that part of a day is counted as one day.*

So, let's analyse what rules are contained in these sub sections.

A. For the basis period, he is physically in Malaysia, for a period or periods which amount to at least 182 days.

E.g. 1. Mr. M. Shoemaker came to Malaysia on 1st January 2001 and stayed on until 31st July 2001. Is he a tax resident?

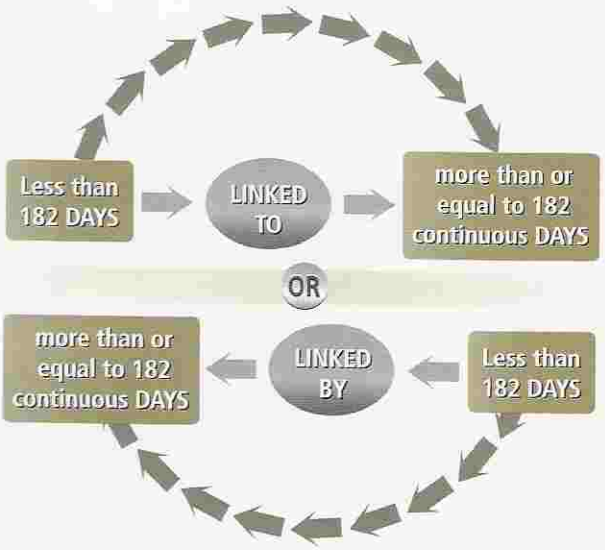
**He is in Malaysia for > than 182 days therefore he is resident under sec. 7(1)(a).**

E.g. 2 Mrs. M. Ox has the following pattern of stay:
1.5.01 – 31.5.01
1.7.01 – 30.8.01
1.10.01 – 28.12.01

Is she tax resident under sec. 7(1)(a)?

**She is in Malaysia for < than 182 days therefore she is a non-resident under sec. 7(1)(a).**

B. *In Malaysia for less than 182 days* (obviously, otherwise he/she would be resident under (a) right?)
this period is linked to or by
another period of 182 or more consecutive days




E.g. 3 Mr. M. Jackfruit arrived in Malaysia on 29.12.00 and returned to Indonesia on 4.7.01. Is he a tax resident for YA 2000 & 2001?

| Year of assessment | Status | Section 7(1) |
|---|---|---|
| 2000 | Resident | (b) |
| 2001 | Resident | (a) |

E.g. 4 Ms. Lime made short visits to Malaysia in 2001 & 2002 as follows:

1.2.01 – 14.6.01
17.8.01 – 15.9.01
1.10.01 – 31.12.01
1.1.02 – 31.1.02

Is she a tax resident for YA 2001 & 2002?

| Year of assessment | Status | Section 7(1) |
|---|---|---|
| 2001 | Resident | (a) |
| 2002 | Non-resident | |

*However the following temporary absences are disregarded in determining the* "**more than or equal to 182 consecutive days**" *i.e. although you are not in Malaysia physically, you would be deemed to be in Malaysia.*

a) connected with his service in Malaysia and owing to service matters or attending conferences or seminars or study abroad;

b) owing to ill-health involving himself or a member of his immediate family; or

c) social visits not exceeding a total of 14 days.

E.g. 5 Would your answer in e.g. 4 be different if her absence in September was attributable to any of the above reasons?

**No, because the "longer period" would still be less than 182 consecutive days i.e. 15th September to 31st December.**

C.


Are the following considered tax residents for the year of assessment indicated by the arrow?

E.g. 6 Mrs. Tulip has the following pattern of stay in Malaysia:

| YA | Status / Days in Malaysia |
|---|---|
| 00 | Resident – 200 days |
| 01 | Non-resident – 100 days |
| 02 | Resident – 80 days |
| 03 | Non-resident – 10 days |
| 04 | **in Malaysia for 91 days** |

**Resident by virtue of sec. 7(1)(c)**

E.g. 7 Ms. Hibiscus has the following pattern of stay in Malaysia:

| YA | Status / Days in Malaysia |
|---|---|
| 01 | Resident – 356 days |
| 02 | Non-resident – 129 days |
| 03 | Non-resident – 140 days |
| 04 | Resident – 320 days |
| 05 | Non-resident – 10 days |
| 06 | **in Malaysia for 121 days** |

**Resident by virtue of sec. 7(1)(c)**

E.g. 8 Ms. Rose has the following pattern of stay in Malaysia:

| YA | Status / Days in Malaysia |
|---|---|
| 01 | Resident – 182 days |
| 02 | Non-resident – 70 days |
| 03 | Resident – 30 days |
| 04 | Non-resident – 115 days |
| 05 | **in Malaysia for 97 days** |

**Resident by virtue of sec. 7(1)(c)**

D.


E.g. 9 Mr. Pickford has the following pattern of stay in Malaysia:

| YA | Status / Days in Malaysia |
|---|---|
| 01 | Non-resident |
| 02 | Resident |
| 03 | Resident |
| 04 | Resident |
| → 05 | **not in Malaysia** |
| 06 | Resident |

Is he a tax resident for YA 2005?

**Resident by virtue of sec. 7(1)(d).**

## WHY IS IT IMPORTANT TO DETERMINE THE RESIDENT STATUS OF AN INDIVIDUAL?

1. **Scope of Charge**
   As we saw earlier, the resident status of a person plays a crucial role in determining the scope of charge i.e. whether he comes into the derived and remittance scope or the territorial scope.

2. **Tax Rates**
   Resident individuals are taxed at scale rate ranging from 0% to 29% whereas non-residents are taxed at a flat rate of 29%.

3. **Personal Reliefs & Rebates**
   What this is we will cover later but it is only available to **resident** individuals.

4. **Withholding Tax**
   Generally applicable only to **non-residents** except for sec. 109C *(don't worry we will study this later)*.

5. **60-Day Exemption Rule**
   Again only applicable to **non-residents** with employment income.

6. **Double Tax Agreements**
   Usually applicable to **residents** only.

7. **Pensions**
   Exemption of pension income under para. 30 and 30A is only applicable to **residents**.

8. **Interest Income**
   Where the individual is a resident then the tax at source under sec. 109C is 5% whereas for **non-residents persons** under sec. 109, it is 15%.

**So, what have we learned here? Whether an individual is a resident or not is not affected by race or religion, nor is it influenced by the citizenship or permanent residence (PR) status of the individual. Note that PR is an immigration concept whereas the residence discussed in this article is tax residency. Now that you are familiar with the complexities of determining resident status, let's try some simple exercises. As usual the answers will be published in the forthcoming issue.**

**The Author:** Siva Nair holds an Honours Degree in Accounting from University of Malaya where he is currently pursuing his MBA (Accountancy). He is a Chartered Accountant (Malaysia) and a fellow of the Malaysian Institute of Taxation. He has gained extensive experience in the field of taxation whilst being employed in one of the big 5 firms and again as a Senior Finance and Tax Executive in an established property development company. Currently he is a freelance lecturer preparing students for the examination of ACCA, ICSA, MIT, MACPA, AIA and also tutoring undergraduates undertaking Accountancy Degree programmes in both local and foreign universities.

## Practical Exercises

Determine the tax resident status for the following persons, for the relevant years of assessment.

**Q1** Mah Cho first arrived in Malaysia on 1st March 2000. The following is his duration of stay in Malaysia:

| Duration of stay | No. of days |
|---|---|
| 01.03.00 – 31.03.00 | 31 |
| 01.05.00 – 31.05.00 | 31 |
| 01.07.00 – 15.07.00 | 15 |
| 01.09.00 – 31.12.00 | 122 |

**Q2** Que Tee hates the cold winters in Alaska. Unfortunately he is forced to endure the agony, due to the nature of his work, until the blessed morning of New Year's Day, when he flies immediately to bask in the tropical shores of Malaysia.

| Duration of stay | No. of days |
|---|---|
| 01.01.00 – 15.04.00 | 105 |
| 01.01.01 – 15.04.01 | 105 |
| 01.01.02 – 15.04.02 | 105 |
| 01.01.03 – 15.04.03 | 105 |

**Q3** Bee Yu Tee, a busy beautician of international fame, is a frequent flier. She has the following pattern of stay in Malaysia:

| Duration of stay | No. of days |
|---|---|
| 01.01.00 – 31.12.00 | 366 |
| 01.01.01 – 30.05.01 | 151 |
| 01.06.02 – 30.09.02 | 122 |
| 01.01.03 – 15.04.03 | 105 |

**Q4** Mr Sill Hoi, is periodically seconded to a modelling agency in Seremban for the years 2001 to 2005.

| Year | Duration of stay | No. of days |
|---|---|---|
| 2001 | 29.12.01 – 31.12.01 | 3 |
| 2002 | 01.01.02 – 15.04.02 | 105 |
| | 20.04.02 – 01.07.02 | 73 |
| 2003 | 01.06.03 – 01.11.03 | 154 |
| 2004 | 01.09.04 – 31.12.04 | 122 |
| 2005 | 01.01.05 – 09.01.05 | 9 |

He flew to Madagascar for a modelling conference from the 16th to the 19th of April and again to visit his ailing aunt in Taiwan from 2.7.02 to 31.12.02. He then proceeded for a holiday in France for 5 months.

**Q5** For parts of the year, Debo Nair leaves the scorching terrains of the Gobi desert, where he is employed as a soil geologist, for the lush green forest of Malaysia where he can quench his zealous thirst for rare botanical specimens. He visited Malaysia once in 1999 when he stayed for 120 days.

| Duration of stay | No. of days |
|---|---|
| 01.05.01 – 31.12.01 | _____ |
| 01.02.02 – 11.07.02 | _____ |
| 20.08.02 – 30.11.02 | _____ |
| 01.09.03 – 30.11.03 | _____ |
| 01.10.05 – 31.12.05 | _____ |
| 01.01.06 – 31.12.06 | _____ |
| 01.01.07 – 31.12.07 | _____ |
| 01.01.08 – 30.04.08 | _____ |

Malaysian Institute Of Taxation

# Time Table For The MIT Examination From 3rd - 7th December 2001

| Time | 3.12.2001 (Monday) | 4.12.2001 (Tuesday) | 5.12.2001 (Wednesday) | 6.12.2001 (Thursday) | 7.12.2001 (Friday) |
|---|---|---|---|---|---|
| 9.00am to 12.15pm* | Taxation I | Business & Financial Management | Financial Accounting II | Economics & Business Statistics | Financial Accounting I |
| 2.00pm to 5.15pm* | Company & Business Law | Taxation II | Taxation III | Taxation IV | Taxation V |

*** Including 15 minutes reading time**

## IMPORTANT INFORMATION

With effect from the December 2000 examination session, candidates are allowed to bring into the examination hall the *Income Tax Act (1967)* (as amended). The Chief Invigilator has the discretion to disallow candidates using the *Income Tax Act* that have written notes. For example, quoting cases in the Act is definitely not permissible.

# Solutions to Practical Exercises on Basis And Scope of Charge

**Q1** The taxable income for Mr. Plantax would be:

| | RM |
|---|---|
| Malaysian income (RM3,000 X 11) | 33,000 |
| US income received in Malaysia in 2001 (received basis) | 10,000 |
| | 43,000 |

**Q2** Collapse Construction will be taxed on the RM52,000 only. By virtue of *Income Tax (Exemption) (No. 48) Order 1997*, its foreign income would be exempt since it is a resident company. It would be able to pay tax exempt dividends of RM6,800 and RM10,200 to En. Jatuh and Runtuh Sdn. Bhd. respectively. Further Runtuh Sdn. Bhd. would be able to pay tax exempt dividends of RM10,200 to its own shareholders.

**Q3** The taxable income for Hydrophobia Sdn Bhd would be:

| | RM |
|---|---|
| Malaysian income | 100,000 |
| Singapore shipping income (world scope) | 90,000 |
| Trading business in Thailand (received in Malaysia in 2001) | 50,000 |
| | 240,000 |

**Q4** The taxable income for Robmisun Bank Ltd would be just the Malaysian income of RM250,000 since foreign income received by a non resident is exempt under Para. 28 of Sch. 6.

**Q5** Sinful Unit Trust would be taxed on the RM500,000 Malaysian income. It qualifies for tax exemption of foreign income under para. 28 sch. 6 *Income Tax Act*.

**Q6** The taxable income for Mr. Lovetax would be:

| | YA 00 RM | YA 01 RM |
|---|---|---|
| Malaysian income | 32,000 | 32,000 |
| Indian income received in Malaysia | 1,250 | – |
| | 33,250 | 32,000 |

**Q7** The taxable income for Greentree Sdn Bhd would comprise of :

| | RM |
|---|---|
| Malaysian income (RM3,000 X 11) | 33,000 |
| a) Income from plantation activities | 4M |
| b) Gain on sale of fixed assets – capital | Not taxable |
| c) Compensation – payments in lieu of loss of profits is revenue and therefore taxable | 0.06M |
| | 4.06M |

**Q8** For YA 2001, Dyefast Assurance Sdn. Bhd. will be taxed on its Malaysian profits of 10 million and the lease rental payments from Indonesia since it is received in Malaysia in 2001.

**Q9** a) The dividends received MACPA will be exempt by virtue of *Income Tax (Exemption) (No. 48) Order 1997*.

b) The shareholders will not be able to enjoy tax exempt dividends since they are on the third tier of exemption, above the recipients i.e. MACPA.

c) ACCA should transfer its shareholdings in MACPA to ICEAW so that the first tier of tax exempt dividends will be paid by MACPA to ICEAW and the second tier of tax exempt dividends will be paid by ICEAW to its shareholders. (The influence of minority shareholders is ignored)

**Note:**
Q9 should read " How can you resolve their dilemma?" and not "However ..." The error is regretted.

# Public Ruling

| No. | Title of Ruling | Issued / Updated | Comments |
|---|---|---|---|
| 7/2001 | Basis Period For Business & Non-Business Sources (Companies) | 30.4.2001 | *Supersedes Public Ruling 2/2000 dated 1.3.2000* |
| 6/2001 | Basis Period For A Business Source (Individuals & Persons other than Companies / Co-Operatives) | 30.4.2001 | *Supersedes Public Ruling 3/2000 dated 1.3.2000* |
| 5/2001 | Basis Period For A Business Source (Co-Operatives) | 30.4.2001 | *Supersedes Public Ruling 2/2000 dated 1.3.2000* |
| 4/2001 | Basis Period For A Non-Business Source (Individuals & Persons other than Companies) | 30.4.2001 | *Supersedes Public Ruling 1/2000 dated 1.3.2000* |
| 3/2001 | Appeal Against An Assessment | 18.01.2001 | |
| 2/2001 | Computation Of Initial & Annual Allowances In Respect Of Plant & Machinery | 18.01.2001 | |
| 1/2001 | Ownership Of Plant And Machinery For The Purpose Of Claiming Capital Allowances | 18.01.2001 | |
| 8/2000 | Wilful Evasion of Tax and Related Offences | 30.12.2000 | |
| 7/2000 | Providing Reasonable Facilities And Assistance | 16.06.2000 | |
| 6/2000 | Keeping Sufficient Records (Persons other than Companies & Co-operatives) – Revised | 30.06.2001 | |
| 6/2000 | Keeping Sufficient Records (Persons other than Companies & Co-operatives) | 01.03.2000 | |
| 5/2000 | Keeping Sufficient Records (Individuals & Partnerships) – Revised | 30.06.2001 | |
| 5/2000 | Keeping Sufficient Records (Individuals & Partnerships) | 01.03.2000 | |
| 4/2000 | Keeping Sufficient Records (Companies & Co-operatives) – Revised | 30.06.2001 | |
| 4/2000 | Keeping Sufficient Records (Companies & Co-operatives) | 01.03.2000 | |
| 3/2000 | Basis Period for a Business Source (Individuals & Persons other than Companies & Co-operatives) | 01.03.2000 | |
| 2/2000 | Basis Period for a Business Source (Companies & Co-operatives) | 01.03.2000 | |
| 1/2000 | Basis Period for a Non-business Source | 01.03.2000 | |

*source: www.hasilnet.org.my*

# Subsidiary Legislation

| P.U.(A) No. | Title | Effective Date | Details |
|---|---|---|---|
| P.U. (A) 211 | *Income Tax (Exemption) (No.3) Order 2001* | Y/A 2000 in respect of the basis period ending in the year 2000. | **Exemption**<br>1. 1) The Minister exempts a venture capital company from payment of income tax in respect of the statutory income on all sources of income for ten years of assessment or the years of assessment equivalent to the life of the fund established for purposes of investing in a venture company, whichever is the lesser, which in the Order is referred to as "the exempt period", commencing from the year of assessment in the basis period the venture capital company commences business or the year of assessment of the coming into effect of the Order, whichever is the later, upon satisfying the conditions as specified in para. 4.<br>2) Nothing in subpara. (1) shall absolve or be deemed to have absolved the venture capital company 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.<br>**Conditions to qualify for the exemption**<br>2. To qualify for the exemption above, the venture capital company shall, for each year of assessment for the period of exemption obtain certification from the Securities Commission confirming that:<br>a) it has invested at least seventy percent of its funds in venture companies; and<br>b) in relation to a company, it has not invested in venture companies which are its related companies at the point of first investments.<br>**Losses from disposal of shares**<br>3. Where a venture capital company incurs a loss from the disposal of shares in a venture company in the basis period for any year of assessment within the exempt period, such loss shall be carried forward to the post-exempt period.<br>**Application of paragraphs 5 and 6 of Schedule 7A**<br>4. Paragraphs 5 and 6 of sch. 7A to the Act shall apply mutatis mutandis to the amount exempt under subpara. (1). |
| P.U. (A) 212 | *IncomeTax (Deduction For Investment In A Venture Company) Rules 2001.* | Y/A 2001 | **Application**<br>1. A company or an individual resident in Malaysia and making investments in a venture company shall be entitled to the deduction described below in ascertaining the adjusted income of that company or that individual.<br>**Deduction**<br>2. Subject to rules below, for the purpose of ascertaining the adjusted income of a company or an individual resident in Malaysia for the basis period for a year of assessment, there shall be given as a deduction, the amount equivalent to the value of investment made in a venture company. |

| P.U.(A) No. | Title | Effective Date | Details |
|---|---|---|---|
| P.U. (A) 212 (continued) | *Income Tax (Deduction For Investment In A Venture Company) Rules 2001.* | Y/A 2001 | **Conditions to qualify for the deduction**<br>3. To qualify for the deduction, the company or the individual shall, for each year of assessment in the basis period in which the investment is made, obtain certification from the Securities Commission confirming that:<br>a) the investment in a venture company is in the form of the holding of shares which at the point of acquisition are not listed for quotation in the official list of a stock exchange;<br>b) the investment in a venture company is made for financing or funding at seed-capital, start-up or early stage; and<br>c) the investment is not made in a venture company which is its related company at the point of first investment.<br>**Non-application**<br>4. These Rules shall not apply to:<br>a) a venture capital company in which the *Income Tax (Exemption) (No.3) Order 2001* is applicable for the whole of the exemption period; or<br>b) a company or an individual for the year of assessment in which the company or the individual has disposed of its shares in a venture company prior to its listing on the official list of a stock exchange. |
| P.U. (A) 219 | *Income Tax (Exemption) (No. 4) Order 2001* | YA 1999 until the YA 2003 | **Exemption**<br>1. 1) The Minister exempts Pengurusan Danaharta Nasional Berhad and the wholly-owned subsidiaries of Pengumsan Danaharta Nasional Berhad from the payment of income tax in respect of the statutory income on all sources of income except the dividend income from the year of assessment 1999 to the year of assessment 2003.<br>2) Nothing in subpara. (1) shall absolve or be deemed to have absolved Pengurusan Danaharta Nasional Berhad or any of the wholly-owned subsidiaries of Pengurusan Danaharta Nasional Berhad 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) 220 | *Income Tax (Exemption) (No. 5) Order 2001* | YA 1999 and subsequent years of assessment | **Exemption**<br>1. 1) The Minister exempts all persons from the payment of income tax in respect of interest received in respect of bonds and securities issued by Pengurusan Danaharta Nasional Berhad within and outside Malaysia from the year of assessment 1999 and subsequent years of assessment.<br>2) Sections 109 and 109C of the Act shall not apply to income exempted under this Order. |

| P.U.(A) No. | Title | Effective Date | Details |
|---|---|---|---|
| P.U. (A) 226 | *Stamp Duty (Exemption) (No. 12) Order 2001* | 1 January 2001 | **Exemption**<br>1. The instruments specified in the Schedule executed on or after 1 January 2001 for the purpose of a securitization transaction are exempted from stamp duty.<br><br>**Revocation**<br>2. The *Stamp Duty (Exemption) (No. 6) Order 2000* [P.U. (A) 46/2000] published in the Gazette on 17 February 2000 is revoked. |
| P.U. (A) 227 | *Real Property Gains Tax (Exemption) Order 2001* | 1 January 2001 | **Exemption**<br>1. 1) The Minister exempts any person from the payment of real property gains tax in respect of chargeable gains accruing on the disposal of any chargeable assets:<br><br>a) to or in favour of a special purpose vehicle; or<br><br>b) in connection with the repurchase of the chargeable assets, to or in favour of the person from whom those assets were acquired, for the purpose of securitization transaction.<br><br>2) Nothing in subpara. 3(1) shall absolve or be deemed to have absolved the person from complying with any requirement to submit any return or to furnish any other information under the provisions of the Act.<br><br>**Revocation**<br>2. The *Real Property Gains Tax (Exemption) Order 2000* [P.U. (A) 58/2000] published in the Gazette on 24 February 2000 and the *Real Property Gains Tax (Exemption) (No. 6) Order 2000* P.U. (A) 513/2000] published in the Gazette on 31 December 2000 are revoked. |

*source: www.lawnet.com.my*

# INVITATION TO WRITE

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

Articles contributed can be written in English or Bahasa Malaysia. It should be between 2,500 and 5,000 (double-spaced, typed pages). They should be submitted in hardcopy and diskette (3.5 inches) form in Microsoft Word.

Contributions intended for publication must include the writer's name and address, even if a pseudonym is used. The Editor reserves the right to edit all contributions based on clarity and accuracy of expressions required.

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

INLAND REVENUE OFFICERS UNION

# 19TH IROU NATIONAL SEMINAR ON TAXATION

Tuesday, 30 October 2001 • Venue: Nikko Hotel, Kuala Lumpur & Wednesday, 31 October 2001 • Venue: P.J. Hilton

This year's Inland Revenue Officers' Union (IROU) Seminar is a historic collaboration among the Union, the Malaysian Institute of Taxation (MIT) and the Malaysian Institute of Accountants (MIA). Involving the taxpayers' representatives in organising the event recognises the close cooperation the parties need to have in the new regime of self-assessment where the standard of higher compliance and enforcement is expected. Hence, their input is needed.

The MIT, a body representing tax compliance and consultancy. The MIT Council has representatives from all the Big 5 firms. The MIA, the statutory body for accountants in the country, has more than 16,000 members, most of whom are involved in tax compliance and consultancy.

This year's Seminar will highlight the proposed tax changes in the Budget and amendments to the Income Tax Act 1967. Presentations will be made by senior officers of the Inland Revenue Board, the Treasury and the private sector. Our panel speakers are directly involved in drafting the proposals and, therefore, are in a position to explain the rationale behind each amendment.

The increasing importance of field audits by the IRB cannot be overlooked. This activity will be stepped up as self-assessment gathers momentum. Recognising its importance, this topic is included in the Seminar this year. The speakers and penalties will cover areas such as how to handle a field audit and tax investigation, records maintenance, etc.

The Organising Committee welcomes your registration and appreciate your continued support for this annual event.

## WHO SHOULD ATTEND

- Directors
- Financial Directors
- Financial Controllers and Managers
- Corporate Treasurers
- Accountants
- Investment Analyst
- Tax Consultants
- Tax Managers
- Company Secretaries
- Lawyers
- Financial Planners
- Corporate Planners
- Businessmen
- Investors
- Management Consultants

## PROGRAMME

### Kuala Lumpur - 30 October 2001

| | |
|---|---|
| 8:00am | Registration |
| 9:00am | Opening Ceremony<br>**Speeches by**<br>**Encik Aminnordin Abd. Hamid**<br>*President IROU*<br>**YAB Dato Seri Dr. Mahathir Mohamad** (Invited)<br>*Prime Minister/Minister of Finance, Malaysia* |
| 9:30am | Morning Coffee Break |
| 10:00am | **Budget 2002 Proposals**<br>**Chairman: Encik Ahmad Mustapha Ghazali**<br>*President MIT*<br>**Speaker: Mr Lim Heng How**<br>*Deputy Director General*<br>*(Technical & Legal) Inland Revenue Board*<br>**Panelist:** to confirm |
| 12:30pm | Lunch |
| 2:00pm | **Self Assessment for the Businessmen & Field Audit**<br>**Speakers and Panelists:** to confirm |
| 3:30pm | **Q & A Session** |
| 4:00pm | Afternoon Tea Break |
| 4:30pm | End of Session |

### Petaling Jaya - 31 October 2001

| | |
|---|---|
| 8:00am | Registration |
| 9:00am | Opening Ceremony<br>**Speech by**<br>**Encik Aminnordin Abd. Hamid**<br>*President IROU* |
| 9:30am | Morning Coffee Break |
| 10:00am | **Budget 2002 Proposals**<br>**Chairman: Mr Michael Loh**<br>*Deputy President MIT*<br>**Speaker: Puan Nik Esah Nik Mahmood**<br>*Assistant Director General*<br>*Head of Technical Division,*<br>*Inland Revenue Board*<br>**Panelist:** to confirm |
| 12:30pm | Lunch |
| 2:00pm | **Self Assessment for the Businessmen & Field Audit**<br>**Speakers and Panelists:** to confirm |
| 3:30pm | **Q & A Session** |
| 4:00pm | Afternoon Tea Break |
| 4:30pm | End of Session |

Registration Form on the next page!

## ADMINISTRATIVE DETAILS

**CPD Hours :**
All participants will be presented with a Certificate of Attendance by IROU upon successful completion at the programme for use in registering CPD hours.

**Cancellation:**
Please inform us in writing if you intend to cancel. No refunds are given for cancellations by delegates less than 7 days before the workshop. A 20% administration charge will be retained on other cancellations. Please substitute an alternative delegate if you wish to avoid cancellation penalties. Cancelled unpaid registrations will also be liable for full payment of the course fees.

Time : 8:00am till 4:30pm
Course Fee : * Member (MIT/MIA/MAA) : RM300.00
Non-member : RM400.00

* Member includes Member's staff and Member Firm's staff. Sponsoring member is required to indicate his name and membership number in the registration form and the staff must report directly to his in his firm or organisation.

**Enquiries:**

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Brickfields, 50470 Kuala Lumpur.

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# Payment for Cell Phone Service - No Withholding Tax

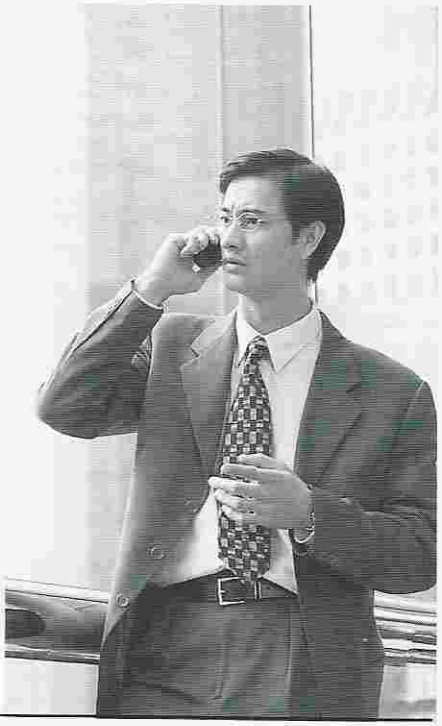
India's Madras High Court has ruled that subscribers to certain scientific and/or technological services, such as cell phones, are paying not for technical services, but for the use of a facility, and are therefore not obliged to withhold tax on payments to the provider.

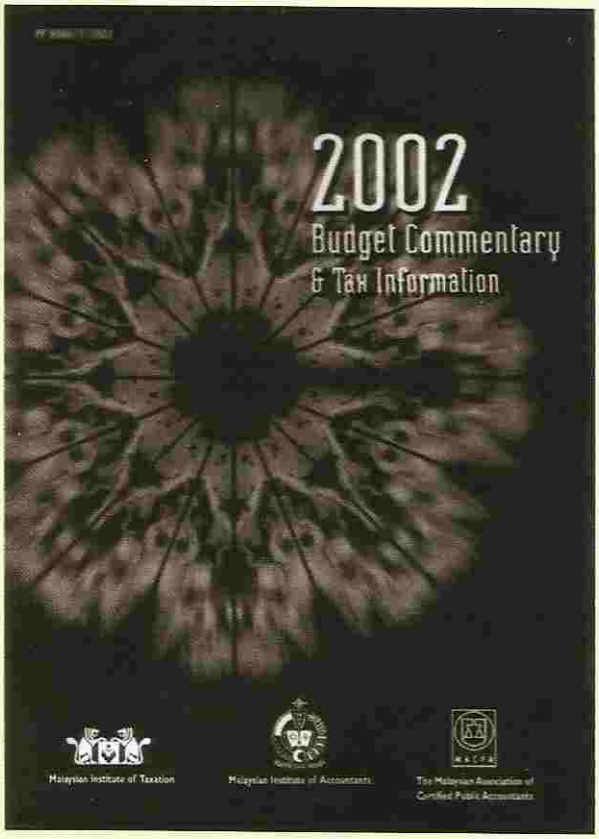
**Facts**

The taxpayer was engaged in the business of providing cellular phone services to its subscribers for a fee. The tax authorities were of the view that the subscribers were paying the company a fee for technical services, therefore section 194J required that tax be withheld on payments to the provider.

However, the Court held that the subscribers could not be deemed to be paying a fee for technical services merely because mobile phone services employ high-tech communication technology. The subscribers are really paying for the use of a facility, so payments to the service provider are not subject to withholding tax under sec. 194J of the *Income Tax Act*.

Editorial Note:
This decision is of interest to Malaysia in view of sec. 109B of the *Income Tax Act 1967*.






The Malaysian economy will face greater challenges as a result of increasing globalisation and liberalisation, as well as rapid advancement in information and communication technology. To enhance the nation's competitiveness and economic resilience, concerted efforts will have to be undertaken to improve its productivity as well as facilitate the development of a knowledge-based economy.

The coming budget is expected to give priority to increasing the supply of quality manpower, enhancing research and development efforts and accelerating the development of certain growth sectors. It is also envisaged that emphasis would be given to strengthening the economic and social fabric of the Malaysian society through the provision of better social services such as improved health and educational facilities, adequate and affordable housing and other related services.

For the first time, the budget Commentary will be jointly published by the **Malaysian Institute of Taxation, the Malaysian Association of Certified Public Accountants and the Malaysian Institute of Accountants**. The booklet will also contain useful tax information for quick reference.

A complimentary copy of the booklet will be sent to each members of the three bodies. Members are encouraged to purchase additional copies of the booklet for their staff, clients and business associates. A space will be reserved in the inside cover of the booklet for your firm's name to be inserted.

Members who wish to purchase additional copies of the 2002 Budget Commentary & tax Information are kindly to complete the Order Form below and return it with the appropriate remittance to the MIA Secretariat by **October 12, 2001**.

## Order Form - 2002 Budget Commentary & Tax Information

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| 100 - 499 copies (10% discount) | RM7.20 | | |
| 500 - 999 copies (15% discount) | RM6.80 | | |
| 1,000 copies & above (20% discount) | RM6.40 | | |
| Over-print of firm's name (only for bulk order of 1,000 copies & above) | RM120.00 | | |
| | | Sub-total | |
| Postage & packing (Peninsular Malaysia: RM1.00 per copy; Sabah & Sarawak: RM2.00 per copy) | | | |
| ☐ Delivery by courier - different rates depending on location<br>☐ To be collected from MIT office | | | |
| | | TOTAL | |

In the event that the Budget Day is postponed to 26 October, 2001, delivery of the Budget booklet will be deferred accordingly.

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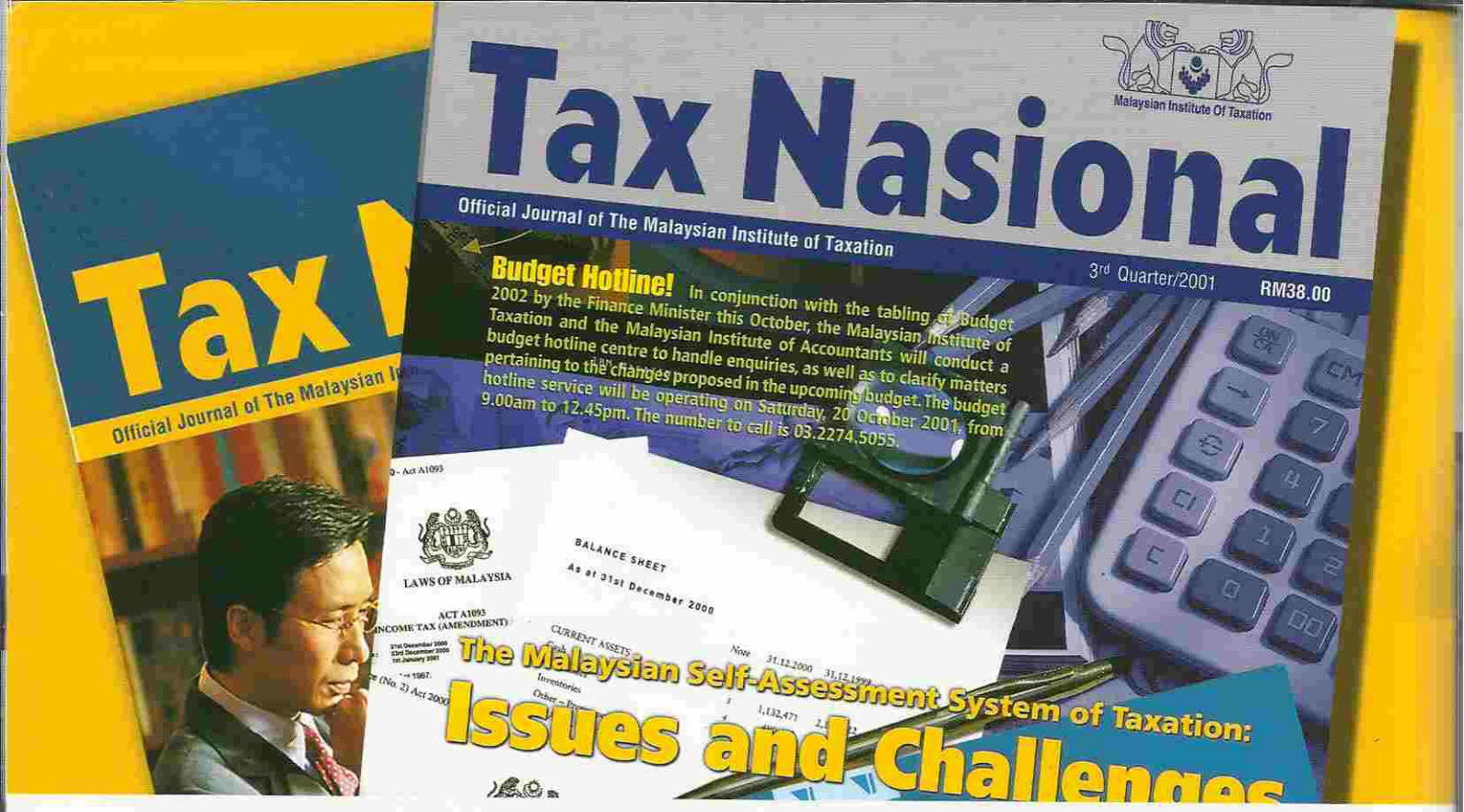


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