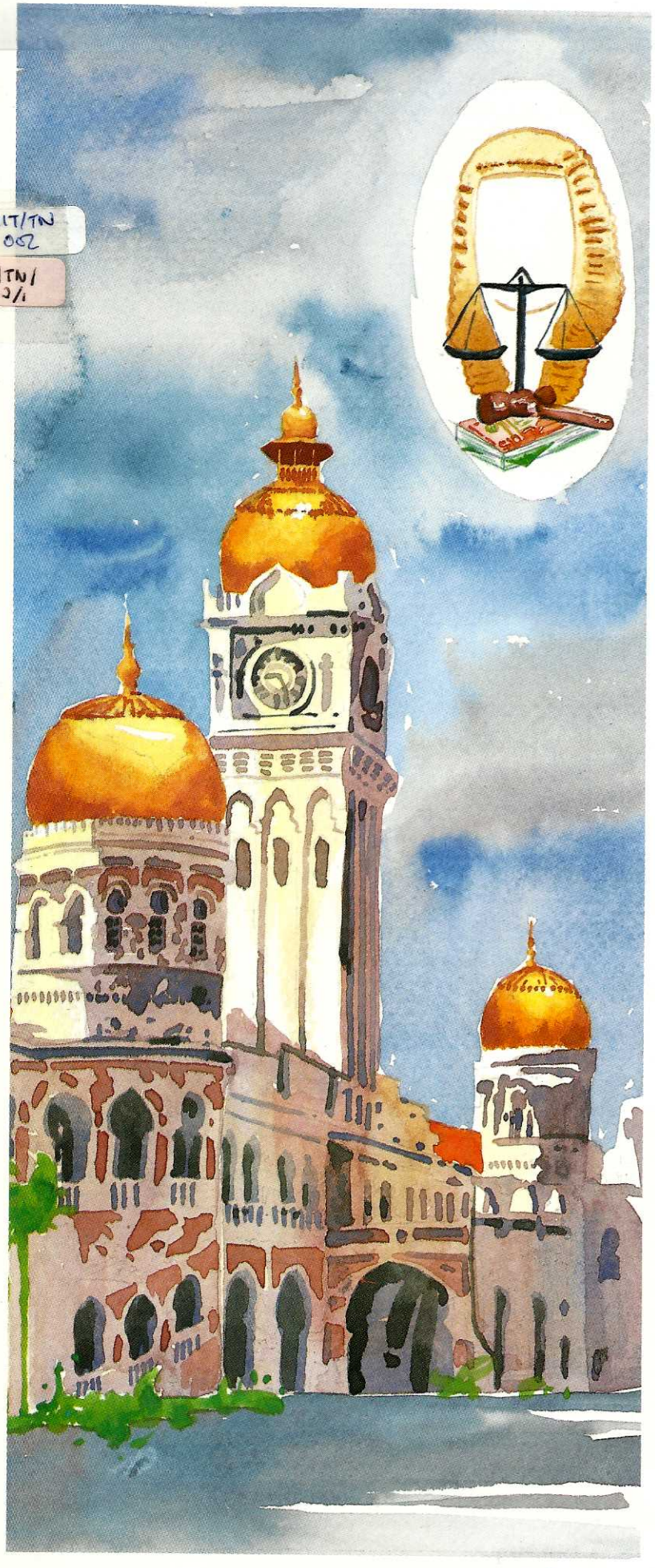

TAX NASIONAL

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Modern Trends In Tax Avoidance

Goods And Services Tax

1993 Annual Dialogue With IRD

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Malaysian Institute of Taxation

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OFFICIAL JOURNAL OF THE MALAYSIAN INSTITUTE OF TAXATION

M A R C H 1 9 9 3

Malaysian Institute of Taxation

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The objectives of the Institute are, inter alia:

1. To provide an organisation for persons interested in or concerned with taxation matters in Malaysia.
2. To advance the status and interest of the taxation profession and to work in close co-operation with the Malaysian Institute of Accountants (MIA).
3. To exercise professional supervision over the members of the Institute and frame and establish rules made herein for observance in matters pertaining to professional conduct.
4. To provide examination for persons interested in or concerned with the taxation profession.

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MODERN TRENDS IN TAX AVOIDANCE

Tax avoidance can indeed be respectable – within certain parameters and even healthy in a democratic society.

JAMES LOH CHING YEW

Tax Avoidance as you know affects not only the tax profession, and businessmen who are constantly advised by you to appropriate annual sums as tax provisions, but also society in general. I welcomed the opportunity to dispel certain prejudices and even phobias about tax avoidance on the part of the general public whom we serve and the politicians who represent the general public.

I revelled in the opportunity to show that tax avoidance can indeed be respectable – within certain parameters and even healthy in a democratic society where the predominant or sole rationale of economic firms i.e. business entities is to maximise profits, one of the ways of doing so being tax avoidance, tax mitigation or tax planning. However, my enthusiasm, I must say was somewhat dampened when my attention was recently drawn to the publication of a revolutionary judgement by the Supreme Court of Malaysia, namely Lim Kar Bee v. Duofortis Properties (M) Sdn. Bhd. wherein the Supreme Court declared unanimously as follows –

"...the real test seems to be, in any given transaction, whether the primary purpose of the transaction is to avoid tax; if it is, it is an illegal purpose, i.e. of such a nature that it would defeat the tax law in question...
In our opinion, the primary purpose of the scheme was to avoid paying the estate duty... the scheme was therefore illegal."

See (1950 – 1985) MSTC, 3288, at p. 3294, 2nd. column. Earlier on the Supreme Court in a less sanguine mood, opined that tax avoidance was not necessarily legal; see p. 3293, 2nd. column.

The tax profession is understandably alarmed and more than curious as to what this revolutionary pronouncement means for it has been nurtured on the premise that tax avoidance is not illegal whereas tax evasion (e.g. under section 114 of our Income Tax Act, 1967, *"the ITA"*), is.

Before some of us turn desperate and resort to tax evasion which is relatively easy and difficult to detect, let me soothe you by saying, Be of Good Cheer for there other cases, a Federal Court case, a Malaysian Privy Council case, and a very recent House, of Lords case which point in the other direction, and which unfortunately were entirely ignored by the Supreme Court.

Since with great respect I prefer the view of Their Lordships in the Privy Council, The Federal Court, and the House of Lords to the effect that tax avoidance per se is legal although certain forms of tax avoidance may be unacceptable to the Director-General of Inland Revenue, or to the Courts, and therefore unenforceable, as distinguished from illegality – I am in an unenviable position for I speak in the shadow of the guillotine. I am no longer a member of the Judicial & Legal Service but like many of you I earn my living in the world of taxation, etc. Someone, however, must speak up otherwise people will say of Malaysian society that it is comprised of many women, many mice, and a few men.

Tax avoidance schemes all failed because although legal in form were highly artificial

Before I deal with the troublesome Mr. Lim Kar Bee and his case, vis a vis certain leading avoidance or anti-avoidance cases from the United Kingdom, Australia, and New Zealand, I will state the view of Professor Whiteman, Q.C. being acknowledged tax expert. The following passage from Whiteman on Income Tax. (widely regarded as the leading authority on income tax in the U.K.), 3rd. edition. p. 10 reads as follows-

"A sharp distinction must be drawn between these two means; illegal methods of reducing liability, which usually depend on misstating or omitting items from returns, are known as 'tax evasion', and when employed, involve liability to substantial monetary penalities, or in serious cases to a criminal prosecution... There are, however, a number of lawful means open to a taxpayer who wishes to reduce his tax liability; the use of which means is known as 'tax avoidance."

It has been known throughout the many, many decades since we have had income tax that tax avoidance is lawful. The fact that a tax avoidance scheme has failed because it is highly artificial and amounts to a peversion of the law does not make it illegal. One should differentiate between unacceptability and therefore unenforceability of a tax avoidance scheme which is illegal, i.e. tax evasion because it invites sanctions or penalties. The host does not invite an unacceptable guest and it ends there. But if the unacceptable guest gate crashes against the will of the host he can be sued for tresspass, and furthermore if he does so with the intention of committing a criminal offence, e.g. criminal intimidation he can be charged and prosecuted for criminal tresspass.

Thus the House of Lord cases of W.T. Ramsay v. I.R.C. (1981) STC.174. Burmah Oil Co. Ltd. v. I.R.C. (1982) STC.30. and Furniss v. Dawson (1984) STC.153. are leading cases where the tax avoidance schemes all failed because although legal in form were highly artificial and amounted to an illusory pantomine of make belief. They were therefore held to be unenforceable but at no time did Their Lordships declare or even imply that they were illegal. This reasoning is further demonstrated by the success of the subsequent tax avoidance schemes is Craven v. White(1988) STC. 476. and the associated cases (also heard by the House of Lords) together with Craven v. White. namely Bayliss v. Gregory. and Bowater Property Developments v. I.R.C.

Now, in all these three subsequent cases the question of illegality never arose. The Revenue no doubt condemned them because they amounted to successful attempts to mitigate tax through a series of transactions (i.e. at least two successive transactions). They succeeded because they were not artificially contrived or structured transactions with no business purpose except the avoidance of tax. They were considered genuine business transactions because there being a practical likelihood of their not being certain in their outcome, they were therefore not preordained

unlike say a prepackaged dish of noodles where the result is predictable – just put the noodles in the hot pan and presto! a standard dish precooked according to standard specifications.

With the greatest respect to the Supreme Court in Lim Kar Bee's case, there was confusion between illegality, on the one hand, and on the other hand unacceptability leading to unenforceability. You put forward a legally correct plan under non-tax law, say commercial law but for tax purposes it is declared unenforceable because the authorities decide that in terms of reality and the substance of the contract it is denuded of fiscal effect although for commercial purposes it may be enforced. Thus there is nothing to stop you from repeating an unacceptable tax avoidance plan, hoping all the while that a new authority will agree with you but you would not be repeating an illegality. You would merely be described as being repeatedly "impractical" instead of adapting the plan as in Craven v. White.

Another point to note is that our income tax law does not punish tax avoidance per se although penalties may be imposed, not because of tax avoidance it must be said, but because of late payment. This is also the position in the U.K. Under our anti-avoidance law the Director-General of Inland Revenue, under section 140, ITA, may render tax avoidance schemes unenforceable if the effect is to avoid or reduce the tax payable. But there is no punishment merely for putting forward a tax avoidance scheme although penalities may be imposed in respect of the tax hitherto lost but to be recovered.

The Supreme Court may have been inspired by section 140, already mentioned but this power is to be exercised only by the D.G. and furthermore is subject to appeal. The D.G. it goes without saying is a member of the Executive and not the Judiciary, and it would be wrong judicially and legally for a Judge to seek inspiration from a wide ranging power designed for the Executive.

Finally, I will be citing an Australian Privy Council case, and a New Zealand Privy council case to show that section 140 is not to be interpreted in an absolutist manner but with a sense of balance for where wide ranging words are used, the Court may step in -as the Privy Council has done to illumine and explain how the section should be applied in a reasonable manner and not in a manner which is inimical to the Rule of Law.

Now, how do we for practical as well as professional purposes, set about practising our craft in the face of the revolutionary judgement of the Supreme Court?

Like Miss Ling Chooi Sen, a courageous lady member of the Bar I call for the restoration of appeals in tax and civil matters, to the Privy Council, and in doing so I think I am voicing the views of many professionals, and members of the business community.

Nevertheless for the purposes of the present situation I think we are fortunate in that we have a Malaysian Privy Council case, namely Chu Lip Kong v. DGIR (1950 – 1985) MSTC. 58 which in general solves our problem which was created by Lim Kar Bee who chose to rely on his own purported illegality but I will deal with his later on. At page 63, 1st column, Lord Diplock delivering the unanimous judgement of the Privy Council said,

"If by saying that the transfer of the land of C was not "bona fide" the Commissioners meant that the transfer of the land to C before the commercial timber on it was sold to the timber company was in order to avoid a possibility of income tax, this is irrelevant: a taxpayer is still entitled to arrange his affairs in such a manner as to attract the minimum liability to tax. subjcet to the power of the Commissioner of Inland Revenue to disregard certain transactions under section 26 of the Ordinance Inow s. 140 of the ITA)". Emphasis is mine.

Chu Lip Kong's case is therefore authority for the proposition that tax avoidance is permissible subject to our section 140 which is in any event subject to appeal to the Courts, and subject to the ratio decidendi in case law which place limitation on the absolutist interpretation, and application of section 140,ITA.

Where two opposing versions are reasonably consistent with the facts, and in terms of the statue, then the subject or taxpayer should be given the benefit of the doubt.

The Limitations on section 140. ITA:
In two Privy Council cases, an Australian one, and a New Zealand one the substantial equivalent of our section 140, ITA, formed the basis of appeals to the Privy Council. In these two cases, the Revenue's application of what is described as the annihilation provision was challenged. The Privy Council laid down certain conditions for the applications of section 140.

Before I return to Lim Kar Bee's case, vis a vis these two Privy Council Decisions, I should mention that Chu Lip Kong's case is part of the corpus of Malaysian law and being of a higher authority should have been followed by the Supreme Court. It is unfortunate that on a matter of such far reaching importance not only to tax practitioners but also to investors and to society in general, both domestic and foreign, the Supreme Court did not consider the recent House of Lords and Privy Council cases, nor was a representative from the Legal Division of the Inland Revenue Department, or a member of the Bar, requested to assist.

Lim Kar Bee's case was not a tax case no doubt but Their Lordships cited tax cases and sought to establish a principle which went far beyond the confines of that case. In the meanwhile let us consider these two Privy Council cases which show that section 140 is not the completely wide ranging cure all that it appears to be. On the face of it, it is a terribly wide ranging section: anything that seeks to avoid a reduction in tax etc. can be caught and if not applied intelligently without a sense of balance and the reasonable doubt rule, will bring within its net all manner of fish or fowl. Mr. Nigel Tutt who was trained as an accountant, and is now a financial journalist, in his book" the History of Tax Avoidance "1989 edition, describes the annihilation provision as an" *attempt to outlaw avoidance before it begins."* This provision – if interpreted without a sense of balance, and the reasonable doubt rule – is dictatorial in nature, and was criticised in the Privy Council case of Mangin v. I.R.C. (1971) A.C. IN theory the section could bring within it octopic tentacles thousands of business or family transactions which would be in danger of being annhilated much to the damage of the economy.

As we have not had much litigation on this section and as we do not have a clearance procedure in Malaysia, as they have had in the U.K. for many years, we have little guidance on the matter given the vast complexity and variety of business and/or family transactons.

In Lauri Newton & Others v. The Commissioner of Taxation of ... Australia (198) AITR 298; 98 CLR, Lord Denning delivering the unanimous judgement of the Privy Council, held that a transaction would not be caught by section 140, ITA if the following conditions were observed –

(i) look to the overt acts of the transaction;
(ii) ask yourself whether it could be implemented only as a tax avoidance transaction;
(iii) if the answer to (ii) is in the affirmative the it is caught by the section; if on the other hand it could also be explained as a business or family dealing or transaction, e.g. a family arrangement to redistribute property, or to provide for the remaining members of the family on the demise of the taxpayer cum breadwinner, then it is not caught by the section.

I think that the underlying rationale is this: if there is a reasonable doubt, ie. where two opposing versions are reasonably consistent with the facts, and in terms of the statue, then the subject or taxpayer should be given the benefit of the doubt. This is one of the golden rules of the interpretation of statutes: that if on a construction of the statue there is a reasonable doubt then the subject or tax-

payer should benefit from a beneficial construction of the statue.

Newton's case was elaborated on and explained in a New Zealand Privy Council case, Mangin v. I.R.C. (1971) A.C. where the Privy also supported what Lord Denning said. At p. 751, the Privy Council explained that if a business transaction can be carried out in two ways, one in which tax avoidance is involved, and one where tax avoidance is not involved then whichever way you choose to carry out the transaction, the annihilation section will not apply. Similarly with family dealings. The section will therefore apply if it is *"necessarily labelled as a means to avoid tax"*. Emphasis is mine. This is the litmus test to be applied although I might mention that since 1981, Australia has revamped its anti-avoidance section.

So far so good.

The effect of the Ramsay Line of Cases:
What then is the effect of the U.K. House of Lords, Ramsay line of Cases? It was stated by some that they did not apply because we have our own anti avoidance section 140, ITA.

And these quarters fear the Ramsay line of cases (until that is, Craven v. White (1988) because Ramsay rendered highly aritificial avoidance schemes, with no business purpose and which were preordained from beginning to end, unacceptable and unenforceable. At the same time these quarters wished to rely on the Duke of Westminister's case (1936) A.C.1: 19 T.C. 490. where Lord Tomlin delivered the following celebrated principle as follows and which has been reverently quoted time and time again often without the qualifying phrases about sham transactions –

"Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Act is less than if otherwise would be. If he succeeds in ordering them so as to secure the result, then however unappreciative the Commissioners of Inland Revenue or his fellows may be of his ingenuity, he cannot be compelled to pay an increased tax. The so-called doctrine of the "substance" seems to be nothing more than an attempt to make a man pay notwithstanding he had so ordered his affair: that the amount of taxation is not legally claimable."

You will note that I have emphasized certain qualifying phrases and words. Lord Tomlin made it reasonably clear from the start that not all tax avoidance schemes would be successful, the cautionary "if he can" and "if he succeeds" being interposed. Whether or not the taxpayer succeeds depends on the meaning of the phrase "legally claimable". I will endeavour to show that what is legal i.e. enforceable e.g. in the law of contract may in the law of taxation turn out to be "unacceptable" to use the word employed by Judges, and thereby unenforceable.

Thus even the dissenting Law Lord, Lord Atkin who is widely regarded as one of the truly great Judges of the English Bench was generally of the same view as Lord Tomlin but differed in the application of the general principle. His Lordship said,

"It has to be recognised that the subject whether poor or humble or wealthy or noble, has the legal rights to dispose of his capital and income as to attract upon himself the least of tax."

Lord Atkin found for the Revenue and what impelled His Lordship to dissent in a carefully written judgement was that in substance the payments made by the Duke of Westminister to his obedient gardener were in reality the same no matter that the form of payment was so devised so that what was not deductible, i.e. wages of the gardener, became deductible in the form of an annuity, in the computation of the adjusted income of the Duke.

In the present age at least in the United Kingdom, the doctrine of substance has been reborn for in the very recent case of Ensign Tankers (Leasing) v. Stokes (1992) STC. 226. Lord Templeman delivering the unanimous judgement of Lord Atkin, whilst reaffirming the principle laid down by Lord Tomlin as to tax mitigation but not tax avoidance where in the latter case, schemes are denuded of reality, e.g. creating an illusory loss when there is in fact none.

Our income tax law does not punish tax avoidance per se

Lord Atkin, and Lord Templeman differ from Lord Tomlin not so much on the general principle but as to how it should be applied to the facts of a particular case.

In Malaysia prior to the revolutionary judgement of the present Supreme Court, the principle laid down by Lord Tomlin was adopted by the Federal Court of Malaysia (now renamed the Supreme Court because of the abolition of appeals to the Privy Council) in Comptroller of Income Tax (1950 – 1985) MSTC v. A.B. Estates Ltd. 95. where Mcintyre J. delivering the unanimous judgement of the Federal Court also the quoted statement of law by Lord Atkin. His Lordship after quoting from Lord Tomlin, and Lord Atkin said at p. 96, 2nd column

"This of course is good law, and it simply means that a taxpayer is entitled to seek avenues of escape from payment of tax by disposing of a part of his income for a lawful purpose."

And His Lordship went on to support the Duke of Westminister's case. So now we have both Chu Lip Kong's case. and the A.B. Estates case to effectively counter any attempt by the Revenue to use Lim Kar Bee's case as the hangman's noose!

The federal Court it may be said found against the taxpayer in the A.B. Estates Ltd. case because the scheme was so blatantly artificial and in defiance of market value so as to enable the Comptroller of Income Tax to set aside the transaction on the grounds that it was artifical pursuant to section 29 of the old Income Tax Ordinance, 1949, which was not incorporated in the subsequent, ITA.

The Duke of Westminister's case therefore, even before the emergence of the Ramsay line of cases was not meant to be a complete *"let out"* or magic wand as some tax practitioners suppose it to be. In my preview or introductory note I have warned against black and white distinctions. I spoke of grey areas of the law illumined by judicial guidelines and I explained that Judges brought up in the traditions of the common law do not like wild swings of the pendulum even in regard to tax law which is a creature of statute law.

So in the Duke of Westminister's case. Lord Tomlin also made the following qualifying observations which are perhaps sometimes forgotten by tax practitioners in their exciting games of brinkmanship. His Lordship made it clear that his "let out" did not include the situation,

"where documents are not bona fide nor intended to be acted upon but are only used as a cloak to conceal a different transaction". See p. 521 of 19, T.C.

What makes Lim Kar Bee's case so dangerous is not that it regards the scheme as a tax avoidance plan but that it considers all schemes with the primary purpose of tax avoidance as illegal. The Supreme Court therefore being of an absolutist turn of mind did not consider whether the scheme was a genuine tax avoidance scheme or whether it was merely a pantomine of make belief.

My own opinion without having had the benefit of examining the documents pertaining to the tax avoidance scheme in question, is that a case can be made out for the particular scheme in question because it was in bare essence –

(i) a rather uncomplicated scheme for reconstruction of share capital the aim of which was to depreciate the value of the shares and thereby the estate of the taxpayer and also to pay for the land,
(ii) but nevertheless leaving part of the reconstructed share capital to the taxpayer's wife and children.

It could be therefore argued that this could also be labelled as a family arrangement in as much as it could be labelled as a tax avoidance scheme. Remember Lauri Newton's case: it was indeed supported by the Federal Court in the A.B. Estates Ltd. case.

One of the peculiarities of Lim Kar Bee's case is that Lim Kar Bee the owner of the land was also the taxpayer and as taxpayer he sought to set aside the agreement of sale on the grounds that it was illegal so he, Lim Kar Bee cheerfully admitted that it was a tax avoidance scheme and argued that since tax avoidance was illegal it vitiated the agreement of sale pursuant to the Contracts Act.

The Supreme Court upheld Lim Kar Bee's contention without being aware of the rule of law that a litigant cannot rely on his own illegality. The authority for this proposition is the Malaysian case of Pallniappa Chettiar v. Arunasalam Chettiar (1962) M.L.J. This is yet another ground as to why the judgement of the Supreme Court cannot be supported and it is surprising that this well known principle of law was not within the ken of the Supreme Court.

Coming back to the Duke of Westminister's case, the Duke paid his gardener wages which for the purposes of surtax were not deductible. In order to make then deductible and acting on the advice of his tax advisers he entered into covenants to substitute payments of an annuity for payments of wages, which in substance and reality were payment of wages for past services rendered. It was held by the majority of the House of Lords that as the deeds of covenants were legally genuine and made bona fide the legal form and not the substance of the transaction was to be upheld so the payments were deductible being annuity payments. From there has emerged so it is said, the emphasis on the legally valid form so long as it is not a sham – over the substance of the transaction. In his dissertation, *"Tax Planning – The Ground Rules (1985) Mr. Patrick Soares, a British tax lawyer, Barrister-at Law, LLM. traces in his closely reasoned and well written analysis the struggle between the doctrines of legal form and substance, emphasis being sometimes given to the legal form, and sometimes to the substance of the transaction depending e.g. on the change in legal environment."*

I venture to say that we are now in the age where substance of the transaction is given the edge over the doctrine of the the legally valid form which was more appropriate in an age when things were not in a flux and where the questions of e.g. legal status and social heirachy were more stratified and crystallised. So as was pointed out by Lord Diplock in Burmah, at p.32 of (1982) STC one might expect some degree of "subservience" on the part of the Duke's gardener having regard to the state of high employment, and to the fact that the documents were drawn up in the nineteen-thirties.

Latilla v. I.R.C. (143) A.C. 377, House of Lords:

In Lim Kar Bee's case, the Supreme Court quoted the general principle enunciated by Lord Tomlin. Instead of describing it as say, *"the Duke of Westminister principle"* it said with reference to the said principle at p. 3,293. *"Such genial spirit can be constrasted with the rather critical attitude of Viscount Simon L.C. in Latilla v. I.R.C. 1943, A.C. 377 at p. 381 who described such kindred ingenuity as a not commendable exercise of ingenuity."*.

With great respect to the Supreme Court the difference between Latilla's case, and the Duke of Westminister's case was not a contrast between obiter dicta or between contrasting sentiments but between two different cases decided on different wavelengths.

Viscount Simon L.C. was directing his criticism to a scheme whereby the taxpayer who was resident in the United Kingdom transferred his assets abroad but continued to have power to enjoy the fruits of those assets through other persons, resident or domiciled outside the U.K. in defiance of section 18 of the U.K. Finance Act,1936, an anti-avoidance section.

At no time did the Lord Chancellor imply or even hint that tax avoidance per se was illegal or even unacceptable at all times. In Latilla's case, the tax avoider came into conflict with the said section 18 and therefore the tax avoidance scheme was unacceptable and therefore unenforceable. Indeed at p. 382, the Lord Chancellor said, *"Nevertheless if the Crown is unable to bring the scheme of 1933 within the range covered by s. 18 of the Finance Act, 1936, the appellant must succeed. The issue turns on a comparison of the particular arrangements now before us with the language of the section."*. Emphasis is mine.

A tax payer is still entitled to arrange his affairs in such a manner as to attract the minimum liability to tax...

What attracted the criticism of the Lord Chancellor was that the particular scheme was "elaborate and artificial". So if the tax avoider had put forward a plan which was not elaborate and artificial and which did not conflict with the provisions of the said section 18, he would have succeeded.

And indeed in another House of Lords case, Vestey v. I.R.C. (1980) STC, 10; 1, Leading tax Cases, 571, where the House of Lords was faced with the kindred tax avoidance scheme involving basically the same sort of tax strategem but duly improved and modified, the House Lords found for the taxpayer vide section 478 of the U.K. Taxes Act, 1970 which has been amended because of this leading case. Latilla's case when viewed in depth, far from providing support in Lim Kar Bee' case, weakens considerably the judgement of the Supreme Court which relied on this case.

Building a Bridge Between our section 140, and the Ramsay Line of Cases: An Oblation for Lim Kar Bee's case:

It has been emphasized that the Ramsay line of cases represent a rule of construction or interpretation and do not therefore amount to judicial legislation. The general principles of construction have been refined and developed culminating in the very recent and important case of Ensign Tankers (Leasing) Ltd v. Stokes (1992) STC 226. House of Lords. Eleven years of litigation, numerous articles and seminars not to mention a lot of emotional handwringing and the gnashing of teeth have led to a refinement and clarification of the Ramsay principle, and I commend to your attention this very recent case because it encapsulates and explains the modern anti-avoidance law in the U.K. which I venture to submit is of relevance to our tax system. I earnestly hope Ensign, etc. will be accepted here for as Lord Roskill pointed out in Furniss v. Dawson (1984) STC./153 at p. 157, (quoted by Lord Templeman at p. 239 of Ensign). *"The ghost of the Westminister case.... has haunted the administration of this branch of the law for too long"*.Lest I have caused you unease and nervousness, let me also quote the following comforting words by Lord Templeman who together with Lord Goff takes a slightly stricter view of tax avoidance than say Lord Oliver who differed from Lord Templeman, and Lord Goff in Craven v. White (1988) STC. At p. 234 of Ensign. Lord Templeman said, *"the form of the transaction was admittedly designed to avoid tax. But there is no morality in a tax and no illegality or immorality in a tax avoidance scheme"*. Lord Templeman then went on to give examples of legitimate or acceptable tax avoidance, i.e. schemes which would be enforced by the courts as differentiated from those unacceptable to the courts, and therefore unenforcable.

So much for Lim Kar Bee's case.

The importance of the Ensign Tankers (Leasing) Ltd. case besides being a comprehensive resume of the law from 1981 and the period of gestation before that is as follows –

(i) Ensign makes clear the extent to which the Duke of Westminster's case may apply;
(ii) supports the judgement of Lord Atkin in *the Duke of Westminister's case*;
(iii) reiterates the Ramsay principle in Ramsay, Furniss, and it must also be said, in Craven v. White.

What actually are the principles and ramifications therewith? In Ensign. Lord Jauncey quoted with approval the following passage. *"I can do no better than cite the following well known passage from the speech of Lord Brightman in Furniss v. Dawson (1984) STC. 153 at 166-*

The formulation by Lord Diplock in Burmah ..... expresses the limitations of the Ramsay principle. First, there must be a pre ordained series of transacions; of if one likes one single composite transaction. This transaction may or may not include the achievement of a legitimate, commercial (i.e. business end). The composite transaction does, in the instance case; it achieved a sale of the shares...it did not in Ramsay. Second there

must be steps inserted which have no commercial (business) purpose apart from liability to avoidance to tax-not "no business effect". If those two ingredients exist the inserted steps are to be disregarded for fiscal purposes. The court must then look at the end result. Precisely how the end result will be taxed will depend on the terms of the taxing statute sought to be applied". Emphasis is mine.

These are the ground rules and they have been described by the House of Lords, e.g. in Craven v.White, as rule of construction.

Principles of construction of deeds and statutes are relevant whether we deal with the Malaysian, the Australian, the New Zealand, or the British tax system, subject no doubt to the specific constraints of the statute, if any.

This rule of law as summarized by Lord Brightman is limited to tax law. As the passage shows, the intermediate steps are to be disregarded but only *"for fiscal purposes"*. They are therefore self-cancelling because in reality they lead to a fiscal nullity, i.e. where there is no real gain or no real loss and in Ensign, the House of Lords made it clear these self cancelling transactions which were solely for the purpose of tax avoidance, i.e. no business purpose could be disregarded *"for tax purposes"*; see p. 247. So for the purposes of commercial law or the law of contract they are enforceable however, roundabout, or tortuous, the transactions may be but as tax avoidance schemes they are unacceptable.

In Craven v. White. and better still I.R.C. v. Bowater Property Development Ltd. and Bayliss v. Gregory which were heard together with Craven v. White the taxpayer and his advisers succeeded in persuading the House of Lords (3-2 in Craven v. White. and 5-nil in the other two cases) that if there was a practical likelihood of uncertainty as to the outcome of the schemes then it would not be a preordained scheme which would automatically end up in a predicted result. Or to put it another way, the tax avoidance scheme would succeed if there was no practical likelihood that the scheme would assuredly travel on its predestined and preordained course.

In summary, the way for a tax avoidance scheme to succeed is that so long as you have a business purpose for the scheme (no matter you also have tax avoidance in mind) and you do not in a series of transactions or documents, have a preordained scheme automated so as to be completeley predicatable from start to finish i.e. a plan where there is no practical likelihood of certainty as to the outcome, then you are safe. By business purpose is meant that if there is e.g. any loss or expense it should be real and not "cooked up" for the Ramsay line of cases is aimed also against artificial schemes devoid of reality, and relying on what Lord Templeman described as "play acting". One must find out "the true legal effect" of the transaction and this expression with grammatical variations appears now and then in the Ensign case: see e.g. p. 236 & 237.

This approach I must say was that of our Federal court in the A.B. Estates Ltd. case already cited.

By now I think the fear of the Ramsay line of cases has subsided. You cannot have the beloved Duke of Westminister's case and at the same time reject Ramsay. etc. for it has been made abundantly clear that they go together. They form part of the thinking of the courts, a sort of connective tissue whether one is referring to Malaysia or Australia. Once you rely on the Duke of Westminister's case the question now is to what extent is it applicable?

In the Ensign case, Lord Templeman put the matter on a forthright basis at p. 241 where he stated that the Duke of Westminister's case applies to tax mitigation but not to artificial tax avoidance. His Lordship said at p. 240- *"Income Tax is mitigated by a taxpayer who reduces his income or incurs expenditure in circumstances which reduces his assessable income or entitle him to reduction in his tax liability..... Income tax is avoided ...when the taxpayer reduces his liability to tax without involving him in the loss or expenditure which entitle him to that reduction,"* in other words if there is a faked gain or fake loss in defiance or reality. Emphasis is mine.

For the purpose of income tax it entitles the commissioners to look at the end result and to ignore all the steps which were taken in pursuance of the avoided arrangement.

The British Bar has accepted the Ramsay principle being satisfied that it does not represent judicial legislation.

In Malaysia the Federal Court in the AB Estates Ltd. case at p. 99 has approved the following passage from the judgement of Fullagar J. one of the better known judges of the Australian High Court (Australia's highest court of appeal) in Lauri Newton's case-

"Section 260 [s. 140 of Malaysia] alters nothing that was done as between parties. But for the purpose of income tax. it entitles the commissioners to look at the end result and to ignore all the steps which were taken in pursuance of the avoided arrangement. "The emphasis is mine and the phrases emphasized indicate that this passage by an Australian judge ominously presages the trend of judicial thinking in the Ramsay line of cases. This passage by Fullagar J. was also suported by the Privy Council. This is perhaps a case of cross-fertilization of ideas where the flow of ideas this time is from Australian to the United Kingdom through the Privy Council whose judgements have not only enriched our legal system but also been enriched by contact with the Australian legal and tax system which after all owed their inspiration to English law, guided by the Privy Council.

The Ramsay line of cases are not judicial legislation but merely a technique of approach in artificial tax avoidance schemes and are to be welcomed partly because they restore respectablity to the tax profession and partly because they constitute our rules of discipline if I may so put it. Like the Duke of Westminister' case, Ramsay. Burmah, Furniss, Craven v. White, and Ensign etc should also apply for they could not have come into being without the Duke of Westminister's case: they represent an attempt to modernize the law of tax avoidance in keeping with the very complex flux and flows of modern or modernizing economies.

But just in case my opinion (which is the opinion after all, of an undistinguised commentator) is chaff before the wind, let me cite the Privy Council case of Challenge Corporation Ltd. v. C.I.R. (1986) STC. 548 where Lord Templeman delivering the judgment of the majority of the Privy Council adopted the Ramsay principle with regard to the New Zealand tax system where the anti-avoidance principle is substantially the same as ours.

Second, Mr. Patrick Soaresin the dissertation I have already referred to, implies at p. 60 that this principle of statutory construction in Ramsay (and also the principles of construing a series of contracts) is relevant whether we are dealing with New Zealand [substitute Malaysia] or with the U.K.

Far from destroying genuine tax planning or genuine tax avoidance (i.e. tax mitigation) the British cases enrich our system of tax law, and taxation, and our treasury of taxation concepts. We would be poorer in the long run, in the development of our legal and tax systems if we -as an anodyne for the pain of complicated thought – shut out the Ramsay line of cases for short term gain in a fit of the sulks. I mention this for when Ramsay was first decided there were emotional howls of agony and dismay in the U.K. and even cries of "dictatorship"! leading to a tax professional and former senior inspector of taxes, the well known Paul D Voil to rebuke what he described as latter day Tom Paines for an excess of emotion. MIT

GOODS AND SERVICES TAX

Compiled by:
CHUAH SOON GUAN
RA, CPA

Introduction

On February 9, 1993 Singapore released a White Paper on the Goods and Services Tax ('GST'). The rate for the Goods and Services Tax was set at 3 percent and it will be introduced from April 1, 1994. The rate will not be changed for at least 5 years. The tax, which *represents the most far-reaching reform of the Singapore tax system to date*, will cover practically all goods and services with the exception of businesses with annual turnover of less than S$1.0 Million.

At the same time, the Government has given an undertaking to:

- cut corporate tax and personal income tax.
- raise personal income tax relief, such that more than half of the households will not have to pay income tax once the GST is implemented. Currently, 90 per cent of households pay income tax.
- cut a number of current consumption taxes, such as entertainment duty, tourism and taxes on utilities and telephone charges.
- introduce a package of measures to offset the impact of the GST on those who do not pay any income tax now.

'GST' represents the most far-reaching reform of the Singapore tax system to date.

What is GST?

GST is a tax on dometic consumption. The tax is paid when money is spent on goods or services, including imports. It is not paid when money is saved and invested in productive capacity. The tax is collected by the producers of goods and the providers of services. Tax is passed to the final consumer, with the suppliers acting as collection agents. Figure I shows how this multi-Stage tax is collected at every stage of the production and distribution chain.

Worldwide Trend

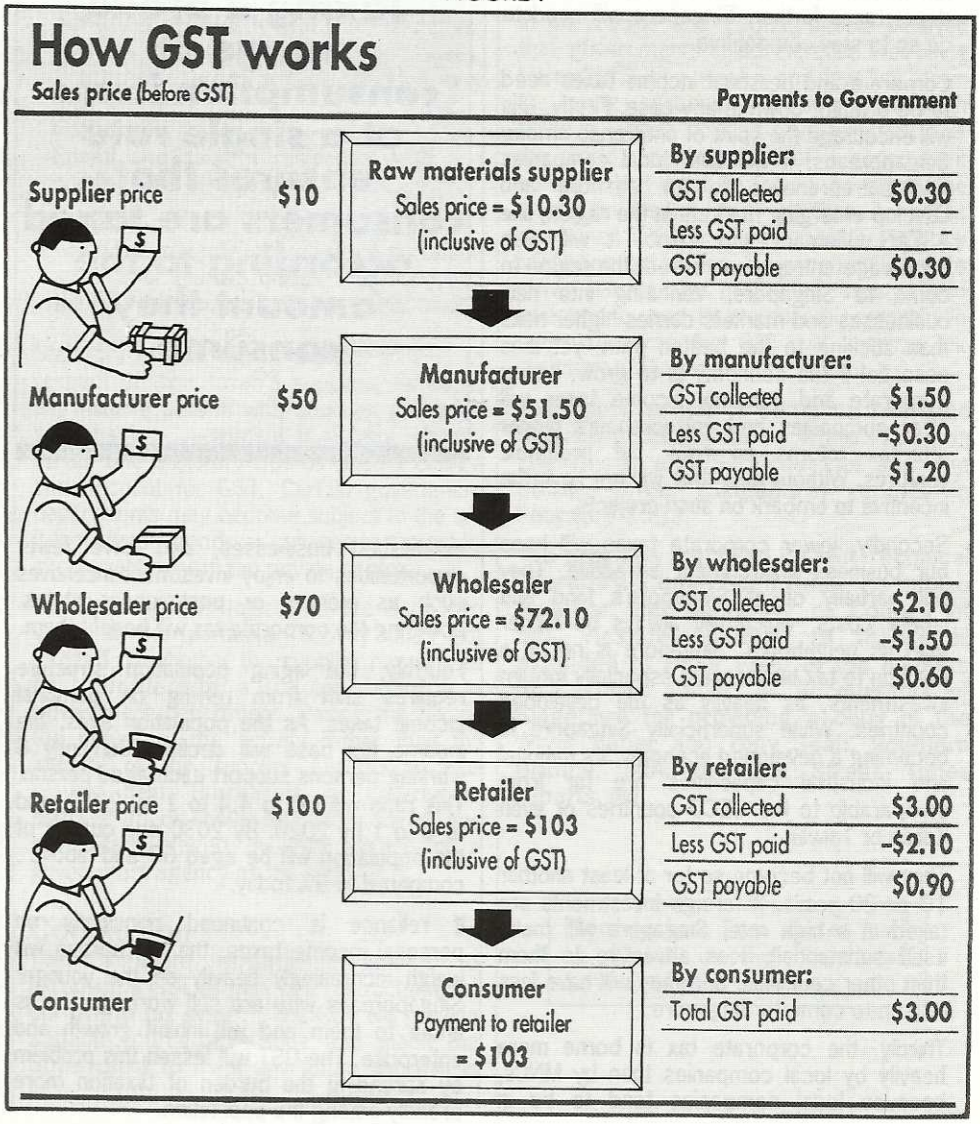
In the 1960s and 70s, the GST, or VAT as it is popularly known, was not widely used. Countries relied mostly on direct taxes such as corporate and personal income taxes to generate revenue to fund government expenditures. Tax rates in the early 1970s were high. For example, the top marginal income tax rate in the UK was 75%, New Zealand 50%, South Korea 70% and Taiwan 60%.

As international trade and investment flows increased, and talent became more mobile across borders, countries with high direct taxes suffered an exodus of talented people to lower tax countries. High income taxes reduced individuals' willingness to work, save and invest. High corporate taxes suppressed initiative and drove businesses elsewhere. Ad hoc indirect taxes weighed heavily and unequally on different parts of the economy and stifled economic activity. Wholesale and turnover taxes caused cascading: tax was levied on the price of a product whose inputs had already been taxed, so that by the time the product reached the consumer, the effective tax on the product was many times the nominal rate.

Cascading also discriminated in favour of vertically integrated firms, which did many stages of production in-house, and paid no tax as the product moved from stage to stage, against horizontal integration, with different firms specialising in different stages of production, paying tax each time one firm sold something to another.

The result was a worldwide shift towards lower direct taxes, and a more even distribution of the tax burden between direct taxes on income and broad based direct taxes on consumption such as the VAT. *Preference for the VAT in tax reform proposals* over the past two decades *has been striking*. It has figured in almost all

FIGURE I



recent tax reforms, including Japan (1989), Finland (1991), Pakistan (1990), Canada (1991) and Thailand (1992). In ASEAN Thailand, Indonesia and Philippines have introduced VATs. VAT is now a condition for entry into the European Community, and some form of VAT is in force in more than 55 Countries.

Specific Reasons for GST

Direct Taxes account for 60% of Singapore's tax revenue. Over 73% of direct taxes come from individual and corporate income taxes. The indirect taxes, which make up 40% of tax revenues, are narrowly based. More than half come from motor vehicles, petroleum, liquor and tabacco. Because these are levied for reasons other than revenue, the Government cannot freely raise or lower their rates as its revenue needs change. To shift more of the tax burden to indirect taxes, GST is needed rather than increasing the existing indirect taxes and levies.

The GST will sustain a lower corporate tax rate. Many countries reduced direct taxes in the 1980s. Corporate and personal income tax rates were cut in 1986, but fortunately on that occasion rapid economic growth made up for the loss of revenue from lower tax rates. Should other countries lower direct taxes further, Singapore will need to do so to stay competitive.

Corporate and personal income taxes need to be brought down in any case. Firstly, this will encourage the spirit of enterprise among Singaporeans, It will spur local companies and entrepreneurs to go offshore and develop emerging markets in the region, like ASEAN, Vietnam and China. It will also encourage entrepreneurs from the region to come to Singapore. Venturing into new businesses and markets carries higher risks than sticking to the beaten path, yet it is essential if the economy is to grow. Lower corporate and personal income taxes will offer companies and entrepreneurs higher after-tax returns on risky but profitable ventures. Without this, they will not have the incentive to embark on such projects.

Secondly, lower corporate taxes will keep our business environment attractive. They will partially offset Singapore's land and labour costs, which will always be higher than its neighbours. Singapore is not in a position to tax businesses, especially foreign investments, as heavily as the developed countries. While superficially Singapore is becoming a developed economy, its national and industrial capabilities are far from comparable to the OECD countries or even Korea or Taiwan.

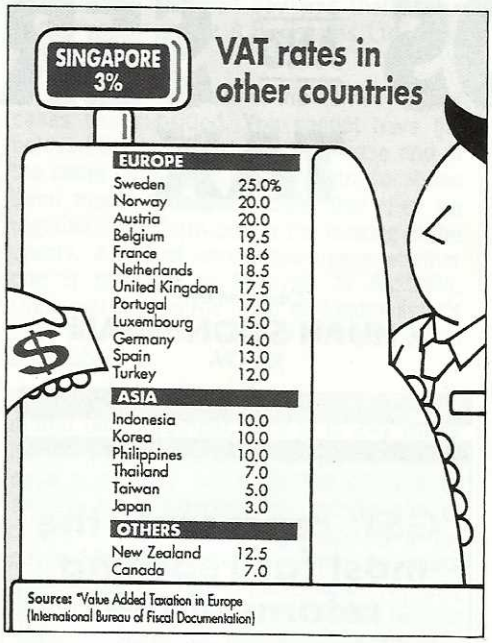
They will not become so for at least another 10 or 20 years. If foreign investments are taxed at a high rate, Singapore will make itself substantially less attractive to them than other countries, and they will have less reason to come to Singapore.

Thirdly, the corporate tax is borne more heavily by local companies than by MNCs, because local companies tend to be in established businesses, and have fewer opportunities to enjoy investment incentives such as pioneer or post-pioneer status. Lowering the corporate tax will benefit them.

Fourthly, the aging population structure requires shift from relying on personal income taxes. As the population ages, the income tax base will decline. Currently 8 working persons support each aged person. This ratio will fall to 4.4 to 1 by 2010, and to 3 to 1 by 2020. By 2030 one quarter of the population will be aged 60 and above , compared to 9% today.

If reliance is continued principally on personal income taxes, the tax burden will weigh increasingly heavily on the younger Singaporeans who are still working. This is unfair to them and will inhibit growth and enterprise. The GST will lessen this problem by spreading the burden of taxation more broadly among the population.

FIGURE II



Taxing a broad range of consumption items at a single rate ensures that consumers are taxed according to the amount they consume.

Therefore *there is the need to introduce the GST and reduce dependence on direct taxes*, even though the Government does not need more money now. Besides reducing corporate and personal income taxes, the Government plans to make additional expenditures to offset the impact of the GST on lower income groups.

Taking this whole package together, the Government expects to collect less revenue in the first few years after the GST is introduced. In the longer term, the package should be revenue neutral, so long as the 3% GST rate is not increased.

Impact On Prices

When the GST is first introduced, overall prices will rise to some extent, but should stabilise after a while. The total rise in price levels resulting from the GST should be at most about equal to the GST rate. With a rate of 3%, this means a one-time increase of about 3% in the Consumer Price Index. This is comparable to the annual inflation Singapore has experienced, and much less than the average annual increase in wages in recent years.

The experience of other countries confirms that introducing a GST usually causes only a one-time increase in prices. This happened for example in New Zealand in 1986, and in Japan in 1989.

A major International Monetary Fund study of the price effects of introducing VAT in 35 countries showed that in 22 countries there was little or no impact on prices. In 7 countries there were one-off price increases. Only 6 countries did the introduction of VAT lead to inflation, and even then the inflation was caused not by the introduction of VAT itself but by excessively high wage demands and loose monetary policy.

Rate And Coverage

GST is at a single low rate of 3%. This is the same rate as Japan, and is much lower than the high rates typical of European countries like the UK (17.5%), Belgium (19.5%), France (18.6%) or Germany (14%). Figure II shows the GST rates of some other countries.

Countries with VAT usually exempt potential taxpayers with turnovers below a certain amount, to reduce administrative costs. Bringing them into the VAT system imposes a heavy burden on both small businesses and the tax authorities, whereas large firms are in any case keeping proper records of their purchases and sales, and should have no difficulty meeting the GST accounting requirements.

Singapore set a high annual turnover limit of $1,000,000. This exemption threshold is higher than most other countries. For example, Japan exempts traders with an annual turnover below Y30 million (S$400,000), Indonesia – below Rp 60 million or S$48,000; and the UK – below 35,000 pounds or S$85,000. This high turnover threshold will exempt nearly all, if

not all, provision and retail shops, hawkers, HDB shopkeepers and taxi drivers from the GST. This will reduce the impact of GST on the lower income groups who buy many of their daily necessities from neighbourhood shops.

Beyond exempting companies with turnovers below $1 million, the Government do not intend to further exempt specific goods and services. GST can then be applied across-the-board. This way we avoid the problems faced by other countries which exempt specific goods or services.

Apart from exports, there will be no zero-ratings. Although tourist purchases of goods are in effect exports, we do not plan to implement a system of tourist refunds in view of the low GST rate and high exemption threshold. This will keep administration costs low. However, if tourist shopping turns out to be badly affected, the Government will consider introducing a system of GST refunds for tourists taking goods out of the country.

Taxing a broad range of consumption items at a single rate ensures that consumers are taxed according to the amount they consume, rather than the types of goods or services they consume.

The UK, Ireland and the Philippines operate a very complex range of exceptions, and levy varying GST rates on different goods and services. This increases compliance and administrative costs for both traders and tax administrators, who have to keep track of the different items exempted or charged at different rates. It creates definitional disputes as to what should be exempted and what should not, and encourages people to cheat and misdeclare to benefit from lower or zero rates.

For "essential", countries which exempt 'essential foods" have invariably found whatever definition they adopt is still controversial. Distinctions between bread, buns, pastries, biscuits and confectionary create opportunities for endless dispute, confusion and evasion. Some countries try to simplify the problem by exempting "unprocessed foods", but few foods are wholly-unprocessed. Even rice is usually polished; wheat is turned into flour; milk pasteurised or made into butter; and meat butchered and often semi-processed.

For those reasons, in Japan, Thailand, New Zealand and most European Community countries, food is taxed under VAT or GST. Singapore will be following their example.

The 27-page White Paper also contains special measures for certain sectors of the economy, including:-

* Exports
  These will be zero rated, that is, the product or service can be sold to overseas customers with no GST attached. At the same time, exporters will be reimbursed for the GST they pay on inputs.

FIGURE III

GST TIME-TABLE

- **9 Feb 1993:** White Paper unveiled.
- **26 Feb 1993:** Bill on GST to be introduced in Parliament for first reading.
- **19 March 1993:** Second Reading of GST Bill. MPs will debate the proposed legislation. It will then be referred to a *Select Committee.*
  Finance Minister Dr Richard Hu said the Government may take up to six months collecting public feedback and suggestions.
- **Last quarter of 1993:** Third reading of the Bill after making the necessary modifications.
- **1 April 1994:** GST comes into effect, together with other tax charges and rebates to help lower-income groups.

* Education and medical services
  They are subject to GST but fees will not rise as the Government will increase subsidies to the state education and public health systems to offset the tax.
* Financial services
  GST will be imposed wherever a charge can be explicitly considered to be for financial services rendered or where the acitivity is not strictly of a financial nature, such as the rental of safe deposit boxes. But precise areas will be decided only after feedback.
* Real estate
  Rental and sale of residential land and buildings will be exempted.
* Tourism
  Given the low rate, there will be no refund system for tourists unless it is found that the GST adversely affects the tourist trade.

Statutory boards will be subject to GST in respect of their taxable supplies. Similarly, any taxable person who supplies goods or services to Government ministries, departments and statutory boards should charge and account for GST. Certain government departments may become subject to the tax *if they supply goods or services to the public* in competition with the private sector.

This treatment is logical as the economic value of the particular activity does not depend on whether the supplier happens to be a private firm, a statutory board or a government department. Basing the tax on the nature of the activity rather than the identity of the supplier ensures a level playing field. Purchasers of government supplied goods should be neither advantaged nor disadvantaged by their choice of a government agency as the supplier.

Conclusion

The Singapore Government intends to introduce a GST as part of a restructuring of our overall tax system. The GST will provide a stable source of revenue, and enable the Government to meet any future shortfall in revenue due to higher expenditure or lower direct taxes.

GST will be a wide ranging tax on the consumption of goods and services. GST will be a new form of taxation in Singapore. The nature of the needs to be widely understood. There will be full public discussion on its principles and details.

In the 1950s and 1960s, people believed that governments could increase well being by redistributing wealth and levelling down the more successful in society through taxation. Those policies have failed all over the world. The true test of a government policy is not how heavily it penalises the more successful, but whether it makes everyone, rich and poor, better off, by rewarding enterprise, by encouraging all to strive harder, by promoting savings and investments and thus economic growth. In these respects the GST will improve tax structure of Singapore.

The above article is compiled from the Singapore Government's White Paper on The Goods and Services Tax and The Straits Times (Singapore) reports in February 1993.

The article is compiled by MIA Technical Secretary, Chuah Soon Guan. He is also member and Secretary of Council of MIT. Acknowledgement of thanks is extended to Peter Fong of the Institute of Certified Public of Accountants of Singapore for providing a copy of the White Paper and Tony Seah, Southern Branch, MIA, the The Straits Times reports. MIT

'Malaysian Tax Cases' will be known as the **'Business Law Journal'** in future.

NEWS FROM U.K.

1 The Queens Taxes

The Queen has agreed to pay taxes and some of the issue are

1 whether she will be taxable as a corporation sole and be liable to corporation tax or whether the Crown is an office and therefore chargeable to tax under Sch E

2 what if she is dissatisfied with an assessment, how will the appeal be carried out e.g., there will be one of Her Majesty's Council for the Crown on one side, and another of Her Majesty's Counsel for the Crown on the other, and one of Her Majesty's judges will adjudicate whether the Crown's submission on the law must be upheld or vice versa. Maybe there could be an application for judicial review, i.e. R v R ex parte R.

2 Pay and File

Pay and file for corporation tax will be operational for all accounting periods ending on or after October 1, 1993. The new regime is strict with automatic penalties. MIT

INTERNATIONAL RELATIONS

In November 1992, the President and the Deputy-President of the Institute attended the Inaugural Organisational Meeting of Asia-Oceania Tax Consultants' Association (AOTCA) and the Signing of the Friendship Agreement held in Tokyo, Japan. The meeting and the signing ceremony were hosted by the Japan Federation of Certified Public Tax Accountant's Associations (JFCPTAA).

Besides the Malaysian Institute of Taxation, the following organisations sent their representatives to the Organisational Meeting and the Signing of the Friendship Agreement:-

1. Taxation Institute of Australia;
2. Australian Society of Certified Accountants in Australia;
3. Institute of Chartered Accountants in Australia;
4. Hong Kong Society of Accountants;
5. Korean Association of Certified Public Tax Accountants;
6. All Pakistan Tax Bar Association;
7. The Tax Management Association of the Philipines, Inc.;
8. Tax-Accountancy Association of Republic of China.

At the AOTCA Organisational Meeting, Mr Teruaki Kataoka, the Chairman of JFCPTAA was appointed as the Chairman of AOTCA, and those persons recommended by the member organisations other than JFCPTAA be made Vice-Presidents of AOTCA.

Malaysia and Australia were appointed as the signatories to confirm the minutes of the Organisational Meeting. MIT

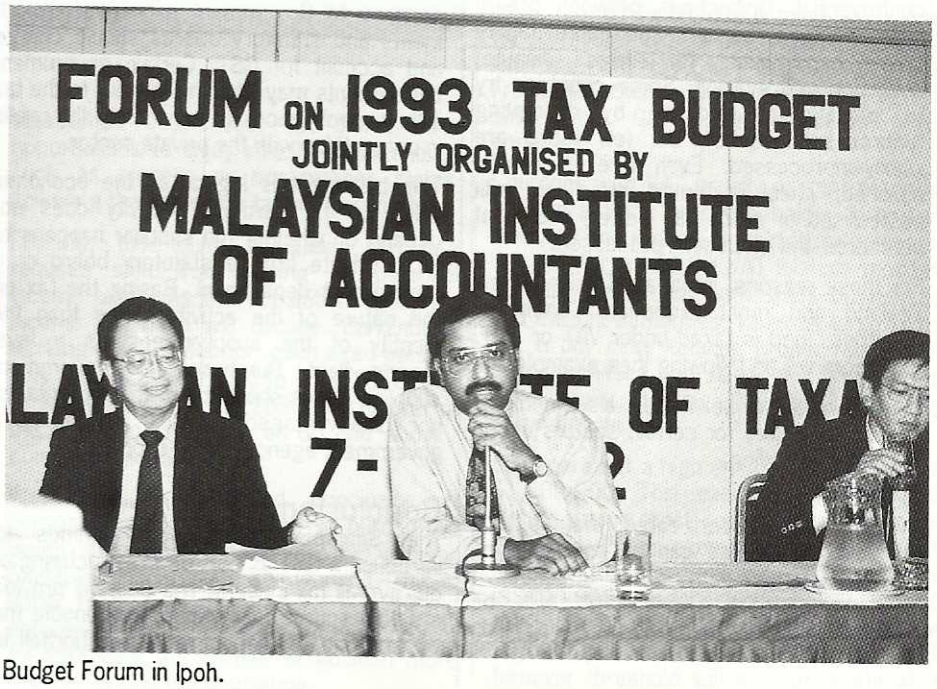
VISIT FROM ZIMBABWEAN TAX AUTHORITY

On March 5, 1993 three delegates from the Zimbabwean Tax Authority visited our institute. The intention of their visit was to find out more about the Operations and formation of our Institute as they were keen to set-up a similar institute in Zimbabwe.

The delegates who visited us were M/s Maxwell Stanley Mangoro, Christopher Mudukuti and Boniface Augustine Chiiladaya. All of them held the rank of Deputy Commissioners of Income Tax. Accompanying them were Mr Navaratnam, Assistant Director - General of Inland Revenue Department, Malaysia and Mr Yong of the Ministry of Finance. The three Zimbabweans were in Kuala Lumpur to negotiate a Double Tax Treaty with Malaysia. When they heard about the M.I.T, they requested for a meeting with us.

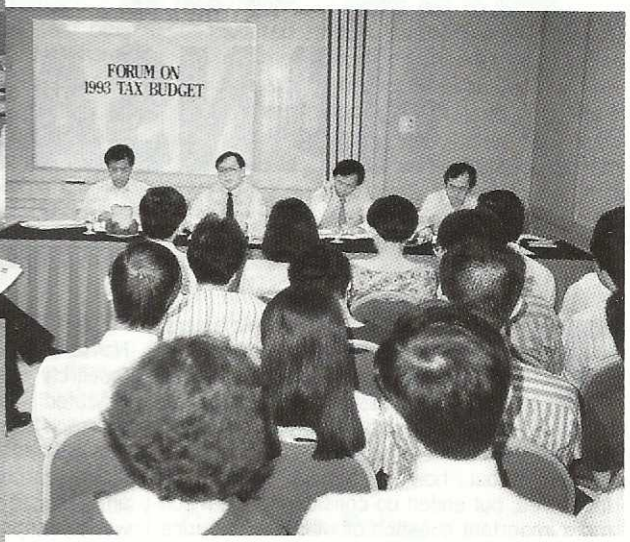
On hand to brief the delegates were Encik Ahmad Mustapha (President), Michael Loh (Deputy President) and Chuah Soon Guan (Secretary), various issues pertaining to the governance of the Institute, professional ethics, training programmes, examinations, entry qualifications and affiliations were discussed. The delegates were particularly keen to know how the Institute could work together with the Inland Revenue Department amicably and whether there could be conflict of interests since staff of the Department could become members of the Institute. MIT

Visit from Zimbabwean delegations, MIT President presenting souvenirs to the delegates. Deputy President, Michael Loh and Secretary, Chuah Soon Guan were also present.



Budget Forum in Ipoh.

MIA/MIT 1993 Budget Hotline on October 30 – 31, 1992.



Forum on 1993. Tax Budget held in Johor Bahru on Nov. 7, 1993.

MIA/MIT Press Conference on 1993 Budget on October 31, 1992

Other **MIT** Council member at Press Conference on 1993 Budget.

1st **AGM** of **MIT** on February 13, 1993.

VALUE OF BENEFIT AND USE OF THE HANSARD

(PEPPER v HART)

The case of the schoolmasters' benefits has now been resolved. The importance of the case is illustrated by the fact that a special committee of seven Law Lords was, convened to hear the appeal. The case started with a dispute about how a benefit in kind is measured, but ended up considering the much more important question of whether reference to *Hansard* was permissible as a guide to statutory interpretation.

It may be remembered that the case concerned schoolmasters at Malvern College whose sons were able to take up surplus places at a concessionary level of fees. The question was Whether the benefit in kind was measured by reference to the additional costs incurred by the school in educating these boys, or whether it should be measured by reference to the average cost of educating each pupil at the school.

The argument raged on the construction of the relevant provision, and in the end was decided by reference to *Hansard*, in particular the repeated assurances given to the House by the Financial Secretary to the Treasury when introducing the provision, that such benefits were to be measured by reference to marginal and not average costs.

The traditional view is that reference to Parliamentary material as an aid to statutory construction is not permissible, although there does seem to have been the occasional breach of this rule over the years.

It may seem strange that a court, when *agonising over the wording of a statute, trying to divine the true intention of Parliament*, deliberately excludes from its consideration the very material which might (and in this case did) provide the answer. However, things are never quite that simple, and it may be that events will soon show what a valuable rule it was. Various difficulties were canvassed before their Lordships, particularly about the expense and time which would be involved in searching through *Hansard* for anything relevant to a particular point and indeed in getting access to the Parliamentary debates at all.

Lord Browne-Wilkinson was not troubled by these difficulties. He took the view that *Hansard* would be just another piece of research material. If a reading of *Hansard* indicated nothing of significance, further research would become pointless. This idea was echoed by Lord Griffiths, who suggested that if searching, through *Hansard* resolves an *ambiguity, it would save expense. However, I* would respectfully submit that one never knows, whether research reveals anything of significance until the research is over. No advocate could afford to stop his research halfway because the answer to his question may be contained in the other half.

It is much more likely that the results will be, inconclusive and will rarely provide a clear answer to any question. As Lord Scarman said in another-case: *"Such material is an unreliable guide to the meaning of what is enacted, it promotes confusion not clarity. The cut and thrust of debate and the pressures of executive responsibility, the essential features of open and responsible government, are not always conducive to a clear and unbiased explanation of the meaning of statutory language. And the volume of Parliamentary and ministerial utterances can confuse by its very size."*

Their Lordships explained that the purpose of looking at Hansard, is not to construe the words used by ministers, but to give effect to the words used as long as they are clear. But what if the words are nearly clear, or if one side thinks they are clear and the other side does not? It seems to me that one cannot look at the words in *Hansard* for the purpose of *trying to ascertain the intention of Parliament*, and not "construe the words used"; that surely is the whole process. And it will create an infinite source of argument.

Their Lordships concluded that reference of *Hansard* should be permitted only in certain circumstances:

a) where the legislation is ambiguous or obscure, or leads to an absurdity,

b) when a statement has been made by a minister or promoter of the bill;

c) where the statements relied on are clear. MIT

PROFITS WHAT PROFITS?

The Privy Council considers the words *'arising in or derived from Hong Kong'* in the case of Commissioners of Inland Revenue v HK-TVB International Ltd

Facts

- TVB was granted by its parent company *'the sole and exclusive right outside Hong Kong'* to grant sub-licenses to others to copy, adapt and show Chinese dialect video films.
- *It did this basically in two ways;*

(i) its agents signed the agreements abroad or

(ii) all negotiations were by telex from Hong Kong

- TVB also provided dubbing facilities in Hong Kong for its *'outside'* customers.

Issue

Whether TVB was liable under section 14, Inland Revenue Ordinance (Hong Kong) to profits tax on fees derived from sub-licenses of certain rights only exercisable in countries outside Hong Kong.

The Law

Section 14 of the Hong Kong Ordinance refers to... every person carrying on a trade,... in Hong Kong in respect of his assessable profits ARISING IN or DERIVED FROM Hong Kong...

(NB: S3 Malaysian Income Tax Act 1967:- *"... upon the income of any person ACCRUING IN or DERIVED FROM Malaysia..."*)

Revenue

Assessed the company to profits arising from its fees under section 14, Inland Revenue *Ordinance, Hong Kong.*

Board of Referees

Allowed the company's appeal

High Court

Reversed the decision

Court of Appeal

Restored the Board of Referees' decision

Privy Council

The appeal was allowed, the High Court order was restored and assessments confirmed. MIT

1993 TAX FILING PROGRAMME

The annual dialogue between the Inland Revenue Department and representatives of MIA, MIT the MACPA and MATA was held at the IRD office on February 15, 1993.

The IRD was represented by the Deputy Director General 1, Encik RajaGopalan and his team of senior officers. The MIA delegation comprised of branch Chairmen, Mr Neoh Chin Wah, Tony Seah, Lee Yat Kong and Michael Tong while MIT delegation led by the Chairman of MIT Technical Committee Mr Lee Beng Fye and comprised of Quah Cheng Choon, Dr Subbramaniam Arjunan and Kenneth Lim. Also present at the dialogue was MIA Technical Secretary, Chuah Soon Guan.

The dialogue discussed among other matters, the programme for filing of the income tax return forms for the year 1993 and other administrative and technical tax issues faced by members in their work or practice.

As regard to 1993 programme for filing return forms, the Inland Revenue Department has issued the following filing programme and new guidelines (for Kuala Lumpur branch only) on completion of the Year Assessment 1993 return forms in order to expedite processing of repayments. A copy of the aforesaid programme and guidelines has been sent to all public accountant members of MIA.

1993 Programme For Filing Return Froms

1. Application for extension of time to file Return Forms after 31.5.1993 should be made by 16.4.1993. Staggered filing of Return Forms after 31.5.93 will be considered in the following cases:-

For C and OG Cases

Extension of time for submission of returns will be considered up to the end of August but the programme for submission should be such that 35 percent of the returns will be submitted by end of June, another 35 percent in July and the remaining 30 percent in August. This programme must be strictly adhered to. Request for changes to the programme will not be considered.

For extension to be granted, the following conditions have to be met:-

(a) One programme listing cases and dates of filing must be submitted in duplicate for approval. Separate lists should be prepared for C and OG cases and the cases listed in numerical order and are to be sent to the respective Branches.

(b) A separate application must be made for each case.

(c) In a C or an OG case where a Notice of Instalment Payment has been issued by the Department under Section 107B of the Income Tax Act, 1967 an estimate of the chargeable income need not be given. Where a Notice of Instalment Payment has not been issued, then an estimate of the chargeable income (total income in the case of individuals) should be given. If the original estimate is subsequently found to be grossly inadequate, a revised estimate must reach the Branch Office not latter than 3 weeks before the extended date of filing.

For SG Cases

Extension of time for submission of Return Forms B and Return Forms BE up to July will be allowed, if at the time of application, payment of tax is already being made by deduction through the employer. This extension will be granted on the condition that:-

(a) A programme listing cases and dates of filing must be submitted for approval. Separate lists should be prepared for Returns B and the cases listed in numerical order; and

(b) A separate application must be made for each case certifying that payment of tax has been made by deduction through the employer.

2. Extension of time after July for SG cases and August for OG and C cases will not be allowed, except in cases where certain companies (C cases only) are required by law to have their accounts approved by the respective authorities. Separate applications for extension of time must be made and each case will be considered on its merits. Discretion lies with Branch Heads who will only consider extension where he is satisfied that because of those requirements returns cannot be submitted within the time specified.
3. For D (Partnership) cases extension of time after 31.5.1993 will not be allowed.
4. In the case where the accounting year ends on or earlier than 30.9.1992 no extension of time beyond 31.5.1993 will be allowed. Where any extension has been inadvertently granted, it shall be deemed as if no extension has been given, if subsequently discovered.
5. Any Return Forms to be filed within the extended time agreed means a complete return form supported by audited/certified accounts, tax computation and all the required details as stipulated in the Return Forms. Any incomplete return submitted will be considered as a late lodgement and be thus subject to penalty.
6. A Return Form addressed to a particular taxpayer who is no longer a client should not be used for submission of income of another taxpayer. Instead it should be returned with an appropriate notation.
7. Failure or delay by taxpayer to prepare accounts or supply information to the Accountant or Tax Agent will not be considered as valid ground for any extension of time or waiver of penalty unless there are extenuating circumstances.
8. Where extension of time has been granted upon claims made that a taxpayer is under an instalment scheme and if subsequently this is found to be incorrect, then it will be considered that no extension of time has been given and an appropriate penalty will be imposed on any late submission.
9. Where an assessment is made on the basis of an estimate given in accordance with paragraph 1 (C), no formal appeal need be lodged as the assessment will be revised by the Department on receipt of the complete return within the extended time.

Collection Policy

10. The policy is to collect the tax within the stipulated period and also by means of the instalment scheme under Section 107B Income Tax Act 1967 and monthly deduction from salaries. The implementation of Section 107B has already been explained in an Explanatory Note issued in 1988.
11. Any credit available to a taxpayer and arising from prior years can be set-off against instalments due but prior arrangement must be made with the Collection Branch.
12. No penalty will be imposed on employees who pay their tax by monthly deducation in accordance with the direction issued by the Department. There may be cases where the total deduction is insufficient to meet the tax payable based on the notice of assessment. In such cases penalty be imposed if taxpayer fails to pay the outstanding tax within the time allowed.
13. Accountants and Tax Agents should advise their clients of the necessity to make sufficient provisions for payment of tax to avoid the late payment penalty. Taxpayers other than SG cases have been made aware that they should commence payment from January or February. A taxpayer who has not been issued with a Notice of Instalment Payment may request to be included in the scheme provided a notice of assessment for the current year has not already been issued to him. However, the instalment payments will not be extended beyond September or October. In the case of employees, payment can be made by monthly deductions through their employers if no directions to deduct have been received. MIT

1993 ANNUAL DIALOGUE WITH IRD ON TAX ADMINISTRATION AND TECHNICAL MATTERS

The Deputy Director-General of Inland Revenue chaired the dialogue between IRD and MIA, MIT and the MACPA and MATA. Below are the *taxation matters discussed.*

1. Extension of Time

Apart from the submissions by the end of May for companies having early year ends, the filing ratios for June, July and August are fixed by the Inland Revenue at 35%, 35% and 30% respectively for last year.

The Inland Revenue was requested to consider doing away with the filing ratios and grant an automatic extension of time for all cases to the end of August apart from those cases which have to be submitted by end of May. The reasons for this suggestion are as follows:-

a) It saves on time and paperwork for both the Inland Revenue and the Tax Agents.

b) There would not be any significant impact on the compliance submission statistics since the vast majority of the corporate compliance cases are handled by Tax Agents who would, in any case, ensure that a proper submission programme would be implemented to allow for a sufficient number of cases to be submitted each month to avoid a bottleneck in August and the possibility of a penalty for late submission. This suggestion allows the Tax Agents to regulate their submission cases on their own without any known detrimental effect to the Revenue.

c) There would not be any lack of cases to be attended to by the Revenue Officers since by May, a substantial number of cases would have been submitted to the Inland Revenue and this would keep the Revenue staff occupied for the next three months and not including those cases that would be submitted in the following months. Experience shows that about 40% of the total number of corporate cases dealt with are submitted by May. It is believed that this percentage is the experience of the large accounting firms in Malaysia too.

d) Many of these cases would be on the bi-monthly instalment scheme under Section 107B and no financial advantage would be gained by late lodgement of the tax return.

e) Generally the taxpayers especially companies and businesses who are paying in advance are anxious to get their tax assessments finalised as soon as possible. Therefore, the apprehension that the majority of the tax returns would be submitted only in August each year may not be so well founded. Besides, it is certain that every tax agent would continue the usual practice of staggering his submission programme even if there is a later single deadline. This is to spread out the workload.

In view of the overall poor rate of return of Return Forms for 1992, IRD will consider the proposal only when the rate improves. The Deputy DGIR provided some statistics on the percentage of return of Return Forms. Some 60% of return forms for C cases in respect of year of assessment 1992 has yet to be submitted as at date of the dialogue. For other cases the percentages range from 23% to 35%. In this connection the Deputy DGIR requested member firms to assist in improving the rate of return of the Forms.

2. Instalment Payments

Under the law, tax is due and payable within 30 days of the notice of assessment. Members have encountered many instances where the notices of assessment have not been issued on a yearly basis but many years' notices of assessment issued together. This has *resulted in financial hardship to many* taxpayers in that they are unable to settle many years' taxes in one lump sum. Applications to the Collection Branch to pay in instalments have been rejected on the ground that the notices of assessment were issued late in the year (say November/December 1992). The instalment payments cannot be granted because it would extend beyond the year 1992 and this is not permitted based on the policy of the Collection Branch.

MIA/MIT pointed out that it is more equitable to allow a taxpayer to pay 4 years' taxes in instalments when the notices of assessment were issued in November/December 1992. If the notices of assessment were issued in June/July, payment in 4 instalments may be granted as long as the instalment payments do not extend beyond 1992. Besides, it is not the fault of the taxpayer.

The Department was requested to *give due consideration especially to* backlog cases where multiple notice have been issued that IRD grant some grace period to those taxpayers and that instalment payments be allowed if the notices of assessment relate to at least 2 years' taxes notwithstanding that the instalment payments may extend beyond the calendar year in which the assessments are issued.

The Deputy DGIR clarified that applications for instalment payments may be considered on a case by case basis. Applications for instalments must be made promptly and supported by valid reasons.

3. Abatement of Adjustment Income for Exports

Recently, the IRD Technical Division which processes the application has been issuing letters to taxpayers informing that since they are no longer interested in pursuing the claim, the abatement previously provisionally given would be withdrawn and the Assessment Branch informed simultaneously to withdraw the incentive

and raise the relevant additional assessments.

MIA/MIT commented that whilst the IRD is right in withdrawing the incentive after say 2 reminders to rectify the original application, there may be genuine reasons in not being able to do so. For example, it is time consuming to go back to the Customs Department to rectify the following faults in the Customs Declaration Form:-

a) Not signed by an authorised officer
b) Registration number hand written
c) No customs official stamp
d) No official stamp *"Checked and approved"*

The request that a warning letter be issued prior to the letter informing the withdrawal of incentive was considered not necessary as sufficient warnings have been given.

The Department had conducted a survey on the backlog cases and found that the primary causes for the backlog was that the applicants do not respond to queries and requests by the Department even though in many cases several letters were sent. As a result of this lack of response the incentives were withdrawn. The Department also requested the applicants ensure that the second copy of the Customs Declaration Form be submitted to the IRD.

4. Computation of Repayment

The tax authorities normally finalise several years' computation at the same time. The Notices of Additional Assessment are issued first whilst Reduced Assessment and specifically Computation of Repayments are issued months later because it requires approval of the senior officers. Taxpayers thus have to pay the additional tax notwithstanding that there are refund due to them. IRD agreed to study the matter and adopt new procedures, where appropriate, to enable relevant notices to be issued at the same time so that the taxpayers can settle their tax liabilities based on the net position.

5. Abatement of Statutory Income for Exports

The IRD informed that is not possible to issue any guidelines because the relevant proposals had been passed by Parliament yet. However the Department will accept provisionally what is submitted.

6. Non-Leasing Business

MIA/MIT reminded the IRD regarding the guidelines on the allocation of expenses between leasing business and non-leasing business. As MIA/MIT has previously pointed out, the following bases of allocating expense are being practised by the IRD assessment officers:

(i) ratio of lease rental receivable to gross income from other sources;

(ii) ratio of lease debtors/assets to loans/advances;

(iii) ratio of lease rental income to gross income from other sources.

The different ratios used would result in significant differences in the taxes payable. MIA/MIT again urged the IRD to issue guidelines to ensure that a consistent basis of allocation is used.

The IRD informed that the matter is being discussed with the leasing industry.

7. Definition of Manufacture

At the 1991 annual dialogue with the IRD, the MIA and MACPA were requested to proposed a definition for *"manufacture"*.

It was noted that the word *"manufacture"* or *"manufacturing activity"* has been defined in a number of Malaysian legislation such as the Industrial Co-ordination Act 1975, Customs Act 1967, Sales Tax Act 1972 and the Excise Act 1976. It was also noted that the definition in the Industrial Co-ordination Act is intended for licensing purposes and as such is different from that in the indirect tax legislation.

In 1992 MIA/MIT proposed two definitions for the term *"manufacturing"* for the IRD's consideration. The IRD informed that it had decided together with the Ministry of International Trade and Industry (MITI) that no definition of *"manufacturing"* shall be prescribed under the Industrial Co-ordination Act. Instead any problems arising from the definition can be referred back to MITI.

8. Updating of Taxpayers Database

Members of MIA/MIT have encountered instances where notifications pertaining to changes in a taxpayer's particulars, such as termination of employment or change of address of the taxpayer or tax agent, were not promptly recorded in the IRD's database.

This has resulted in notices and other documents from the IRD being sent to the previous address, resulting in delays in the actions to be taken by the taxpayer/tax agent. There have also been instances where form CP 38A for foreign employees were issued after notification had been sent to inform the IRD that these employees had completed their term of employment and left the country.

MIA/MIT requested the IRD to update the taxpayers database promptly, so as to minimise the difficulties stated above. IRD informed that their taxpayers database is updated on a regular basis.

9. Correspondences on Taxpayers' Matters

There have been cases where the IRD send certain correspondences directly to the taxpayer concerned without extending a copy to the tax agent although the taxpayer has requested that all correspondences and notices be sent to the tax agent's attention. This has resulted in delays in the tax agent attending to the matters in question.

MIA/MIT suggested that all correspondences from the IRD be sent to the address elected by the taxpayer. IRD pointed out that correspondences are sent to taxpayers because the department has not been notified of the appointment of tax agent.

As a related matter IRD advised that all ceasure to be a tax agent should also be communicated to the IRD.

10. Registration of New Taxpayers

Delays have been encountered in the registration of new taxpayers. Some of the reasons for the delay are:

(a) Deferring advice or directive being given by the IRD officers in regard to where the registration should be made, whether based on the taxpayer's residence address, his employer's address or his actual place of employment

(b) Exhaustion of income tax numbers allocated to a particular branch office of the IRD, especially in SG cases.

(c) Time taken to ascertain the information required in the registration form.

MIA/MIT suggested that the IRD take appropriate steps to expedite the registration of new taxpayers. In this regard, MIA/MIT also suggested that the information required for registration should be the basic particulars of the taxpayer. IRD pointed that the reasons (a) to (c) given by MIA/MACPA/MIT for the delay in registration of taxpayers are not correct. IRD also pointed out that the residential address of the taxpayer is used as the basis for registration of a new taxpayer.

11. Separate Assessment Form for Wife

Practical difficulties have been encountered by married individuals in

completing the assessment form as information on the wife is not available, particularly in cases where the couple have filed separation of divorce proceedings.

It is suggested that to avoid unnecessary delay in filing the return forms, a separate assessment form should be issued to the wife upon specific request by the taxpayer. The department agreed to the suggestion particularly when separation is likely to be permanent.

12 Delay in Repayments

It is noted that there have been delays by the IRD in making refunds in repayment cases involving material amounts. MIA/MIT seek the IRD's co-operation in expediting such refunds to the taxpayers.

The Kuala Lumpur branch of the IRD has developed certain guidelines for the completion of the Return Forms so that repayments could be processed expeditiously. These guidelines applicable for the branch only. The guidelines have been sent to all public accountants vide circular dated February 15, 1993.

13. Withholding Tax (Section 107A)

Pursuant to Section 107A(1)(a), a withholding tax equivalent to 15% of the contract payment due to a non-resident contractor is to be deducted for payment to the DGIR. Section 107A(3)(a) provides that the DGIR shall deduct the amount of withholding tax so paid from the tax payable by the non-resident contractor for the particular year of assessment.

However, members of MIA/MIT have encountered instances where such withholding tax was not deducted from the instalments payable by the taxpayer pursuant to Section 107B.

IRD informed that transfer of credit in a withholding account cannot be done automatically. Taxpayers are advised to make specific requests for deductions of instalments from withholding taxes made under 107(A).

14. Stand-Over of Tax Payment

It is noted that the assessment branches of the IRD have advised that they no longer have the authority to allow a stand-over of tax payment in cases where the amount of tax payable is a subject of contention. Any request for stand-over must be made to the Head Office.

The department pointed out that it is not true that the branches do not have the authority to allow a stand-over of the tax payment.

15. Computation of Capital Allowances

A schedule showing the detailed computation of capital allowances is normally submitted together with the tax returns to the IRD.

It has been noted that in some cases the assessment officers would carry out re-computation of the capital allowances, particularly in the OG cases. However, the detailed schedule of the computation is not provided to the tax agent. This has posed difficulties to the tax agent in trying to reconcile the difference between the two amounts of capital allowances.

It is appreciated that the IRD would carry out independent checks or re-computations of submissions made, where necessary. However, where the computation of capital allowances would have been carefully prepared by the tax agents in accordance with the prescribed rates, the IRD should only carry out re-computations in selected cases. In such instances, the IRD should provide the detailed schedule of the computation to the tax agent. IRD will advise the tax agents in writing the written down values of assets if the figures are adjusted.

16. Tax Clearance for Foreign Employees

When a foreign employee complete his term employment and attempts to obtain tax clearance, he is required to provide such information as the date of his departure from the country and the flight number. MIA/MIT requested the IRD to waive this requirement in cases where the employee's tax payment is borne by the employer provided the employer's business in Malaysia continue to exist.

The IRD advised that these requirements cannot be waived as there are instances where the amount withheld may apparently be sufficient but the employer later notifies the IRD that the employee owed him some money and as a result the full amount withheld cannot be released to the IRD. However where the employer accepts, in writing, full responsibility for the employee's tax liability this requirement may be waived.

17. Notification by Fax

Fax machine has increasingly become an important tool of communication. It serves as a speedy and convenient means of communication, especially in cases of urgent matters.

MIA/MIT suggested that notifications/documents sent by fax be accepted as official documents provided acknowledgement of receipt by the IRD by return fax is received. The department replied that pending changes to the law, documents transmitted by fax for purpose should be followed by a hard copy. Transmission of messages by fax is acceptable but the date of receipt of the hard copy only will be taken as receipt of such letters or correspondences.

18. Communications with IRD

Members of MIA/MIT have encountered difficulties in contacting the IRD officers by telephone or fax as the telecommunication lines are often engaged.

The IRD agreed with the suggestion to install additional telephone and fax lines subject to availability of allocated funds.

19. Letter of Identification

In order that the tax information of taxpayers are availed only to authorised persons, the IRD has proposed that all persons dealing with the Collection branch carry a letter of identification.

The letter should be in the tax agent's letterhead and identifies the bearer as authorised to deal with a particular taxpayer. A copy of the firm's appointment letter as tax agent should be appended with the identification letter. As the collection branch's files do not have a copy of the letter of appointment of tax agent, firms intending to use their security identification tag by their authorised staff should provide their staff with a copy of the appointment letter by the client. MIT

CIRCULAR

CONSULTATIVE PANEL BETWEEN CUSTOMS DEPARTMENT AND PRIVATE SECTOR

The Institute serves on the Consultative Panel between the Customs Department and the Private Sector. The Panel provides a forum for the discussion of practical issues and suggestions relating to customs and excise submitted by the private sector.

The next meeting of the Panel is scheduled for mid May 1993. In this regard, members are invited to inform the Institute of any suggestions or problems that you may have encountered in your work or practice relating to customs and excise which, if the Institute deems necessary, would be raised for discussion by the Panel. MIT

SINGAPORE BUDGET PROPOSAL

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Growth

This was an optimistic Budget with growth for 1993 projected at 6% -7%.

Goods and Services Tax

The Minister also tabled the Goods and Services Tax Bill to be effective from 1 April 1994 at a rate of 3% on a broad base goods and services

Taxation of Business

1 Corporate Tax Rate

For year of assessment 1994 the corporate tax rate will be reduced from 30% to 27%, with a long-term target of a 25% corporate tax rate.

2 Venture Abroad Incentives (W.E.F. YA 1994)

2.1 Unilateral tax credit for dividends

- A unilateral tax credit will be granted on dividend income from investments in countries with which Singapore has no tax treaty.
- The unilateral tax credit will also cover the underlying foreign corporate tax on the profits out of which the dividend is paid
- This is provided the company or individual receiving the dividend in Singapore owns at least 25% of the capital of the foreign company paying the dividend.
- Unilateral tax credit will also be given where a tax treaty does not provide for underlying tax credit.

2.2 Unilateral tax credit for services income

- The existing unilateral tax credit scheme for services income will be extended to cover more countries. It will apply to services income remitted from Fiji, Kampuchea, Laos, Myanmar and Vietnam.
- More services such as management consultancy, and qualifying services provided under the Finance and Treasury Centre tax incentive, will come under the scheme

2.3 Double deduction for expenses incurred in the promotion of exports

- A double tax deduction will be granted for approved expenses incurred in the promotion of export of services.
- The existing scheme for the promotion of export of goods will be expanded to cover services
- The scheme will also be extended to new activities, namely, feasibility studies, product certification and packaging for export.

2.4 Double deduction for developing overseas investment opportunities

- A double deduction will be allowed for exploring and developing investment opportunities abroad it will cover approved expenses incurred in setting up project development offices and feasibility studies, including consultation and legal fees.

2.5 Overseas investment incentive - removal of requirement

- Under the overseas investment incentive the capital losses incurred by an eligible investor in approved overseas investments can be deducted against the investor's domestic income.
- However, the investor is required to invest in each overseas investment through a Singapore-incorporated company.
- Instead of this requirement, it will be sufficient to maintain a separate account for each overseas investment.

2.6 Exemption for venture capital and regional funds

- A ten-year tax exemption scheme will be open to approved venture capital and regional funds. The following income will be exempt gains from disposal of approved local and overseas investments, regardless of the holding period, and
- interest income from convertible loan stocks and dividends derived from approved overseas investments
- The scheme will be administered by the Economic Development Board.

2.7 Overseas enterprise incentive

- An approved company, known as an "Overseas Enterprise", will be exempt from tax for up to ten years, on the basis of qualifying incomes from approved kinds of overseas investments and projects.
- The Overseas Enterprise will be issued a certificate stating the approved kinds of overseas investments and projects, the related qualifying incomes which would be exempt from tax, and the exemption period and commencement date.
- A portion of any incremental domestic income which is connected to the approved investments and projects may also be included as qualifying income.
- The Overseas Enterprise will be able to declare exempt dividend to its ordinary shareholders out of its tax-exempt incomes. If the shareholder is a holding company, it may in turn declare a second-generation exempt dividend to its ordinary shareholders.
- However, an Overseas Enterprise must be a Singapore-incorporated resident company, which is at least 50% owned by our citizens, permanent residents, statutory boards, or the Government.
- The Overseas Enterprise incentive will be administered by the Economic Development Board.

3 Perks to Attract Offshore Investments (wefYA 1994)

3.1 Art and antiques incentives

A 10% concessionary tax rate will apply to approved art and antiques dealers on income derived from transacting on behalf of non-residents with approved auction houses. The concession will be granted for an initial period of five years with a possible extension. Well established auction houses which conduct substantial auctioning activities in Singapore and private museum operators here can also qualify for the pioneer services tax incentive. The approved income of the company will be exempt from tax for a period of five years with possible extension for up to another five years.

3.2 Exemption for non-resident beneficiaries

The specified income of non-resident beneficiaries of trusts will be tax-free where the trustee is an approved trustee company.

3.3 Extended tax holiday for SIMEX

SIMEX will continue to enjoy a tax-holiday for another five years. The last five-year tax-holiday was granted in 1988.

3.4 Warehousing and servicing incentive extended

One half of the income of an approved warehousing or servicing company is exempt from tax for a period of five years. From year of assessment 1994 it will be possible to extend the tax relief period for a further five years.

3.5 Extended incentive for syndicated offshore credit and underwriting facilities

A tax exemption scheme was introduced in 1983 to promote the development of loan syndication activities in Singapore. Under the scheme, income derived from approved syndicated offshore credit and underwriting facilities is exempt from tax. The tax holiday, which is due to expire this year, will be extended for another five years.

3.6 Tax exemption for RASCE members

The interest paid by members of the RAS Commodity Exchange to non-resident clients on the margin deposits for futures transactions on the Exchange will be tax

exempt. The interest paid by the Exchange to its non-resident members on their margin deposits, security deposits and adjusted net capital will similarly be exempt from tax.

4 C.P.F.

From 1 July 1993, the employers' CPF contribution rate will be raised from 18% to 18.5%. The employees' rate will be reduced from 22% to 21.5%. The Government may further adjust the rates in 1994 by an additional 1.5%, bringing the employer and employee contribution rates to 20% each.

5 Property Tax

A one-off 25% property tax rebate for industrial and commercial properties will be given for the year from July 1993. HDB and ITC will pass on this rebate to their tenants. Private landlords are urged to pass on at least half the rebate to their tenants.

6 Medical Expenses

Currently employers are allowed an unlimited tax deduction for all expenses incurred in providing medical benefits to employees. From year of assessment 1994 the tax deductibility of expenses on medical benefits will be capped at 2% of total employees' remuneration. As a transitional relief measure, companies which have already exceeded the 2% cap in year of assessment 1992, will not have to pay tax on the entire amount in excess of the 2%. In the first year, they will be allowed to deduct up to 4% of payroll or their percentage in year of assessment 1992, whichever is the lower. This 4% cap will be reduced by 0.5% per year until it reaches 2% after five years.

For companies enjoying concessionary tax treatment, the resulting increase in income from disallowing expenses in excess of the cap will not be treated as concessionary income but will be taxed at the full corporate tax rate.

7 Capital Allowances and Losses

Companies granted tax incentives may have some income taxed at a concessionary rate and the rest at the normal rate. If the company suffers a loss under one tax rate but makes a profit under another tax rate, the loss can be set-off against the profit on a dollar for dollar basis. The capital allowances under one tax rate which exceed the income from the same tax rate can also be set-off in the same manner. This dollar for dollar set-off can result in a tax reduction which is different from that based on the tax rate at which the income is taxed, e.g., a $100 loss under a 10%. tax rate should result in a tax reduction of $10 but when set-off against income taxed at 30%, the tax reduction is $30.

To rectify this situation, an adjustment factor will be applied whenever losses or capital allowances under one tax rate are to be set-off against the income under another tax rate. The factor will be the ratio which the tax rate of the loss or capital allowance to be set-off bears to the tax rate of the income against which the loss or capital allowance is to be set-off. This takes effect from year of assessment 1994 Incentives which provide for complete exemption of income are not affected by this change

8 Personal Taxation

8.1 Lower Income Taxes

The top personal income tax rate of 33%, will be reduced to 30%,,. The tax rates on the other personal income brackets will be proportionately reduced

REDUCTION IN PERSONAL INCOME TAX RATES WITH EFFECT FROM Y/A 1994

Chargeable income Group	Y/A 1993 Existing Rates	Y/A 1994' Revised Rates
1-5,000	3.5	2.5
5,001-7,500	6	5
7,501-10,000	8	6
10,001-15,000	8	7
15,001-20,000	9	8
20,001-25,000	12	11
25,001-35,000	14	13
35,001-50,000	17	15
50,001-75,000	21	19
75,001-100,000	24	22
100,001-150,000	26	24
150,001-200,000	28	25
200,001-400,000	31	28
More than 400,000	33	30

From year of assessment 1987 onwards a 15%, rebate on the tax payable on up to the first $10,000 of chargeable income has been given

The revised rates represent a 3 percentage point reduction in the top marginal rate with proportionate reduction in the other rates, In addition, the 15% rebate has been subsumed into the revised rates

8.2 Personal relief

Effective from year of assessment 1994, the personal relief will be $3,000 - an increase of $1,000

8.3 Tax credit for overseas salaries

In line with the Government's call on Singaporeans to venture abroad, Singaporeans who have worked overseas for at least six months in any calendar year may choose to be non-residents for tax purposes. This proposal will take effect from year of assessment 1993.

Where Singapore has no tax treaty with countries in which Singaporeans are working, the Government will grant a unilateral tax credit for the foreign tax paid on employment income as well as director's fees. This proposal will be effective from year of assessment 1994.

8.4 Wives - separate assessment and child relief claims

Presently married women may be assessed separately only on their earned income and income derived from accumulated earned income. From year of assessment 1994, married women may elect for separate assessment on all their incomes.

The restriction which allows married woman to claim enhanced child relief for any of her children only if she claims the normal child relief for that child will be removed. This will take effect from year of assessment 1993.

8.5 Parent and handicapped sibling relief

Taxpayers who live apart from their aged parents or handicapped siblings will be able to claim for relief. This is provided such taxpayers have spent at lest $1,500 a year maintaining their aged parent or handicapped sibling. The change will come into effect in year of assessment 1994.

8.6 Rebates

The Minister for Finance has proposed an across-the-board and one-off rebate of 5% on personal income tax for year of assessment 1993.

To offset the effect of the GST on the individual, a rebate on personal income tax will be granted annually. The rebate, which will be $700 in the first year, will decrease by $50 a year, until it reaches $500. A person whose income tax liability is $700 or less will not have to pay income tax for that year. This change will take effect from year of assessment 1994.

9 Property tax

Owner-occupied residential properties with annual values of less than $10,000 will be granted a property tax rebate based on a sliding scale. For properties with annual values of $5,000 or less, there will be a maximum rebate of $150. For properties with annual values of between $5,000 and $10,000, the rebate will vary from $150 to zero.

10 Service and conservancy charges

The Government will pay the December 1993 service and conservancy charges for occupiers of one, two and three-room HDB flats who are Singapore citizens. This one-off payment is equivalent to a 5% income tax rebate.

Additionally, to offset the effects of the GST, occupiers of one, two and three-room HDB flats will enjoy rebates on their service and conservancy charges over a period of five years. The rebates will vary according to the size of the flat and will decline by $1 a year.

11 Additional rebates and offsets

The Government will implement a package of additional rebates of offset the effects of the GST on households earning below $1,500. Among other things, the Government will increase several grant schemes and give rental rebates to tenants of one and two-room HDB flats.

12 Self-employed - tax deduction on CPF

Self-employed persons who contribute to the CPF will be allowed a tax deduction of up to 18% (up from 17.5%) of their assessable income, subject to a maximum of $12,960. This change will take effect from year of assessment 1994.

13 CPF Share-ownership Top. Up Scheme

The Government will implement a CPF Share-Ownership Top-Up Scheme to help middle and working class Singaporeans own shares. In September this year, the Government will make a $200 grant into each CPF account, provided the employee or his employer has paid at least $500 in contributions from 1 March 1993 to 31 August 1993. Members who contribute less than $500 during the said period will receive a pro-rated grant from the Government.

14 Taxation of retirement benefits

Several changes have been proposed to rationalise the tax treatment of all retirement benefits and to prevent the use of CPF as a tax-shelter. They are

- the maximum level of tax-free retirement benefits allowed by the Government will be the 40% compulsory contributions to CPF,
- all retirement benefits received from private employers, including gratuities and pensions will be taxable but employees will be taxed only when the benefits are paid out to them.

The proposed changes will take effect from year of assessment 1994.

15 Indirect Taxes

15.1 Suspension/Reduction of Existing Indirect Taxes

Several changes in the existing indirect taxes have been proposed to offset the Goods and Service Tax to be introduced.

The changes proposed include:

- the charge of 4% levied on restaurants and hotels will be reduced to 1%,
- the 5% entertainment's duty on all forms of general entertainment will be suspended,
- existing duties on petrol and diesel will be adjusted downwards,
- import duties on motor vehicles will be reduced,
- the tax on PUB bills of households which are in excess of $40 will be reduced to 2% (down from 5%), and
- the 5% tax on the telephone bills of domestic users will be suspended.

The above changes will be effective from 1 April 1994.

15.2 Higher Cigarette and Tobacco Duties (with effect from budget day)

Import duty on

Cigarettes raised from $100 to $115 per kilogram.

Import duty/Excise duty

Tobacco and the excise duty on cigarettes raised from $50 to $60 per kilogram. The changes take effect with effect from Budget day. MIT

DOUBLE TAXATION (RELIEF) AGREEMENTS

REGION	CONCLUDED	INITIALED	UNDER NEGOTIATIONS
ASEAN	Philippines Singapore Thailand	Indonesia	
ASIA/ PACIFIC	Australia Bangladesh India Japan New Zealand Pakistan People Republic of China South Korea Sri Lanka	Mauritius Papua New Guinea	Taiwan
EUROPE/ AMERICA	Austria Belgium Canada Denmark Federal Republic of Germany Finland France Hungary Italy Netherlands Norway Poland Romania Sweden Switzerland United Kingdom U.S.S.R. United States of America Yugoslavia	Malta Venezuela Czechoslovakia	Brazil Turkey
MIDDLE EAST/ AFRICA		Egypt Kuwait Iran Saudi Arabia Sudan	U.A.E. Zimbabwe

JABATAN HASIL DALAM NEGERI,
UNIT 14, CAWANGAN PENAKSIRAN,
TINGKAT 3-12, BLOK 8A,
KOMPLEKS BANGUNAN KERAJAAN,
JALAN DUTA,
50600 KUALA LUMPUR

Tetuan Institut Percukaian Malaysia (MIT),
111, Kompleks Antara Bangsa,
Jalan Sultan Ismail,
50250 Kuala Lumpur.

Tetuan,

Garis Panduan Kes-kes Pembayaran Balik Cukai.

Saya dengan hormatnya adalah diarah merujuk kepada perkara tersebut di atas.

2. Sukacita dimaklumkan Pejabat kami kini sedang berusaha untuk memendekkan masa prosesan kes-kes pembayaran balik, dan ini dapat mengelakkan kelewatan didalam menyelesaikan kes-kes tersebut. Sehubungan dengan itu, pejabat ini telah menyediakan garispanduan khas untuk memudahkan melengkapkan Borang Retan Tahun Taksiran 1993 bagi penerima Pembayaran Balik cukai.

3. Saya berbesar hati sekiranya dapat tuan memberi kerjasama kepad apihak kami untuk mengembalikan Borang Retan Tahun Taksiran 1993 pelanggan tuan yang akan menerima Pembayaran Balik Cukai kelak dengan mengikut peraturan-peraturan didalam garispanduan tersebut.

4. Bersama-sama ini saya kepilkan garis-panduan Pembayaran Balik tersebut untuk tuan edarkan kepada semua firma Akauntan yang menjadi ahli Institut/Persatuan tuan.

5. Kerjasama tuan sangat dihargai.

Sekian, terima kasih.

'BERKHIDMAT UNTUK NEGARA'
'CINTAILAH BAHASA KITA'

Saya yang menurut perintah,

t.t.

(SALIMAH JAN BT. MOHD. BAYAZID KHAN)
b.p. Penolong Pengarah Kanan,
Cawangan Penaksiran,
Kuala Lumpur.

Tuan/Puan,

PEMBAYARAN BALIK (REPAYMENT)

Saya dengan hormatnya merujuk kepada Borang retan bagi Tahun Taksiran 1992 dimana tuan/puan telah dikenalpasti sebagai penerima pembayaran balik bagi tahun berkenaan.

2. Pejabat kami kini sedang berusaha untuk memendekkan masa prosesan semua kes-kes pembayaran balik untuk mengelakkan kelewatan dalam penyelesaian kes-kes tersebut. Sehubungan dengan itu, pejabat ini telah menyediakan garis panduan khas untuk memudahkan tuan/puan melengkapkan Borang Retan tahun Taksiran 1993 yang sedang dan akan dikeluarkan selewat-lewatnya 26hb. Februari 1993.

3. Saya berbesar hati sekiranya dapat tuan memberi kerjasama kepada pihak kami untuk mengembalikan Borang Retan Tahun Taksiran 1993 kelak dengan menyertakan butir-butir yang diperlukan seperti berikut:-

3.1 **Kes Individu**

a. Kembalikan baucer-baucer asal dividen. (Salinan fotostat baucer dividen dan salinan fotostat yang disahkan tidak diterima).
b. Senaraikan baucer dividen suami dan isteri secara berasingan dengan mengikut format di perenggan C.
c. (i) Senaraikan baucer dividen dari Malaysia dan dari negara-negara lain (bukan Malaysia) secara berasingan seperti format di bawah:-

DIVIDEN DARI MALAYSIA

Bil	Nama Syarikat	No. Waran	Dividen Bersih (i)	Dividen Kasar Yang Dikira semula 100 x Dividen Bersih / 66 (2)	Cukai Yang di-potong (2-1)

DIVIDEN DARI NEGARA-NEGARA LAIN (BUKAN MALAYSIA)

Bil	Nama Negara	Tarikh bayaran	Nama Syarikat	Nombor Waran	Nilai Kasar Mata Wang Asing	Nilai Dividen Kasar Dalam Rm	Cukai Dipotong

(ii) Kepilkan baucer-baucer dividen mengikut susunan didalam senarai yang telah disediakan di atas.
d. Asing dan senaraikan baucer-baucer dividen yang dibayar mengikut tahun-tahun yang berkaitan.
e. Tuliskan nombor ka dpengenalan dan nombor rujukan fail cukai pendapatan di belakang setiap baucer dividen yang dikemukakan. *(untuk mengesan jika berlaku keciciran).*
f. Nyatakan alamat penuh surat menyurat tuan yang tidak menggunakan nombor peti surat pos.
g. Pastikan semua pendapatan yang diterima dilaporkan dan sertakan penyata pendapatan yang lengkap.
h. Pastikan semua tuntutan potongan disertakan dengan maklumat-maklumat sokongan:
   (i) Bagi perbelanjaan perubatan atau pembelian alat sokongan asas bagi keluarga terdekat yang cacat seperti ibu bapa dan anak – sertakan resit yang asal.
   (ii) Bagi Pelepasan Anak
   – Nyatakan tarikh lahir anak dan nama penuh sekolah, jika ada.
   – Nyatakan nama Universiti dan jumlah perbelanjaan yang dibuat jika anak menuntut di luar negara.
   (iii) Bagi potongan premium insuran nyawa – sertakan salinan polisi insurans (jika ada pertambahan atau perubahan) dan salinan resit pembayaran premium insuran bagi tahun berkenaan.
i. Baucer-baucer dividen yang diterima dari Syarikat Sdn. Bhd. (Private Limited Co.) hendaklah disertakan bersama salinan sijil saham yang dimiliki dan disahkan (Certified Shares Certificate) oleh pengarah syarikat tersebut.

3.2 **Kes-kes Skim Persaraan dan Tabung-Tabung lain**

a. Baucer-baucer dividen kecil yang dikeluarkan oleh namaan (*"nominee"*), nyatakan:-
   (i) Nama sipenerima yang berbeza daripada nama skim/tabung yang didaftarkan dengan jabatan ini.
   (jj) Dapatkan pengesahan daripada namaan.
   (iii) Buat peraturan dengan namaan untuk menyelesaikan masalah perbezaan nama sipenerima dengan segara.
b. Semua baucer-baucer dividen kecil (Subsidiary Income Tax Certificate) mesti diakui terima oleh pemilik benafaat yang berkenaan di ruangan yang dikhaskan.
c. Sebutkan nama, alamat dan nombor akaun bank dimana pembayaran balik perlu dikreditkan.

3.3 **Kes-Kes Harta Pesaka**

Pendapatan dividen harta pesaka yang dibayar atas nama pentadbir perlu mendapatkan pengesahan di belakang baucer dividen oleh pentadbir bahawa dividen tersebut adalah milik harta pesaka.

4. Sila kembalikan Borang Retan Tahun Taksiran 1993 dengan mencatatkan huruf "R" dengan jelas di:-
   a. Sebelah nombor rujukan fail cukai pendapatan dalam Borang Retan di atas, dan
   b. Sudut kiri di sebelah atas sampul surat yang akan dikembalikan ke pejabat ini.

Sekian, kerjasama tuan/puan dalam perkara ini sangatlah dihargai dan didahului dengan ucapan terima kasih.

'BERKHIDMAT UNTUK NEGARA'
'CINTAILAH BAHASA MALAYSIA'

t.t.

(HASMAH BT. ABDULLAH)
Penolong Pengarah Kanan
Unit 14
Cawangan penaksiran
Jabatan Hasil Dalam Negeri,
Kuala Lumpur.

ADMINISTRATIVE DETAILS

CERTIFICATE OF ATTENDANCE
All participants will be presented with a Certificate of Attendance.

SEMINAR DETAILS
Registration starts at 8.30 a.m. and the seminar starts at 9.00 a.m. The programme ends at 5.00 p.m.

WITHDRAWALS
Should you be unable to attend, a substitute is welcome at no extra charges. There will be no refunds for withdrawals.

DISCLAIMER
MIA/MIT reserves the right to change the speaker, topic, date and to cancel the conference should circumstances beyond its control arise.

COURSE DOCUMENTATION
Includes folders with all relevent notes

	MIA/MIT/MAAT MEMBERS	NON-MEMBERS
EARLY BIRD REGISTRATION FEES *(to reach Secretariat on or before 13 April 1993)*	RM300	RM320
FEES : *(after 13 April 1993)*	RM320	RM350

Closing date for registration : *27 April 1993*

NEW DIRECTIONS IN

MALAYSIAN TAXATION

Malaysian Institute of Taxation

REGISTRATION FORM

Payment must be included with registration. Walk-In delegates with payment will be admitted subject to space availability. Photocopies of this form are acceptable.

Please register the following participants for the "MIA/MIT Conference".

Name (as per I/C)	Designation	MIA/MIT/MAAT No.
_____	_____	_____
_____	_____	_____
_____	_____	_____

Name of Company : _____

Address : _____

_____

MALAYSIAN INSTITUTE OF TAXATION
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Contact Person : _____

Tel No. : _____ Fax No.: _____

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made payable to the **"Malaysian Institute of Accountants"** or **"Malaysian Institute of Taxation"**

For enquires please call Ms. Chew Soon See, CPD Officer, Malaysian Institute of Accountants
Dewan Accountant, No. 2 & 4 Jalan Tun Sambanthan 3, Brickfields, 50470 Kuala Lumpur. Tel: 03-2745055 Fax: 03-2741783

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