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# TAX NASIONAL

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## Indirect Methods of Income Reconstruction Capital Allowances at Project Inception A Conceptual Model for IRD Special Commissioners' Decision

- Qualified Audit Report
- A Housing Developer must be Taxed just like any other Trader
- Promotional Expenses, Entertainment Expenses
- Disposal of Property - Whether Liable to Income Tax or RPGT?
- Land - Whether Fixed Asset or Stock-in-trade?
- Income from Chartering Malaysian Ships - Tax Exempt
- Whether "NET PROCEEDS" License Payment is Qualifying Expenditure under S33(1)
- UNPAID Director's Salaries and Commissions - Taxable
- Whether a Penalty can be Imposed under S113 on a Partnership
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Malaysian Institute Of Taxation



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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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# Indirect Methods of Income Reconstruction: A Comparison Between The United States And Malaysia

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By

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In the U.S.A., the Internal Revenue Service (IRS) can reconstruct income when it determines that a taxpayer's records are either inadequate or nonexistent, or if the taxpayer is suspected of understating income. This computation can, under Section 446(b) of the Internal Revenue Code (IRC), be made by any method that, in the opinion of the IRS, clearly reflects income. This has been established in *Petzoldt*.<sup>1</sup>

The methods of proving tax evasion extend from the simple direct proof of the omission of a single specific item also known as the direct method, to the complex circumstantial net worth and bank deposit methods, which can establish that assets acquired by the taxpayer represent unreported income.

Under the direct method, proof may consist of little more than the taxpayer's return, the testimony and records of a third party showing the payment of an unreported item of income to the taxpayer or the nonpayment of a claimed deduction by the taxpayer.

Under the indirect methods or also known as the circumstantial methods, any one of the following method is used:

- (1) The Net Worth Method.
- (2) The Expenditures Method, and
- (3) The Bank Deposits Method.

Indirect methods of income reconstruction do not constitute "methods of accounting." Rather, they are the means of providing the Service with economic information on which to base calculations of adjusted gross income (AGI) under the taxpayer's method of accounting or a method of accounting that most clearly reflects income.

Indirect methods of income reconstruction do not constitute 'methods of accounting'.

The method selected varies with the situation and the availability of taxpayer records. The precise amount of the tax evaded need not be proved; the IRS only has to show that a substantial amount of income was omitted from the taxpayer's return.

However, there may also be occasions, such as when records are destroyed by fire, these indirect methods could be employed to determine the taxpayer's income. Furthermore, if a taxpayer can show that the loss of records was due to circumstances beyond his control, under Reg. 1.274-5(c) (3), he can substantiate a deduction by reasonable reconstruction of his expenditures. In such a circumstance, the IRS cannot draw an adverse inference.<sup>2</sup>

Although indirect methods do not produce updated books and records, they are legal avenues of proof of underreported income available to the Service.

## Maintenance of Books and Records

The above methods of reconstructing income are usually employed by the IRS when it determines that a taxpayer's records are either inadequate or nonexistent, or if the taxpayer is suspected of understating income. This is because some tax payers do not keep sufficient books and records, while others will not make them available to the IRS.

Although indirect methods do not produce updated books and records, they are legal avenues of proof of underreported income available to the Service.<sup>3</sup> Section 446 (a) requires that the computation of taxable income be based on the method of accounting under which the taxpayer "regularly computes his income in keeping his books." Sec. 446 (b) provides, however, that if a taxpayer does not regularly use a method of accounting or if the accounting method "does not clearly reflect income," the IRS may make the computation under a method that will best meet the test(s) under Sec. 446.

According to Regs. Sec. 1.446-1(a) (4), all taxpayers must maintain accounting records that will ensure that a correct tax return can be filed. This requirement is supported by Regs. Sec. 1.6001-1(a), which states in part that "any person subject to tax...shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters...."

The IRS can also use all legal evidence available to it in determining whether the taxpayer's books accurately reflect his financial history, without first establishing the inadequacy of such books.<sup>4</sup>



The IRD in *Newman* has proven that the unreported income would not change because the net worth method only measures the difference between the years.

In Malaysia, under Section 82(1) of the Income Tax Act (ITA), 1967, every person carrying on a business "shall keep and retain in safe custody sufficient records to enable the income from the business for each year of assessment..... to be readily ascertained by the Director General," and Section 82 (1) (b) specifically states that "if the gross taking from the business for the basis year for any year of assessment exceeded one hundred and fifty thousand ringgits from the sale of goods....shall issue a printed receipt serially numbered for every sum received....."

The above relevant sections in the IRC and the ITA of Malaysia ensure that proper records are kept by businesses for every transaction. This, however, is in most occasions are ignored by the taxpayers.

#### (1) Net Worth Method

This is the best known of the circumstantial methods. Although originally used against taxpayers whose principal source of income was some illegal activity, it is now regularly applied to routine cases of tax evasion where other methods are insufficient. The Supreme Court sanctioned the use of the net worth method in 1954 in *Holland*.<sup>5</sup>

However, the definition of the net worth method was provided for in *Bedeian*.<sup>6</sup> In that case, it was stated that net worth is not the same as net economic worth. Net worth is, however, determined by reference to the actual costs and liabilities, and by reference to the tax basis of assets, not their fluctuating market values. Depreciation is only considered if

it is deductible.

The following steps generally lead to a determination of the increase in net worth:

##### Step 1:

Determine all assets and liabilities of the taxpayer on a cost basis as of the beginning and end of the first year in question.

##### Step 2:

Subtract total liabilities from the total assets.

##### Step 3:

The same mechanical analysis is to be extended to the assets and liabilities of subsequent years to demonstrate any change in the net worth over the period of years.

Bankruptcy also forecloses argument about prior accumulated funds.

##### Step 4:

Add all nondeductible items, such as nondeductible living and household expense items.

##### Step 5:

From the above total amount add all nondeductible personal expenditures, and deduct all nontaxable sources of funds, such as gifts, inheritances, and income tax refunds.

##### Step 6:

Subtract the reported net income from the adjusted increase in net worth to determine the unreported incomes, the amount presumably arising from current earnings.

The most common defense to this form of indirect proof is that the computation failed to include assets at the beginning of the net worth period that were sold or expended during the period. This might include (1) prior accumulated funds not held in the bank account (cash hoard defense), or (2) an asset previously purchased by the taxpayer, held in another's name, and sold

during the period. Also, it may be argued that the computation failed to take into consideration nontaxable sources of income, such as loans from the taxpayer's family or friends.<sup>7</sup>

#### Opening Net Worth

As mentioned above, in most of the cases, the IRS's opening net worth figure has been disputed. This is because, by increasing the opening net worth, the overall difference will be decreased. The IRS is required to establish the taxpayer's net worth "with reasonable certainty required by law," and to "adequately investigate the leads that were susceptible of being checked."<sup>8</sup> However, the IRS in *Newman*<sup>9</sup> has proven that the unreported income would not change because the net worth method only measures the difference between the years. Also, in *Friedberg*<sup>10</sup>, the Supreme Court found that the taxpayer had no such hoard of cash at the opening point to dispute the opening net worth figure prepared by the IRS.

The Supreme Court in *Calderon*<sup>11</sup> held that, although there may have been an "error" as to cash on hand at the starting point for opening net worth, the remainder of the computation through independent evidence is good enough for a conviction for fraud to be based.

Furthermore, financial statements made by the taxpayer for credit or other reasons, income tax returns, or business records of the taxpayer may also be used to establish the taxpayer's beginning net worth. Of considerable importance to this method are net-worth statements filed with banks by the taxpayer himself. The taxpayer's bank-

Private living expenses are not defined in the Act. As such, the main problem will be to ascertain the amount the taxpayer actually spent during those years.



ruptcy proceedings too can be the crucial starting point, at zero or at a small uncomplicated sum. Bankruptcy also forecloses argument about prior accumulated funds.

The Inland Revenue Department (IRD) of Malaysia, uses a similar method as the above, known as the means test. The means test is a quick way of establishing that a case needs further investigation. The following steps are taken to compute the income omitted by the taxpayer:

#### Step 1:

Net asset worth at beginning of period is determined and net asset worth at end of period is deducted from it.

#### Step 2:

Any increase in the net worth is then added with all the private living expenses for the period under investigations.

#### Step 3:

The above computation will result in the apparent income.

#### Step 4:

Income declared by the taxpayer in the returns will then be deducted from the apparent income. This will give rise to any income omitted by the taxpayer.

Although the means test looks similar to the net worth method, but the problem is in computing the private living expenses of the taxpayer. In this method, all private living expenses have to be determined for the periods under investigations. Private living expenses are not defined in the Act. As such, the main problem will be to ascertain the amount the taxpayer actually spent during those years.

### (2) The Expenditures Method

This particular method is also known as the sources and application of funds method, sometimes referred to as the cash expenditures or the excess expenditures method. It is also similar to the net worth method.

The expenditures method, according to the Third Circuit in *Caserta*,<sup>12</sup> "starts with an appraisal of the taxpayer's net worth situation at the beginning of a period. He may have much or he may

It is, however, interesting to note that income from illegal activities such as drug trafficking have never been detected and tax imposed on them in Malaysia.

have nothing. If, during that period, his expenditures have exceeded the amount he has returned as income and his net worth at the end of the period is the same as it was at the beginning, then it may be concluded that his income tax return shows less income than he has in fact received."

This method is generally more appropriate than the net-worth method in situations where the taxpayer consumes his income instead of channeling it into investments or tangible property. The expenditures method is simpler to present since assets and liabilities that do not change during the prosecution period can be eliminated from the expenditures statement.

Frequently, a taxpayer's conflicts with the IRS are preceded by other legal problems concerning the illegal manner in which their income is generated. In *Eschweiler*<sup>13</sup>, the tax payer's problems originated with illegal drug activity. The IRS, using the expenditures method, assessed the taxpayer for taxes on the amount of the bond posted, the cocaine and marijuana purchased, and living expenses during the period.

Brown was successful in arguing that the large deposits were accumulated earnings from prior years and gifts from a remorseful father who had abandoned him at birth.

In another drug-related case, the IRS could not compute living expenses for the entire period since the taxpayer was jailed for part of the term and was, thus, not providing his own living expenses. The taxpayer argued successfully that yet another portion of his support during the period came from his wife's earnings.<sup>14</sup>

The IRD of Malaysia uses a method known as the capital accretion method which is similar to the expenditures method. The primary objective under this method is to establish the capital increase, i.e. the savings and any addition to such savings, and the expenditure, i.e., the living expenses, etc.

The computation under this method is as follows:

Total Income = Expenditure + Savings

and

Taxable total income =	Increase in Capital
	+
	Non-business expenses and Capital losses
	-
	Non-business Capital receipts

The capital accretion method is used not only to prove actual taxable income but also to:

- corroborate other methods of proving income, and
- test check accuracy of reported taxable income.

It is, however, interesting to note that income from illegal activities such as drug trafficking have never been detected and tax imposed on them in Malaysia. This is one area where Malaysia could learn from the U.S. authorities.

### (3) Bank Deposit Method

The bank deposit method is based on the premise that a taxpayer's bank deposits most frequently represent income, and, where this is not true, the taxpayer is in the best position to explain the nature of a deposit. The IRS neither has to prove that all the deposits are income nor establish a likely source of the unreported income.<sup>15</sup> The taxpayer must establish that deposits represent nontaxable income.



Any person who wilfully and with intent to evade tax shall on conviction, be liable to a fine not exceeding RM10,000 or to imprisonment for a term not exceeding three years or to both.

The same defenses used against the net worth method are available in this method. In addition, the taxpayer may prove that he had no interest in the particular bank account in question, particularly if the account was a joint account used by the taxpayer and others. Frequent arguments by taxpayers include undisclosed gifts and cash hoards kept in safe places due to a fear of banks.

In *Brown*<sup>16</sup>, deposits made by Brown were compared to gross income reported over a three-year period. The IRS determined that the taxpayer had large amounts of unreported income in all three years. Brown was successful in arguing that the large deposits were accumulated earnings from prior years and gifts from a remorseful father who had abandoned him at birth. These arguments were supported by Brown's personal work history and a very conservative lifestyle that could easily contribute to the accumulation of a large savings.

In *Marghazar*<sup>17</sup>, four different bank accounts were analyzed. Two of the accounts had been opened in the taxpayer's name and he had personally handled the transactions made in the account. Thus, all deposits in these accounts entered into the computation of the taxpayer's income. One account had been opened in the name of his parents but the account was under the complete control of the taxpayer and he had handled all transactions in this account. These funds also entered into the computation. The fourth account was a joint account that the taxpayer shared with a

friend. He admitted having a half interest in the account and, accordingly, 50% of the deposits to the account entered into the income computation.

In the case of Malaysia, under Section 79 of the Act, the Director General (D-G) is empowered to require any person to furnish a statement containing particulars of the accounts relating to:-

- (a) the taxpayer;
- (b) the taxpayer's wife;
- (c) the dependent child or jointly in any such names;
- (d) in which he is or has been interested jointly or solely;
- (e) in which he has or has had power to operate jointly or solely;
- (f) all assets of his, his wife or dependent child;
- (g) all sources of income.

The question is whether the taxpayer should also declare a bank account which he operated as a treasurer of a club, society or as an agent for another person? Under section 84 of the Act, if the D-G specifically requests that he declares such an interest, then he is obliged to do so.

Beside the above mentioned methods, there are other methods which the IRS may rely upon. One other method is the mark-up method. In this method, income is determined as a percentage by computing the mark-up pertinent to the particular business or industry. Gross profit is determined by applying the resulting percentage or mark-up to gross sales.

Factors taken into consideration, include bank deposits, supplier records, sales records, records of prior or subsequent earnings, industry information available in commercial publications, and returns of taxpayers in similar businesses.

In addition, he is liable to a special penalty of treble the amount of tax undercharged.

One particular area whereby changes would be necessary is in educating the public in complying with the tax rules and regulations.

#### Penalties

In the U.S.A, penalties and additions to tax are imposed on reconstructed income. Under Section 1401 of the IRC, if the taxpayer is found to have unreported income from such sources as illegal drug sales, then a self-employment tax under this section may be imposed in addition to the income tax.

Section 6662(b) (1) of the IRC provides for an addition to tax of 20% of any underpayment if any part of the underpayment is due to the intentional disregard of rules or Regulations. Furthermore, Section 6663 provides for an addition to tax equal to 75% of the underpayment if any part of the underpayment is due to fraud.

On the other hand, under Section 114 of the ITA 1967 of Malaysia, any person who wilfully and with intent to evade tax shall on conviction, be liable to a fine not exceeding RM10,000 or to imprisonment for a term not exceeding three years or to both. In addition, he is liable to a special penalty of treble the amount of tax undercharged.

#### Suggestions For Improvement.

Malaysian tax system has to be improved to meet the future challenges. This is because she is on the right direction to become an industrialized nation in three decades. The economic growth for the past five years is impressive, with an annual growth rate of 8%.

In order to sustain the economic growth and stay competitive, a good tax system is indeed necessary. For that purpose, some major changes have to be carried out to achieve the above objective. One particular area whereby changes would be necessary is in educating the public in complying with the tax rules and regulations. By doing so,



in the near future, the present traditional system of assessment can be replaced by the self-assessment system. The best way to do that, is to incorporate tax as a course in the school curriculum.

When self-assessment system is implemented, more IRD personnel could then be deployed to do audit and investigations on the tax returns. Indirectly, the knowledge of the taxpayers and tax preparers will also improve as they have to keep abreast with the changes in the tax regulations. Knowledge of the taxpayers in keeping proper books of records will also be improved. Proper maintenance of books and records are vital for a good tax system to work. Furthermore, this will ensure better compliance by the taxpayers and improve tax collections. On the whole, a good tax system will lead to better compliance and more revenue for the government. The extra revenue could also come handy in implementing beneficial projects for the citizens of Malaysia.

#### Summary and Conclusion.

In this paper, the indirect methods of reconstructing income used by the IRS and the IRD are compared. Although there are similarities between them, there are areas where Malaysia can learn

from the U.S. authorities. For example, in the U.S., income from illegal activities are computed and a self employment tax is imposed on such income. This, however, is not the practice in Malaysia. But since it represents in-

**The best way to do that, is to incorporate tax as a course in the school curriculum.**

come, IRD should also consider imposing tax on such activities. This paper concludes with some suggestions as how to improve the tax system in Malaysia to face the future challenges.

1. *Petzoldt v. Commissioner*, 92 TC 661, 687 (1989)
2. *Alexander*, TCM 1978-487.
3. Section 446, Internal Revenue Code.
4. *Volutis v. Comm.*, 219 F2d 782, 55-1 USTC 9262 (CA-5, 1955) and *Epstein W., v. Comm.*, 246 F2d 563, 57-2 USTC 9797 (CA-6, 1957).
5. *Marion L. Holland and Ethel E. Holland v. U.S.*, 54-2 USTC 9714, 348 U.S. 121, 75 S.Ct. 127, (1954).

6. *Bedeian, Sophie v. Commissioner*, 54 TC 295; 2CB A 1970.
7. *Friedberg D., v. U.S.*, 54-2 USTC 9713, 348 U.S. 142, 75 S.Ct. 138 (1954). *D. Smith v. U.S.*, 54-2 USTC 9715, 348 U.S. 147, 77 S.Ct. 138 (1954).
8. *Smith*, 80-2 USTC 9730, 45 AFTR 2d 80-595 (CA-6, 1979).
9. *Newman R.E., v. Commissioner*, 64 TCM 1265; TC Memo. (1992).
10. *Friedberg d., v. U.S.*, 54-2 USTC 9713, 348 U.S. 142, 75 S.Ct. 138 (1954).
11. *Calderon E.B., v. U.S.*, 54-2 USTC 9712, 348 U.S. 160, 75 S.Ct. 186 (1954).
12. *Caserta*, 199 F2d 905, 52-2 USTC 9540, 42 AFTR 884 (CA-3, 1952).
13. TCM 1989-601.
14. *Hesse*, TCM 1989-515.
15. *Tokarski*, 87 TC 74 (1986).
16. TCM 1989-541.
17. TCM 1989-609.

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Knight R. A., and Knight L.G. 1992. How The IRS Reconstructs Income Without Records. Taxation for Accountants. January, p:29-35.

### Royal Customs And Excise Department Transfer of Senior Officers With Effect From 20 January 1996

NAMES	FROM	TO
1. Mohd. Daud b. Ali	Timbalan Pengarah, Kastam Negeri, Johor.	Timbalan Pengarah Kastam Negeri, Sabah.
2. Akil b. Abdullah	Pengarah Bahagian Pencegahan, Ibu Pejabat.	Timbalan Pengarah Kastam Negeri, Johor.
3. Mior Sallehuddin b. Mior Ghazali	Menteri Penasihat Kastam Brussels	Pengarah Bahagian Kastam, Ibu Pejabat.
4. Mohd b. Osman	Pemungut Cukai Kastam Persekutuan, Singapura.	Pengarah, Bahagian Pencegahan, Ibu Pejabat.
5. Adnan b. Mohd. Ibrahim	Pengarah Kanan Negeri Negeri Sembilan.	Menteri Penasihat Kastam Brussels.
6. Khairuddin b. Ismail	Penolong Kanan Pengarah Kastam Import/Export & Perindustrian, Sarawak.	Pengarah Kastam Negeri, Negeri Sembilan.
7. Zakaria b. Mahmood	Penolong Kanan Pengarah Kastam Cawangan Zon Bebas & Kawalan GPB, Ibu Pejabat.	Pemungut Cukai Kastam Persekutuan, Singapura.



# CAPITAL ALLOWANCES

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## AT PROJECT INCEPTION

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By Mr Stephen Winter  
Capital Allowances Consultant

Capital allowances on the plant and machinery content of a building have never enjoyed the degree of exposure they deserve

Capital allowances on the plant and machinery content of a building have never enjoyed the degree of exposure they deserve. One of the reasons for this may be that there is no definition of plant or machinery set out in the Malaysian Income Tax Act. Whilst the definition of "machinery" does not usually create a problem, "plant" on the other hand has received the attention of the courts as far afield as Australia, India, South Africa and the United Kingdom. From the precedent cases it has been established that plant and machinery includes items such as air-conditioning and ventilation equipment, certain plumbing and electrical installations, fire fighting equipment, lifts and escalators, furniture and fittings, and even demountable partitions.

Even if the property investor or owner occupier is aware of the substantial tax savings that capital allowances offer, it is debatable as to whether the tax allowances are ever maximised. What is almost completely overlooked, how-

ever, is the early consideration of capital allowances during the inception and design stages of a development project. Taking care to ensure that certain instructions are given to consultants and that relevant facts are documented will serve to strengthen the taxpayer's case with the Inland Revenue Department (IRD). Similarly, the incorporation of certain features into the design can have a surprisingly advantageous effect on the availability of capital allowances.

### Significance of Capital Allowances

Thus, the developer of a luxury hotel could be entitled to capital allowances of between 40 to 48 percent of his total construction cost with the current corporate tax of 30 percent, the developer would enjoy a minimum tax saving equivalent to 12 percent of total construction cost.

### Tax Planning Considerations

The tax cases which have attempted to

define plant for capital allowances serve to highlight several unnecessary weaknesses in the taxpayer's arguments. In purchased buildings, where the owner is dependent on the plant as it exists and has to accept circumstances which were created by others, there is little choice. However, in buildings which the taxpayer has been instrumental in designing and developing, he is able to learn and profit by the mistakes of others. The best way of illustrating tax planning considerations is by a number of selected examples.

In 1963 the case of Jarrold (Inspector of Taxes) v John Good & Sons Ltd made it clear that demountable partitioning would qualify as plant only if, for business purposes, there was an intention to demount the partitions. A written instruction, therefore, from the building owner at design stage, requesting the architect to specify a particular system of partitioning because of the need to change his office layout for business purposes, should be considered.



Production of this instruction to the IRD at the appropriate time would strengthen the taxpayer's case in such a claim.

Certain design features are now commonplace in buildings which are used by financial institutions. The high degree of computerisation which has manifested itself over the recent years has led to an increasing need to house cabling and ductwork in specially designed floors and ceilings. These have been contentious items of claim in the recent past because the IRD consider that they form part of the setting of the building in which the business is carried on, and not the plant with which the business is carried on. However, early correspondence in connection with the need for specifically designed floors and ceilings with demountability to cope with the changing needs of the taxpayer's business should reinforce an argument for these parts of the building to qualify as plant.

Likewise, it has been argued by the IRD that lift shafts are not plant because they form part of the setting of the building and perform a structural function. The taxpayer's counter-argument is that lift shafts are an integral part of the lift installation without which the lifts would not function. In order to strengthen this argument it would assist if, wherever possible, a structural engineer could certify that the lift shaft was not a necessary structural element of the building.

Whilst claiming capital allowances on electro-mechanical engineers' fees is quite straightforward, architectural and quantity surveying fees can prove to be more of a problem. It should be possible for the various consultants to identify in their accounts the specific part of their fee which is directly related to the plant and machinery. However, it should be noted that plant qualifying for capital allowances is not just restricted to electro-mechanical work.

## The case of Jarrold v John Good & Sons Ltd made it clear that demountable partitioning would qualify as plant only if, for business purposes, there was an intention to demount the partitions

It should also be possible to qualify elements of "structural" work at an early stage if they form an integral part of an item of plant, such as the supporting structure for heavy air-conditioning equipment, for example. Design-stage correspondence in many similar instances can save considerable amounts of time-wasting dialogue when it becomes necessary to support the "grey areas" of claim to the Director-General of Inland Revenue.

The cost of "preliminaries and general conditions" in a construction contract is attributable to both allowable and non-allowable items. Therefore, these costs should be apportioned over the contract to ensure that a proportion of the expenditure is correctly attributed to qualifying items. The taxpayer's case could be strengthened by ensuring that the contractor is advised to provide specific information relating to the setting-up costs necessary for those subcontractors with a significant proportion of work involving machinery and plant.

### Design Features

Design features have already been mentioned as forming an important factor in maximising capital allowances. One such example of this can be illustrated by reference to the case of *Hampton (Inspector of Taxes) v Fortes Autogrill Ltd* (1980), where false ceilings were

not accepted as plant because they were not necessary for the functioning of any apparatus used for the purpose of the trade and were not part of the means by which the trade was carried on.

However, a "plenum" ceiling which acts as a return air duct would qualify for capital allowances as an essential part of the air-conditioning installation.

Other examples of design planning consist of incorporating items which are more likely to be plant than others. Demountable or removable items stand a higher chance of success than fixed or static items. Examples include carpets rather than carpet tiles fixed with adhesive, and demountable partitions (as already described) rather than fixed walls.

Thus it can be seen that thought given to design features in a building at an early stage can save a taxpayer considerable amounts of corporate taxation. However, in every case it will be important to assess the viability of such design changes on the overall construction cost.

The foregoing examples are just a few of many situations which can arise in practise. However, each building is an individual asset and, as such, will have to be separately assessed.

Perhaps developers and building owners are too preoccupied with design, cost and speed of construction to give much thought to capital allowances until after completion of the building. However, bearing in mind the significance of capital allowances to the building owner's post tax returns, the preplanning of these tax allowances should also demand early attention.

Capital allowances are there for the taking - why not plan for them?



# - Strategic Planning -

## A CONCEPTUAL MODEL FOR INLAND REVENUE DEPARTMENT, MALAYSIA

By Dr S. Sivamoorthy,

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### 1. STRATEGIC PLANNING PROCESS

Strategic planning is the management of activities which defines the overall character and mission of the organisation, the product/service segments, it will enter and leave the allocation of resources and management of synergies among its various units. The following issues will be addressed in order to ascertain the character and mission of the organisation :-

- What are the purposes of the organisation?
- What image should the organisation project?
- What are the ideals and philosophies the organisation desire its staff to possess?
- What is the organisation's business or businesses?
- How can the organisation's resources best be used to fulfil organisation purposes?

Before dwelling deeply into the details of Strategic Planning/Management, it is useful to study the overall process. The basic strategic management/planning model, as illustrated in figure 1 is useful as an expository device.

### 2.1 Mission Statement & Analysis

In any organisation, a mission statement must be carefully developed for the following reasons:-

- Ensure uniformity of purpose within the organisation.
- Provide a basis for allocating organisational resources.
- Serve as a focal point for individuals to identify with the organisation's purpose and direction.
- Facilitate the translation of objectives into a work structure involving the assignment of tasks to responsible elements within the organisation.
- Specify organisational purposes and translation of these purposes into objectives in such a way that cost, time and performance parameters can be assessed and controlled.

### 2.2 Components of a Mission Statement

Components and correspond-

ing questions that a mission statement should address are as follows:

#### (a) Customers

Who are the customers? The Department's first responsibility is to the Treasury/Ministry of Finance. The Ministry of Finance must draw up a development oriented tax system which is used as an essential instrument of resource allocation, income redistribution and economic stabilisation. Hence, the principal objective of taxation is to augment adequate revenue for financing of capital formation and other public utility services.

On a different perspective, the tax paying public (Tax-payers) are often considered as the Department's customers and any extension of educating the public on tax affairs is targetted towards the tax-payers. This emphasis is reinforced in the statement of "Dasar Kualiti JHDN" which reads as follows:

*Kami adalah komited dalam memberi perkhidmatan yang*



berkualiti kepada pelanggan kami secara profesional. Kami akan memastikan pegawai dan staf kami berkhidmat ke arah kecemerlangan yang maksimum berasaskan prinsip inisiatif dan didukung oleh ikrar JHDN, kami akan menjadikan perkhidmatan berkualiti sebagai cara hidup kami.

**(b) Products or Services**

What are the Department's major products and services. The function of the Inland Revenue Department is to administer the Income Tax Act 1967 and other supplementary Tax Act. It is the duty of the service to correctly apply the laws enacted by Parliament; to determine the provisions in the light of the legislative purpose in enacting them; and to perform this work in a fair and impartial manner with neither the Government or a taxpayer point of view.

**(c) Markets**

Where does the Department compete. The emphasis here revolve around any proposals or revision to tax laws should include administrative and legislative provisions which will result in a fair and effective system of tax administration. It should minimise tax evasion and tax avoidance in the payment of taxes and promote economy, convenience of efficiency in the assessment and collection of taxes to both government and taxpayers.

**(d) Technology**

The Department should apply micro-electronic and computer technology in computations, information, education and finance.

**(e) Concern for survival,**

**growth and profitability**  
Is the organisation committed to economic objectives?

The Department is committed to establish a tax structure which will be an effective instrument to achieve maximum social and economic growth. Inevitably the tax structure will have the following as its main economic objectives :-

- Achievement of reasonable levels of prices, consumption and production.
- Achievement of an equitable distribution of income and wealth among people.

**(f) Philosophy**

What are the basis beliefs, values and aspirations of the Department? The basis beliefs and values are outlined in "Ikrar JHDN" (Appendix). The IRD at all levels is committed to the principles of quality, viz a viz :-

- Establish a Quality climate where quality is first among equals with schedule and costs.
- Emphasising product and service quality by eliminating systematic flaws during planning, implementation and operational process.
- Improve responsiveness to the public and other service components.
- Develop evaluation systems consistent with quality principles.

**(g) Concern for employees**

Can the Department share the following concern, i.e.

"To recruit, develop, motivate, reward and retrain personnel of exceptional ability, character and dedication by providing good working conditions, superior leadership, compensation on the basis of performance and opportunity for growth."

**2.3 Mission of Inland Revenue Department**

The mission of the Department is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations and to conduct itself so as to warrant the highest degree of public confidence in its integrity and efficiency. The full scrutiny of the return forms support the mission of the department by encouraging the current reporting by taxpayers of their income sources. This is accomplished by:-

- Measuring the degree of voluntary compliance as reflected on filed returns.
- Reducing non compliance by identifying and allocating resources to those returns most in need of examination.
- Conducting on a timely basis quality audits of each selected tax returns to determine the correct tax liability.
- Development of competent staff by regular training facilities and the necessary measures to motivate the staff.
- Advise public of their rights and responsibilities.

**3. INTERNAL AUDIT TO IDENTIFY KEY STRENGTHS AND WEAKNESSES**

3.1 Strengths refers to internal competencies possessed by the organisation in comparison with its "Competitors". Strengths may be based upon the capabilities and motiva-



tion of the organisation personnel; quality of physical facilities; attributes of organisational structure and financial resource and structure. The strengths of the Department can be summarised as follows:

- (a) Area of functional duties of the IRD is a conferred authority by Legislations passed in the Parliament.
- (b) To ensure effective tax administration, the IRD is decentralised by allocation of responsibility between Headquarters and branches. Proper coordination and control is ensured through circulars, periodic inspections by the inspectorate and performance reporting regularly.

3.2 Weakness are attributes of the organisation which tend to decrease competence in comparison with its "Competitors". The weaknesses of the Department can be summarised as follows:-

- (a) Administrative difficulties of the administrative implementation of Double Taxation Treaties.
- (b) Collection problem has resulted into mounting tax arrears which is as result of centralised tax collection in Kuala Lumpur. Ideally the taxpaying public should be allowed to make payments in banks and post offices.
- (c) Tax consciousness i.e. attitude of the people towards taxation as manifested in their compliance with tax obligations is admittedly low in Malaysia.
- (d) The system of collection of data and information on taxpayers with various government agencies.
- (e) Personnel. The staff lack adequate training in rel-

evant disciplines and quality of assessment work may have declined in the past due to transfers, resignation/retirement of several senior officers.

## 4. EXTERNAL AUDIT TO IDENTIFY KEY OPPORTUNITIES AND THREATS

4.1 An opportunity is a combination of circumstances, time, place which if accompanied by a course of action on the part of the organisation, is likely to produce significant benefits.

The opportunities for the Department can be summarised as follows:-

- (a) Undertake externally oriented programmes like field audit, mobile units, tax assistance units, to exploit the "untapped tax capacity".
- (b) Internally oriented programmes to increase administrative efficiency through computerisation, total quality management and productivity measurement.

4.2 A Threat is a reasonably probable event, which, if it were to occur, would produce significant adverse results to the organisation.

The threats for the Department can be summarised as follows:

- (a) There is conflict of interest in reconciling the congruence of goals between the Government's development efforts and IRD's objective of collecting maximum revenue with minimum costs. The various taxation measures, namely legislative changes and tax incentives and directed toward restructuring of corporate

equity and stimulation of both foreign domestic investments which will lead to substantial taxes foregone in the future.

- (b) The penal provision of the tax laws relating to submission of incorrect returns or false returns do not act as adequate deterrent to tax evaders.
- (c) The existence of former tax officers in the private sector advising taxpayers on various tax planning and tax avoidance techniques.

## 5. STRATEGY FORMULATION

### 5.1 Administrative Devices for Improving Voluntary Compliance

The most effective way of accomplishing the IRD's mission is to achieve and maintain the highest possible level of voluntary compliance. Various administrative measures includes improving taxpayer education campaigns, adequate publicity in mass media and extensive application of computerisation.

- (a) Improve Taxpayer Education Campaigns

Taxpayer education is generally been considered low and hence recommend establishing special units for developing education packages and implementing mass communication packages. Taxpayer services can take different forms, namely:-

- Telephone and Walk in Assistance.
- Taxpayer Education Programme, namely Volunteer Income Tax assistance programme, Community Outreach Tax Assistance Programme, Small Business Tax Work-



shop and Understanding Taxes Programme.

- Taxpayer Information Programme.

(b) Publicity

The sort of publicity that is envisaged are those simple reminders slotted in between programmes on television like the "Dadah (Drug Abuse)", "Save Energy" and "AIDS" campaigns to be produced periodically.

(c) Application of Computerisation System

Computerisation should include maintenance of taxpayer master files; making assessments, identification of non filers, update on collection, statistical studies and miscellaneous processing, etc.

A Public Resolution Programme need to be established using computer in order to respond effectively to taxpayer complaints and problems immediately (New Zealand IRS).

## 5.2 Legislative Devices for Improving Voluntary Compliance

- Case for Self Assessment to be implemented to cover initially all salaried persons, followed by extending to non salaried persons declaring up to RM 25,000 per annum.
- Case of PAYE systems.
- Extension of withholding tax on contract payments (Sec 107A of ITA 1967) to include resident contractors.
- Extension of compulsory audit by certified Public Accountants to include

sole proprietorship businesses and partnerships with annual sales exceeding, say RM250,000.

## 5.3 Intensify Tax Campaigns Against "Hard to Tax" Category

Intensify tax campaigns on all business establishments and other "hard to tax" categories of taxpayer like amusement arcade, entertainment outlets, restaurants, self employed non professionals, construction, plumbing and other service sectors, hawkers and other sub-contractors.

Strategic alternatives to techniques in taxation of this category can be carried out in the following manner.

- Best Judgment Assessment or Estimated assessment.
- Standard Assessment where renewal of permits and licenses is subject to payment of fixed amount of tax.

## 6. OPERATIONAL ASPECTS OF ASSESSMENT AND INVESTIGATION SECTION

### 6.1 Statement of Objectives

- To improve the ratio of tertiary qualified staff in the technical group in the Assessment Section as at 31/12/1992 from say 1:18 to 1:8 and in the Investigation section from 1:12 to 1:1 through suitable recruitment policies. \*
- To reduce the number of outstanding assessments to no more than 5% of the total returns received in the Companies Business and Partnerships Units for each year.
- To reduce the number of reassessment caused by departmental errors to no

more than 5% of the total assessments.

- To increase the aggregate number of backduty cases finalised to about 3 cases per investigation officer and a total settlement of a minimum of RM 1 million per year.

- The ratio is purely based on writer's assumption.

## 7. STRATEGY-PLAN OF ACTION

- Practice Management by Objective (MBO) by undertaking the following steps in the various sections:-

- Pindown job inputs
- Establish verifiable measures of performance.
- Choose key responsibility areas where officers specify performance standards controls and ideas for work improvement.
- Review objectives and results.

- Set up Staff Training College whose primary objective is to equip new staff and existing staff with necessary knowledge of tax legislation, accounting practices and management disciplines.

- Expansion of Scope of Function of Operation Division and Research and Planning Division to include the following:

- Undertake a comprehensive study of the need for additional revenue for accelerated national development and the sources from which this might most equitably be derived.
- Conduct research on taxation for purpose of improving the tax system and tax policy viz a viz



upgrading the Back Duty Manual and Staff Handbook.

- Recommend such reforms and revision as may be necessary to improve revenue collection, administration and formulation of sound tax policy.

- To draw up a programme of training needs and curriculum for officers which will be undertaken by the Staff Training Residential College.

#### 8. CONCLUSION

Strategic planners in successful

organisations take time to formulate, implement and evaluate strategies. Strategic planning for IRD becomes inevitable at this time because of plans to corporatise the IRD as announced by the Minister of Finance during the tabling of the 1993 budget.

### APPENDIX I

#### BAHAWA KAMI, PEGAWAI-PEGAWAI DAN STAF JABATAN HASIL DALAM NEGERI

- \* Menyedari tanggungjawab kami kepada Negara, Bangsa dan Agama;
- \* Menjunjung cita-cita Rukunegara;
- \* Berpegang teguh kepada Teras perkhidmatan Cemerlang;
- \* Mengamalkan sifat-sifat Kepimpinan Melalui Teladan.

#### BERIKRAR AKAN

- \* Menumpukan seluruh tenaga dan usaha kami mendukung matlamat Jabatan mewujudkan suatu sistem pengurusan percukaian yang berkesan, adil dan saksama agar ia berjaya;
- \* Memungut jumlah cukai yang sepatutnya tanpa menimbulkan bebanan yang tinggi kepada orang awam;
- \* Melahirkan kepercayaan orang awam terhadap keadilan dan keunggulan sistem percukaian masakini;
- \* Mendorong orang awam untuk tampil ke hadapan membayar cukai-cukai yang sepatutnya secara sukarela.

#### DAN BERAZAM

- \* Menjalankan tugas-tugas kami dengan cekap, berkualiti dan berkesan;
- \* Memberikan perkhidmatan yang segera dan mesra kepada orang awam;
- \* Mengamalkan sikap-sikap amanah, jujur, penuh tanggungjawab dan positif;
- \* Sentiasa berusaha meningkatkan imej Jabatan kami.

The Council of  
**The Malaysian Institute of Taxation**  
wishes all Muslim readers

"Selamat Hari Raya Aidil Adha"



# Qualified Audit Report

RAYUAN NO. PKR 611

GAS (M) SDN. BHD ..... PERAYU  
 dan  
 KETUA PENGARAH HASIL DALAM NEGERI ..... RESPONDEN

1. At the hearing of the Special Commissioners of Income Tax held in Kuala Lumpur on the 3rd, 4th, 5th and 8th of October 1994, GAS (M) Sdn. Bhd. (the Appellants) appealed against assessments raised by the Director General of Inland Revenue (the Respondent) as follows:

Year of Assessment	Date of Notice of Assessment	Tax Payable RM
1983	8.9.1986	182,058.00
1984	3.9.1986	248,240.50
1985	3.9.1986	89,824.10
1986	23.9.1986	38,682.45

2. Shortly stated, the question for our determination was whether the Respondent's computation of the Appellants' business loss relief and capital allowance for the Years of Assessment 1983 to 1986 is correct.

3. The Appellants were represented by Encik JCYL, advocate and solicitor, and the Respondent was represented by Puan S bt. K, Senior Federal Counsel assisted by Puan R S, Assessment Officer.

4. The Appellants called the following witnesses to give evidence:

- (i) F S N (SP1)  
*Managing Director*  
 (ii) C L K (SP2)  
*Businessman*

- (iii) L H K L (SP3)  
*Government Pensioner and former Tax Consultant*  
 (iv) Y Y Y (SP4)  
*Housewife*  
 (v) K E L (SP5)  
*Accountant*

5. The Respondent called the following witness to give evidence:

- (i) E L K (SR1)  
*Assessment Officer*

6. The following documents were tendered in evidence at the hearing:

Exhibit	Description
A	Statement of Agreed Facts
B	Agreed Bundle of Documents
C	Appellants' Bundle of Documents
D	Appellants' Bundle of Authorities
E	Appellants' Submission
F	Respondent's Bundle of Authorities
R1	Appellants' letter dated 29.12.1977 addressed to Jabatan Hasil Dalam Negeri
R2	Appellants' letter dated 15. 10. 1977 addressed to Jabatan Hasil Dalam Negeri
R3	C & Co's letter dated 30.9.1980 addressed to

	Director General of Inland Revenue
R4	Jabatan Hasil Dalam Negeri's letter dated 31.10. 1980 addressed to C & Co.
R5	C & Co's letter dated 28. 11.1980 addressed to Director General of Inland Revenue
R6	Form C for year of assessment 1977
R7	Form C for year of assessment 1975
R8	Form C for year of assessment 1976
R9	Form C for year of assessment 1978
R10	Accounts for year of ended 31.12. 1977
R11	Accounts for year of ended 31.12. 1980
R12	Accounts for year of ended 31.12. 1981
R13	Accounts for year of ended 31.12. 1982
R14	Accounts for year of ended 31.12. 1983
R15	Accounts for year of ended 31.12.1984
R16	Accounts for year of ended 31.12. 1985
R17	Jabatan Hasil Dalam Negeri's letter dated 7. 1.1979 addressed to Appellants
R18	Jabatan Hasil Dalam Negeri's letter dated 24.12.1981 addressed to Appellants



- P19 A-M Appellants' capital allowances schedules for the years of assessment 1975 to 1987
- P20 Guideline issued by Malaysian Institute of Accountants
- P21 Appellants' computation of unabsorbed capital allowances and industrial building allowances
- P22 Appellants' computation of capital allowances for the years of assessment 1975 to 1986
- R23 Jabatan Hasil Dalam Negeri's letter dated 22.9.1980 addressed to C & Co.
- R24 Jabatan Hasil Dalam Negeri's working of capital allowances for the years of assessment 1975 to 1982
- P25 Director General of Inland Revenue's letter dated 27.7.1990 addressed to L H & Company
- P26 L H & Company's letter dated 8.10.1990 addressed to Director General of Inland Revenue

7. As a result of the evidence both oral and documentary adduced before us we found the following facts proved or admitted:

(a) **Facts Admitted**

- (i) The Appellants are a private limited company incorporated in Malaysia having their registered address at Lot A, Jalan, Section 123, Petaling Jaya, 46000 Selangor Darul Ehsan;
- (ii) The Appellants carry on the business of manufacturing shoes;
- (iii) The Appellants commenced their business as a shoe manufacturer until 31st December 1973, as

a partnership (MS Manufacturer Company) before being incorporated as a private limited company;

- (iv) When the Appellants were carrying on the business as a partnership they were also manufacturing shoes;
- (v) The plant and equipment, and the industrial buildings were "inherited" by the Appellants at their written down values, that is to say residual or book values (after deduction of capital and industrial building allowances) and these written down values were arrived at by the Partnership Division of the Respondent;
- (vi) For the Years of Assessment 1975 to 1982, the Appellants were not liable to tax under the Income Tax Act, 1967;
- (vii) The dispute over tax concerns the Years of Assessments 1983 to 1986 inclusive and the total amount of tax covered by these assessments is RM 599,629.55;
- (viii) The total sum of tax allegedly owed together with alleged penalties has already been paid subject to appeal.

(b) **Facts Proved**

- (i) The Appellants appointed Y P K & Co. as their tax agent on 29th December 1977 to handle their tax affairs for the years of assessment 1974 to 1976 (as per Exhibit R1).
- (ii) On 15th October 1979 C & Co. took over as their tax agent from Y P K (as per Exhibit R2).
- (iii) Subsequently C & Co. was replaced by L H K L from August 1988 until 1991.

(iv) The Appellants did not call Y P K or C, their agents at the material time and who were duly authorised to handle their tax affairs, to testify on their behalf.

(v) C's letter dated 30th September 1980 addressed to the Respondent (as per Exhibit R3) says as follows:

"We refer to your letter of 22.9.1980 and regret to advise that the company do not agree to your total rejection of the accounts for the year ended 31.12.1977 as total rejection appears to be not in your best judgment. Kindly reconsider the accounts and the company is prepared to accept partial rejection as follows:

	RM
Loss as per accounts	327,444.42
<b>Add</b>	
gain on sale of fixed assets	7,895.00
	<hr/> 335,339.42
<b>Less</b>	
depreciation	54,525.01
legal expenses	2,093.93
	<hr/>
Unverifiable purchases	54,664.00
	<hr/> 111,282.94
	<hr/> 224,056.48
Capital allowances	?
	<hr/> 224,056.48

The company has suffered losses totalling \$1,076,907.00 up to 31.12.1977 and the allowable loss of \$224,056.48 now requested should justify your consideration. The accounts of 1977 were not so badly



- kept as in the previous years and it is a true fact that the company did suffer very heavy losses because of the nature of the trade as shoes maker.
- (vi) The concession made by C was accepted by the Respondent as per letter dated 31st October 1980 (as per Exhibit R4).
  - (vii) At the time when C made the concession to the Respondent as in Exhibit R4 he was the agent of the Appellants.
  - (viii) The assessment made by the Respondent is based on the concession made by C as agent of the Appellants and not on any statement made by Y P K.
  - (ix) No evidence was led by the Appellants to show that the RM1,076,907 claimed by them qualify as allowable losses.
  - (x) The Appellants did not make a claim for capital allowances within the stipulated time. The capital allowances including industrial building allowances were computed by SR1 based on Exhibit R24.
  - (xi) The Auditors' Reports on the Appellants' accounts for the years ended 31.12.1974, 31.12.1975 and 31.12.1976 were highly qualified with reservation with over 20 items in the accounts which needed to be verified.
  - (xii) Although L H said that Y P K tried to instigate him to conspire with him to put the Appellants into tax problems, he made no similar allegation against C.
  - (xiii) The Appellants led no evidence whatsoever to show their income and losses after the Year of Assessment 1979.
8. It was contended on behalf of the Appellants that:
    - (i) The Respondent's computation of capital allowances for the years of assessment 1983 to 1986 is incorrect in that it is not based on the residual values provided by the Partnership Division of the Jabatan Hasil Dalam Negeri itself (unlike the Appellants' computation) but on figures conceived by the assessment officer in her imagination or her own perception.
    - (ii) The Respondent was inconsistent in allowing business loss relief amounting to RM 224,056.00 for the year of assessment 1979 and it should not have refused to allow business loss relief for the basis years ended 1974, 1975 and 1976 on grounds of consistency.
    - (iii) As the Appellants were entitled to industrial building allowances, these allowances should be separately categorized and differentiated from plant and machinery allowances following normal practice but this was not done.
    - (iv) The Respondent contradicted itself by first suggesting that the capital allowances were notional allowances and then later on its assessment officer contended that they were not notional allowances. Thus Exhibit R4 written by the Respondent dated 31 October 1980 stated that the capital allowances were merely notional allowances; (see also the letter from the assessment officer, E L K, dated the 29 December 1990 to the same effect); and later on contradicted itself by a letter (by the same assessment officer) dated the 8 June 1992 (page 18 of Appellants' Bundle of Documents).
    - (v) The Respondent at first issued original and additional assessments but later on it stated

that the assessments were estimated assessments.

- (vi) The Respondent constantly relied on an auditor-accountant one C who after initially being on the Appellants' side as to "very heavy losses" agreed with the Respondent without consulting or even informing the Appellants.
- (vii) Owing to internal sabotage by Y P K, the contradictions of C and the contradictions of the Revenue officers hereinbefore described, the whole case for the Respondent is highly unreliable thereby vitiating altogether the assessments under dispute.
- (viii) Y P K and C were hostile to the interests of the Appellants who were their client; and because C eventually favoured the Respondent he should have been called by the Respondent and since the Respondent did not call him, section 114(g) of the Evidence Act should be invoked so that an adverse inference could be drawn against the Respondent.
- (ix) E L K, the assessment officer admitted that she "inherited the file" from her superior officer under whose instruction she worked; so the superior officer should have been called as a witness by the Respondent but this was not done.
- (x) K E L, a chartered accountant who was called as an expert witness said that the Respondent's Exhibits R10 to R16 which were relied on by the Respondent show accumulated losses; furthermore p 20 of the Appellants' Bundle of Documents and R3, a letter from C (which is relied on by the Respondent) show that the accumulated losses totalled RM1,076,907 up to year ending 31.12. 1977; so it is not correct for the Respondent to aver that the loss to be carried forward was only



RM224,056.00.

- (xi) K E L also said that the correct figures for capital allowances are as contained in Exhibit P22, being computations arrived at by him.
- (xii) K E L also said that the computations of the former tax consultant as contained in Exhibits P 19(A) to (M) are accurate and should be relied on. Thus according to him, the capital allowances for plant and machinery amount to RM956,965 and for industrial building allowances RM51,840 for years of assessment 1975 to 1986 making a total of RM1,008,805. Exhibit P 21, K E L contended, was computed as a basis for compromise with the Respondent.
- (viii) K E L said that the accumulated loss relief, and the capital allowances (including industrial building allowances) as claimed by the Appellants would wipe out the income tax claimed by the Respondent.
- (ix) At page 78 of the Appellants' Bundle of Documents it is stated that the former tax consultant had separately categorized industrial building allowances which the Appellants contend were not allowed by the Respondent.
- (x) K E L said that Exhibit P 20 (the "Malaysian Auditors' Guideline") draws a distinction between what is "fundamental" and what is "material": the question as to whether the accounts of the Appellants represent a "true and fair view" of the company's financial affairs is a fundamental matter pursuant to sections 169 and 174 of the Companies Act which mention the requirement of a "true and fair view". All the auditors' reports from 1974 onwards (see p 32 Agreed Bundle) state that the accounts represent a "true and fair

view". In order to arrive at a "true and fair view" an accountant and a lawyer would have to take into account the matters enumerated in section 169 Companies Act, 1965 and at the end of the day the auditor has to determine even in the face of material inconsistencies and material qualifications whether the accounts represent a "true and fair view" of the company's financial affairs. The qualifications by the auditors are not fundamental and they were correct in stating that the accounts of the Appellants represent a "true and fair view" although the said accounts were not perfect. It was contended that in the event of a conflict between what is fundamental and what is material the former prevails.

- (xi) K E L said that the Respondent, through the assessment officer E L K, admitted she had constantly relied on the final agreement of Chiang, the auditor (as expressed at P 21 of the Appellants' Bundle of Documents) but the said assessment officer (see her letters at pp 3, 4, 5 and 24 of the said Bundle) was relying on an auditor who had betrayed his client and therefore, except for admissions made by the said auditor, one does not have to rely on the said auditor's final agreement with the Respondent.
- (xii) After opposing the Respondent's assessments as at p 20 of the Appellants' Bundle of Documents, Exhibit R 3 (dated 30 September 1980) the auditor, C then by his letter of the 28 November 1980 agreed with the Respondent's figure for loss relief without consulting his client, the Appellants. It is further contended that C, the said auditor failed to provide an explanation as to why he finally

agreed with the Respondent without authorization from the Appellants. The Appellants rely on page 22 of the Appellants' Bundle of Documents which is a letter from the Appellants' Counsel to C, the auditor requesting him to provide an explanation for making the unauthorized admission to the Respondent.

- (xiii) It was contended by the former tax consultant that he did not receive C's letter of 28.11.1980 (p 21 Appellants' Bundle, Exhibit R 5) agreeing with Respondent and indeed by a letter dated 10 January 1990, he requested the Respondent to supply C's letter relied on by the Respondent (p 8 of Appellants' Bundle). It was contended by the managing director that C never mentioned Exhibit R 5 (p 21 Appellants' Bundle) to him.
- (xiv) Since C had acted in an unauthorised manner - without obtaining the Appellants' agreement to the purported admission to the Respondent (p 21 of Appellants' Bundle) and since the Respondent through the assessment officer, E L K (see pp 3, 4, 5 & 24 of Appellants' Bundle) relied on C, it was not incumbent on the Appellants to call C who should have been called by the Respondent. Since the Respondent did not call C on whom it relied section 114(g) of the Evidence Act should be invoked against it.
- (xv) The assessment officer who was called by the Respondent as a witness and who is not an approved company auditor (pursuant to sections 8 and 9 of the Companies Act, 1965) was neither qualified nor entitled to override the conclusion of the auditors that the accounts of the Appellants represented a true and fair view of the Appellants' financial affairs.



- (xvi) Although the assessment officer invoked Paragraph 76 Schedule 3 to the Income Tax Act 1967 to the effect that capital allowances must be claimed and alleged that they were not claimed, it is contended by the former tax consultant (called as a witness) that they were indeed claimed through his capital allowances computation, P 19(A) to (M) which were handed to the Respondent for consideration.
- (xvii) The former tax consultant said that he had worked as a tax consultant for the Appellants from 1975 to 1979 and that he had dealt with the said assessment officer, E L K. The former tax consultant contended that although he had requested for Form 'Q' (Notice of Appeal) from the said assessment officer by way of repeated requests pursuant to letters dated 19/9/1989, 16/1/1990 and 17/9/1990 (see p 29 of Appellants' Bundle of Documents) he did not receive the said Form Q.
- (xviii) The Respondent had tried to suppress the appeal being made by refusing to supply the said Form 'Q' to the former tax consultant as a result of which the Appellants had to apply for extension of time to appeal by way of Form 'N' which was granted when the Counsel for the Appellants intervened on behalf of the Appellants by protesting to the then Senior Federal Counsel who was also the Head of the Legal Division of the Inland Revenue Department.
- (xix) The former tax consultant said that the assessment officer warned him that it would take six years for the appeal to be heard.
- (xx) The former tax consultant said that the former auditor of the Appellants - on whom the Respondent also relied - namely Y P K was hostile to

the interests of the Appellants in that he sought to incite the former tax consultant to sabotage the case for the Appellants by putting the Appellants into trouble with the Respondent; see p 126 of Appellants' Bundle which is the affidavit of the said tax consultant, in addition to his sworn evidence before the Special Commissioners.

- (xxi) The managing director of the Appellants said that if they wanted to evade payment of alleged tax all the Appellants' directors had to do was to wind up the company and then let the Respondent take action but the Appellants refrained from doing so; and in fact right now the Appellants admit they are making profits, and have declared these profits to the Respondent. Thus there was no intention to evade or even avoid payment of taxes.
- (xxii) The auditors, Y P K and C, were not acting as tax agents but as auditors and therefore the Respondent was wrong in regarding them as the Appellants' tax agents; in any event the Appellants had been betrayed by C who did not obtain the Appellants' consent to his agreement with the Respondent, Exhibit R 5 (p 21 Appellants' Bundle).
- (xxiii) In view of the very unsatisfactory nature of the Respondent's case the estimated assessments were defective and not in accordance with law.
9. It was contended on behalf of the Respondent that:
- (i) There are good and sufficient grounds for the Respondent to reject the Reports and Accounts of the Appellants in respect of the years of assessment 1975 to 1977. The assessments were raised under sec-

tion 90(l)(b) of the income Tax Act, 1967.

- (ii) For the year of assessment 1978 the chargeable income was NIL. The Appellants' tax agent C agreed that RM224,056.00 is the loss to be carried forward from the year of assessment 1979.
- (iii) From the year of assessment 1979 onwards the assessments were raised based on the Report and Accounts submitted by the Appellants.
10. We were referred to the following authorities:

#### By the Appellants:

- (i) Minister of National Revenue v. Wrights' Canadian Ropes, Limited JC 1946.
- (ii) Argosy Co. Ltd. v. Inland Revenue Commissioner (1971) WLR 514.
- (iii) Hochstrasser v. Mayes (1959) 3 All E.R. 817.

#### By the Respondent:

- (i) Rosette Franks (King Street) Ltd. v. Dick (H.M. Inspector of Taxes) 36 TC 100.
- (ii) Commissioner of Income Tax, Central and United Provinces v. Laxminarain Badridas 5 ITR 170.
- (iii) Bi-Flex Caribbean Ltd. v. The Board of Inland Revenue 63 TC 515.
- (iv) A.B.C. v. The Comptroller of Income Tax Singapore (1959) 25 MLJ 162.
- (v) Government of Malaysia & Anor v. Jagdis Singh (1987) 2 MLJ 185.
- (vi) Comptroller of Income Tax v. S. & Co. (Pte) Ltd. (1972) 2 MLJ 234.
- (vii) Lau Sieng Nguong v. Hap Shing & Co. Ltd. (1969) 1 MLJ 190.
- (viii) Inland Revenue Commissioners v. West (1991) STC 357.
- (ix) Yee Chang & Co. Ltd. v. N.V. Koninklijke Paketvaart Maatschappij (1958) 24 MW 131.



(x) The King v. The Kensington Income Tax Commissioners (ex parte Aramayo) 6 TC 613.

(xi) Tudor and Onions v. Ducker (H.M. Inspector of Taxes) 8 TC 591.

(xii) Lloyds Bank Export Finance Ltd. v. Commissioner of Inland Revenue (1991) STC 474.

11. We, the Special Commissioners who heard the appeal, took time to consider our decision and gave it on 15th October 1994 for the following reasons:

The issues for determination in this appeal were whether the Respondent's computation of the business loss relief and capital allowances of the Appellants are correct. We shall now examine both the matters submitted to us for deliberation.

## Business Loss Relief

Under section 90(1) of the Income Tax Act 1967 (the Act) where a person has delivered a return to the Director General of Inland Revenue for a year of assessment, the Director-General may:

- (a) accept the return and make an assessment accordingly; or
- (b) refuse to accept the Return and, according to the best of his judgment determine the amount of the chargeable income for that year and make an assessment accordingly.

In this appeal the Respondent did not accept the accounts submitted by the Appellants as they did not appear to reflect the true position of their income. E L K (SR1) who holds a degree in Accounting and who is an assessment officer attached to the Inland Revenue Department, said in her evidence that the Auditors' Reports of the Appellants for years ending 31.12.1974, 31.12.1975 and 31.12.

1976 were highly qualified with reservation over 20 items in the accounts which needed to be verified. She said that based on the accounts it is not possible to raise an assessment as there were many qualified items. The material items in the accounts were not verified. Still the auditor said that the accounts gave a true and fair view of the accounts of the Appellants. According to the Appellants' witness, K E L (SP5), an Accountant, the Auditors' Report gave a true and fair view of the accounts subject to certain verification. He said that this means that verification might have been done. We are of the view that the "true and fair view" certification was subject to the verification of those items, meaning that verifications were not done when the Auditors' Report was made. The appellants ought to have called the auditors concerned to explain the qualifications which they have failed to do so. Any evidence that SP5 gave on this aspect is mere speculation without first-hand information on the accounts. His evidence ought to have been based on the accounts with corresponding entries from the account books. In any event SP5 himself said that the accounts were not perfect. In that event it is illogical for him to assert that the auditors were correct in saying that the accounts presented a true and fair view. Thus the Respondent was justified in not accepting the accounts. Be that as it may, as will be made apparent in the next paragraph, the assessment made by the Respondent was based on the proposal made by the Appellants' tax agent after the rejection of the accounts. We interpolate to add that an assessment officer of the Inland Revenue Department need not be an approved company auditor to override the conclusion of the auditors of any account for income tax purposes. The objection of the Appellants in this regard based on sections 8 and 9 of the Companies Act 1965 has no merit as the said

sections are confined to the duties of an auditor for the purposes of the said Act only.

For Year of Assessment 1978 the Respondent proposed not to accept the accounts tendered by the Appellants as they were qualified. The tax agents of the Appellants, C and Co. appealed to the Respondent for a partial rejection of the accounts for Year of Assessment 1978 though for previous years they had accepted the total rejection of the accounts. In the letter of appeal C and Co. said that although the Appellants had suffered losses of \$1,076,907 they proposed an allowable loss of \$224,056.48. This is contained in Exhibit R3 which reads as follows:

"We refer to your letter of 22.9.1980 and regret to advise that the company do not agree to your total rejection of the accounts for the year ended 31.12.1977 as total rejection appears to be not in your best judgment. Kindly reconsider the accounts and the company is prepared to accept partial rejection as follows -

		RM
Loss as per accounts		327,444.42
<b>Add</b>		
Gain on sale of fixed assets		7,895.00
		<hr/>
		335,339.42
<b>Less</b>		
Depreciation	54,525.01	
Legal expenses	2,093.93	
Unverifiable purchases	54,664.00	
		<hr/>
		111,282.94
		<hr/>
		224,056.48
Capital allowances		?
		<hr/>
		224,056.48

The company has suffered losses totalling \$1,076,907/- up to 31.12.1977 and the allowable loss of \$224,056.58 now requested should



justify your consideration. The accounts of 1977 were not so badly kept as in the previous years and it is a true fact that the company did suffer very heavy losses because of the nature of the trade as shoes maker. You may wish to know that the company will not be able to survive any further pressure of adverse trade conditions and its survival is now entirely in the hands of its creditors and bankers.

As requested we enclose a signed copy of audited accounts for the year ended 31.12.1978 which again show a loss of \$142,471/-.

Yang benar,  
t.t.

We interpolate to add that it is not every loss that would amount to an allowable loss.

In this regard SR1 said in her evidence,

"The tax agent claimed that the company had suffered losses of \$1,076,907 and yet proposed to the department to accept losses of \$224,056.48 to be carried forward because we have to make a distinction between book loss in the accounts and allowable loss under the Income Tax Act. Under Income Tax Act we have to make adjustments according to the provisions of the Act. So the allowable losses are after the adjustments have been made under the Act. That is why they proposed to carry forward an allowable loss of \$224,056.48.

The evidence of SR1 that we have reproduced explain in crystalline terms the rationale behind the proposal made by the Appellants' tax agent. The proposal was accepted by the Respondent. With regard to this proposal the Appellants contended that they were not consulted by C & Co on this agreement with the Respondent. Notwithstanding the denial by the

Appellants' witness, F S N (SP1) the Managing Director, that he did not receive a copy of C's letters to the Respondent dated 30.9.1980 and 28.11.1980 respectively, the letter of appointment of C as their tax agent still prevails and any action taken by him is binding on them as he was their duly appointed agent at the material time (see *IRC v West (1991) STC 357*). No evidence was adduced by the Appellants to show that C had been discharged as their tax agent at the time he wrote those letters and, accordingly, the Respondent had no indication that C was not acting for them. It is not the duty of the Respondent to verify whether the relationship between the Appellants and their agent had been terminated and the burden is clearly on the Appellants to inform the Respondent if that was the case which they have failed to discharge. In the circumstances the Respondent is entitled to treat the concession made as an admission and the Appellants are estoppel from denying them. In this regard the Appellants' own witness K E L (SP5) said in examination-in-chief,

"If a professional accountant or auditor were to turn against his client we don't have to rely on him except as to admissions."

Of course any admission made can be explained away pursuant to section 31 of the Evidence Act 1950 but the Appellants have failed to discharge this burden. They ought to have substantiated their contention by calling C on their behalf to testify on the allegation raised by them. They have failed to do this.

Learned Counsel for the Appellants submitted that the two former tax agents of the Appellants were not called as their witnesses to give evidence as they may turn hostile. Having said that he contended that it was the responsibility of the Respondent to call them as their witnesses as, in particular, the Respon-

dent had relied on the concession made by C. We are of the view that these two persons are in a better position to explain the affairs of the company as they were the tax agents of the Appellants at the material time. C ought to have been called to explain the concessions made by him as the concession made by him is now disputed by the Appellants. As the Respondent's case rests on the concession made by C the Appellants ought to have called him as their witness to explain why he made the unauthorised concession. It is ludicrous to expect the Respondent to call him as a witness to establish that the concession on which they relied was unauthorised. Thus, contrary to the submission of learned Counsel for the Appellants, it is the Appellants who ought to have called them as their witnesses as they were their agents at the material time. We must reiterate that the responsibility of a party to call a witness cannot be lawfully excused merely on the ground that the witness may turn hostile. Where a party's witness turns hostile the party may seek refuge under section 154 of the Evidence Act 1950. The Appellants ought to have been aware of the legislative protection accorded to them. The onus on the Respondent is only to prove the concession made by C which has been successfully done by way of Exhibits R3 and R5. Any clarification regarding the concession made is the responsibility of the Appellants. As the evidence of the tax agents would have played a highly critical role in making a determination in this appeal we invoked the provisions of section 114(g) of the Evidence Act 1950 to presume that their evidence, if produced, would have been unfavourable to the Appellants. Be that as it may, if in fact the Appellants are convinced that the concession made by their authorised agent (or unauthorised as claimed by them) is a mistake then their remedy to rectify it is



through section 131 of the Act and not as done by them here. In that event the appeal is not properly before us and warrants dismissal on that ground alone.

With regard to the allegation of L H (SP3) who said that Y P K tried to instigate him to conspire with him to fix the Appellants with tax problems with the intention of extorting money it is our view that it is not material to the outcome of this appeal as it was C and not Y P K who had made the proposal on the allowable losses to the Respondent. Thus the alleged motives of Y P K are irrelevant. However, it is of relevance to note that no similar allegation was made against C. Thus the evidence of the Appellants on this issue does not assist them.

The Appellants claimed that the Company suffered losses totalling RM1,076,907. In support of this contention they relied on the letter from C & Co. (Exhibit R3) to the Respondent and said that they should be allowed that amount. We must at once point out that though C did mention in the letter that the Company had suffered losses amounting to RM1,076,907.00 he categorically and unequivocally requested for an allowable loss of RM224,056.48 by the same letter. Leaving aside the concession made by C in the said letter for a moment we shall consider whether the Appellants are entitled to the sum of RM1,076,907.00 as allowable losses. The relevant provisions which deal with the deduction of adjusted losses are found in sections 43(2) and 44(2) of the Act which read as follows:

"43(2) ... Subject to subsections (3) and (5), there shall be deducted under subsection (1)(a) pursuant to this subsection from the aggregate of the relevant person's statutory income from each of his sources consisting of a business

for the relevant year the amount ascertained under section 44(4) or (5) for any particular year of assessment preceding the relevant year or, where that amount exceeds that aggregate, so much of that amount as is equal to that aggregate:

Provided that, where a deduction has been made or may be made pursuant to this subsection from the aggregate of the relevant person's statutory income from each of his sources consisting of a business for a year of assessment following the particular year in question or for more than one year of assessment following that particular year and in either such case ending prior to the relevant year, then, for the purposes of the application of this subsection for the relevant year, there shall be substituted in place of the amount ascertained under section 44(4) or (5) for that particular year so much, if any, of that amount as has not been deducted for the year of assessment following that particular year or, as the case may be, for those years of assessment following that particular year and ending prior to the relevant year.

44(2) ... Subject to subsections (3) and (5), there shall be deducted pursuant to this subsection from the aggregate income of the relevant person for the relevant year the amount of any adjusted loss from a source of his for the basis period for the relevant year or, where there is an adjusted loss from each of two or more sources of his for the appropriate basis period for each source for the relevant year, the aggregate of the adjusted loss from each of those sources for its appropriate basis period for the relevant year."

The adjusted loss for a basis period is calculated in exactly the same way as adjusted income except that where the allowable expenditure exceeds the gross income then an

adjusted loss arises. This is provided by section 40 of the Act which reads as follows:

"Subject to this Act, where but for an insufficiency of gross income of a person from a business for the basis period for a year of assessment there would have been an amount of adjusted income of that person from the business for that period, the amount by which the total of all such deductions as would then have been allowed under the foregoing provisions of this Chapter in ascertaining that adjusted income exceeds his gross income from the business for that period shall be taken to be the amount of his adjusted loss from the business for that period."

For income tax purposes an adjusted loss from a business source is allowable from the aggregate income of a person for a relevant year of assessment. Where the adjusted loss exceeds the aggregate income for any year of assessment the excess is carried forward for set-off against the total of the statutory income from all business sources in the following year of assessment and so on until the adjusted loss has been fully utilised. In this case no evidence was adduced by the Appellants to show how the full amount of the losses of RM1,076,907 claimed was arrived at. This figure which was specified in Exhibit R3 had not been accepted by the Respondent. Thus the onus is on the Appellants to prove it. The burden of proof on the Appellants is not only to show that the amount allowed is wrong but also to show what the proper amount should be. This onus assumes monumental significance in the light of the fact that it is not every loss suffered by a company that becomes an allowable loss. In order to qualify as an allowable loss the loss must satisfy the requirements of the Income Tax Act 1967. Paragraph 13 of Schedule 5 to the Act provides that the burden



of proving that an assessment against which an appeal is made is excessive or erroneous lies on the Appellant. This means that the taxpayer must not only show that the assessment is wrong but he must go further to show "what correction should be made to make it right or more nearly right" (see *Trautwein v. FCT (No.1)*(1936) 56 CLR 63). In our opinion the Appellants have failed to discharge the burden placed on them.

Bethat as it may, no evidence whatsoever was led by the Appellants to show their income and losses after the Year of Assessment 1979. This is particularly significant in the light of the fact that the subject matter of the appeal arises from the Years of Assessment 1983 to 1985. The agreed fact that the Appellants were not liable to tax for the Years of Assessment 1975 to 1982 does not assist the case for the Appellants in any way. Such an agreement, on its own, does not indicate the amount of business loss relief given during the period of appeal. The relief granted in Year of Assessment 1979 is only the base upon which relief for subsequent Years are calculated. The total absence of evidence on the relief granted during the intervening period precludes us from determining the business loss relief for the period under appeal.

#### Capital Allowance

In computing the adjusted income from a source for a basis period no deduction is allowed for capital expenditure or for depreciation of assets used in producing the gross income. The accounting depreciation is not recognised as a tax deductible expense as it is merely the writing off of the cost of fixed assets over a period of time. However, the Act does provide for the deduction of allowances in respect of qualifying expenditure on plant and machinery as well as qualifying expenditure on industrial

building pursuant to Schedule 3 of the Act. The Capital Allowance and Industrial Building Allowance are calculated for a year of assessment and are deducted from the adjusted income from the business in arriving at the statutory income. The allowances are calculated by reference to the estimated useful life of the asset which is reflected in the rates prescribed by the Director General of Inland Revenue. The allowances commence in the year when the expenditure is incurred and continue to be given in subsequent years until the qualifying expenditure is fully set-off or the asset is disposed. The allowances due for each year of assessment is calculated on the written down value or residual expenditure of the asset. In this regard reference may be made to Paragraph 68 of Schedule 3 of the Act which provides as follows:

" A reference in this Schedule to residual expenditure at any date in relation to that asset in respect of which qualifying expenditure has been incurred by a person is to be construed as a reference to the total qualifying expenditure incurred by him on the provision, construction or purchase of the asset before that date reduced by -

- (a) the amount of any initial allowance made to that person in relation to the asset for any year of assessment;
- (b) the annual allowance made to that person in relation to that asset for any year of assessment before that date;
- (c) any annual allowance which, if it had been claimed (or could have been claimed, if the expenditure in respect of the asset had been qualifying expenditure and if the asset had been in use for the purposes of a business of his) by that person in relation to that asset, would have made to him for a

year of a year of assessment before that date. "

We must also point out that a claim for capital allowances must be made in writing and the relevant particulars of the asset must be provided. This is a requirement of Paragraphs 76 and 77 of Schedule 3 of the Act which read as follows:

"76. A person shall not be entitled to an allowance under this Schedule for a year of assessment unless he makes a claim for the allowance for that year in accordance with paragraph 77.

77.

(1) Any claim by a person for an allowance under this Schedule for a year of assessment shall be made in a written statement containing such particulars as may be requisite to show that the claimant is entitled to the allowance and a certificate signed by the claimant verifying those particulars.

(2) Any claim to be made by a person for a year of assessment in accordance with this paragraph shall be delivered with a return of his income made under section 77 for that year."

The Return Form provides a column which has to be signed by the taxpayer if he wishes to claim for capital allowance. Evidence was given by SR1, ELK that the Appellants did not sign the relevant column provided on page 2 of the Return Form for years of assessment 1975 to 1977 (Exhibit R6, R7, R8). The Respondent had written off notional allowance for the years of assessment 1975 to 1977 in order to arrive at the residual expenditure for the year of assessment 1978. Whatever they did was in accordance with paragraph 68(c) Schedule 3 of the Income Tax Act 1967



which reads as follows:

"68. A reference in this Schedule to residual expenditure at any date in relation to an asset in respect of which qualifying expenditure has been incurred by a person is to be construed as a reference to the total qualifying expenditure incurred by him on the provision, construction or purchase of the asset before that date, reduced by-

- (a) ....
- (b) ....
- (c) any annual allowance which, if it had been claimed (or could have been claimed, if the expenditure in respect of the asset had been qualifying expenditure and if the asset had been in use for the purposes of a business of his) by that person in relation to that asset, would have been made to him for a year of assessment before that date."

Whether it is described as a notional allowance or as something else it does not alter its position as described in paragraph 68(c). What the Respondent did up to the Year of Assessment 1977 was to give a notional allowance for plant and machinery and on the industrial building as no claim was made during that period. From the Year of Assessment 1978 onwards these allowances were allowed. To our mind the fact that these allowances were lumped up in one sum makes no difference. The fact remains that they were allowed. With regard to the computation of these allowances Exhibit R24 shows in clear terms how they were computed by SRI. She said that she made the computation in 1989 upon receipt of figures from the Partnership Division of the Respondent.

In the premises the Appellants have no grounds to complain on the computation of capital allowances.

Accordingly we dismissed the appeal and confirmed the assessments.

12. The material part of the Deciding Order dated 15th October 1994 that we made is in the following terms:

"SETELAH MENDENGAR RAYUAN INI dengan kehadiran Encik J C.Y. L, Peguambela dan Peguamcara bagi pihak Perayu dan Puan S bt. K, Peguam Kanan Persekutuan dibantu oleh Puan R S, Pegawai Penaksir, bagi pihak Responden

ADALAH DIPUTUSKAN BAHAWA kerugian berjumlah RM224,056.00 yang dibawa ke hadapan ke Tahun Taksiran 1979 adalah dikekalkan

ADALAH DIPUTUSKAN SELANJUTNYA BAHAWA elaun modal seperti yang dibenarkan oleh Ketua Pengarah Hasil Dalam Negeri juga dikekalkan

DAN DENGAN INI ADALAH DIPERINTAHKAN BAHAWA rayuan ini ditolak

MAKA ADALAH DIPERINTAHKAN BAHAWA Notis-notis Taksiran seperti yang disenaraikan di bawah dikekalkan

Tahun Taksiran	No Taksiran	Tarikh Notis Taksiran	Cukai Dikenakan (RM)
1983	C 0869240 - 08	8.9. 1986	182,058.00
1984	C 0869240 - 08	3.9. 1986	248,240.50
1985	C 0869240 - 08	3.9. 1986	89,824.10
1986	C 0869240 - 08	23.9.1986	38,682.45"

13. The Appellants by a notice dated 3rd November 1994 required us to state a case for the opinion of the High Court pursuant to paragraph 34 of Schedule 5 to the Income Tax Act 1967, which case we have stated and do sign accordingly.

14. The question for the opinion of the High Court is whether on the facts found by us our decision is correct in law.

Dated: 11 September 1995

Signed  
(S. AUGUSTINE PAUL)  
Pengerusi, Pesuruhjaya Khas Cukai Pendapatan

Signed  
(KAMARUDIN BIN MOHD NOOR)  
Pesuruhjaya Khas Cukai Pendapatan

Signed  
(TONG CHOOI POH)  
Pesuruhjaya Khas Cukai Pendapatan



# A HOUSING DEVELOPER Must Be Taxed Just Like Any Other TRADER

[Summary of Case Stated - PKR 601 - Liquidator Bagi YF Development Sdn Bhd]

## FACTS

The Taxpayer was incorporated in Malaysia on 13 June 1977

The memorandum of association authorised it to carry on the business of property developer and it did carry on such business by constructing only one building, a Multi-Storey Complex. Construction of the Complex commenced in April 1979 and was completed during the financial year ended 31 January 1985. The Taxpayer's principal activities include the sale and rental of lots in the Complex. This is the only project constructed by the Taxpayer and it did not embark on any other development project.

All expenditure incurred since its incorporation, including recurrent administrative expenses, was deferred and accumulated in an asset item "Kompleks YF Development Expenditure" shown in the accounts for each of the financial years ended 31 January.

During financial year 1985, development expenditure amounting to RM863,393 increased the total cost to RM23,583,294 when construction of the Complex was completed in that year. Of this total cost, a sum of RM10,257,609 representing the cost of the sold units was transferred in the same year to the income and expenditure account for "Sale of shop Units".

A witness testified that "for 1985 the accounts show the company made profits. I signed the accounts as advised by my accountant and auditor. But I do not agree that there were profits. The accountant said that they were estimated profits and that after completion if there was no profit there would be no tax"

The balance of RM13,325,685 remaining in the "Kompleks YF Development Expenditure" account, representing the cost of unsold units, was transferred to Current Assets in Financial Year 1986. In relation to this, Note 2(f) to the accounts

for FY 1985 "No profit has been taken up in the accounts in respect of unsold shop units. The cost of the completed shop units is calculated on a pro-rata basis where direct allocation of cost is not possible."

As a result of the failure to sell more than half, in terms of cost, of the units, the Taxpayer faced a financial crisis and its financiers, took action in the High Court to foreclose the Complex. Consequent to the High Court judgment, the remaining units were offered for sale by public auction. Not all the units were sold.

The Taxpayer's accounts show that deposits and progress payments had been received from purchaser of units in the Complex since as early as FY 1980. These receipts were deferred and credited to the "Kompleks YF Development Expenditure" account and were only treated as income from the sale of units in FY 1985 when the construction of the Complex was completed.

For years of assessment 1982, 1984, 1985, 1986 and 1988 the Taxpayer's audited accounts and computations of tax were submitted to the Revenue by its former accountant. Assessments were raised by the Revenue against the Taxpayer based on the accounts submitted by its accountant.

The assessments for years of assessment 1982 and 1984 were raised under section 4(c) of the Act in respect of fixed deposit interest income of RM5,875 in FY 1981 and RM1,800 in FY1983.

The original assessment of tax amounting to RM43,871.40 for year of assessment 1985 was raised on chargeable income of RM97,492 as declared on behalf of the Taxpayer, based on a pre-tax net profit of RM170,331.30 which was computed in the Taxpayer's Detailed Profit and Loss Account for FY 1984. Additional tax was assessed on 13 January 1990 for year of assessment 1985 on account of overdraft interest being subsequently disallowed as a deductible expense.



The original Notice of Assessment dated 19 July 1986 showing tax amounting to RM1,443,502.22 for year of assessment 1986 was based on chargeable income made up of RM3,088,519 declared on behalf of the Taxpayer and another sum of RM45,601 pertaining to rejected capital allowances claimed for the Hawkers Centre. The chargeable income was in turn based on a pre-tax net profit of RM3,145,241.67 which was computed in the Taxpayer's Detailed Profit and Loss Account for FY 1985. Additional tax was assessed on 13 January 1990 for year of assessment 1986 because certain deductible expenses were subsequently disallowed.

The tax for year of assessment 1988 was raised under section 4(c) of the Act in respect of part of the loan interest receivable.

By letter dated 5 November 1990 addressed to the Revenue the Taxpayer's tax agent contended that no tax was payable for all the years of assessment "because of the development loss for each year". The contention that there was a development loss for each year was based on his calculations which took into account interest expenses incurred after the construction of the Complex was completed in FY 1985. To quote from the same letter, 'Although construction has been completed during the year ended 31 January 1985, not all the units have been sold. The date of completion of the project should be the date the last unit is sold and, as such, all costs including interest expenses incurred up to the said date should be included as the direct development costs'. Thus it was the Taxpayer's contention that, under the completed contract method of accounting, the project is not deemed to be completed until all the unsold units have been disposed.

Initially, the Taxpayer had not appealed against the said assessments. However, on 14 December 1990, the Taxpayer made an application under section 100(1) of the Act, using the prescribed Form N, for an extension of time to appeal out of time but the application was dismissed by the Revenue.

The Taxpayer's application was subsequently forwarded to the Special Commissioners pursuant to section 100(2) of the Act, and on

26 October 1991 the Special Commissioners allowed the Taxpayer leave to appeal out of time on condition that its profit and loss accounts for the relevant years be prepared under the completed contract method and filed with the Revenue within three months. These accounts were prepared and submitted by the Taxpayer to the Revenue, after which the Taxpayer's out-of-time appeal was forwarded by the Revenue to the Special Commissioners in May 1993. Supplementary Notices of Appeal, all dated 22 June 1993, were filed for each of the relevant years of assessment.

### **ISSUE**

Whether unsold units in the Taxpayer's commercial building project, and the expenses incurred in building them, should also be taken into account in assessing the tax payable for the relevant years of assessment.

### **ARGUMENTS BY THE TAXPAYER**

For tax purposes, the completed contract method is the superior method compared with the progress payments method, and that there can be no tax on the loss which occurred in each of the relevant years of assessment as computed on the completed contract method.

### **ARGUMENTS BY THE REVENUE**

Income tax was correctly assessed for the relevant years of assessment.

### **HELD**

The income of the Taxpayer for every year of assessment from 1979 has to be recomputed in accordance with the provisions of the Income Tax Act 1967, especially

- (i) all building expenses for unsold units has to be taken into account in accordance with section 33(1) of the Act; and
- (ii) the unsold units are to be taken into account in accordance with the provisions of section 35 of the Act.

### **Note :**

The Revenue has filed an appeal with the High Court against this decision.



# S39(1)L - Are PROMOTIONAL Expenses, ENTERTAINMENT Expenses?

[Summary of Case Stated - PKR 626 - C SDN BHD]

## FACTS

The taxpayer is engaged in the business of blending and sale of lubricants, equipment and other products.

During the Years of Assessment 1989, 1990, 1991, and 1992 the taxpayer gave away certain items to customers who purchased its products. Examples of items given away are;

T-Shirts / Jackets, Tissue Paper, , Torch Lights, Mugs, Pocket / Stainless Steel Knife, Luggage / Travelling / Sports Bags, Water Cannisters, Umbrellas, Key Gard, Bath / Sports Towels, Marblelite Ash-tray

The Revenue disallowed all the above items in the computation of adjusted income.

The items given away were not the products of the taxpayer.

The object of the company in giving away the items was to induce the customers to buy more of the taxpayers product's. Such campaigns were organised at different times of the year.

The company's logo was used on the items given away to enhanced their corporate image.

The giving away of the items were conditional upon the customer purchasing their products.

## ISSUES

Whether expenses incurred by the taxpayer were:

- (a) wholly and exclusively incurred in its business pursuant to section 33(1) of the Act and should be allowed as they were not incurred in the context of entertainment as claimed by the Taxpayer; or
- (b) the expenses were incurred in the provision of entertainment and should be disallowed under section 39(1)(L) of the Act as contended by the Revenue.

## ARGUMENTS BY TAXPAYER

- \* The expenses incurred in respect of the items in dispute should be allowed as they were wholly

and exclusively incurred in the production of income within the meaning of section 33(1) of the Act and were not expenses for "entertainment" as provided for in the Act.

- \* The expenses in regard to all items claimed as deductible had conspicuously embossed on them the logo of the taxpayer, reflecting the direct advertising nature.
- \* The items were only given to Customers following a sales campaign upon the purchase of the taxpayer's products.
- \* Before 1989, all items claimed or conceded were allowed by the Revenue as being expenses wholly and exclusively incurred in the production of income.
- \* The rules of construction with particular regard to strict construction clearly support the taxpayer's contentions.
- \* If there is any ambiguity in law, latent or patent the construction favourable to the Appellant should be applied on the basis of the authorities cited.
- \* The rule in Pepper & Hart should be applied in the interpretation of the Income Tax Act 1967 in regard to the provision for entertainment.
- \* The Revenue's disallowance is based on a misconception of law where a proviso in section 39(1)(L) is interpreted to override the subject matter which it qualifies.

## ARGUMENTS BY REVENUE

- \* The Revenue contention is that the said items were expenses incurred in the provision of entertainment under section 39(1)(L) and should be disallowed.

## HELD

The expenditure is subject to S39(1)(L) restriction and the appeal is dismissed.

Note: the Taxpayer has appeal to the High Court against this decision.



# Disposal of Property - Whether Liable to Income Tax or Real Property Gains Tax?

[Summary of Case Stated - PKR 627 - T T Sdn Bhd]

## FACTS

The Memorandum of Association stated that the principal object of the Taxpayer is to carry on the business of theatre proprietors etc;

In addition the Memorandum of Association state as follows:

To acquire by purchase or otherwise for investment or re-sale and to traffic in land, immovable or real property of all description and tenure etc;

To apply for, acquire by purchase, lease, exchange or howsoever any real or immovable property or howsoever any real or immovable property of any tenure etc;

By a Sale & Purchase Agreement dated 10 March 1973 the executors of the estate of the late LWT agreed to sell the subject properties in undivided shares to the purchasers Dato' LCH and LCB acting as nominees of the Taxpayer.

The purchase price was paid by way of a bank loan. The Taxpayer had to pay enormous amounts as interest on the loan taken to purchase the land which produced no income.

On 2 May 1978, the Taxpayer applied to the Dewan Bandaraya for conversion of the land and planning approval. They also paid development charges. The application for conversion was approved on 21 March 1979. There were squatters on the lots when they were acquired. The Taxpayer then took steps to evict the squatters from the land.

An architect and a cousin of Dato LCH (SP2), the Managing Director of TT Sdn Bhd said that he was informed by Dato LCH that he wanted to build a cinema on the subject properties. He advised Dato LCH that there should also be supporting facilities such as shophouses, office and similar development on the said properties. He prepared a letter to the Town Planning Department asking for conversion of the subject properties from residential to limited commercial use including the proposed cinema. The sketch

plan shows the cinema, shops, flats and apartments. The plan for the building of a cinema was rejected as there were schools around the area.

Apart from being involved in cinema business SP2 is also involved in other business activities like property development through K Development Sdn Bhd. and in oil palm plantation.

By a Sale & Purchase Agreement dated 4 December 1980 between the TT Sdn Bhd as Vendor, and T Development Sdn Bhd it was agreed that 155163 / 174240 undivided share of the subject properties be sold for a sum of RM 10 million. The price was later modified by a Supplementary Agreement dated 11 December 1981. This was after the rejection of the plan for the construction of the cinema.

By a Sale & Purchase Agreement dated 29 February 1984 19077 / 174240 undivided share of the subject properties were sold to T Sdn Bhd for RM13,171,200.

The Schedule of Development Expenditure as at November 30, 1982 shows, a sum of \$195,000 was paid as broker's commission for the sale of land. A sum of \$490 was paid as travelling expenses in connection with the sale of the land.

The area of land that was retained after selling parts of the subject properties was only 18,816 sq. Ft. or 11% of the subject land.

No evidence was led to show why they could not proceed with the development of subject properties despite the failure to get approval for the erection of the cinema hall. Neither did they lead any evidence to show that the land was of no use to them upon rejection of the plan to erect the cinema hall.

The Revenue raised an assessment to real property gains tax on the gains derived from the sale of the subject properties in the sum of RM367,566.80 and the said tax having been paid, the Revenue issued a Certificate of Clearance dated 28 January 1988.



Subsequently, the Revenue felt that the sale of the properties should be subject to income tax and accordingly issued two Additional Assessments dated 28.9.1989 and a further two Additional Assessments dated 19.7.1990.

### ISSUE

Whether the gain made by the Taxpayer from the disposal of a property is exigible to tax under section 4(a) of the Act or whether it amounts to realisation of capital asset and thereby liable to Real Property Gains Tax.

### ARGUMENTS BY TAXPAYER

- \* The acquisition of the subject properties by them from the executors was for the purpose of an investment, that is to say, a joint venture agreement with persons acting on behalf of the C Organisation so as to expand the business of building cinemas for lease rental to screen C Organisation films;
- \* The executors sold the undivided lots to them without subdividing them because the intention was to wind up the estate of the late LWT as soon as possible and so that the respective cinematic business of the joint venture parties could be expanded;
- \* The sales of the undivided lots were forced sales after the rejection by the Dewan Bandaraya of their plan to build a cinema hall straddling all the lots and after a long interval of time between acquisition and sale;
- \* The proceeds from the sale of the subject properties were capital in nature being proceeds from the sale of an investment and therefore were not subject to income tax.
- \* Apart from subsequent objections as to income tax, the Revenue is in law debarred from raising assessments to income tax, after having previously charged them to real property gains tax and after having issued a Certificate of Clearance to this effect. The preliminary objection is based on the following reasons in law-
  - (i) there is a presumption in tax law against double i.e. cumulative taxation following high authority;

- (ii) the systems of capital taxation (vide real property gains tax), and income taxation represent two mutually inconsistent and incompatible systems of taxation;
- (iii) The Revenue cannot have two chances as there should be finality; each reason in law being sufficient to vitiate the income tax assessments.

### ARGUMENTS BY REVENUE

- \* The gain from the sale of the land is a revenue receipt and is subject to section 4(a) of the Act for the following reasons:
  - (i) Clause 7 of the acquisition provides that the clause shall become null and void upon failure to obtain approval to build the cinema hall. This was duly acknowledged by the Taxpayer.
  - (ii) The subject properties were sold in portions.
  - (iii) The Taxpayer took steps which led to the maturing of the asset sold. They obtained conversion of the land from residential to commercial use, evicted the squatters and spent large sums of money on development and pre-operational activities.
  - (iv) The Taxpayers conducted the sale through brokers and spent some money on travelling expenses in connection with the sale of the land.
  - (v) The Taxpayer had to borrow money to purchase the subject properties.
  - (vi) The Memorandum & Articles of Association allowed them to traffic in land.
  - (vii) No evidence was led to show that the land was of no use to them upon rejection of the plan to erect the cinema hall.

### HELD

The gain on the disposal is a gain or adventure in the nature of a trade and the appeal is dismissed.

### Note:

An appeal has been filed with the High Court against this decision.



ended 31 December 1982 and resulted in a pre-tax profit of RM961,944.41. This pre-tax profit was declared in the Taxpayer's Form C for year of assessment 1983 and consequently income tax was imposed and the tax was settled without an appeal being lodged at the time of settlement.

There was another compulsory acquisition of the Taxpayer's land in 1983. As in the previous year, this gain was shown as a separate item in the Trading and Profit & Loss Account for the year ended 31 December 1983. As a result, the Taxpayer's ended the year 1983 with a pre-tax profit of RM696,799.29 which was declared in the Taxpayer's Form C for the year of assessment 1984. Consequently income tax was imposed and it was settled without an appeal being lodged at the time of settlement.

The abovementioned profits in the accounts for the years 1982 and 1983 wiped out the previously accumulated loss and resulted in an unappropriated profit as shown in the Balance Sheet as at 31 December 1983.

The following three years 1984 to 1986 marked another period of nil income which brought the unappropriated profit down to RM603,368.71 as at 31 December 1986.

In 1987, the Taxpayer sold off 24 housing plots. The accounts show sums representing 2% and 40% of the disposal price, had been collected as deposits in 1984 and 1985 respectively.

The profit was shown as a separate item "Profit on Disposal of Land" in the Trading and Profit & Loss Account for the year ended 31 December 1987. This pre-tax profit was declared in the tax computation and income tax was imposed. The tax was settled without an appeal being lodged at the time of settlement.

Development expenses amounting to RM450 were incurred in 1989 and were written off in 1990 when the last remaining portion of the Taxpayer's land, comprising five housing plots were sold off. The gain from the sale of the land was shown as a separate item "Profit on Disposal of Land" in the Trading and Profit & Loss Account for the year ended 31 December 1990 and the pre-tax profit was declared in the tax computation for year of assessment 1991 and consequently income tax was raised.

Witnesses SP1 and SP2 testified at the hearing that the compensation received in 1982 and 1983 and the gains from land sold in 1987 and 1990 were shown as

trading profits in the relevant years accounts in order to paint "a better picture of the company" and to "make it look good". Witness SP1 also testified that this practice was queried verbally by him but the then accountant did not heed to his suggestion to treat the compensation and profits from disposal as extraordinary income to be put into capital reserve.

By letter dated 15 February 1992 the Taxpayer's tax agent gave notice of appeal against the 1991 Notice of Assessment dated 21 January 1992 on the grounds that the assessment was excessive, and in particular, that "the profit on disposal is of a capital nature and should therefore be assessed under the Real Property Gains Tax Act 1976". The letter also stated that assessments had been issued in error for years of assessment 1983, 1984 and 1988 and requested for a review of the computations.

The Revenue responded with a reply that the assessments for 1983, 1984 and 1988 had been based on the tax computations submitted by the Taxpayer and that, in any event, those assessments are final because no appeals were received within the 30-day limit. The Revenue's letter stated that the 1991 assessment was also based on the tax computation prepared by the Taxpayer's former tax agent and that the assessment was correct, but the Taxpayer's current tax agent was told that he could proceed with his appeal if he disagreed with the explanation given.

## ISSUE

- \* Whether the lands compulsorily acquired by the Government in 1982 and 1983 and those sold by the Taxpayer in 1987 and 1990 constituted fixed assets as contended by the Taxpayer, or were stock-in-trade as contended by the Revenue.
- \* Whether the market value of the relevant lands at the time of their compulsory acquisition or sale should be used at their cost price in computing the adjusted income.

## ARGUMENTS BY THE TAXPAYER

- \* The lands compulsorily acquired by the Government were fixed assets of the Taxpayer from the time of purchase in 1967 and were never part of its stock-in-trade and therefore not subject to income tax but to real property gains tax under the provisions of the Real Property Gains Tax Act 1976;



- \* The lands sold in 1987 and 1990 also never formed part of its stock-in-trade and neither were the sales "an adventure in the nature of trade", and therefore the profits were capital profits subject to real property gains tax under the provisions of the Real Property Gains Tax Act 1976; and
- \* As an alternative, the Taxpayer is entitled to use the market value of the lands in 1982, 1983, 1987 and 1990 as the cost price in computing the adjusted income, following the principle established in DGIR v LCW.

#### **ARGUMENTS BY THE REVENUE**

- \* The lands acquired by the Government are part of the Appellant's stock-in-trade and are therefore subject to income tax under the Act;
- \* The lands sold in 1987 and 1990 are part of the Taxpayer's stock-in-trade and are therefore subject to income tax under the Act;

- \* Alternatively, the said transaction were "an adventure in the nature of trade"; and
- \* The Taxpayer's is not entitled to use the market value of the lands in 1982, 1983, 1987 and 1990 as the cost price in computing the adjusted income, but to use the acquisition price in 1967.

#### **HELD**

The lands compulsorily acquired by the Government in 1982 and 1983 and the lands sold in 1987 and 1990 was stock-in-trade and not fixed assets of the Taxpayer.

The original cost of the land and not the market price is to be used in calculating the cost of the land in the tax computations.

#### **Note:**

An appeal to the High Court has been filed against this decision.

## **R E M I N D E R S**

### **Commencement of Employment**

An employer who commences to employ an individual likely to be chargeable to tax is required to notify the IRD by completing Form CP 22 within 1 month (from date of commencement of employment)

### **Payment of Tax Assessed**

Where actual tax liability exceeds total instalments the additional tax must be settled after the notice of assessment has been issued within 1 month from the date of the last instalment

Where tax is not settled by instalments under S 107B ITA 1967, the tax assessed must be settled after the notice of assessment has been issued within 30 days from the date of the notice of assessment.



# Income From Chartering Malaysian Ships Tax Exempt

[Summary of Case Stated - PKR 634 - S Kapal Sdn Bhd]

## FACTS

The Taxpayer is the owner of a ship named M.T. S. and which is registered under the Merchant Shipping Ordinance, 1952 as a ocean going tanker.

The company held all its board meetings in Malaysia and all the directors are Malaysian and the company is Malaysian tax resident. All the shareholders are also Malaysian.

The Memorandum and Articles of Association of the Taxpayer provides for the chartering of ships.

The Taxpayer had a "Time Charter-Party" agreement with a Malaysian Corporation. The vessel operated according to the terms of the agreement until it was sold.

Capital allowances were given to the Taxpayer by the Revenue.

At all relevant times the Taxpayer was in the business of transporting cargo.

## ISSUE

Whether the Taxpayer are exempt from tax in accordance with section 54A of the Income Tax Act 1967, for carrying on the business of transporting passengers or cargo by sea on board Malaysian ships.

## ARGUMENTS BY THE TAXPAYER

- \* The Taxpayer is the owner and operator of the said Malaysian ship and is in the business of transporting of passengers or cargo by sea on board Malaysian ships and therefore, qualifies for exemption from income tax under section 54A of the Act.
- \* The business of transporting passengers or cargo includes the chartering of Malaysian ships which fall within the definition of "transporting passengers or cargo" in section 54A(6) of the Act and therefore, the statutory income from chartering of ships is exempt from income tax.

## ARGUMENTS BY THE REVENUE

The Assessment under appeal were correctly assessed under the Income Tax Act, 1967.

## HELD

The Taxpayer has carried out his business within the definition of S54A(6) of the Income Tax Act 1967, and the appeal is allowed.

## Note:

The Revenue has appealed to the High Court against this decision.



# Whether "NET PROCEEDS" License Payment is Qualifying Expenditure Under S33(1)

[Summary of Case Stated - PKR 635 - Syarikat J (Woods) Sdn Bhd]

## Note:

It was agreed by consent that the decision of this appeal will be binding on similar appeals registered as PKR 594 / 595 / 629 / 610

## FACTS

The Taxpayer were principally engaged in the extraction and sales of log timber.

On 1st November 1976 the Taxpayer was issued a Special License to take Forest Produce under the Forest Enactment, 1968 by the State Government.

The License covered an area of approximately 19,000 acres.

On 7th April 1982 the Taxpayer submitted Forms C and income tax computations for Years of Assessment 1976, 1977, 1978 and 1979 together with audited accounts of years ended 31 December 1975, 1976, 1977 and 1978.

By a letter dated 26 November 1984 the Revenue revised the tax computations submitted by the Taxpayer for the Year of Assessment 1978 by disallowing as an expenditure net proceeds of RM253,708 resulting in the Taxpayer having a chargeable income of RM36,765.

On 1st December, 1984 the Revenue issued a Notice of Assessment showing a total tax charged of RM17,394.25 for Year of Assessment 1978.

On 1st December 1989 the Revenue informed

the Taxpayer that the tax computation for Year of Assessment 1978 was to be revised resulting in the Taxpayer's chargeable income being increased to RM168,758. A Notice of Additional Assessment was issued on 7th March 1990 for Year of Assessment 1978 showing additional tax charged in the sum of RM59,396.85.

By a letter dated 26th November the Revenue informed the Taxpayer that their tax computation for Year of Assessment 1979 was being revised by disallowing as an expenditure net proceeds of RM510,006 resulting in the Taxpayers chargeable income being increased from RM299,538 to RM809,544.

On 1st December 1989 the Revenue issued a Notice of Assessment showing the total tax charged as RM382,708.40 for the Year of Assessment 1979.

The Taxpayer appealed against the Notice of Assessment for Years of Assessment 1978 and 1979 and the Notice of Additional Assessment for Year of Assessment 1978 by way of Forms Q dated 11th August 1989 and 18th October 1990 respectively.

The Timber License granted to the Taxpayer requires them to pay the net proceeds to the State Government which they are entitled to get back as subsidy for agriculture and industrial development purposes. This is in line with the State Government policy to encourage agricultural development on the land.



The net proceeds are calculated by taking into account extraction costs, royalty and other fees. The average F. O. B. Value of timber exported minus total cost is the net proceed. The net proceed are levied and included in royalty bills as and when timber are extracted. It is based on the volume of timber removed.

The net proceeds were not paid for the purpose of earning the profits although they arose out of and were connected with the trade.

The net proceeds were also payable even if the Taxpayer did not finally make a profit.

The accounts of the Taxpayer show that in some years there were losses. In such years they still had to pay the net proceeds though they were not subjected to any tax.

The Secretary of National Resources in the Chief Minister's Office said that,

"The net proceeds are charged as stated here. The net proceeds would be an estimate. The net proceeds is meant to take out all the profits. Therefore after payment of net proceeds there should not be any net profits. In the context of the formula used for calculating net proceeds it would appear to be the same as net profits. It would be the same in principle. In practice the net proceeds need not necessarily be the same as net profits as the timber could be sold for a higher or lower price".

## ISSUE

Whether the payments of net proceeds in the sum of RM253,708 for the Year of Assessment 1978 and RM510,006 for the Year of Assessment 1979 by the Appellants were allowable deductions within the meaning of section 33(1) of the Act, read with section 39(1) of the same Act.

## ARGUMENTS BY THE TAXPAYER

- \* The net proceeds payments are conditions of the timber license and were required to be made to the State Government, failing which legal proceeding could be instituted to recover the amount not paid.
- \* They had no rights to the net proceeds. They have to apply for a refund of it and there were many conditions which had to be fulfilled.
- \* By making the payment they did not acquire any asset of an enduring benefit.
- \* The payments made were wholly and exclusively incurred in the production of gross income and should therefore be allowed as a deduction under Section 33(1) of the Act.

## ARGUMENTS BY THE REVENUE

- \* The net proceeds payments were not wholly and exclusively incurred in the production of gross income within the meaning of Section 33(1) of the Act.
- \* It is not an expense as it is arrived at after deduction of all expenses.
- \* It is not a grant.
- \* It is an income deposited with the State Government to be used later for development and industrial purposes.

## HELD

The payment "net proceeds" is not an expenditure allowable under section 33(1) of the Income Tax Act 1967.

### Note:

An appeal has been filed with the High Court by the Taxpayer against this decision.



# UNPAID Director's Salaries and Commissions Taxable

[Summary of Case Stated - PKR 551 - Mr T]

## FACTS

Mr T is an advocate and solicitor and is also the controlling shareholder and director of NTT Sdn Bhd and TT Sdn Bhd.

The Return Form "C" and audited accounts of TT Sdn Bhd for the Years of Assessment 1979, 1980, 1981, 1982 and 1983 show that salaries were due to the Mr T.

A public accountant affirmed in a statutory declaration that,

He has checked TT Sdn Bhd's account from its incorporation in 1977 until 1986 and he has found the said company is indebted to its director, Mr T, the sum of \$2,897,521.38 as at 31.12.1986 (latest audited accounts)

He also confirmed that since incorporation in 1977 until 1986 all salaries and commissions due from the said company to Mr T since 1978 had been properly posted in the accounts books and into his personal ledger account. From 1978 to 1986, the total amount of the salaries and commissions due from the said company to Mr T was around \$319,000.

From the said ledgers he also found that between 1978 to 1986 certain sums of money were paid to Mr T and the said sums had been properly posted into his personal ledger accounts. However, the sums so paid were never sufficient for him to

recover all the monies due to him from the company.

The system of posting of salaries and commissions without real money being paid nor received aforesaid is in accordance with the standard accounting principle of accruals. This means that the company can claim tax deductions for the year for the amount so posted and pay out the same amount of debt in subsequent year to years when the company have funds available. In the case of TT Sdn Bhd this is impossible because since its incorporation, the said company had been heavily in debt and suffered net losses consecutively. It was therefore not in the position to clear the said salaries and commissions to the said Mr T nor was it in a position to clear the loan debts. This situation prevailed until 1986. He has been informed by the directors that at the moment the said company is dormant.

Mr T was assessed to tax on the salaries and commissions due to him for the Years of Assessment 1979, 1980, 1981, 1982 and 1983.

Mr T said in his evidence that the evidence that the salaries and commissions from the company were never paid to him as it had no money to pay him.

Mr T apart from making a mere claim for the losses from his legal practice led no evidence to support the claim.



On 5.7.1986 the Revenue issued a Notice of Assessment for the Year of Assessment 1986 based on an estimated income of RM4,000.

The company had substantial fixed assets during the relevant years of assessment.

YA	RM - million
1979	1.216
1980	1.701
1981	1.756
1982	1.314
1983	1.132
1984	0.73
1986	0.13

The tax deducted on dividends declared by NTT Sdn Bhd between 16.10.1979 to 12.2.1982 was at 35% instead of 40%. This was in line with the approval given by the FIC for the exemption of 5 % of the company income tax pursuant to the Income Tax (Exemption for Restructuring of Equity Capital) Order 1980.

By Forms Q dated 28 February 1991 Mr T appealed against the said additional assessments. There was no appeal lodged with the Revenue on the Notice of Assessment for the Year of Assessment 1986 issued on 5.7.1986.

The Additional Assessment for Year of Assessment 1986 dated 26.2.1991 for the sum of RM1,122.30 is in respect of income from rental of RM5,659.

The appeal registered as PKR 551 has not been concluded at all from the time it was filed till now. This appeal relates to Additional Assessments for the Year of Assessment 1979, 1980, 1981, 1982, 1983 and 1986 all dated 26th February 1991.

On the other hand the deciding order made on 27th August 1992 relates to Notices of Assessment for,

YA 1979	19th November 1981,
YA 1981	3rd September 1983,
YA 1982	3rd September 1983,
YA 1983	4th February 1984,
YA 1984	15th December 1984.

Mr T lodged an appeal by Form Q for the second group of assessments but the appeal was out of time.

He then submitted an application for extension of time to appeal on Form N and this was submitted to

the Special Commissioners by the Director-General of Inland Revenue. The deciding order dated 27

August 1992 refers to the said Form N.

### ISSUE

\* Whether director' salaries and commissions due but not received by the Taxpayer from TT Sdn Bhd are chargeable to tax for the years of assessment 1979, 1980, 1981, 1982 and 1983;

\* Whether the tax deducted on the dividends declared by NTT Sdn Bhd on the below mentioned dates should be at the rate of 40% instead of 35%.

16 - 10 - 1979

20 - 10 - 1979

7 - 4 - 1980

6 - 11 - 1980

25 - 7 - 1981

24 - 11 - 1981

14 - 2 - 1981

4 - 3 - 1982

\* Whether the Taxpayer is entitled to further deduction of expenses from his legal practice amounting to RM3,893 for Year of Assessment 1979, RM7,912 for Year of Assessment 1980, RM12,130 for Year of Assessment 1981, RM18,459 for Year of Assessment 1982 and RM17,408 for Year of Assessment 1983; and

\* Whether the chargeable income of RM4,000 for the Year of Assessment 1986 as estimated by the Revenue under section 90(1)(b) is correct.

### ARGUMENTS BY THE TAXPAYER

\* The said salaries and commissions due to him were not paid to him by TT Sdn Bhd for



the Years of Assessment 1979, 1980, 1981, 1982, and 1983 should not therefore be part of his chargeable income;

- \* Tax at the rate of 40% should be levied on the dividends declared by NTT Sdn Bhd instead of the 35% as levied on them;
- \* Certain expenses incurred by his legal firm which have been disallowed by the Revenue should be allowed; and
- \* The estimated income of RM4,000 from his legal firm assessed for the year of assessment 1986 is incorrect.

#### **ARGUMENTS BY THE REVENUE**

- \* The said salaries and commission from TT Sdn Bhd are receivable and are therefore exigible to tax.
- \* The tax of 35% was correctly imposed on the dividends and as such the tax set off under section 110 of the Act was correctly allowed.
- \* The Taxpayer has failed to discharge the burden of proof to show that the losses were incurred by him.

- \* The income of RM4,000 raised in accordance with section 90(1)(b) of the Act was not part of this appeal.

#### **HELD**

- \* Director's salaries and commission that is payable but not paid by TT Sdn Bhd can be deemed to be received by the Taxpayer in accordance with section 29 of the Income Tax Act 1967 and as such can be subject to tax for the years of assessment 1979, 1980, 1981, 1982 and 1983;
- \* Tax at the rate of 35% deducted from dividend which was paid by NTT Sdn Bhd is correct;
- \* The Taxpayer failed to provided proof for losses suffered by his legal practice;
- \* The appeal against the income of RM4,000 for year of assessment 1986 cannot be considered as part of this appeal.

#### **Note:**

The Taxpayer has filed an appeal with the High Court against this decision.

## **R E M I N D E R S**

### **Cessation of Employment**

An employer is required to notify the IRD of the cessation of employment of an employee by the completion of Form CP 22A/CP 21 not less than 1 month's notice.

### **Change of Address**

Every chargeable person who changes his/her address in Malaysia for another address in Malaysia must inform the IRD in writing within 3 months of the change.



# Whether a Penalty can be Imposed under S113 on a Partnership?

[Summary of Case Stated - PKR 592 - K & Co.]

## FACTS

A penalty was imposed under section 113(2) of the Act on a partnership involved in the timber trading business and it was duly paid.

In their Profit & Loss Account for the years 1978, 1979, 1980, 1981, 1982, and 1983 they had lumped timber profits under "Purchase of Logs" and "Sales of Logs".

Prior to 1977 they did their own sawmilling. After 1977 they sold the said logs to the sawmilling company called K Sawmill (1926) Sdn Bhd.

The Managing Partner admitted that he was not aware of "Timber Profits Tax" and was in fact ignorant of the matter until it was brought up by the Revenue. He denied any knowledge that Form P requires any information on timber profit tax.

Under "Purchase of Logs" the taxpayer had included logs extraction expenses in the accounts and had lumped them together. An analysis of all the log purchase includes the log extraction expenses from 1974 to 1977.

In view of the Revenue not being made aware of the facts the taxpayer were never charged with the "Timber Profits Tax".

Notwithstanding the Revenue's enquiry vide letters dated 8.5.1980 and 18.3.1984 - that timber profit tax had not been assessed and thus the Taxpayer were under-assessed - the Taxpayer persisted in not submitting the timber profit returns. He confirmed that their explanation was not accepted by the Revenue.

The manner they made their declaration resulted in the unallowable expenses being granted. In fact timber profit tax was not raised at all.

A Senior Tax Examiner (SR1) said that in Form P which was submitted to the Revenue by the Taxpayer for Year of Assessment 1979 there is no indication of any timber operations. In fact it seemed to indicate that the Taxpayer were conducting a trading business.

SR1 further said that initially they wrote to the Taxpayer vide letter dated 8.5.1980 requesting for the timber profit computation. Another letter dated 18.10.1980 to the same effect was also sent to the Taxpayer. In reply the Taxpayer sent a letter to the Revenue the material part of which read as follows:

"We wish to state that all the logs extracted by this partnership could not be sold in the form of logs, and therefore the logs were fully processed into sawn timber for consumption by our own sawmill. Timber profit tax is not payable in our case, and we shall be glad that you kindly waive submission of timber profit tax computation for the relevant years".

By letter dated 18.3.1984 the Revenue informed the Taxpayer that as a result of the Taxpayer giving incorrect information timber profits tax for years of assessment 1979 to 1983 had not been assessed and the income tax on all partnership members for the said years of assessment had been under-assessed. The Taxpayer were therefore asked to explain why they had done so and were also asked to give reasons why a maximum penalty under section 113 of the Act should not be imposed. A reminder was sent to the Taxpayer vide letter dated 8.5.1984 further reminding them



to reply to the letter dated 18.3.1984 within 14 days failing which a maximum penalty under section 113(2) of the Act would be imposed on the timber profit tax without further notice. The Taxpayer did not respond to these letters as required.

### **ISSUE**

- \* Whether the returns submitted by the Taxpayer for the years of assessment 1979 to 1984 were incorrect and
- \* Whether a penalty can be imposed under section 113 of the Act on a partnership.

### **ARGUMENTS BY THE TAXPAYER**

- \* They had not made any incorrect returns,
- \* As all their timber profits had been declared as a lump sum for the purchase of logs. This practice was continued even when they set up a "Sdn Bhd". There was no attempt to hide the profits.
- \* It was also contended that under section 86 of the Act a partnership is required to make its return in a prescribed form. However, the form does not provide for the declaration of timber profits.
- \* Under the Supplementary Income Tax Act, 1967 the Revenue is to assess the timber profits for which purpose the Taxpayer had submitted all the particulars.

- \* It was further contended by the Taxpayer that under section 113(1) of the Act good faith is a defence and this ought to apply under section 113(2) of the Act also.
- \* A partnership is not a "person" within the meaning of section 113(2) of the Act.

### **ARGUMENTS BY THE REVENUE**

- \* The Taxpayer are obliged to declare the timber profit under section 87 of the Act;
- \* The returns as supplied by the Taxpayer were incorrect;
- \* The Revenue can impose a penalty on the Taxpayer notwithstanding the fact that it is a partnership as provided under section 113(2) of the Act.

### **HELD**

- \* The Returns for Year of Assessment 1979 to 1984 did not comply with the provisions of the law;
- \* A penalty can be imposed on a partnership.

### **Note:**

The Taxpayer has appeal to the High Court against this decision.

**The Council of  
The Malaysian Institute of Taxation  
wishes all Buddhist readers**

**"Selamat Hari Vesak"**



# INTEREST RESTRICTION

[Summary of Case Stated - PKR 537 - RB Sdn Bhd]

## FACTS

The Appellant was a company wholly owned by a State Foundation. Its business was the extraction and sale of timber. For this purpose it was required to have a timber licence from the State Forest Department and it also had to pay a royalty to the State Government on all logs sold. The royalty payment made up 35% to 40% of the Appellant's expenditure. The timber logs were both exported and sold locally. The export sales were done in US dollars.

In 1981, the Appellant obtained a loan of RM 70 million (the first loan) from a bank. The royalty payments remained outstanding because of cash flow problems. After utilization of the first loan, the appellant obtained another loan (the second loan) in US dollars from the same bank. The second loan was utilized to settle the first loan to the extent of RM 63.75 million.

The Revenue was not informed of the purpose of the loan when the tax computation of the Appellant was made. In ascertaining the adjusted income of the Appellant for the years of assessment 1983 to 1987, the Revenue disallowed as deductions the sums paid on the second loan as interest.

## ARGUMENTS

The Appellant contended that the second loan was taken to settle the first loan which had been taken to pay timber royalties. Since royalty payment is wholly and exclusively incurred in the production of income pursuant to Sec 33(1) of the Income Tax Act, the interest on the

loan taken to meet the royalty payment should also qualify under Sec 33 (1).

The Revenue contended that Sec 33(1) does not apply to borrowed money. Sec 33(1)(a) of the Act does not apply as the second loan was not used for the purpose of producing income. The interest in this case was incurred for the purpose of settling the first loan. The Revenue was also not informed of the purpose of the loan.

## DECISION

*The Special Commissioners decided that the interest on the loan did not qualify for deduction. The appeal was dismissed and the assessments confirmed. The applicable section in the case of interest on borrowed money is section 33(1)(a)(i) of the Act. The money borrowed was used for the purpose of settling debts which were allegedly incurred in the production of income. The payment of debts does not relate to production of income as the income would have already been produced when the debt was incurred.*

### Note:-

Another matter under appeal in this case was whether the Revenue was entitled to invoke Sec 140 of the Act in disallowing payments made as donations to the State Foundation. This issue was the same as that in the case of SB Sdn Bhd. vs D.G.I.R (PKR 536) and it was agreed by both parties that the decision in that case would also be applicable in this case.



# WHAT IS A S44 (6) DONATION?

[Summary of Case Stated - PKR 536 - SB Sdn Bhd]

## FACTS

The appellant was a commercial company involved in timber operations. It was wholly owned by and was one of the trading arms of a State Foundation. The State Foundation was involved in educational scholarship, community service projects, flying doctor services etc., for which it needed a lot of cash. The State Foundation was an approved institution for the purposes of Sec 44(6) of the Income Tax Act 1967. In a letter to the appellant, the State Government expressed its "wish" that all surplus funds in the subsidiary companies of the Foundation be donated to the Foundation. The letter also stated that the State Government would assist in obtaining tax relief or exemption for the subsidiary companies in respect of the donations.

For the years of assessment 1980 to 1987, the appellant made substantial donations to the Foundation. The donations were roughly equivalent to the profits made by the appellant and for certain years, they even exceeded the profits made.

The Revenue invoked Sec 140 of the Income Tax Act to disallow the donations originally claimed and allowed and raised additional assessments for the years of assessment 1980 to 1987. SB Sdn Bhd appealed against these assessments.

## ARGUMENTS

The appellant claimed that it had a choice whether to make the payments as donations or dividends. It chose to make donations and therefore it had a legal right to the deductions. There was no legal obligation on the part of the Appellant to make the donations and the same were therefore voluntary in the sense of not being under duress.

The Revenue contended that Sec 140 was properly invoked as the payments to the foundation were not allowable on the facts of the case. The appellant was wholly owned by the Foundation and no donation was made to any other person; sometimes the donation made exceeded the profits; the donations were abnormal, illogical and ridiculous; the transaction was not at arm's length and the payment was an appropriation of profits.

## DECISION

The Special Commissioners decided that the payments to the Foundation were not donations and that the Director General of Inland Revenue was entitled to invoke Sec 140 of the Income Tax Act and disallow a deduction in respect thereof. The payments were not made voluntarily; in the normal course of events, the Appellant would have been obliged to pay its profits to the Foundation by way of dividends; in addition the Appellant received a benefit in making the payments as it did not have to declare a dividend to the Foundation.



# NOT ACTIVELY ENGAGED IN WORKING A MINE

[Summary of Case Stated - PKR 489 - Syarikat KJ Sdn Bhd]

## FACTS

A director of the Appellant obtained mining rights over some Malay Reservation land. He had entered into an agreement with a dredging company under which the company provided him with financial assistance to acquire the mining rights. Under the agreement, the dredging company was to be appointed as a contractor with full and exclusive control of all mining and sale of tin ore. On 15 September 1964, all rights, benefits and legal title under the agreement were assigned to the Appellant.

Under the arrangement, the appellant was to receive a half-share of the net profits from the sale of tin ore. The Appellant was not to be liable for any losses suffered by the dredging company. The Appellant was to be indemnified by the dredging company in respect of claims arising from the mining operations. The dredging company was to provide a fully equipped dredge and staff.

For the years of assessment 1965 to 1967, the Revenue raised additional assessments disallowing deduction for standard profit deduction provided for under Paragraph 3(1) of the Fourth Schedule to the Income Tax Ordinance 1947 in calculating tin profit tax.

For the years of assessment 1968 to 1974, The Revenue raised additional assessments disallowing deduction for mining allowance under Paragraph 3 of Schedule 2 to the Income Tax

Act 1967. Syarikat KJ Sdn Bhd appealed against the assessments.

## ARGUMENTS

The Appellant contended that the standard profit deduction should be given for the years of assessment 1965 to 1967 and the mining allowance under schedule 2 to the Act should be made for the years of assessment 1968 to 1974 on the ground that the arrangement between the Appellant and the dredging company constituted a partnership or joint venture. Alternatively, the dredging company sold the tin concentrates as the agent of the Appellant.

The Revenue contended that the Appellant was not entitled to the standard profit deduction since the tin ore was won and sold by the dredging company. The Appellant was not entitled for mining allowance because the Appellant was not "actively engaged" in working the mine.

## DECISION

The Special Commissioners dismissed the appeal on both issues. The arrangement between the parties did not constitute a partnership. The sale of tin concentrates by the dredging company cannot amount to being sale by it as agent of and on behalf of the Appellant. In addition, the Appellant was not "actively engaged" in working the mine.



## PRESIDENT OF AUSTRALIAN TAX BODY VISITS MIT

President En Ahmad Mustapha Ghazali, Deputy President Mr Michael Loh and Mr Harpal Singh Dhillon, Chairman of the Institute's International Relations Committee received the President of the Institute of Taxation, Australia, Mr Peter J Cowdroy at the Institute on 11 January 1996. Mr Cowdroy was in Kuala Lumpur to attend a conference and meeting but managed to make time from his busy schedule to visit the Institute. The visit also gave an opportunity to the two Presidents to renew ties, their last meeting being at the recent Asia-Oceania Tax Consultants' Association (AOTCA) General Council meeting held in Seoul, South Korea in November last year.

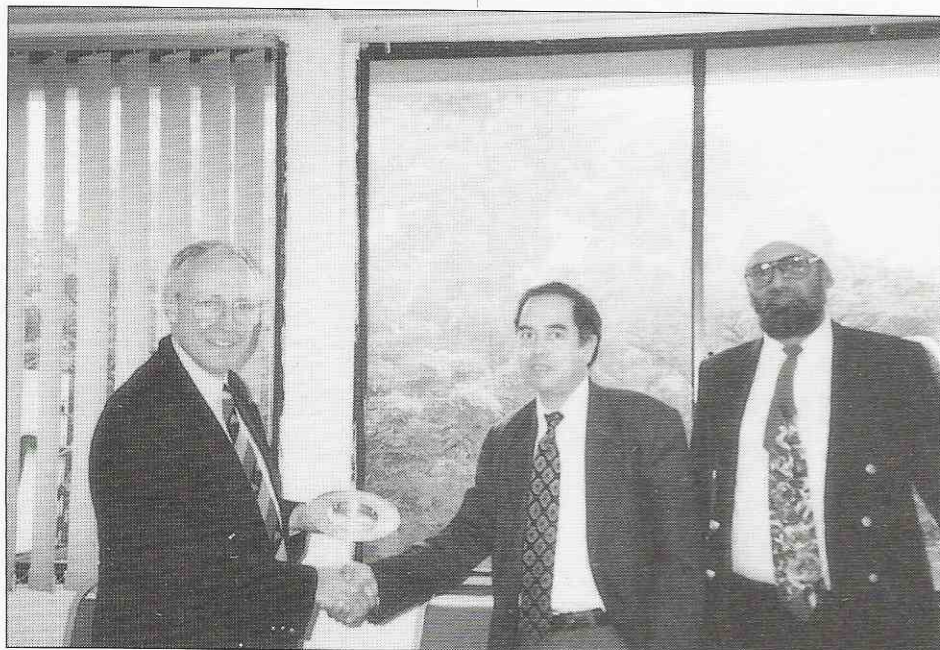


Discussing issues... (from left to right) Mr Michael Loh, En. Ahmad Mustapha Ghazali and Harpal Singh Dhillon.

The two hour meeting gave both parties ample opportunity to learn about each other's organisations. There was much

to learn from the Australian body as it was founded in 1943. Like MIT, it was incorporated as a company limited by guarantee in 1952. Membership of the Australian body comprises tax accountants, lawyers, academicians, agents, as well as commercial and overseas associates.

En Ahmad Mustapha Ghazali gave an overview of the Institute's current activities and projects, whilst Mr Loh as Chairman of the Education & Training Committee briefed Mr Cowdroy on the MIT Examinations including the structure and syllabus. Other matters which were discussed at the meeting were possible cooperation in organising seminars/conferences, journal content and membership issues. The meeting ended with an exchange of gifts between the two Presidents.

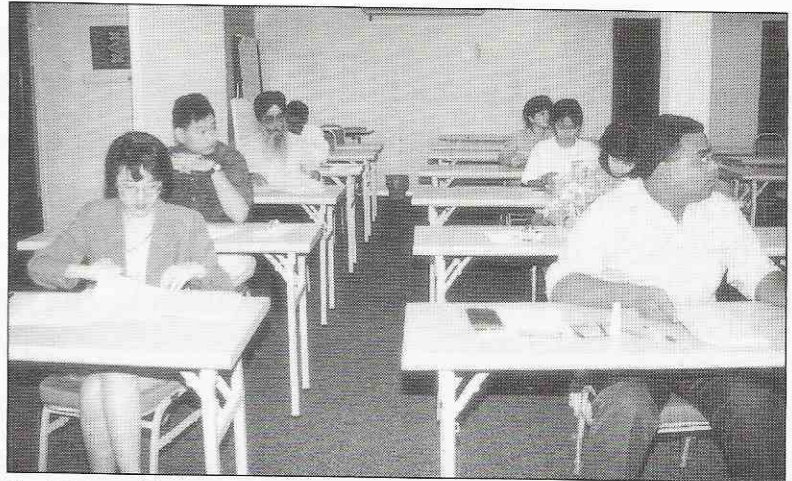


Exchanging of gifts. Mr. Peter J. Cowdroy (left) receiving a pewter plate from En. Ahmad Mustapha Ghazali (centre) whilst Mr. Harpal Singh Dhillon (right) looks on.



## INSTITUTE HOLDS FIRST EXAMINATION

On the morning of 18 December 1995, the first batch of candidates registered for the MIT Examination sat for their first paper. The Examination was held over a period of 5 days with seventy-three candidates tackling eight out of the ten papers being offered. The papers were Taxation I, Financial Accounting I, Economic, Business Statistics & Computer Knowledge of Level I, Taxation II, Taxation III and Company & Business Law of Level II and from Level III, Taxation IV and V. Although the examination was being held for the first time, there were candidates for all three levels because a number of candidates obtained exemptions. These candidates were mainly graduates from universities or had passed either an accountancy or non-accountancy professional examination.



Candidates waiting anxiously for the start of the examinations.

The examination was held throughout the country with centres in Kuala Lumpur, Johor Bahru, Seremban, Ipoh, Georgetown, Kota Kinabalu and Kuching. The Institute wishes to express its gratitude to its members, members of the Malaysian Institute of Accountants (MIA), their staff and the secretariat of MIA who helped to ensure the

smooth conduct of the examination at the various centres.

The Institute has started registering students for the next examination to be held in December 1996. If you have any enquiries, please contact, Ms Marian L Guntingan, the Examination Secretary.

### DATES TO REMEMBER FOR 1996

<b>January 1</b>	Annual subscription for 1996 payable
<b>February 12</b>	Release of 1995 MIT Examination results. Students will be notified by post and 1996 examination entry form will be enclosed
<b>March 31</b>	Payment of annual subscription fee for 1996 (RM50.00) <i>without penalty</i>
<b>April 30</b>	Payment of annual subscription fee for 1996 <i>with penalty</i> of RM50.00. Students who fail to pay by this date will be removed from the Register and have to re-register
<b>October 31</b>	Closing date for registration to sit for December 1996 examination
<b>November 15</b>	Closing date for submission of examination entry forms for December 1996 examination.
<b>November 30</b>	Despatch of examination notification letter.
<b>December</b>	MIT Examination



## EXAMINATION RESULTS FOR MIT EXAMINATIONS 1995

The performance of students for the December 1995 examinations was encouraging. Overall, 28.6% of candidates cleared the first level of the examination whereas 23.5% cleared the second level. In terms of performance in individual subjects, students did not perform well in three subjects i.e. Economics; Business Statistics & Computer Knowledge; Company and Business Law; and Taxation V. The performance in the other subjects (with pass rate in brackets) was as follows: Taxation I (71.4%); Financial Accounting I (43.75%); Taxation II (54.4%); Taxation III (27.3%) and Taxation IV (25%). There were no candidates sitting for the Business & Financial Management and Financial Accounting II papers due to the granting of exemptions.

### FOUNDATION / LEVEL 1

#### Taxation I

1. Hiew Lee Leng
2. Jagdish Singh a/l Arjan Singh
3. Mahendran a/l Kulasingam
4. Cheam Lea Pheng
5. Soo Bee Leng
6. Liew Shau Siem
7. Chan Suet Chin
8. Chan Ai Hoon, Michelle
9. Athavan a/l Shanmukam
10. Tan Soo Fong
11. Tee Wei Keong
12. Wong Lai Yong
13. Leonard Chrisdee Choong  
Leng
14. Ong Yoke Ping
15. Cheng Lian Bee

#### Financial Accounting I

1. Liew Shau Siem
2. Chan Suet Chin
3. Chan Ai Hoon, Michelle
4. Ng Chew Nam
5. Wong Lai Yong
6. Leo Yoon Heong
7. Ong Yoke Ping

#### Economics, Business Statistics and Computer Knowledge

1. Cheam Lea Pheng
2. Soo Bee Leng
3. Ng Chew Nam

### INTERMEDIATE / LEVEL II

#### Taxation II

1. Prabhutava a/p Jaya Krishnan
2. Loh Ee Sum
3. Christopher Low Hon Peng
4. Norashikin Bt Mohd  
Khaliluddin
5. Tang Yeth Fong
6. Ho Chee Kong
7. Lee Yuen Fah
8. Koh Kheng Boon
9. Lee Yon Chong
10. Chan Chee Ming
11. Suto Wai Sun

#### Taxation III

1. Prabhutava a/p Jaya Krishnan
2. Tang Yeth Fong
3. Tan Ching Wong
4. Koh Kheng Boon
5. Lee Yon Chong
6. Patrick Ting Chin Kiong
7. Cheh Chooi Jing
8. Yoon Wei Chin
9. Yong Foo Chuen

#### Company and Business Law

1. Loh Ee Sum
2. Tang Yeth Fong
3. Lee Yon Chong

### FINAL / LEVEL III

#### Taxation IV

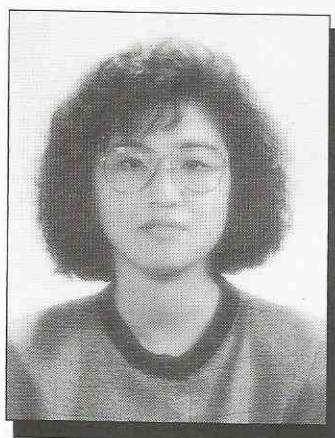
1. Raja Norhana Bt Raja Harun
2. Wan Chee Wai



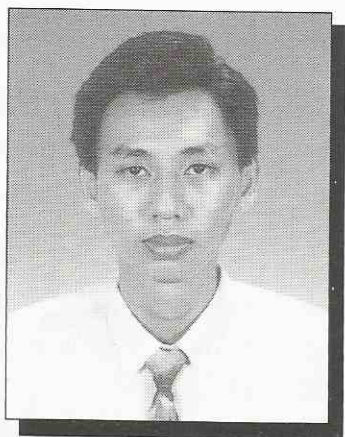
# THE PRIZE WINNERS

AS DETERMINED BY

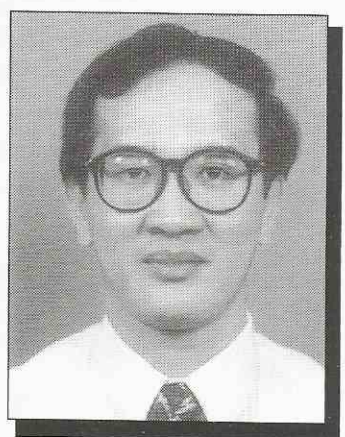
# THE COUNCIL ARE



**Chan Suet Chin** (MIT/0030/95) for  
Best Performance in Taxation I



**Wan Chee Wai** (MIT/0013/95 for  
Best Performance in Taxation IV



**Lee Yon Chong** (MIT/0063/95) for

- Best Performance in Taxation III
- Best Overall Performance in  
Intermediate Level / Level II



# COURTESY VISIT TO UNIVERSITY PERTANIAN MALAYSIA



Mr Chow Kee Kan (right) presenting some of MIT's publications to Assoc. Professor Hj. Zainal Abidin (left) whilst En Hamzah Saman looks on.

On 11 December 1995, a delegation from the Institute led by the Chairman of the Government Affairs Committee, En Atarek Kamil Ibrahim and Vice-Presidents En Hamzah HM Saman and Mr Chow Kee Kan paid a courtesy visit to Associate Professor Hj Zainal Abidin b. Kidam, the Dean of the Faculty of Economics & Management, Universiti Pertanian Malaysia.

Among matters raised at this visit was the issue of career talks and possible practical training/attachment programmes between members of the Institute and students of UPM.

The delegates was informed that UPM students are expected to undergo a 6 months practical training as part of their course requirement. Currently, it is viewed that the programmes are unsystematic and unstructured resulting in both the student and employer/trainer not benefiting. This is sometimes due to the fact that the student is unsure of his/her interest and within the programme the student may end up switching from audit to tax and vice-versa.

To overcome this, it was proposed that potential employers (from tax firms) could come to the University and conduct in-

terviews and if both parties mutually agree (i.e. the student has decided to train in tax and the employer finds him/her a suitable candidate), the student can attach himself/herself with the firm and gain experience.

It is also proposed that career talks could be organised before the interview process to allow students to consider a possible career in taxation and therefore be ready when the interviewers from the firms come around to the University.



## MEMBERSHIP OF MIT AS AT 30 JANUARY 1996

The following persons have been admitted as associate members of the Institute as at 30 January 1996.

NAME	MEMBERSHIP NO	NAME	MEMBERSHIP NO	NAME	MEMBERSHIP NO
KHOO PUAY TEK	1010	GOH OON CHUAN @ BENNY GOH	1072	YEO THIAM SWEE	1135
CHENG SIN GNOH	1011	YEAP SIEW KUAN	1073	LAI YONG TIAM	1136
SOO SIEW PENG	1012	SING SAI HOI @ YVONNE SING SAI HOI	1074	LIM PHIAK SEE	1137
LEE CHEE CHUAN	1013	LIM CHUON SING	1075	THAM MING YONG	1138
YIM WENG KHEONG	1014	ALISON ELEANOR AUGUSTIN	1076	PATRICIA SOO-HO MEI YEN	1139
CHAI KOH CHAN	1015	HOO THEN EE	1077	WERN SIEW SIEW	1140
YEE CHEE KEONG	1016	CHANG CHENG KHOON	1078	WONG YOKE MOOI	1141
TING HANG SING	1017	NG SIAW WEI	1079	TEH YEW FONG	1142
CHUAH SOON GUAN	1018	LIM POH CHIN	1080	WONG PAKE KUAN	1143
KAMAL BIN DAUD	1019	PAN SOO YING	1081	WONG CHECK FUNG	1144
TAM POH LIN	1020	LEE CHENG SWEE	1082	MAK KAM YING	1145
LUM KOK YEE	1021	LEE CHIOK SENG	1083	WAN HENG CHOON	1146
YVONNE KHOO AI LING	1022	WONG GIE TAI	1084	K.P. BALAKRISHNAN A/L PARAMESWARAN	1147
TONY KOH KOK BENG	1023	CHEW LAI LIENG	1085	CHIN YOKE MUI	1148
CHOONG TUCK YEW	1024	CHEW WAI KHOON	1086	LEE WAH SAN	1149
CHONG CHAI CHOO	1025	CHEW BOON CHEONG	1087	MICHAEL G. VELTEN	1150
SAW CHYE LAY	1026	LOONG TYAN TSAI	1088	TAN BOON CHAI	1151
WONG KANG JUAT	1027	YU PENG YIN	1089	KAMOLNAT KIJVANIT @ TEOH AI KOON	1152
CHEE KOK KUI	1028	CHONG KAW CHAI	1090	S. VALARMATHY D/O SUBRAMANIAM	1153
ALVIN RICHARD THORNTON	1029	TAJUL ARIFIN BIN AHMAD TAJUDDIN	1091	CHAN KEE KIAT	1154
TAN SWEE GUAN, EDWIN	1030	CHONG SAY WOON	1092	SWARAN SINGH A/L HAKKAM SINGH	1155
CHOW KAN FOOK	1031	CHUA HOCK HOO	1093	ROLT SIDNEY CARTON	1156
TEO MENG HUA	1032	PAUL CHENG CHAI LIQU	1094	ONG NYUK YIN	1157
HONG HEE LEONG	1033	LIEW KWAI CHOY	1095	CHEAH TUT MUN	1158
KRISHNAN A/L NACHIAPPEN	1034	KOH KHENG MIN	1096	YONG CHIU MEI	1159
YAP CHAI HUAT	1035	LIM HIOK SEN @ LING SIK SENG	1097	WONG MOOK @ AH HAR	1160
DAMIAN OH KOK HUAT	1036	YEOH SOO LEN	1098	ANNIE MILDRED LOPEZ	1161
YONG BOON KIM	1037	HAU WAN HOCK	1099	LOH TIN CHEE	1162
STANLEY YEOW KONG SING	1038	CHAI SONG LIN	1100	CHOOI TAT WAI	1163
NG HONG CHEW	1039	RAMLI BIN MOHAMED	1101	CHEEH WAI WING	1164
LIM KIM HOCK	1040	CHUA LIAN CHOOI	1102	K RAMIAH S/O KASI CHETTIAR	1165
LEE POH YOKE	1041	LEE ONN MUN	1103	THEY HENG CHONG @ TEH CHONG FAY	1166
KUEK TEE SAY	1042	LEE HENG AUN	1104	LEE YUEN FAH	1167
LEE MENG SOON	1043	OOI TSE PIAO	1105	LEE AH KAU	1168
ABDUL SAMAD BIN MOHAMED IBRAHIM	1044	TAN TENG CHAI	1106	LIM YU PUA @ THOMAS LIM	1169
YONG HEN KONG @ PETER	1045	YEONG YOW MENG	1107	WONG YUN MAN	1170
LIM KUN KIM	1046	KANAGALINGAM A/L MARNICKAM	1108	CHAN KAR CHING	1171
RONNIE CHIA SIANG HEE	1047	ZAINAL ABIDIN BIN MD. YASSIN	1109	TEH YEONG KEAR	1172
SARJIT KAUR A/P TARA SINGH	1048	TAN SIN HUAT	1110	PONG NG CHOI @ POON NG CHOI	1173
CHRISTOPHER TAN	1049	HANAPI BIN RASOL	1111		
LAY CHIEW FAR	1050	YEOH POH IM	1112		
WONG CHIN SING, FRANCIS	1051	LING EE HEE	1113		
LEONG HOE KIT	1052	LIM SAW IMM	1114		
ALEXANDRA CHIN @ FUI LIN	1053	HUANG YING LING	1115		
KWAN CHEONG KAW @ KUAN YEEK CHIEU	1054	OOI CHIN HOCK	1116		
LIM HWA LEAN	1055	KHOO HENG CHIN	1117		
CHOONG SAM KENG	1056	SEE ENG CHEONG	1118		
LIM SU LAI	1057	LIM FUNG NEE	1119		
LIM JAI HIA	1058	NASIBAH AMINY BTE JAMALUDDIN	1120		
IBRAHIM SHAH MAHADEVAN		LIEW FOONG ING	1121		
BIN ABDULLAH	1059	ANNE TEO	1122		
ZULKEPLI BIN MARZUKI	1060	CHUA LIK KWANG	1123		
MOHD NASRI BIN ISMAIL	1061	LEE GUAT KOEY	1124		
SATHYANANTHAN A/L S. CHELLIAH	1062	WONG TZH SHIN	1125		
TANG KOON KAM	1063	SAKAYA JOHNS RANI A/P AMALATHAS	1126		
WAN IDRIS BIN WAN IBRAHIM	1064	GOH GEE KIN	1127		
CHUA HONG ENG	1065	NG CHOON FAH	1128		
NG TUAN HOO	1066	GOH SIEW LING	1129		
LIM GUAN NGOH	1067	TAN YOK KWEE	1130		
BONG SIET FAH	1068	CAROL YONG	1131		
YONG MING MI	1069	CHOW KUO SENG	1132		
KOAY SOO NGOH	1070	LAI MAY CHOO	1133		
EARLE PETER SIEBEL	1071	KONG FOH THAI	1134		

### MEMBERSHIP STATUS OF MIT AS AT 30 JANUARY 1996

Honorary Fellows	4
Fellows (Founder Council Members)	14
Associate Members*	1152
	1166
<b>* Associate Members</b>	
Public Accountants of MIA	738
Registered Accountants of MIA	117
Licensed Accountants of MIA	17
Advanced Course Exam of IRD	96
Advocates & Solicitors	6
Approved Tax Agents	107
Others	74
Deceased	(3)
	1152



NOTICE

Dear Member

The Institute is now currently in its fourth year of operation with an on-going professional examination. The Council of the Institute seeks your cooperation to promote the Institute and the MIT Examination.

The Council would appreciate it if your firm/organisation would include the words, "*Preferably a Member of the Malaysian Institute of Taxation*" as one of your requirements whenever your firm/organisation advertises for tax personnel, if appropriate.

Please be informed that the Institute has produced a research paper on "*Value Added Tax*" in view of the possible introduction of Sales and Service Tax by the Government in the near future.

If you are interested to obtain a copy of the paper, you may purchase it at a nominal cost. Please contact Ms Amanda of the Secretariat for details.

## Requirement To Enclose A Duplicated Copy Of NRIC With Form 48A/49

The Institute has been informed by the Registrar of Companies that there have been some incidents whereby the Director's NRIC/passport number is not the same as what is provided in the Form 48A of Form 49. This inconsistency has invariably caused inconvenience to the Registrar of Companies.

Therefore, with effect from **15 February 1996**, the Registrar of Companies requires a duplicated copy of the Director's NRIC to be enclosed together with the Form 48A or Form 49.

Please be guided accordingly.

# Order Form For Membership Directory

The Membership Directory was published to assist members of the Institute to identify themselves and for the public who may wish to know who our members are. The Directory is currently as at 31 December 1994 with supplements published every 6 months. Supplements can be purchased from the Institute at nominal cost.

Members who wish to purchase additional copies of the Membership Directory are kindly requested to complete this Order Form and return it with the appropriate remittance to the Institute.

### PRICE PER COPY

MIT Member	RM10.00
Non MIT Member	RM15.00

Please include RM1.50 being postage charge and RM0.50 for each additional copy.

Name: \_\_\_\_\_

Membership No: \_\_\_\_\_

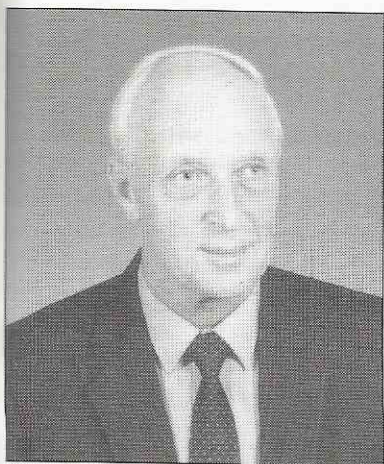
Address: \_\_\_\_\_

Tel No: \_\_\_\_\_

Enclosed is cheque no: \_\_\_\_\_ for RM \_\_\_\_\_

made payable to Malaysian Institute of Taxation for \_\_\_\_\_ copies of the Membership Directory.





# TAXATION OF THE INCOME OF INDIVIDUALS

By:  
RICHARD THORNTON

## THE PERSON AS AN INDIVIDUAL

Our income tax is not discriminatory. All are eligible to be members of that privileged group, the income tax payers of Malaysia. The scope and basis of charge is substantially the same for each one but there are a few variations. In earlier articles we have dealt with the taxation of companies, partnerships, trusts, co-operatives, clubs and associations. Now it is time to look at the "person" as an individual and the ways in which he is given special treatment for the purposes of income tax.

Throughout the Income Tax Act 1967 ("The Act"), the word "person" is used making it clear that almost all of the provisions of the Act apply not only to individuals but also to companies and other bodies. This applies to the rules about what is gross income, permissible deductions and the various stages in reaching total income as well as to responsibilities such as the making of returns and paying tax. They apply to all.

Section 2 of the Act says that an individual means a natural person. As a definition, it does not take us very far but it should not be difficult for us to know the difference between a natural (human) person and an unnatural one such as a company, which is a concept of law; or the 'ghost' which we saw, or thought we saw, in the trees on a dark night.

There are certain aspects of income tax where individuals are treated quite differently from other taxpayers, such as the right to deductions, rebates and reduced tax rates.

The personal deductions are covered by Chapter 7 (sections 45 to 51) of the Act. They are given by way of deductions from the total income of a resident individual in arriving at his chargeable income. Deductions must be claimed by completing the appropriate sections in the tax return form, usually Borang B. Rebates for individuals are covered by section 6A and are given in charging the income to tax. There is no need to claim.

## HUSBANDS AND WIVES

Before going on to talk about deductions etc, we should be clear on how the law applies to people who are married.

Since 1991, separate taxation of husbands and wives has been the 'norm' in Malaysia but the Act, in Section 45(2), gives a wife the right to 'opt out' by electing for her total income to be aggregated with that of her husband. Unless she does so, her chargeable income will consist of her total income as calculated under the Act, less any personal deductions allowable to her. As a separate taxpayer, her income will be charged to tax at the graduated rates specified for individuals.

If the election is made, her total income is aggregated with the total income of her husband and assessed to tax in his name. She will be treated as having no chargeable income and has no right to personal deductions. Only the husband can claim them.

The election must be made in writing by the wife before the first of April (or any subsequent date permitted by the Director-General) in the year of assess-

ment for which it is to apply. The election needs to be made every year.

"Wife" means a woman who (whether or not she has gone through any religious or other ceremony) is regarded by virtue of any law or custom as the wife of a man or as one of his wives. To qualify to make the election she must be living together with her husband in the basis year for the year of assessment concerned without ceasing to live with him or to be married to him. Furthermore, she must be resident in Malaysia for that basis year or, if not resident, then a citizen of Malaysia.

## PERSONAL DEDUCTIONS

### 1. The basic personal deduction

This consists of a deduction of RM4,000 for the individual with an addition of RM1,000 for dependent relatives. In practice, all taxpayers are given a total of RM5,000.

### 2. Parents' medical expenses

Given for medical expenses expended in the basis year for a year of assessment by the individual in respect of his parents, the limit is RM5,000 per year from year of assessment 1996 (previously RM1,000 per year). A receipt given by a medical practitioner, certifying that the treatment was given to the parent(s), must be produced to back up the claim.

### 3. Basic supporting equipment

For amounts expended in the basis year for a year of assessment by the



## EXAMPLE 1

For the basis year 1995, the following details apply to Alan and Pat, who were married and living together during that year. They had two children under 18 and one over 18, who was receiving full-time education in Malaysia.

	Alan RM	Pat RM
Salary	78000	6600
Bonus	12000	nil
Benefits in kind	8000	nil
Employment income	98000	6600
Dividends - gross		5000
with tax deducted RM1500		
Parents' medical cost	2400	600
EPF	7200	660

The calculations made below show that Alan and Pat should not choose to be taxed jointly for the year of assessment 1996.

	Separate tax		Joint tax
Employment income	98000	6600	104600
Dividend income		5000	5000
Total income	98000	11600	109600
Deductions:			
personal	(5000)	(5000)	(5000)
parents' medical costs	(2400)	( 600)	(2400)
EPF deduction - maximum	(5000)	( 660)	(5660)
Chargeable income	85600	5340	96540
Tax payable			
on RM5,000		50.00	
on balance at 4%		13.60	
on 70000	8950.00		8950.00
on balance at 26%	4056.00		6900.40
	13006.00	63.60	15850.40
Rebate (RM90 restricted)		(63.60)	
s.110 credit		(1500.00)	(1500.00)
	13006.00	(1500.00)	14350.40

The net liability under separate tax is RM11506 (RM13006 payable by Alan, less RM1500 repayable to Pat). This is much less than the amount payable under joint tax. Generally, it is not beneficial to be taxed separately when the wife's income is greater than about RM3,000 (the amount of the wife deduction).

individual to purchase necessary basics supporting equipment for the use a disabled person who can be himself, his wife, his child or parent. The limit is RM5,000 per year from year of assessment 1996 (previously RM3,000 per year)

## 4. Study costs

This is given for fees expended in the basis year for a year of assessment by the individual for any course of study to acquire technical, vocational or industrial skills in

a Government-recognised institution in Malaysia. It applies from year of assessment 1995 and has a limit of RM2,000 per year.

## 5. Deduction for a wife

Where a wife living with her husband has elected not to be separately assessed, or she has no total income for a year of assessment, the husband is entitled to an additional deduction of RM3,000 for that year. If she is also a disabled person, the deduction is increased to RM5,500.

Payments to a wife by way of alimony pendente lite, to a divorced wife by way of alimony or maintenance or to a legally separated wife under a court order, deed or written agreement also qualify for deduction, subject to the overall limitation.

The deduction under this heading is limited to RM3,000 (plus RM2,500 for a disabled wife, if appropriate) in one year, regardless of the number of wives or ex-wives involved.

## 6. Deduction for children

The deduction is only given to a parent who pays for the maintenance of an unmarried child or, where education or training is involved, pays the costs of providing the education or training. It depends upon the circumstances applying to the child in the basis period for a year of assessment.

There is a basic deduction of RM800 for any child who, at any time in the basis year, is either (i) under 18 or (ii) receiving full-time instruction at a university, college, school or similar educational establishment or serving under articles or indentures with a view to qualifying in a trade or profession (referred to as "receiving further education").

The basic deduction is enhanced where it is proved to the satisfaction of the Director-General that the child is physically or mentally disabled. The amount is RM5,000 from year of assessment 1996 (previously RM1,600).



When a child receiving further education is also over 18 at any time in the basis year, an enhanced deduction is available to cover amounts expended on maintenance or further education up to RM3,200 per annum, where the further education is undertaken in Malaysia, and up to RM1,600 for further education outside Malaysia.

There is no limit on the number of children who may be claimed for. Up to years of assessment 1994, the limit was 5.

The child may be a legitimate child, a step-child or an adopted child of the individual or his wife, but an adoption must be shown to be legal.

From year of assessment 1996 a wife who is living together with her husband and is assessed separately for any year of assessment is allowed to elect in writing that the appropriate deduction for children be allowed to her in full. Previously the deduction was given to the husband as of right even though she maintained the children and even though they were her children and not those of her husband.

Where two or more individuals are each entitled to claim a deduction in respect of the same child, the deduction is to be apportioned between them in proportion to their payments. It seems that this could now apply in the case of a separately assessed wife who will not be disbarred from claiming deductions in respect of her children although, under the new provision, she can elect to take the whole sum.

## 7. Provident fund contributions and insurance premiums

The deduction under this head has to cover Employees Provident Fund ("EPF") contributions which are mandatory for most employees as well as life insurance payments, all of which are deductible with an overall limitation of RM5,000 per annum.

The deduction also covers EPF contributions made by a self-employed

### EXAMPLE 2

Besides deciding whether to be jointly taxed or not, married couples now have to consider whether the wife should claim for the child deductions. En. Rahim and his wife have four children under 18. He is pursuing a course of study, during which time his earnings are limited. For the basis year 1995, En. Rahim had casual earnings of RM13,000 and his wife earned a salary of RM36,000. The wife pays EPF contributions but, otherwise, they have only the standard deductions to claim.

	Separate tax En. Rahim RM	Wife RM	Combined tax RM
Total income	13000	36000	49000
Deductions:			
personal	(5000)	(5000)	(5000)
wife			(3000)
children	(3200)		(3200)
EPF		(3600)	(3600)
Chargeable income	4800	27400	34200
Tax payable			
on RM2500	0		
on RM20000		850.00	850.00
on balance	46.00	740.00	1420.00
	46.00	1590.00	2270.00
Rebate RM90 max.	(46.00)		
	0	1590.00	2270.00

En. Rahim and his wife should obviously be separately taxed but, if the wife claimed the child deductions, the position would be better still:

Total income	13000	36000
Deductions:		
personal	(5000)	(5000)
children		(3200)
EPF		(3600)
Chargeable income	8000	24200
Tax payable		
on RM5000	50.00	
on RM20000		850.00
on balance	120.00	420.00
	170.00	1270.00
Rebate RM90 max.	(90.00)	
	80.00	1270.00

Only RM1350 is payable in total so the wife should elect to take the child deductions. No time limit is specified.

person as permitted by the EPF rules, contributions under any written law relating to widows' and orphans pensions and contributions

under an approved scheme.

Insurance means life insurance, or a deferred annuity, taken out by



the individual or his wife on the life of the individual, his wife or on their joint lives. The amount qualifying for relief is limited to 7% of the capital sum, excluding bonuses or profits, payable on death.

When the individual's wife has total income for a year of assessment, and has elected for joint assessment, amounts paid by the wife, including EPF, also qualify for deduction by the husband up to a separate limit of RM5,000.

### 8. Insurance for educational and medical benefits

Newly introduced with effect from year of assessment 1996, this is a deduction to cover premiums paid in the basis year for a year of assessment for insurance on education or medical benefits. The limit is RM2,000 per year.

When the individual's wife has total income for a year of assessment, and has elected for joint assessment, amounts paid by the wife also qualify for deduction by the husband up to a separate limit of RM2,000.

### TAX PAYABLE AND TAX REBATES

Chargeable income is the amount ascertained by deducting from the total income all of the deductions mentioned above. Tax is calculated at the rates specified in Schedule 1 of the Act. For resident individuals, this will be the graduated rates set out in Part I (unless the income is non-exempt interest, which is chargeable at a special rate of 5% under Part VI).

Rebates for a resident individual who is eligible for them are given against the amount of tax on his chargeable income, up to the amount of the tax. When the amount eligible for rebate, under both of the following headings, exceeds the tax payable, the excess is lost and cannot be offset or carried forward.

Rebates are given before any tax credit available for set-off under Section 110 (dividends etc) or Sections 132 or 133 (relief from double taxation) so that the right to a repayment, if appropriate, is

not lost.

Rebates are available for:

#### 1. Small incomes

An individual whose chargeable income does not exceed RM10,000 for a year of assessment is given a rebate of RM90 if he has been allowed the basic personal deduction and an additional rebate of RM60 if he has also been allowed the deduction for a wife.

#### 2. Payment of zakat etc.

Payments made in the basis year for a year of assessment for zakat, fitrah or any other Islamic religious dues, payment of which is obligatory, and is evidenced by a receipt issued by an appropriate religious authority established under any written law.

### TAX COMPLIANCE RESPONSIBILITIES

The individual is subject to all of the requirements of the Act in the same way as any other person, including the obligation to make a return of income, to notify chargeability to tax if appropriate and to pay tax due on an assessment.

Many individuals will suffer tax deductions at source from employment income or will be required to pay tax by instalments.

An individual who arrives in Malaysia during a particular year of assessment, and who is not chargeable to tax for that year but will be chargeable to tax for the following year, must notify the Director-General within 2 months of his arrival of his chargeability to tax (Section 77(3)).

Similarly an individual who is about to leave Malaysia should ensure that all tax, penalties and obligations under the Act have been paid or dealt with, otherwise the Director-General might take action under Section 104 to prevent him from leaving.

### TAX RESIDENCE OF INDIVIDUALS

An individual is tax resident in Malay-

sia if he is caught by one of the four tests contained in Section 7 of the Act. Under these, he is resident in Malaysia for the basis year for a year of assessment if, during that basis period, he is present in Malaysia:

- (i) for at least 182 days
- (ii) for less than 182 days, but that period is linked by or to another period of presence in Malaysia for 182 days or more in the preceding or following basis year
- (iii) for at least 90 days, having been either resident, or present for at least 90 days, in 3 out of the 4 previous basis years
- (iv) not at all, but was resident for the previous 3 basis years and is resident for the following basis year.

Temporary absences are ignored in calculating the long period under (ii), but not otherwise, when they are owing to (a) service matters or attending conferences, seminars or study abroad connected with the person's service in Malaysia (b) ill-health of the person or his immediate family or (c) social visits not exceeding 14 days in all.

Any day during part of which the individual is present counts as a day in Malaysia. Other countries have different rules which might result in a person being resident in two countries at the same time. Where Malaysia has a double taxation agreement with the other country, the agreement will contain provisions to deal with overlap problems.

### NON-RESIDENTS

Non-resident individuals are still subject to the requirements of the Act, except where those requirements are relaxed for their benefit.

By paragraph 28 of Schedule 6, a non-resident is exempted from tax on income received in Malaysia from sources outside Malaysia. Consequently the normal scope of charge is varied so that he is only chargeable in respect of income accruing in or derived from Malaysia.

Unlike resident individuals, the non-



resident is not entitled to personal deductions or rebates and he is charged to tax on all of his chargeable income at the rate specified in paragraph 2 of Part I, Schedule I to the Act, which for year of assessment 1996 is 30% (previously 32%). However, a non-resident who is a Malaysian citizen or a pensioner may be given non-resident relief, which effectively gives the benefit of the personal deductions.

In addition, the non-resident is chargeable to tax on certain types of income which are deemed, in his case, to be derived from Malaysia, particularly interest, royalties, services of a public entertainer and the special classes of income covered by Section 4A. For such income, special rates of tax are provided.

A non-resident person may be assessed and charged to tax either directly or in the name of any attorney, factor, agent, receiver or manager.

### CHILDREN

A child who is still a minor is classified as an incapacitated person but he is capable of having income in his own right and, where his income is sufficient to make him chargeable to tax, he is liable to tax in the same way as any other individual and would have the same rights, including the right to claim deductions, tax credits, repayments and to give notices of appeal.

Normally, the parent or guardian of the minor will be assessable and chargeable to tax on his behalf under the provisions of Section 69(1), but it is specifically provided that a minor himself

### EXAMPLE 3

Michael is engaged in full-time study and has no income. His mother is remarried and his step-father has been claiming the child deduction of RM3,200 in respect of Michael.

In 1995 Michael received a net dividend of RM4,200 from a resident company set up by his late father. As a result, Michael's income exceeded RM3,200 and his step-father is not able to claim the deduction for year of assessment 1996. The first reaction to this is dismay at the RM960 increase in the step-father's tax bill (assuming his top tax rate to be 30%).

However, Michael can claim a refund of the tax deducted from his dividend. Michael's total income will be RM6,000, the gross equivalent of the net dividend. His personal deduction will be RM5,000 and his chargeable income RM1,000. On this, no tax will be payable because a nil tax rate applies to the first RM2,500 of chargeable income.

Michael can expect to receive a tax refund of RM1,800 whilst his step-father is worse off by only RM960, which seems like a fair exchange.

may be directly assessable and chargeable to tax.

The existence of a child's income in his own right could prejudice the tax position of the parent. The parent is not given the deduction for a child for any year of assessment in which the child's

total income exceeds the amount of the deduction available.

A minor's income in his own right is not that of his parents, but it might be treated as such if Section 65 (settlements) applies. The Section is intended to discourage, amongst other things, the setting up of trusts by individuals in favour of their minor relatives so as to divert income and thus reduce or avoid tax. It applies where the settlement has resulted, directly or indirectly, and during the life of the settlor, in income becoming payable to or applicable for the benefit of a relative of the settlor who has not attained the age of 21. In the case of a parent's settlement, this could result in the income being deemed to be that of the parent and not of the child.

### OTHER INCAPACITATED PERSONS

Some individuals may be placed under legal restraint due to physical, mental, financial or other problems. In the same way as minors, they are persons for tax purposes with all the rights and obligations which go with it. They can have income and are entitled to personal deductions. They may be liable to tax or may be entitled to claim a repayment of tax.

Where another person has lawful direction or control of property on behalf of the incapacitated person, that other person is assessable and chargeable to tax on his behalf. Otherwise, the Director-General may appoint any person under Section 68(1) of the Act to be assessable and chargeable on his behalf.

## Cessation of Employment

An employer is required to notify the IRD of the cessation of employment of an employee by the completion of Form CP 22A/CP 21 not less than 1 month's notice.

### Moneys to be Withheld on Cessation of Employment

Employers are required to withhold payment of any moneys payable to the employee for 90 days or until tax clearance is received, whichever is the earlier.



# SCHEDULAR TAX DEDUCTION TABLES

**JADUAL POTONGAN CUKAI BULANAN**  
SCHEDULE OF MONTHLY TAX DEDUCTIONS

PINDAAN 1995

1

B = Bujang/Bersuami	Single Person/Married Woman	K = Kahwin	Married
KA1 = Berkahwin dan mempunyai 1 orang anak	Married, with 1 child	KA6 = Berkahwin dan mempunyai 6 orang anak	Married, with 6 children
KA2 = Berkahwin dan mempunyai 2 orang anak	Married, with 2 children	KA7 = Berkahwin dan mempunyai 7 orang anak	Married, with 7 children
KA3 = Berkahwin dan mempunyai 3 orang anak	Married, with 3 children	KA8 = Berkahwin dan mempunyai 8 orang anak	Married, with 8 children
KA4 = Berkahwin dan mempunyai 4 orang anak	Married, with 4 children	KA9 = Berkahwin dan mempunyai 9 orang anak	Married, with 9 children
KA5 = Berkahwin dan mempunyai 5 orang anak	Married, with 5 children	KA10 = Berkahwin dan mempunyai 10 orang anak	Married, with 10 children

Jumlah Saraan Bulanan	POTONGAN CUKAI BULANAN MONTHLY TAX DEDUCTIONS																							
	Total Monthly Remuneration	Kategori 1 Category 1	Kategori 2 Category 2										Kategori 3 Category 3											
			Di mana isteri tidak bekerja Where wife is not working										Di mana isteri bekerja Where wife is working											
			B RM	K RM	KA1 RM	KA2 RM	KA3 RM	KA4 RM	KA5 RM	KA6 RM	KA7 RM	KA8 RM	KA9 RM	KA10 RM	K RM	KA1 RM	KA2 RM	KA3 RM	KA4 RM	KA5 RM	KA6 RM	KA7 RM	KA8 RM	KA9 RM
RM																								
1201 - 1250	10	-	-	-	-	-	-	-	-	-	-	-	10	-	-	-	-	-	-	-	-	-	-	-
1251 - 1300	21	-	-	-	-	-	-	-	-	-	-	-	21	-	-	-	-	-	-	-	-	-	-	-
1301 - 1350	24	-	-	-	-	-	-	-	-	-	-	-	24	11	-	-	-	-	-	-	-	-	-	-
1351 - 1400	27	-	-	-	-	-	-	-	-	-	-	-	27	23	10	-	-	-	-	-	-	-	-	-
1401 - 1450	30	-	-	-	-	-	-	-	-	-	-	-	30	26	22	10	-	-	-	-	-	-	-	-
1451 - 1500	33	-	-	-	-	-	-	-	-	-	-	-	33	29	25	21	-	-	-	-	-	-	-	-
1501 - 1550	36	21	-	-	-	-	-	-	-	-	-	-	36	32	28	24	11	-	-	-	-	-	-	-
1551 - 1600	39	24	-	-	-	-	-	-	-	-	-	-	39	35	31	27	23	10	-	-	-	-	-	-
1601 - 1650	42	27	23	-	-	-	-	-	-	-	-	-	42	38	34	30	26	22	10	-	-	-	-	-
1651 - 1700	45	30	26	22	-	-	-	-	-	-	-	-	45	41	37	33	29	25	21	-	-	-	-	-
1701 - 1750	48	33	29	25	21	-	-	-	-	-	-	-	48	44	40	36	32	28	24	11	-	-	-	-
1751 - 1800	51	36	32	28	24	-	-	-	-	-	-	-	51	47	43	39	35	31	27	23	10	-	-	-
1801 - 1850	54	39	35	31	27	23	-	-	-	-	-	-	54	50	46	42	38	34	30	26	22	10	-	-
1851 - 1900	57	42	38	34	30	26	22	-	-	-	-	-	57	53	49	45	41	37	33	29	25	21	-	-
1901 - 1950	60	45	41	37	33	29	25	21	-	-	-	-	60	56	52	48	44	40	36	32	28	24	11	-
1951 - 2000	63	48	44	40	36	32	28	24	-	-	-	-	63	59	55	51	47	43	39	35	31	27	23	-
2001 - 2050	66	51	47	43	39	35	31	27	23	-	-	-	66	62	58	54	50	46	42	38	34	30	26	-

**JADUAL POTONGAN CUKAI BULANAN**  
SCHEDULE OF MONTHLY TAX DEDUCTIONS

PINDAAN 1995

2

B = Bujang/Bersuami	Single Person/Married Woman	K = Kahwin	Married
KA1 = Berkahwin dan mempunyai 1 orang anak	Married, with 1 child	KA6 = Berkahwin dan mempunyai 6 orang anak	Married, with 6 children
KA2 = Berkahwin dan mempunyai 2 orang anak	Married, with 2 children	KA7 = Berkahwin dan mempunyai 7 orang anak	Married, with 7 children
KA3 = Berkahwin dan mempunyai 3 orang anak	Married, with 3 children	KA8 = Berkahwin dan mempunyai 8 orang anak	Married, with 8 children
KA4 = Berkahwin dan mempunyai 4 orang anak	Married, with 4 children	KA9 = Berkahwin dan mempunyai 9 orang anak	Married, with 9 children
KA5 = Berkahwin dan mempunyai 5 orang anak	Married, with 5 children	KA10 = Berkahwin dan mempunyai 10 orang anak	Married, with 10 children

Jumlah Saraar Bulana	POTONGAN CUKAI BULANAN MONTHLY TAX DEDUCTIONS																						
	Kategori 1 Category 1	Kategori 2 Category 2										Kategori 3 Category 3											
		Di mana isteri tidak bekerja Where wife is not working										Di mana isteri bekerja Where wife is working											
		B RM	K RM	KA1 RM	KA2 RM	KA3 RM	KA4 RM	KA5 RM	KA6 RM	KA7 RM	KA8 RM	KA9 RM	KA10 RM	K RM	KA1 RM	KA2 RM	KA3 RM	KA4 RM	KA5 RM	KA6 RM	KA7 RM	KA8 RM	KA9 RM
2051 - 2100	69	54	50	46	42	38	34	30	26	22	-	-	69	65	61	57	53	49	45	41	37	33	29
2101 - 2150	73	57	53	49	45	41	37	33	29	25	21	-	73	68	64	60	56	52	48	44	40	36	32
2151 - 2200	78	60	56	52	48	44	40	36	32	28	24	-	78	71	67	63	59	55	51	47	43	39	35
2201 - 2250	83	63	59	55	51	47	43	39	35	31	27	23	83	76	70	66	62	58	54	50	46	42	38
2251 - 2300	88	66	62	58	54	50	46	42	38	34	30	26	88	81	74	69	65	61	57	53	49	45	41
2301 - 2350	93	69	65	61	57	53	49	45	41	37	33	29	93	86	79	73	68	64	60	56	52	48	44
2351 - 2400	98	73	68	64	60	56	52	48	44	40	36	32	98	91	84	78	71	67	63	59	55	51	47
2401 - 2450	103	78	71	67	63	59	55	51	47	43	39	35	103	96	89	83	76	70	66	62	58	54	50
2451 - 2500	108	83	76	70	66	62	58	54	50	46	42	38	108	101	94	88	81	74	69	65	61	57	53
2501 - 2550	113	88	81	74	69	65	61	57	53	49	45	41	113	106	99	93	86	79	73	68	64	60	56
2551 - 2600	118	93	86	79	73	68	64	60	56	52	48	44	118	111	104	98	91	84	78	71	67	63	59
2601 - 2650	123	98	91	84	78	71	67	63	59	55	51	47	123	116	109	103	96	89	83	76	70	66	62
2651 - 2700	128	103	96	89	83	76	70	66	62	58	54	50	128	121	114	108	101	94	88	81	74	69	65
2701 - 2750	133	108	101	94	88	81	74	69	65	61	57	53	133	126	119	113	106	99	93	86	79	73	68
2751 - 2800	138	113	106	99	93	86	79	73	68	64	60	56	138	131	124	118	111	104	98	91	84	78	71
2801 - 2850	143	118	111	104	98	91	84	78	71	67	63	59	143	136	129	123	116	109	103	96	89	83	76



# SCHEDULAR TAX DEDUCTION TABLES



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2851 - 2900	148	123	116	109	103	96	89	83	76	70	66	62	148	141	134	128	121	114	108	101	94	88	81
2901 - 2950	153	128	121	114	108	101	94	88	81	74	69	65	153	146	139	133	126	119	113	106	99	93	86
2951 - 3000	158	133	126	119	113	106	99	93	86	79	73	68	158	151	144	138	131	124	118	111	104	98	91
3001 - 3050	163	138	131	124	118	111	104	98	91	84	78	71	163	156	149	143	136	129	123	116	109	103	96
3051 - 3100	168	143	136	129	123	116	109	103	96	89	83	76	168	161	154	148	141	134	128	121	114	108	101
3101 - 3150	173	148	141	134	128	121	114	108	101	94	88	81	173	166	159	153	146	139	133	126	119	113	106
3151 - 3200	178	153	146	139	133	126	119	113	106	99	93	86	178	171	164	158	151	144	138	131	124	118	111
3201 - 3250	183	158	151	144	138	131	124	118	111	104	98	91	183	176	169	163	156	149	143	136	129	123	116
3251 - 3300	188	163	156	149	143	136	129	123	116	109	103	96	188	181	174	168	161	154	148	141	134	128	121
3301 - 3350	193	168	161	154	148	141	134	128	121	114	108	101	193	186	179	173	166	159	153	146	139	133	126
3351 - 3400	199	173	166	159	153	146	139	133	126	119	113	106	199	191	184	178	171	164	158	151	144	138	131
3401 - 3450	207	178	171	164	158	151	144	138	131	124	118	111	207	199	189	183	176	169	163	156	149	143	136
3451 - 3500	215	183	176	169	163	156	149	143	136	129	123	116	215	204	194	188	181	174	168	161	154	148	141
3501 - 3550	223	188	181	174	168	161	154	148	141	134	128	121	223	212	201	193	186	179	173	166	159	153	146
3551 - 3600	231	193	186	179	173	166	159	153	146	139	133	126	231	220	209	199	191	184	178	171	164	158	151
3601 - 3650	239	199	191	184	178	171	164	158	151	144	138	131	239	228	217	207	196	189	183	176	169	163	156
3651 - 3700	247	207	196	189	183	176	169	163	156	149	143	136	247	236	225	215	204	194	188	181	174	168	161
3701 - 3750	255	215	204	194	188	181	174	168	161	154	148	141	255	244	233	223	212	201	193	186	179	173	166
3751 - 3800	263	223	212	201	193	186	179	173	166	159	153	146	263	252	241	231	220	209	199	191	184	178	171
3801 - 3850	271	231	220	209	199	191	184	178	171	164	158	151	271	260	249	239	228	217	207	196	189	183	176
3851 - 3900	279	239	228	217	207	196	189	183	176	169	163	156	279	268	257	247	236	225	215	204	194	188	181
3901 - 3950	287	247	236	225	215	204	194	188	181	174	168	161	287	276	265	255	244	233	223	212	201	193	186
3951 - 4000	295	255	244	233	223	212	201	193	186	179	173	166	295	284	273	263	252	241	231	220	209	199	191
4001 - 4050	303	263	252	241	231	220	209	199	191	184	178	171	303	292	281	271	260	249	239	228	217	207	196
4051 - 4100	311	271	260	249	239	228	217	207	196	189	183	176	311	300	289	279	268	257	247	236	225	215	204
4101 - 4150	319	279	268	257	247	236	225	215	204	194	188	181	319	308	297	287	276	265	255	244	233	223	212
4151 - 4200	327	287	276	265	255	244	233	223	212	201	193	186	327	316	305	295	284	273	263	252	241	231	220
4201 - 4250	335	295	284	273	263	252	241	231	220	209	199	191	335	324	313	303	292	281	271	260	249	239	228
4251 - 4300	343	303	292	281	271	260	249	239	228	217	207	196	343	332	321	311	300	289	279	268	257	247	236

## JADUAL POTONGAN CUKAI BULANAN SCHEDULE OF MONTHLY TAX DEDUCTIONS

PINDAAN 1995

B = Bujang/Bersuami  
KA1 = Berkahwin dan mempunyai 1 orang anak  
KA2 = Berkahwin dan mempunyai 2 orang anak  
KA3 = Berkahwin dan mempunyai 3 orang anak  
KA4 = Berkahwin dan mempunyai 4 orang anak  
KA5 = Berkahwin dan mempunyai 5 orang anak

Single Person/Married Woman  
Married, with 1 child  
Married, with 2 children  
Married, with 3 children  
Married, with 4 children  
Married, with 5 children

K = Kahwin  
KA6 = Berkahwin dan mempunyai 6 orang anak  
KA7 = Berkahwin dan mempunyai 7 orang anak  
KA8 = Berkahwin dan mempunyai 8 orang anak  
KA9 = Berkahwin dan mempunyai 9 orang anak  
KA10 = Berkahwin dan mempunyai 10 orang anak

Married  
Married, with 6 children  
Married, with 7 children  
Married, with 8 children  
Married, with 9 children  
Married, with 10 children

Jumlah Saraan Bulanan  Total Monthly Remuneration  RM	POTONGAN CUKAI BULANAN MONTHLY TAX DEDUCTIONS																							
	Kategori 1 Category 1	Kategori 2 Category 2										Kategori 3 Category 3												
		Di mana isteri tidak bekerja Where wife is not working										Di mana isteri bekerja Where wife is working												
		B RM	K RM	KA1 RM	KA2 RM	KA3 RM	KA4 RM	KA5 RM	KA6 RM	KA7 RM	KA8 RM	KA9 RM	KA10 RM	K RM	KA1 RM	KA2 RM	KA3 RM	KA4 RM	KA5 RM	KA6 RM	KA7 RM	KA8 RM	KA9 RM	KA10 RM
4301 - 4350	351	311	300	289	279	268	257	247	236	225	215	204	351	340	329	319	308	297	287	276	265	255	244	
4351 - 4400	359	319	308	297	287	276	265	255	244	233	223	212	359	348	337	327	316	305	295	284	273	263	252	
4401 - 4450	367	327	316	305	295	284	273	263	252	241	231	220	367	356	345	335	324	313	303	292	281	271	260	
4451 - 4500	375	335	324	313	303	292	281	271	260	249	239	228	375	364	353	343	332	321	311	300	289	279	268	
4501 - 4550	383	343	332	321	311	300	289	279	268	257	247	236	383	372	361	351	340	329	319	308	297	287	276	
4551 - 4600	391	351	340	329	319	308	297	287	276	265	255	244	391	380	369	359	348	337	327	316	305	295	284	
4601 - 4650	400	359	348	337	327	316	305	295	284	273	263	252	400	388	377	367	356	345	335	324	313	303	292	
4651 - 4700	410	367	356	345	335	324	313	303	292	281	271	260	410	396	385	375	364	353	343	332	321	311	300	
4701 - 4750	421	375	364	353	343	332	321	311	300	289	279	268	421	407	393	383	372	361	351	340	329	319	308	
4751 - 4800	431	383	372	361	351	340	329	319	308	297	287	276	431	417	403	391	380	369	359	348	337	327	316	
4801 - 4850	442	391	380	369	359	348	337	327	316	305	295	284	442	428	414	400	388	377	367	356	345	335	324	
4851 - 4900	452	400	388	377	367	356	345	335	324	313	303	292	452	438	424	410	396	385	375	364	353	343	332	
4901 - 4950	463	410	396	385	375	364	353	343	332	321	311	300	463	449	435	421	407	393	383	372	361	351	340	
4951 - 5000	473	421	407	393	383	372	361	351	340	329	319	308	473	459	445	431	417	403	391	380	369	359	348	
5001 - 5050	484	431	417	403	391	380	369	359	348	337	327	316	484	470	456	442	428	414	400	388	377	367	356	
5051 - 5100	494	442	428	414	400	388	377	367	356	345	335	324	494	480	466	452	438	424	410	396	385	375	364	



# SCHEDULAR TAX DEDUCTION TABLES

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5101 - 5150	505	452	438	424	410	396	385	375	364	353	343	332	505	491	477	463	449	435	421	407	393	383	372
5151 - 5200	515	463	449	435	421	407	393	383	372	361	351	340	515	501	487	473	459	445	431	417	403	391	380
5201 - 5250	526	473	459	445	431	417	403	391	380	369	359	348	526	512	498	484	470	456	442	428	414	400	388
5251 - 5300	536	484	470	456	442	428	414	400	388	377	367	356	536	522	508	494	480	466	452	438	424	410	396
5301 - 5350	547	494	480	466	452	438	424	410	396	385	375	364	547	533	519	505	491	477	463	449	435	421	407
5351 - 5400	557	505	491	477	463	449	435	421	407	393	383	372	557	543	529	515	501	487	473	459	445	431	417
5401 - 5450	568	515	501	487	473	459	445	431	417	403	391	380	568	554	540	526	512	498	484	470	456	442	428
5451 - 5500	578	526	512	498	484	470	456	442	428	414	400	388	578	564	550	536	522	508	494	480	466	452	438
5501 - 5550	589	536	522	508	494	480	466	452	438	424	410	396	589	575	561	547	533	519	505	491	477	463	449
5551 - 5600	599	547	533	519	505	491	477	463	449	435	421	407	599	585	571	557	543	529	515	501	487	473	459
5601 - 5650	610	557	543	529	515	501	487	473	459	445	431	417	610	596	582	568	554	540	526	512	498	484	470
5651 - 5700	620	568	554	540	526	512	498	484	470	456	442	428	620	606	592	578	564	550	536	522	508	494	480
5701 - 5750	631	578	564	550	536	522	508	494	480	466	452	438	631	617	603	589	575	561	547	533	519	505	491
5751 - 5800	641	589	575	561	547	533	519	505	491	477	463	449	641	627	613	599	585	571	557	543	529	515	501
5801 - 5850	652	599	585	571	557	543	529	515	501	487	473	459	652	638	624	610	596	582	568	554	540	526	512
5851 - 5900	662	610	596	582	568	554	540	526	512	498	484	470	662	648	634	620	606	592	578	564	550	536	522
5901 - 5950	673	620	606	592	578	564	550	536	522	508	494	480	673	659	645	631	617	603	589	575	561	547	533
5951 - 6000	683	631	617	603	589	575	561	547	533	519	505	491	683	669	655	641	627	613	599	585	571	557	543
6001 - 6050	694	641	627	613	599	585	571	557	543	529	515	501	694	680	666	652	638	624	610	596	582	568	554
6051 - 6100	704	652	638	624	610	596	582	568	554	540	526	512	704	690	676	662	648	634	620	606	592	578	564
6101 - 6150	715	662	648	634	620	606	592	578	564	550	536	522	715	701	687	673	659	645	631	617	603	589	575
6151 - 6200	725	673	659	645	631	617	603	589	575	561	547	533	725	711	697	683	669	655	641	627	613	599	585
6201 - 6250	736	683	669	655	641	627	613	599	585	571	557	543	736	722	708	694	680	666	652	638	624	610	596
6251 - 6300	746	694	680	666	652	638	624	610	596	582	568	554	746	732	718	704	690	676	662	648	634	620	606
6301 - 6350	759	704	690	676	662	648	634	620	606	592	578	564	759	743	729	715	701	687	673	659	645	631	617
6351 - 6400	772	715	701	687	673	659	645	631	617	603	589	575	772	755	739	725	711	697	683	669	655	641	627
6401 - 6450	785	725	711	697	683	669	655	641	627	613	599	585	785	768	750	736	722	708	694	680	666	652	638
6451 - 6500	798	736	722	708	694	680	666	652	638	624	610	596	798	781	763	746	732	718	704	690	676	662	648
6501 - 6550	811	746	732	718	704	690	676	662	648	634	620	606	811	794	776	759	743	729	715	701	687	673	659

## JADUAL POTONGAN CUKAI BULANAN SCHEDULE OF MONTHLY TAX DEDUCTIONS

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PINDAAN 1995

B = Bujang/Bersuami	Single Person/Married Woman	K = Kahwin	Married
KA1 = Berkahwin dan mempunyai 1 orang anak	Married, with 1 child	KA6 = Berkahwin dan mempunyai 6 orang anak	Married, with 6 children
KA2 = Berkahwin dan mempunyai 2 orang anak	Married, with 2 children	KA7 = Berkahwin dan mempunyai 7 orang anak	Married, with 7 children
KA3 = Berkahwin dan mempunyai 3 orang anak	Married, with 3 children	KA8 = Berkahwin dan mempunyai 8 orang anak	Married, with 8 children
KA4 = Berkahwin dan mempunyai 4 orang anak	Married, with 4 children	KA9 = Berkahwin dan mempunyai 9 orang anak	Married, with 9 children
KA5 = Berkahwin dan mempunyai 5 orang anak	Married, with 5 children	KA10 = Berkahwin dan mempunyai 10 orang anak	Married, with 10 children

Jumlah Saraan Bulanan  Total Monthly Remuneration  RM	POTONGAN CUKAI BULANAN MONTHLY TAX DEDUCTIONS																						
	Kategori 1 Category 1  B RM	Kategori 2 Category 2  Di mana isteri tidak bekerja Where wife is not working										Kategori 3 Category 3  Di mana isteri bekerja Where wife is working											
		K	KA1	KA2	KA3	KA4	KA5	KA6	KA7	KA8	KA9	KA10	K	KA1	KA2	KA3	KA4	KA5	KA6	KA7	KA8	KA9	KA10
		RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM	RM
6551 - 6600	824	759	743	729	715	701	687	673	659	645	631	617	824	807	789	772	755	739	725	711	697	683	669
6601 - 6650	837	772	755	739	725	711	697	683	669	655	641	627	837	820	802	785	768	750	736	722	708	694	680
6651 - 6700	850	785	768	750	736	722	708	694	680	666	652	638	850	833	815	798	781	763	746	732	718	704	690
6701 - 6750	863	798	781	763	746	732	718	704	690	676	662	648	863	846	828	811	794	776	759	743	729	715	701
6751 - 6800	876	811	794	776	759	743	729	715	701	687	673	659	876	859	841	824	807	789	772	755	739	725	711
6801 - 6850	889	824	807	789	772	755	739	725	711	697	683	669	889	872	854	837	820	802	785	768	750	736	722
6851 - 6900	902	837	820	802	785	768	750	736	722	708	694	680	902	885	867	850	833	815	798	781	763	746	732
6901 - 6950	915	850	833	815	798	781	763	746	732	718	704	690	915	898	880	863	846	828	811	794	776	759	743
6951 - 7000	928	863	846	828	811	794	776	759	743	729	715	701	928	911	893	876	859	841	824	807	789	772	755
7001 - 7050	941	876	859	841	824	807	789	772	755	739	725	711	941	924	906	889	872	854	837	820	802	785	768
7051 - 7100	954	889	872	854	837	820	802	785	768	750	736	722	954	937	919	902	885	867	850	833	815	798	781
7101 - 7150	967	902	885	867	850	833	815	798	781	763	746	732	967	950	932	915	898	880	863	846	828	811	794
7151 - 7200	980	915	898	880	863	846	828	811	794	776	759	743	980	963	945	928	911	893	876	859	841	824	807
7201 - 7250	993	928	911	893	876	859	841	824	807	789	772	755	993	976	958	941	924	906	889	872	854	837	820
7251 - 7300	1006	941	924	906	889	872	854	837	820	802	785	768	1006	989	971	954	937	919	902	885	867	850	833
7301 - 7350	1019	954	937	919	902	885	867	850	833	815	798	781	1019	1002	984	967	950	932	915	898	880	863	846



# SCHEDULAR TAX DEDUCTION TABLES



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7351 - 7400	1032	967	950	932	915	898	880	863	846	828	811	794	1032	1015	997	980	963	945	928	911	893	876	859
7401 - 7450	1045	980	963	945	928	911	893	876	859	841	824	807	1045	1028	1010	993	976	958	941	924	906	889	872
7451 - 7500	1058	993	976	958	941	924	906	889	872	854	837	820	1058	1041	1023	1006	989	971	954	937	919	902	885
7501 - 7550	1071	1006	989	971	954	937	919	902	885	867	850	833	1071	1054	1036	1019	1002	984	967	950	932	915	898
7551 - 7600	1084	1019	1002	984	967	950	932	915	898	880	863	846	1084	1067	1049	1032	1015	997	980	963	945	928	911
7601 - 7650	1097	1032	1015	997	980	963	945	928	911	893	876	859	1097	1080	1062	1045	1028	1010	993	976	958	941	924
7651 - 7700	1110	1045	1028	1010	993	976	958	941	924	906	889	872	1110	1093	1075	1058	1041	1023	1006	989	971	954	937
7701 - 7750	1123	1058	1041	1023	1006	989	971	954	937	919	902	885	1123	1106	1088	1071	1054	1036	1019	1002	984	967	950
7751 - 7800	1136	1071	1054	1036	1019	1002	984	967	950	932	915	898	1136	1119	1101	1084	1067	1049	1032	1015	997	980	963
7801 - 7850	1149	1084	1067	1049	1032	1015	997	980	963	945	928	911	1149	1132	1114	1097	1080	1062	1045	1028	1010	993	976
7851 - 7900	1162	1097	1080	1062	1045	1028	1010	993	976	958	941	924	1162	1145	1127	1110	1093	1075	1058	1041	1023	1006	989
7901 - 7950	1175	1110	1093	1075	1058	1041	1023	1006	989	971	954	937	1175	1158	1140	1123	1106	1088	1071	1054	1036	1019	1002
7951 - 8000	1188	1123	1106	1088	1071	1054	1036	1019	1002	984	967	950	1188	1171	1153	1136	1119	1101	1084	1067	1049	1032	1015
8001 - 8050	1201	1136	1119	1101	1084	1067	1049	1032	1015	997	980	963	1201	1184	1166	1149	1132	1114	1097	1080	1062	1045	1028
8051 - 8100	1214	1149	1132	1114	1097	1080	1062	1045	1028	1010	993	976	1214	1197	1179	1162	1145	1127	1110	1093	1075	1058	1041
8101 - 8150	1227	1162	1145	1127	1110	1093	1075	1058	1041	1023	1006	989	1227	1210	1192	1175	1158	1140	1123	1106	1088	1071	1054
8151 - 8200	1240	1175	1158	1140	1123	1106	1088	1071	1054	1036	1019	1002	1240	1223	1205	1188	1171	1153	1136	1119	1101	1084	1067
8201 - 8250	1253	1188	1171	1153	1136	1119	1101	1084	1067	1049	1032	1015	1253	1236	1218	1201	1184	1166	1149	1132	1114	1097	1080
8251 - 8300	1266	1201	1184	1166	1149	1132	1114	1097	1080	1062	1045	1028	1266	1249	1231	1214	1197	1179	1162	1145	1127	1110	1093
8301 - 8350	1279	1214	1197	1179	1162	1145	1127	1110	1093	1075	1058	1041	1279	1262	1244	1227	1210	1192	1175	1158	1140	1123	1106
8351 - 8400	1292	1227	1210	1192	1175	1158	1140	1123	1106	1088	1071	1054	1292	1275	1257	1240	1223	1205	1188	1171	1153	1136	1119
8401 - 8450	1305	1240	1223	1205	1188	1171	1153	1136	1119	1101	1084	1067	1305	1288	1270	1253	1236	1218	1201	1184	1166	1149	1132
8451 - 8500	1318	1253	1236	1218	1201	1184	1166	1149	1132	1114	1097	1080	1318	1301	1283	1266	1249	1231	1214	1197	1179	1162	1145
8501 - 8550	1331	1266	1249	1231	1214	1197	1179	1162	1145	1127	1110	1093	1331	1314	1296	1279	1262	1244	1227	1210	1192	1175	1158
8551 - 8600	1344	1279	1262	1244	1227	1210	1192	1175	1158	1140	1123	1106	1344	1327	1309	1292	1275	1257	1240	1223	1205	1188	1171
8601 - 8650	1357	1292	1275	1257	1240	1223	1205	1188	1171	1153	1136	1119	1357	1340	1322	1305	1288	1270	1253	1236	1218	1201	1184
8651 - 8700	1370	1305	1288	1270	1253	1236	1218	1201	1184	1166	1149	1132	1370	1353	1335	1318	1301	1283	1266	1249	1231	1214	1197
8701 - 8750	1383	1318	1301	1283	1266	1249	1231	1214	1197	1179	1162	1145	1383	1366	1348	1331	1314	1296	1279	1262	1244	1227	1210
8751 - 8800	1396	1331	1314	1296	1279	1262	1244	1227	1210	1192	1175	1158	1396	1379	1361	1344	1327	1309	1292	1275	1257	1240	1223

## JADUAL POTONGAN CUKAI BULANAN SCHEDULE OF MONTHLY TAX DEDUCTIONS

PINDAAN 1995

B = Bujang/Bersuami

KA1 = Berkahwin dan mempunyai 1 orang anak

KA2 = Berkahwin dan mempunyai 2 orang anak

KA3 = Berkahwin dan mempunyai 3 orang anak

KA4 = Berkahwin dan mempunyai 4 orang anak

KA5 = Berkahwin dan mempunyai 5 orang anak

Single Person/Married Woman

Married, with 1 child

Married, with 2 children

Married, with 3 children

Married, with 4 children

Married, with 5 children

K = Kahwin

KA6 = Berkahwin dan mempunyai 6 orang anak

KA7 = Berkahwin dan mempunyai 7 orang anak

KA8 = Berkahwin dan mempunyai 8 orang anak

KA9 = Berkahwin dan mempunyai 9 orang anak

KA10 = Berkahwin dan mempunyai 10 orang anak

Married

Married, with 6 children

Married, with 7 children

Married, with 8 children

Married, with 9 children

Married, with 10 children

Jumlah Saran Bulanan

Total Monthly Remuneration

RM

Kategori 1

Category 1

B

RM

Kategori 2

Category 2

Di mana isteri tidak bekerja

Where wife is not working

K

KA1

KA2

KA3

KA4

KA5

KA6

KA7

KA8

KA9

KA10

RM

Kategori 3

Category 3

Di mana isteri bekerja

Where wife is working

K

KA1

KA2

KA3

KA4

KA5

KA6

KA7

KA8

KA9

KA10

RM

8801 - 8850

1411

1344

1327

1309

1292

1275

1257

1240

1223

1205

1188

1171

1411

1392

1374

1357

1340

1322

1305

1288

1270

1253

1236

1219

8851 - 8900

1425

1357

1340

1322

1305

1288

1270

1253

1236

1218

1201

1184

1425

1406

1387

1370

1353

1335

1318

1301

1283

1266

1249

1232

8901 - 8950

1440

1370

1353

1335

1318

1301

1283

1266

1249

1231

1214

1197

1440

1420

1401

1383

1366

1348

1331

1314

1296

1279

1262

1245

8951 - 9000

1454

1383

1366

1348

1331

1314

1296

1279

1262

1244

1227

1210

1454

1435

1415

1396

1379

1361

1344

1327

1309

1292

1275

1258

9001 - 9050

1469

1396

1379

1361

1344

1327

1309

1292

1275

1257

1240

1223

1469

1449

1430

1411

1392

1374

1357

1340

1322

1305

1288

1271

9051 - 9100

1483

1411

1392

1374

1357

1340

1322

1305

1288

1270

1253

1236

1483

1464

1444

1425

1406

1387

1370

1353

1335

1318

1301

1284

9101 - 9150

1498

1425

1406

1387

1370

1353

1335

1318

1301

1283

1266

1249

1498

1478

1459

1440

1420

1401

1383

1366

1348

1331

1314

1297

9151 - 9200

1512

1440

1420

1401

1383

1366

1348

1331

1314

1296

1279

1262

1512

1493

1473

1454

1435

1415

1396

1379

1361

1344

1327

1310

9201 - 9250

1527

1454

1435

1415

1396

1379

1361

1344

1327

1309

1292

1275

1527

1507

1488

1469

1449

1430

1411

1392

1374

1357

1340

1323

9251 - 9300

1541

1469

1449

1430

1411

1392

1374

1357

1340

1322

1305

1288

1541

1522

1502

1483

1464

1444

1425

1406

1387

1370

1353

1336

9301 - 9350

1556

1483

1464

1444

1425

1406

1387

1370

1353

1335

1318

1301

1556

1536

1517

1498

1478

1459

1440

1420

1401

1383

1366

1349

9351 - 9400

1570

1498

1478

1459

1440

1420

1401

1383

1366

1348

1331

1314

1570

1551

1531

1512

1493

1473

1454

1435

1415

1396

1379

1362

9401 - 9450

1585

1512

1493

1473

1454

1435

1415

1396

1379

1361

1344

1327

1585

1565

1546

1527

1507

1488

1469

1449

1430

1411

1392

1375

9451 - 9500

1599

1527

1507

1488

1469

1449

1430

1411

1392

1374

1357

1340

1599

1580

1560

1541

1522

1502

1483

1464

1444

1425

1406

1389

9501 - 9550

1614

1541

1522

1502

1483

1464

1444

1425

1406

1387

1370

1353

1614

1594

1575

1556

1536

1517

1498

1478

1459

1440

1420

1403

9551 - 9600

1628

1556

1536

1517

1498

1478

1459

1440

1420

1401

1383

1366

1628

1609

1589

1570

1551

1531

1512

1493

1473

1454

1435

1418

PINDAAN 1990



# SCHEDULAR TAX DEDUCTION TABLES

9

9601 - 9650	1643	1570	1551	1531	1512	1493	1473	1454	1435	1415	1396	1379	1643	1623	1604	1585	1565	1546	1527	1507	1488	1469	1449
9651 - 9700	1657	1585	1565	1546	1527	1507	1488	1469	1449	1430	1411	1392	1657	1638	1618	1599	1580	1560	1541	1522	1502	1483	1464
9701 - 9750	1672	1599	1580	1560	1541	1522	1502	1483	1464	1444	1425	1406	1672	1652	1633	1614	1594	1575	1556	1536	1517	1498	1478
9751 - 9800	1686	1614	1594	1575	1556	1536	1517	1498	1478	1459	1440	1420	1686	1667	1647	1628	1609	1589	1570	1551	1531	1512	1493
9801 - 9850	1701	1628	1609	1589	1570	1551	1531	1512	1493	1473	1454	1435	1701	1681	1662	1643	1623	1604	1585	1565	1546	1527	1507
9851 - 9900	1715	1643	1623	1604	1585	1565	1546	1527	1507	1488	1469	1449	1715	1696	1676	1657	1638	1618	1599	1580	1560	1541	1522
9901 - 9950	1730	1657	1638	1618	1599	1580	1560	1541	1522	1502	1483	1464	1730	1710	1691	1672	1652	1633	1614	1594	1575	1556	1536
9951 - 10000	1744	1672	1652	1633	1614	1594	1575	1556	1536	1517	1498	1478	1744	1725	1705	1686	1667	1647	1628	1609	1589	1570	1551
10001 - 10050	1759	1686	1667	1647	1628	1609	1589	1570	1551	1531	1512	1493	1759	1739	1720	1701	1681	1662	1643	1623	1604	1585	1565
10051 - 10100	1773	1701	1681	1662	1643	1623	1604	1585	1565	1546	1527	1507	1773	1754	1734	1715	1696	1676	1657	1638	1618	1599	1580
10101 - 10150	1788	1715	1696	1676	1657	1638	1618	1599	1580	1560	1541	1522	1788	1768	1749	1730	1710	1691	1672	1652	1633	1614	1594
10151 - 10200	1802	1730	1710	1691	1672	1652	1633	1614	1594	1575	1556	1536	1802	1783	1763	1744	1725	1705	1686	1667	1647	1628	1609
10201 - 10250	1817	1744	1725	1705	1686	1667	1647	1628	1609	1589	1570	1551	1817	1797	1778	1759	1739	1720	1701	1681	1662	1643	1623
10251 - 10300	1831	1759	1739	1720	1701	1681	1662	1643	1623	1604	1585	1565	1831	1812	1792	1773	1754	1734	1715	1696	1676	1657	1638
10301 - 10350	1846	1773	1754	1734	1715	1696	1676	1657	1638	1618	1599	1580	1846	1826	1807	1788	1768	1749	1730	1710	1691	1672	1652
10351 - 10400	1860	1788	1768	1749	1730	1710	1691	1672	1652	1633	1614	1594	1860	1841	1821	1802	1783	1763	1744	1725	1705	1686	1667
10401 - 10450	1875	1802	1783	1763	1744	1725	1705	1686	1667	1647	1628	1609	1875	1855	1836	1817	1797	1778	1759	1739	1720	1701	1681
10451 - 10500	1889	1817	1797	1778	1759	1739	1720	1701	1681	1662	1643	1623	1889	1870	1850	1831	1812	1792	1773	1754	1734	1715	1696
10501 - 10550	1904	1831	1812	1792	1773	1754	1734	1715	1696	1676	1657	1638	1904	1884	1865	1846	1826	1807	1788	1768	1749	1730	1710
10551 - 10600	1918	1846	1826	1807	1788	1768	1749	1730	1710	1691	1672	1652	1918	1899	1879	1860	1841	1821	1802	1783	1763	1744	1725
10601 - 10650	1933	1860	1841	1821	1802	1783	1763	1744	1725	1705	1686	1667	1933	1913	1894	1875	1855	1836	1817	1797	1778	1759	1739
10651 - 10700	1947	1875	1855	1836	1817	1797	1778	1759	1739	1720	1701	1681	1947	1928	1908	1889	1870	1850	1831	1812	1792	1773	1754
10701 - 10750	1962	1889	1870	1850	1831	1812	1792	1773	1754	1734	1715	1696	1962	1942	1923	1904	1884	1865	1846	1826	1807	1788	1768
10751 - 10800	1976	1904	1884	1865	1846	1826	1807	1788	1768	1749	1730	1710	1976	1957	1937	1918	1899	1879	1860	1841	1821	1802	1783
10801 - 10850	1991	1918	1899	1879	1860	1841	1821	1802	1783	1763	1744	1725	1991	1971	1952	1933	1913	1894	1875	1855	1836	1817	1797
10851 - 10900	2005	1933	1913	1894	1875	1855	1836	1817	1797	1778	1759	1739	2005	1986	1966	1947	1928	1908	1889	1870	1850	1831	1812
10901 - 10950	2020	1947	1928	1908	1889	1870	1850	1831	1812	1792	1773	1754	2020	2000	1981	1962	1942	1923	1904	1884	1865	1846	1826
10951 - 11000	2034	1962	1942	1923	1904	1884	1865	1846	1826	1807	1788	1768	2034	2015	1995	1976	1957	1937	1918	1899	1879	1860	1841
11001 - 11050	2049	1976	1957	1937	1918	1899	1879	1860	1841	1821	1802	1783	2049	2029	2010	1991	1971	1952	1933	1913	1894	1875	1855

## NOTES

- The total monthly remuneration in respect of which monthly deductions are to be made under this Schedule are remuneration of every description paid during the month to the employee, including director's fees less any money paid to the employee by way of refund for bona fide out-of-pocket expenses incurred in respect of travelling or subsistence in the performance of the duties of the employment and less the employee's compulsory contributions to Employees Provident Fund or to any approved pension fund, subject to a maximum of RM416 per month or RM5,000 per year.
- Where a bonus, gratuity, commission or other similar payments is made to an employee, additional to normal remuneration, the amount of additional tax to be deducted in the month in which that bonus, gratuity, commission or other similar payment (the "additional payment") is made shall be calculated as follows:

12 x deduction on notional monthly remuneration

less

12 x deduction on normal monthly remuneration

The notional monthly remuneration shall be calculated as the normal monthly remuneration plus one-twelfth on the additional payment.

- "Child" in relation to an employee, means an unmarried dependent legitimate child or stepchild or adopted child of his, under the age of 18 years. If above 18 years old, the child must be:
  - receiving full-time instruction at any university, college, school or others similar educational establishment; or
  - serving under articles of indentures with a view to qualify in a trade or profession.
- Where an employee is a divorcee, a widow, or a widower, and pays for the maintenance of the children, Category 3 of the schedular monthly tax deduction applies. Where that employee has no children, Category 1 applies.

## ADDITIONAL NOTES

- Claim For Child Relief

The Schedular Tax Deduction (STD) tables are calculated on child relief under normal circumstances. There may be instances

where employees could be entitled to additional child relief. Under these circumstances, employers may make deductions in accordance with the following guidelines:

In circumstances where

- Child over the age of 18 years and receiving full-time education in college or university outside Malaysia.
- Child over the age of 18 years and receiving full-time education in a college or university in Malaysia.
- Child certified by the Department of Social Welfare to be disabled.

- Please note that the wife may elect to wholly claim child relief. Where she elects, her STD deduction shall be determined in accordance with Category 3 and the STD deduction for the husband shall be determined in accordance with Category 1.
- For further information regarding STD, please contact our nearest IRD branch.



## MALAYSIAN INSTITUTE OF TAXATION

**Rules And Regulations**  
**(ON PROFESSIONAL CONDUCT AND ETHICS)**

**T**hese rules and regulations are made by the Council of the Malaysian Institute of Taxation pursuant to Article 22 of its Articles of Association and shall come into force on 1 September 1995.

Members are required to observe proper standards of professional conduct and specifically to refrain from acts which have been described in the rules and regulations as misconduct, which includes, but is not confined to, any act or default likely to bring discredit to himself, the Institute or the taxation profession.

Members who fail to observe such standards may be required to answer a complaint before the Investigation and Disciplinary Committees.



# FUNDAMENTAL PRINCIPLES

*The fundamental principles set out below frame in broad and general terms the basic guidelines for the professional conduct of members.*

- 1.1 In accepting or continuing a professional assignment or occupation a member should always have regard to any factors which might reflect adversely upon his integrity and objectivity in relation to that assignment or occupation.*
- 1.2 A member should carry out his professional work with a proper regard for the technical and professional standards expected of him as a member and should not undertake or continue professional work which he is not himself competent to perform unless he obtains such advice and assistance as will enable him competently to carry out his task.*
- 1.3 A member should conduct himself with courtesy and consideration towards all with whom he comes into contact in the course of his professional work.*
- 1.4 A member should follow the ethical guidance of the Institute and in circumstances not provided for by that guidance should conduct himself in a manner consistent with the good reputation of the profession and the Institute.*
- 1.5 A member should be truthful and honest in all his professional work. In particular, he should not knowingly or recklessly supply information or make any statements which are false or misleading. Similarly, a member should not knowingly fail to supply relevant information.*
- 1.6 A member should not undertake within his professional practice business activities which are not compatible with those normally undertaken by tax practitioners.*



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## HOW TO BECOME A MEMBER OF THE MALAYSIAN INSTITUTE OF TAXATION

### Benefits and Privileges of Membership

The Principal benefits to be derived from membership are:

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

### Qualification Required For Membership

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

### Associate Membership

1. Any person who has passed the Advanced Course examination conducted by the Department of Inland Revenue and who has not less than five (5) years practical experience in practice or employment relating to taxation matters approved by the Council.
2. Any person whether in practice or in employment who is an advocate or solicitor of the High Court of Malaya, Sabah and Sarawak and who has had not less than five (5) years practical experience in practice or employment relating to taxation matters approved by the Council.

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

### Fellow Membership

1. A Fellow may be elected by the Council provided the applicant has been an Associ-

ate Member for not less than five (5) years and in the opinion of the Council he is a fit and proper person to be admitted as a Fellow.

2. Notwithstanding, Article 8(1) of the Articles of Association, the First Council Members shall be deemed to be Fellows of the Institute.

### Application of Membership

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

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

	Fellow	Associate
(a) Admission Fee:	RM300	RM200
(b) Annual Subscription:	RM100	RM75

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

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

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

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