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- An Overview Of The Global Information Infrastructure Or 'Information Superhighway'
- The World Wide Web And Electronic Commerce
- Security And Encryption
- Payment Mechanisms
- Tax Policy And Administration Issues: General Considerations
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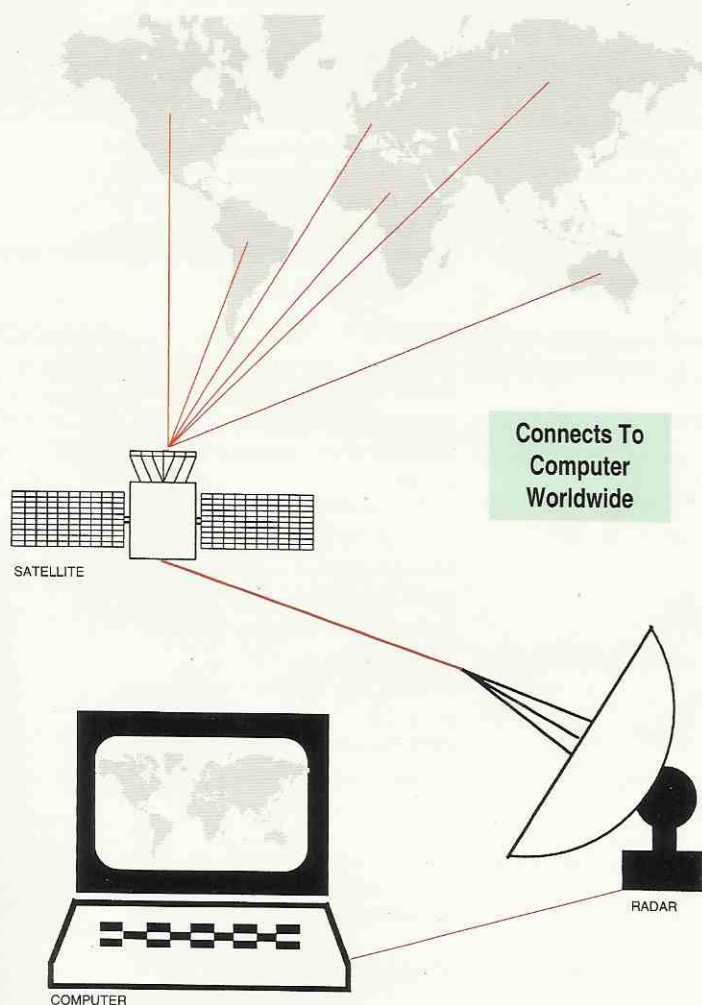
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Malaysian Institute of Taxation



Multimedia Super Corridor



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The objectives of the Institute are, inter alia:

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

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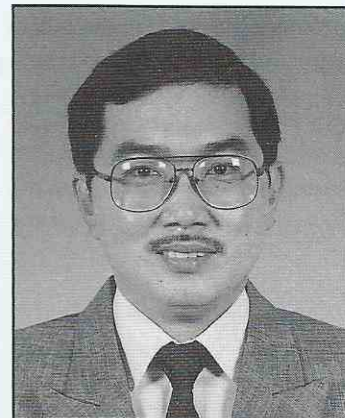
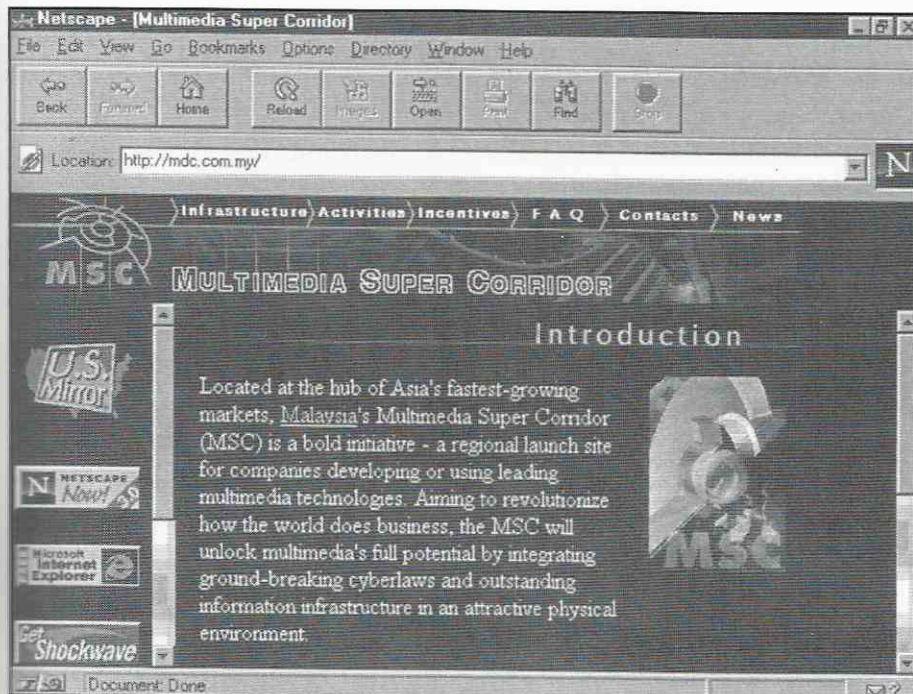
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Multimedia Super Corridor

by Antony Tong

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Antony Tong

Leading Asia's Information Age

Much has been publicised and written on Malaysia's Multimedia Super Corridor that it is not surprising that infoseek turned up 443,462 references to the MSC on the world wide web. Top of the search results with 100% relevancy is the homepage of the Multimedia Development Corporation at <http://www.mdc.com.my>.

To access the site, you require an advanced browser that accepts frames and Javascripts. Netscape 3.0 is recommended which can be downloaded from the site itself.

The first page will introduce you to the MSC: "Located at the hub of Asia's fastest-growing markets, Malaysia's Multimedia Super Corridor is a bold initiative - a regional launch site for companies developing or using leading multimedia technologies.

Aiming to revolutionize how the world does business, the MSC will unlock multimedia's full potential by integrating ground-breaking cyberlaws and outstanding information infrastructure in an attractive physical environment." Considering that the MSC will be the first of its kind anywhere in the world, the MSC will take Malaysia into "Cyberspace, the final frontier....going boldly where no nation has gone before".

You can then browse through various sections dealing with **Infrastructure, Activities, Incentives, FAQ, Contacts and News**. A 12- page Investors' Brochure is also included under the **News** section which covers titles like Malaysia's Multimedia Super Corridor, The MSC - The Perfect Multimedia Environment, Superior Telecommunications And Logistics, Multimedia Commerce - Enabling Policies And Cyberlaws, Seven

Flagship Applications To Drive Development, MSC Status - A Bill Of Guarantees and Compelling Incentives, The Multimedia Development Corporation - The MSC's Super Agency, Cyberjaya - An Outstanding Environment To Work And Play, Malaysia - Building On Past Successes and Who Should Be In The MSC. To read the Investors' Brochure though, you require Adobe Acrobat Reader 3.0 - if you do not have this software, don't worry - MDC have created a link for you to download it.

The site also explains what is the MDC and its role in the MSC? The MDC was formed and given the monumental task by the Malaysian Government of being the champion, facilitator, custodian and partner of companies choosing to operate in the MSC. It will be a one-stop super agency, cutting through red tape to expedite permit and licence approvals. This is most welcomed as MSC companies need only to deal with the Corporation, thereby eliminating the need of dealing with a host of government departments. Other

functions of the MDC include the provision of information and advice on the MSC, introducing companies to potential local partners and financiers, marketing the MSC globally, shaping MSC-specific laws and policies and setting standards for the MSC's information infrastructure and urban developments.

MDC has thoughtfully included a section on **FAQs** (Frequently Asked Questions). Since the MSC was first proposed and promoted worldwide through the efforts of our Prime Minister Datuk Seri Dr Mahathir Mohamad and the MDC, headed by its executive chairman Tan Sri Dr Othman Yeop Abdullah, there has been intense interest and numerous queries on the MSC. The twelve Q&A in the FAQs however provides clarification on certain general areas of the MSC. Specific operational questions would have to wait until the MDC iron out the issues.

A piece of good news though - for companies interested in obtaining MSC status, application brochures will be ready in early March 1997 from the MDC. These brochures will set out a list of incentives and guidelines. In the meantime, you can take a look at the electronic version of this brochure under the **Contacts** section by clicking on "Applying for MSC Status". Currently, four companies have obtained MSC status - Mimos Berhad, Telekom Malaysia Bhd, US-based Sun Microsystems Pte Ltd and Nippon Telegraph and Telephone Corporation of Japan.

To see what the site has on incentives, go to **MSC Status - A Bill of Guarantees and Compelling Incentives** in the Investors' Brochure. These are listed as including:-

- Substantial financial incentives such as 0 per cent income tax for up to 10 years or a 100 per cent Investment Tax Allowance, and no duties on multimedia equipment.
- The right to tender for key implementation contracts for Flagship Applications. Only companies with MSC status will be able to apply for these contracts.
- Support from the MDC's one-stop client centre that will expedite visas and other licences and permits.
- Direct access to Malaysia's top leadership through membership in the MSC's International Advisory Panel, chaired by the Prime Minister, and the Founders' Council, chaired by the Deputy Prime Minister. First movers to the MSC will be invited to sit on these high-level councils. (Twenty-eight leaders of multinational IT companies have been appointed to sit on the International Advisory Panel).

MDC's operating officer Dr Mohamed Arif Nun recently reported that details of the package of incentives for MSC companies are expected to be finalised in February 1997 by a Committee comprising the MDC, the Treasury, Bank Negara and the Inland Revenue. This package would also consider the

other incentives announced in the 1997 Budget such as:-

- A special incentive for companies whose presence attract other companies to establish their operations in the IT City.
- A special guideline to regulate foreign currency transactions and loans.
- Small-and medium-scale industries undertaking Research and Development activities be given funding under the allocation for Intensification of Research in Priority Areas.
- Recruitment of expatriates according to needs.

All-in-all, the MDC homepage offers you a wealth of information on the MSC. You have to be patient though as not all the answers you may want on the MSC can be found here - wait till early March 1997 when the application brochure and incentive package is ready.

For further queries, you can contact the MDC at Level 1, Enterprise 2 Technology Park Malaysia, Bukit Jalil, 57200 Kuala Lumpur, Malaysia. Its telephone is +(603) 966-1388 and fax +(603) 966-0388.

Frequently Asked Questions

Q: When will the MSC's multimedia network be in place?

A: The fibre-optic backbone (with potential capacity of 2.5-10 gigabit per second) will be in place by 1998. There will also be high-bandwidth links from the MSC to the rest of Malaysia and other countries, including 5 gigabit per second fibre-optic links to ASEAN, Japan, the US and Europe in place by mid-1997.

Q: When will the MSC's other infrastructure projects be in place?

A: Kuala Lumpur Tower, the region's tallest telecommunications facility, is already operational. Kuala Lumpur International Airport, the largest airport in the region with 80 gates, is scheduled to open in 1998 in time for the Commonwealth Games. Kuala Lumpur City Centre is nearing completion (the twin towers already dominate the KL skyline) and will be ready for occupancy in 1997. The first phase of IT City (working population of 16,000) is scheduled to be completed by 1998.

Q: What can I do here that I can't do in Silicon Valley?

A: Penetrate Asian markets. The Asian market is growing rapidly with rising incomes, booming PC penetration and expanding network infrastructures. The critical differentiators and idiosyncrasies of each market cannot be "virtually" analysed, internalised and met by firms in far-off locations who do not have a committed presence on the ground in Asia. Personal relationships remain important in Asia and this requires overseas com-

panies to select a regional hub for a physical presence.

With the best environment in the world for harnessing the benefits of multimedia, the MSC offers the one thing Silicon Valley can never provide: a low-cost, central and influential base in Asia, from which to penetrate Asian markets using leading-edge multimedia technologies and applications.

Q: How will I attract skilled staff?

A: The skilled workforce needs of companies in the MSC will be met by a combination of

- Unrestricted and user-friendly work permit policies for foreign knowledge workers.
- A dramatic increase in the number of technical and business professionals graduating from Malaysian universities.
- A growing number of technical graduates from the MSC's new Multimedia University and the MSC campuses of top IT universities.
- Creation of university-company partnerships to educate and train potential employees in specific skills. These factors will be reinforced by the development of eco-friendly, cost-effective and convenient world-class living environments in the MSC. The projects to build these environments (such as Cyberjaya and the Kuala Lumpur City Centre) are already well under way. This superb living environment will attract tech-

nical professionals from across Malaysia and the rest of the world to locate in the MSC.

Q: How easy is access to major business centres?

A: Via telecoms, the MSC will have 5 gigabit per second fibre-optic links to hubs in ASEAN, Japan, the US and Europe, enough bandwidth to handle multimedia conferencing as well as traditional, high-quality voice communications.

Via physical transport, Kuala Lumpur International Airport (open in 1998) will have the capacity to handle 25 million passengers per annum through its 80 gates and two parallel runways, up to 60 million passengers by 2020. It will also have the capacity to handle over 1 million metric tonnes of cargo to and from major centres in Asia and the rest of the world. In addition, high-speed road and rail links will provide efficient access to the four main seaports - Penang, Port Kelang, Kuantan and Pasir Gudang - across Peninsular Malaysia.

Q: What is the cost of telecoms and other necessary operating costs?

A: The MSC is committed to providing world-class telecoms, linked to all global business centres, with the most cost-competitive and innovative tariffs. Costs will compete with US telecoms rates and special time-or distance-independent tariff structures will be developed for MSC companies.

Frequently Asked Questions

Q: What ownership restrictions will be imposed on my company ?

A: None. Traditional ownership restrictions will be lifted within the MSC to accelerate the growth of the MSC and enhance its attractiveness to world-class companies.

Q: Is the legal environment restrictive ?

A: In accordance with the Bill of Guarantees, the policies and laws of the MSC are being designed to make it the best environment in the world to harness the benefits of multimedia technologies and applications. The laws that will be enforced will make Malaysia the regional leader in intellectual property protection and free information exchange.

Founding companies will have an influential role in continuing to shape the development of the MSC's world-first "cyber-laws" and other business policies. Over 150 detailed interviews have been conducted with multimedia / IT companies to understand their requirements. The Bill of Guarantees and cyber-laws reflect this input.

Q: What will the lifestyle be like ? Will I want to live there ? Will my employees want to live there ?

A: Cyberjaya, the major living community development in the MSC,

is located amongst rolling hills of rain-forests and plantations set off by many natural lakes. Strict zoning policies will preserve the environmental beauty and air quality of this eco-friendly development, powered by solar and other zero-emission urban waste energy sources.

There will be a choice of hillside mansions, lakefront houses and condominiums to suit family needs, while first-class, resort-style hotels and serviced apartments accommodate business professionals in transit. There will be convenient shopping and excellent recreational facilities, as well as short and easy commutes to KL Tower, KLCC, Putrajaya and KLIA.

Q: How stable is the Malaysian economic and political landscape ?

A: Extremely stable. Since independence in 1957, Malaysia has been led by the National Front party, which has the strong support of the populace, having led the nation through spectacular and equitable phases of economic growth based on its development initiatives in agriculture in the 1960s and in manufacturing / industrialisation in the 1970s and 80s. The MSC is the latest initiative to once again leapfrog the economy to leadership in the Information Age. As such, the MSC also enjoys the widespread popularity and support of the Malaysian people.

Q: What is the long-term commitment of the government to the MSC ?

A: The Prime Minister and Cabinet have embraced the MSC concept and are communicating it throughout the country and overseas. In Malaysia, this has triggered an avalanche of interest by private developers and state governments. In the MSC area, several multimedia developments are already underway and numerous companies are submitting applications to begin operations there. Select early-movers will have direct access to Malaysia's leaders through the International Advisory Panel, which is chaired by the Prime Minister, and the Founders' Council.

Q: How many government agencies will I interact with ?

A: One. The Multimedia Development Corporation's key role is to serve MSC companies as its clients as the one-stop shop responsible for maintaining all aspects of the MSC's ideal environment, business and otherwise. It will combine the efficiency and effectiveness of a private company with the decision-making authority of a high-powered government agency.



Q U O T E

**'It is not sufficient to know what one ought to say,
but one must also know how to say it'**

Aristotle

Cyberspace*



EXECUTIVE SUMMARY

New information and communications technologies such as the Internet are creating exciting opportunities for workers, consumers, and businesses. Information, services, and money may now be instantaneously transferred anywhere in the world. Firms are increasing their imports and exports of goods, services, and information as the costs associated with participating in global markets plummet, and they are forming closer relationships with suppliers and customers around the world. New markets and market mechanisms are emerging. Consumers can choose from a much broader range of goods and services, and "intelligent agent" software will soon give consumers an unprecedented ability to hunt for bargains.

These new technologies, particularly communications technologies including the Internet, have effectively eliminated national borders on the information highway. As a result, cross-border transactions may run the risk that countries will claim inconsistent taxing jurisdictions, and that taxpayers will be subject to quixotic taxation. If these technologies are to achieve their maximum potential, rules that provide certainty and prevent double taxation are required.

In order to ensure that these new technologies not be impeded, the development of substantive tax policy and administration in this area should be guided by the principle of neutrality. Neutrality rejects the imposition of new or additional taxes on electronic transactions and instead simply requires that the tax system treat similar income equally, regardless of whether it is earned through electronic means or through existing channels of commerce.

A major substantive issue raised by these new technologies is identifying the country or countries which have the jurisdiction to tax such income. It is necessary to clarify how existing concepts apply to persons engaged in electronic commerce. In addition, transactions in cyberspace will likely accelerate the current trend to de-emphasize traditional concepts of source-based taxation, increasing the importance of residence-based taxation.

Another major category of issues involve the classification of income arising from transactions in digitized information, such as computer programs, books, music, or images. The distinction between royalty sale of goods, and services income must be refined in light of the ease of transmitting and reproducing digitized information.

In the area of tax administration and compliance, electronic commerce may create new variations on old issues as well as new categories of issues. The major compliance issue posed by electronic commerce is the extent to which electronic money is analogous to cash and thus creates the potential for anonymous and untraceable transactions. Another significant category of issues involves identifying parties to communications and transactions utilizing these new technologies and verifying records when transactions are conducted electronically. However, developments in the science of encryption and related technologies may lead to systems that verify the identity of persons on-line and ensure the veracity of electronic documents.

Tax National invites comments on the issues raised by this paper as well as any other issues relating to electronic commerce.

Cyberspace*

INTRODUCTION

It is by now a well-worn cliché to say that we live in an era of rapid technological and social change. Technologies and businesses that were unknown a few years ago are now widespread. Most recently, the explosive growth of telecommunications technology, sometimes referred to as the "Global Information Infrastructure," or the "Information Superhighway" which includes the Internet, has enabled people to communicate and exchange information on an unprecedented scale. These technologies present tremendous opportunities to enrich all of our lives in so many ways, many of which we are likely not to have envisioned. The day is coming when every home will be connected to it, and it will be just as normal a part of our life as a telephone and a television. It's becoming our new town square, changing the way we relate to one another, the way we send mail, the way we hear news, the way we play.

These new technologies bring with them social changes and new ways of doing business. Services are an ever-growing sector of the economy. Modern telecommunications allow information, services, and money to be instantaneously transferred anywhere in the world. Some have even speculated that the traditional corporation could itself become obsolete in certain cases as "virtual corporations" bring together varying groups of consultants and independent contractors on a project-by-project basis.

These technological advances may put particular pressure on the principles governing the taxation of

transnational transactions. It is the very nature of these developments that they tend to blur national borders and the source and character of income. Consequently, significant issues often arise regarding how the income arising from transnational transactions utilizing these technologies should be treated under current rules. As a result, it is possible that countries will claim inconsistent taxing jurisdiction, with the attendant possibility that taxpayers will be subject to international double taxation. If these technologies are to achieve their maximum potential, this must be avoided. Overall tax policy goal in this area should emulate policy in other areas — maintain neutrality, fairness and simplicity — a policy which serves to encourage all desirable economic activity new and old.

These technological developments dictate that the Income Tax Act and generally accepted principles of international tax policy be reexamined. It is in all parties' interests to study the potential issues now, seek public comment, and develop rules that accommodate evolving technologies and ways of doing business.

This paper is meant to be a step in this process of reexamination. It is neither a treatise on taxation of technology nor a blueprint for future changes. Instead, the purpose of this paper is to stimulate public discussion by raising issues that currently exist or seem likely to arise. This paper is intended to encourage interested taxpayers, practitioners, academics, and others to comment on the issues identified herein and other similar tax issues that they believe require

Some have even speculated that the traditional corporation could itself become obsolete in certain cases

resolution.

The modernization process of which this paper is an early step will proceed on many fronts. Some of the issues identified in this paper can be resolved through the administrative process. It is possible that other issues can be resolved only through amendments to the Income Tax Act. Finally, it may also be necessary to reach an international consensus on certain issues.

It is intended that the goal of this process is to develop a framework for analysis that will not impede electronic commerce. The solutions that emerge should be sufficiently general and flexible in order to deal with developments in technology and ways of doing business that are currently unforeseen. In most cases, this will require that existing principles be adapted and reinterpreted in the context of developments in technology. In extreme cases, it may be necessary to develop new concepts.

The nature of the Global Information Infrastructure obviously has ramifications beyond taxation, including national security, copyright, privacy, security, financial trading systems, and even economic measurement. These issues are outside the scope of this paper.



Cyberspace*

AN OVERVIEW OF THE GLOBAL INFORMATION INFRASTRUCTURE OR "INFORMATION SUPERHIGHWAY"

The Information Superhighway

The Information Superhighway or Global Information Infrastructure is not a single computer network or means of communication but instead refers to the convergence of previously separate communications and computing systems into an interoperable, global network of networks. Eventually, this superhighway may transmit a wide spectrum of information, films, programs, and services into every business and household, incorporating voice telephone and cable television. This trend is driven in part by the fact that the cost of communications is falling quickly. The Information Superhighway permits its users to send and receive information around the world, at relatively low cost.

Convergence of technologies

The distinct communications systems that will converge to form the Information Superhighway include telephone systems, cable and satellite communications, and computer networks. This convergence has been in part driven by two major technological changes. In telecommunications, transmission has evolved from copper wire, which has a relatively limited data transmission capacity to fiber optic cable, which has virtually limitless capacity. This increased capacity makes it practical to rapidly transmit large amounts of information such as videos or x-rays. The second technological development is "digitization," the conversion of text, sound, images, video and other content into a common digital format. Any type of information, including cash equivalents, which can be digitized can be transmitted electronically.

Communications revolution is more than the Internet

Although the Internet which is dis-

cussed below, is the best known aspect of the communications revolution, the Internet is only an example of these developments. Many companies now operate extensive internal corporate networks, or "intranets," and certain transactions, such as in the financial services sector, are likely to occur on private networks for security reasons. For tax considerations, it is generally immaterial whether parties communicate over the Internet or over a private, proprietary network, such as an on-line service or over an intra corporate network. It is also necessary to keep in mind that the communications revolution is the result of a number of technological and economic developments, such as relatively inexpensive computers and telecommunications services and the growth of the service sector. The growth of the service sector plays an important role because developments in communications allow services to be instantaneously transmitted around the world. As a result, services frequently no longer need to be produced at the place where they are consumed. As developments in communications facilitate international trade in services, there may be increasing pressure on the international tax rules that apply to such services.

The Internet

The most widely publicized part of the information superhighway is the Internet. While originally a system connecting governmental and academic institutions, the Internet has expanded beyond its initial participants to a world-wide network with user estimates ranging from 30-60 million, and growing rapidly. The Internet has been described as a *world-wide network of networks with gateways linking organizations in North and South America, Europe, the Pacific Basin and other countries . . . The organization ad-*

ministratively independent from one another. There is no central, worldwide, technical control point. Yet, working together, these organizations have created what to a user seems to be a virtual network that spans the globe.

The Internet has no central computer or organizational structure. "Far from being a hub with spokes, the Internet is more like a spider's web, with many ways of getting from point A to point B." What links the Internet together and allows its many disparate parts to communicate is the "TCP/IP" protocol (Transmission Control Protocol/Internet Protocol), which is simply a means of specifying how data is broken up in "packets" and assigned addresses to be transferred over the Internet. It allows computers to communicate regardless of differences in hardware and software, or communications technology.

Instead of a central computer, the Internet uses hundreds of thousands of computers called "routers." Routers are like postal substations; they make decisions about how to route "packets" of data just like a postal substation decides how to route envelopes containing mail. Each router does not need a connection to every other one. Instead, packets of data are sent in the right general direction, using the best route available at the time, until they finally arrive at their destination. In fact, the individual packets making up a single message may end up taking different routes, to be recombined when they reach their destination.

The packets are transmitted over existing telephone networks. However, since the Internet is not tied to any communications technology, Internet traffic can also travel over cable TV systems, satellite links, or fiber optic cables.

Cyberspace*

THE WORLD WIDE WEB AND ELECTRONIC COMMERCE

BACKGROUND

The World Wide Web

The World Wide Web ("WWW" or "Web") is one of the fastest growing applications of the Internet. What distinguishes the Web from other components of the Internet is that it is a multimedia, hypertext system. Unlike other Internet services, the Web blends text, images, video and audio instead of displaying simple text. Web documents are hypertext documents that can contain links to other documents which can be accessed by "clicking" on these links. In fact, the links could be to any other "WWW" document on any Internet server anywhere in the world. Accessing the Web requires a browser program. The browser reads information accessed from the Web and presents it to the user in a standard format. Internet search tools allow users to locate Web pages containing the desired information.

Web pages and Web sites

A company's or individual's collected Web documents are usually referred to as a "Web site." A uniform addressing system allows users around the world to access information on any Website. The information is stored in the form of Web documents and pages on central computers called servers. The location of a server is irrelevant since it can be accessed by users around the world.

Exponential growth of the Web

Some indication of the speed at which the World Wide Web has developed is given by the fact that it was invented in 1989. Graphical browser programs, which made the Web easy to use and thus accessible to a wide audience, were only invented in 1993.

By 1996, it was estimated that there were over 250,000 commercial Web sites and a substantial number of major companies, and countless small ones, have invested on a presence on the Web.

Technical barriers

Two factors that will be critical to the growth of electronic commerce are bandwidth and improved payment mechanisms. Bandwidth refers to the speed at which data can be transferred over the system. Currently, at the transfer speeds available to most consumers, it would take about two days to transfer the entire contents of a music CD across the Internet. With higher speed connections likely to occur in a few years, transfer time is likely to be drastically reduced, to about 10-15 minutes. Payment is also of course a critical factor. There is an emerging consensus that electronic money will accelerate the growth of electronic commerce. If payments can be made by a mouse click on an "electronic wallet" instead of transmitting credit card numbers, commerce is likely to grow.

ELECTRONIC COMMERCE

Generally

"Electronic commerce is the ability to perform transactions involving the exchange of goods or services between two or more parties using electronic tools and techniques. The growth of electronic commerce will be driven in part by the fact that two of the present economy's important products are software and recorded entertainment (both films and music) which are particularly well suited to being distributed through computer networks.

Retailing and wholesaling

Web pages are now supplementing paper catalogs for many mail order companies and wholesalers. These Web pages are similar to pages from a paper catalog, displaying images of the goods and product information. Links to the vendor's inventory control system can make it possible to verify whether the requested goods are in stock. For example, one such Web site is a bookseller that allows customers to search a database of over one million books, searching by either subject or name. It is open twenty-four hours a day and has customers in over 60 countries. This Web site does not merely allow customers to select and order books but also recommends related titles and will automatically notify customers when a desired book is published.

Computer software

Computer software, which is created and used in digital form, can be sold and delivered electronically. Software may be transferred directly from the seller's computer to the purchaser's computer without the need to deliver a floppy disk or CD-ROM. One such electronics software vendor allows customers to select software, which is transmitted and downloaded in encrypted format. Customers then enter credit card information, which is verified over a private network via a toll-free number. After authorization, a key that unlocks the software is sent to the customer. Alternatively, the cost of the software may be charged to a pre-existing account.

Photographs

Photographs can be purchased over the Internet, and customers can select varying rights to utilize the photograph. For example, stock photo agen-

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cies maintain large selections of photographs on a wide range of topics, which are licensed to publishers and advertising agencies who need a photograph on a given subject. Some stock photograph agencies have established Web sites which allow customers to purchase and download digitized names.

The price is based on the customer's intended use of the photograph. For example, one such arrangement involves five, successively more expensive categories, beginning with consumers who intended to make only personal use of an image, such as a student illustrating a term paper, and increasing to commercial customers who might want to distribute an unlimited number of copies.

On-line information

Electronic research databases are in widespread use. Services such as Lexis, Nexis, and Dialog have created vast computerized databases of reference information, such as legal materials or newspaper and magazine articles. Customers can access these databases and locate the desired information, which can be either read on-screen or printed. The distinction between on-line research services and books is now being blurred. Many publications, primarily reference works are now being created and distributed in digital form, generally via CD-ROMs. In addition, once information has been digitized, it can also be transferred electronically. Some encyclopedias, for example, are now available either on CD-ROM or through an on-line service. With a sufficiently fast modem connection, a user might be indifferent as to whether she were accessing a CD-ROM on her desktop

computer or a mainframe computer located at a distance. However, the latter, which can be easily and regularly updated, can make time-sensitive databases much more valuable than traditional "hard copies" or even CD-ROMs. In the future, the distinction between information stored on a desktop computer and information retrieved from a network will become increasingly blurred as desktop software adopts Web style interfaces which will seamlessly integrate desktop and Web functions.

Services

Services will be a fast-growing area of electronic commerce. For example, at least one accounting firm is currently offering consulting services electronically. For a yearly fee, subscribers can obtain a password to visit the firm's Web site, where they can search a database of information and monitor relevant news. Subscribers can also submit questions, which are then routed to appropriate advisers from the firm's tax, accounting and management consulting divisions.

Health Care

Health care is also an area in which services can be provided electronically. Fiber optic telephone links can now transmit high quality medical images to distant specialists in minutes. For example, at the Massachusetts General Hospital "a team of 70 radiologists has X-rays wired from their own telemedicine center in Riyadh, Saudi Arabia."

Videoconferencing

Videoconferencing also creates expanded opportunities for distant persons to collaborate. Currently, videoconferencing is primarily used by large businesses because it requires

expensive, dedicated equipments, but it is becoming more widespread. For example, videoconferencing is being used by rural residents to obtain access to urban specialists. It is also being used by coaches to train athletes and by employers to interview job applicants. Videoconferencing is expected to become more widespread with the introduction of inexpensive desktop video cameras that can be connected to a personal computer, coupled with higher speed Internet connections.

Gambling

Although Internet gambling may be illegal in the United States, Internet casinos have been established offshore. These Internet casinos operate through Web sites which are virtual replicas of casinos offering electronic slot machines, black jack, poker and roulette. Customers pay for their wagers either by credit card or by establishing an account with a bank associated with the casino and winnings are credited to either the credit card or bank account. In the future, gamblers will presumably be able to place their bets using electronic money.

Stock trading

Some stock brokerages and mutual fund companies have Web sites which allow customers to trade securities electronically, including stocks, bonds, mutual funds, options, futures, and commodities. Customers can access information regarding stock prices and company research and after researching the desired stock, an investor can enter an order on-line, specifying the stock, the number of shares and the price. Orders placed at the market price are routinely completed and confirmed in less than a minute. The trade is confirmed electronically

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SECURITY AND ENCRYPTION

and sometimes by mail as well. At present, trades are still settled conventionally, although electronic money could be used in the future. In addition to trading in the secondary market, securities are now being offered on-line.

Global dealing

"Global dealing" refers to the capacity of financial intermediaries, mainly banks and securities firms, to execute customers' orders and to take proprietary positions in financial products in markets around the world and around the clock. For security reasons, global dealing is conducted over private networks, instead of the Internet, although as discussed above, the means of communication is not relevant for tax purposes. Global dealing is impossible without modern computer and communications technology, which allow orders to be transmitted around the world and a firm's trading position to be continually transferred to locations where markets are open.

Offshore banking and incorporation

Some Web sites now offer offshore incorporation and banking services with the capacity for payment by credit card. Customers complete questionnaires on their computer, specifying the company name, desired jurisdiction, number of shares, etc. and this information is transmitted to a service company which prepares and files the necessary forms. Although individuals and companies have always been able to create offshore corporations and open offshore bank accounts, these developments make it easier and less expensive to do so.

Security requirements for an open system

Security issues pose a particular problem for Internet commerce because the Internet is an "open" and inherently non-secure public system designed to facilitate information exchange. Therefore, the security that is required for practical Internet commerce requires that security procedures be applied at the level of individual commercial transactions instead of being applied to the network as a whole. This involves the encryption of transmissions, which is the first line of defense against interception, duplication, and alteration of a confidential message, whether the message represents an electronic payment or a text. Developments of systems requiring security on the Internet generally rely on "public key" encryption. In addition to keeping the contents of a message secret, these encryption procedures may also be used to create a "digital signature" which can enable the recipient of the message to independently verify the identity of the sender.

Public key encryption

Public key encryption, which is based on complex formulae involving certain mathematical properties of large prime numbers, is intended to allow someone to send a secure communication to a person with whom they have never met, or previously communicated. If they operate as intended, public key encryption techniques may play an important role in tax administration of electronic commerce transactions.

Public key cryptosystems, involve two related complementary strings of numbers called keys, a publicly revealed key and a secret key (also frequently called a private key). Each key unlocks the code that the other key makes. Knowing a person's public key does not help you deduce the corresponding secret key. The public key can be published and widely disseminated across a communications network.

Anyone can use a recipient's public key to encrypt a message to that person, and that recipient uses her own corresponding secret key to decrypt that message. No one but the recipient can decrypt it, because no one else has access to that secret key. Not even the person who encrypted the message can decrypt it.

Message authentication is also provided. The sender's own secret key can be used to encrypt a message, thereby creating a digital signature. Alternatively, the sender could use a separate key solely for the purpose of creating his digital signature. The recipient can check the validity of this digital signature by using the sender's public key to "decrypt" it. This proves that the sender was the true originator of the message, and that the message has not been subsequently altered by anyone else, because the sender alone possesses the secret key that made that signature. It is not practically possible to forge a digitally signed message and the sender cannot later disavow his signature.

These two processes can be combined to provide both privacy and authentication by first signing a message with the sender's secret key, then encrypting the signed message with the recipient's public key. The recipient reverses these steps by first decrypting the message with her own secret key, then checking the enclosed signature with the sender's public key. These steps are done automatically by the recipient's software.



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PAYMENT MECHANISMS

Introduction

At present, a large portion of the money supply already exists in "digital" form, as bank account balances and other book entries with financial institutions, and is transferred in digital form through wire transfers. Physical tokens or paper instruments are no longer utilized for large-dollar payments in financial or foreign exchange transactions and roughly 90 percent of financial transactions, by value, are now conducted electronically. Conventional consumer transactions are also occurring electronically as the use of automatic teller machine cards in retail outlets continues to grow.

Electronic money, involves consumer use of electronic payment systems that may partially displace cash, checks, and credit cards, which constitute about 90 percent, by volume, of financial transactions. These electronic payment systems have the potential to create new forms of money in which value is represented in digital form. "Electronic money" encompasses a wide range of products, which are all still under development. However, electronic money systems share certain similar features and an understanding of these general features is a necessary step in developing means to integrate these new payment systems into our system of tax administration and compliance.

Electronic debit and electronic credit

An electronic debit system is a payment system based on funds stored in a deposit account with a financial institution and subject to electronic payment orders to transfer funds from one account to another. An existing example of such a system is the use of automatic teller machine cards used at point of sale terminals. However, emerging electronic debit systems al-

low consumers to use an electronic checkbook, which can be either a hardware device or a software program, to generate unique check identifiers, maintain a check register, and create a digital signature. The electronic checks are sent via e-mail over the Internet from the payor to the payee, who uses a digital signature for endorsement and forwards it for deposit. Thus, consumers and retailers can gather, transmit, and deposit electronic checks into their accounts without physically going to a bank. If the electronic check is drawn on a bank account, it is cleared and settled through the banking system similar to a paper check.

Electronic credit systems use conventional credit card numbers to make payments over the Internet. Consumers transmit their credit card details to merchants, generally in encrypted form, who process transactions using the existing credit card payment infrastructure. In some cases third parties are used to approve and execute payments in order to eliminate the need to send a credit card number over the Internet.

Electronic debit and electronic credit systems should not raise any fundamental tax policy or administration issues because they essentially represent new ways of executing traditional bank or credit card transactions. Since an independent third party maintains records of the identity of the parties to a transaction and the amounts involved, these transactions are fully auditable. Moreover, unlike the electronic money systems described below, they do not involve new payment systems.

Electronic money

Electronic money involves tokens of value expressed in digital form, in the same sense that a casino chip is a

token of value expressed in physical form. In contrast, the electric debit and credit card systems described above are the functional equivalent of conventional check and credit card transactions and do not involve the creation of new tokens of value. The digital form of electronic money allows it to be processed inexpensively and instantaneously transferred around the world. All electronic money systems function as payment systems or payment system components and all depend upon application of high-speed communication and information analysis. Although no commonly accepted general definition of electronic money exists, some generalizations can be made.

- All purport to permit their users, in some environment, to move funds electronically.
- All rely upon advanced information technology to store, transmit, and receive representations of value.
- All depend upon modern developments in the science of encryption to provide security and upon public communications networks.
- All are possible only because of the reduced costs and economies of scale that technological advances create.
- All at some point, at least at present, require "loading" from funds held within the financial system.

The loading of funds involves the exchange of cash or deposits for digital value backed by an issuer. This could occur, for example, at an ATM, where a consumer loads a smart card with electronic cash and has a bank account debited for the same amount, or over the Internet by downloading electronic money onto a PC hard drive.

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Distinctions between electronic money systems

Electronic money systems differ in a number of basic ways. The primary differences include:

- (i) the identity of the issuer;
- (ii) whether transactions are fully accounted for by the issuer;
- (iii) whether value resides in a ledger with a third party or on a storage device belonging to the consumer; and
- (iv) the means of accessing and transferring value.

These distinctions are discussed in more detail below. They are important because the way in which any particular electronic money system implements these distinctions will be the primary factors in determining how the system should fit into our system of tax administration and compliance and the concerns that the system poses for our system of tax administration and compliance.

Identity of the issuer

One distinction among electronic money systems is the identity of the issuer or sponsor. At present, electronic money can be issued by either a bank, a nonbank financial services company, or a non-financial company.

Whether transactions are fully accounted for by the issuer

The second distinction is whether electronic money transactions are fully accounted for by the issuer. There are both accounted and unaccounted systems. In an accounted system, the e-money issuer maintains a complete or partial audit trail of transactions, and can identify the person to whom the electronic money is issued as well as the people and businesses receiving the electronic money as it flows through the economy. In an unaccounted system, the e-money is is-

sued and passes through the economy without a transaction trail. Unaccounted e-money may operate much like paper currency, moving through the economy anonymously.

There are advantages and disadvantages to both accounted and unaccounted electronic systems and they are likely to operate in tandem. Unaccounted systems may pose risks to the issuer because there are no records to rectify any problems that might arise. However, consumers may not feel comfortable using accounted electronic money for some transactions which they can currently conduct anonymously with cash. In addition an accounted system may impose costs on merchants and e-money issuers that would be passed on to consumers. These costs may be excessive relative to the benefits that consumers receive if electronic money is used for only small value transactions. In contrast, consumers may prefer accounted systems when they wish to have an independent record of the transaction.

Where the value resides

The third important distinction is whether the electronic money is stored on a ledger maintained by a third party ("notational electronic money") or is stored on a token which is maintained by the consumer ("token electronic money"). A notational electronic money system stores value as a notation in the ledger of a third party and is exchanged by subtracting amounts from one entry and adding it to another. The third party serves as an off-site control point which verifies and authorizes transactions. Token electronic money is represented by value stored on a "smart card," computer disk drive, or other storage device and the value is directly exchanged between payor and payee

like currency.

Card vs. PC

Finally, a distinction can be drawn between PC-based systems and card based systems. In PC-based systems, value is transferred to and held in a personal computer and transferred electronically from one computer to another. The PC acts as both a storehouse of value and a device to access that value.

PC-based systems usually:

- enable payment to be made by either clicking on virtual notes and coins appearing on the screen or by typing in an amount;
- are fully integrated with Web browser software to facilitate impulse buying while browsing the Internet;
- show the user's existing balance; and
- affirm transaction completion and maintain a running balance.

In contrast, card-based systems employ so-called "smart-cards" which are plastic cards containing microchips which can process and store any type of digital information, including electronic cash. Customers load value onto their cards from their bank accounts by using automated teller machines or specially equipped telephones in their homes, and eventually, over the Internet. In order to utilize the stored value a separate access device is needed which might be included in a vending machine or attached to a cash register. Similar to the farecards used on many subway systems, the stored-value card is inserted into the access device which debits value from the card and transfers the value to the merchant's account. Card-based systems also differ from PC-based systems in that PC-based systems are designed to be used remotely, whereas

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card-based systems are designed for face-to-face commerce in retail transactions. This is not a rigid distinction because a PC or telephone could be used as an access device for a smart-card, which would enable the card to be used remotely.

Smart card systems can be further distinguished based on whether they are "open" or "closed" systems. In a "closed" system there is generally only one card issuer and one vendor that accepts the card for payments; usually the issuer and the accepting vendor are the same entity. Common examples of closed systems are public transportation farecards, prepaid telephone cards, and prepaid copier cards. In contrast, open systems involve single or multiple issuers which provide cards that can be used with multiple vendors. Card-based systems can also permit personal transfers of value between individuals, rather than just commercial transactions, provided that the individuals have the appropriate equipment.

Example of a PC-based system

One PC-based system, for example, permits customers to purchase electronic money from a bank, generally by debiting an existing bank account. As consumers browse various Web sites which sell goods and services, their electronic money software is active in the background. The program senses when payment is required and pops up a dialog box that prompts the buyer to approve the transaction. The software removes the digital "coins" from the buyer's hard disk and transfers the serial numbers representing the electronic money to the seller's computer. The seller's computer contacts the issuing bank, which verifies that the serial numbers representing the electronic money have not been used and notifies the seller that the electronic money is valid. At that point, the seller sends the electronic goods to buyer. The seller will eventually deposit the electronic money in a bank.

In the context of the analytical framework discussed above, such a system is a nonbank, token unaccounted, pc-based system. Although the electronic money was issued by a bank, it is a nonbank system because a bank is not required. It is a token system because the strings of numbers representing "digital coins" are stored on the customer's computer, not a central ledger. Finally, it is an unaccounted system because the issuer does not maintain any records of how the electronic money is used until it is presented for conversion into conventional funds.

TAX POLICY AND ADMINISTRATION ISSUES: GENERAL CONSIDERATIONS

General

Any consideration of the substantive tax policy, and tax administration and compliance issues that arise in this area must be guided by basic tax policy principles and must also take into account the technical and scientific characteristics of the Global Information Infrastructure, including the Internet.

Neutrality

A fundamental guiding principle should be neutrality. Neutrality requires that the tax system treat economically similar income equally, regardless of whether earned through electronic means or through more conventional channels of commerce. Ideally, tax rules would not affect economic choices about the structure of markets and commercial activities. This will ensure that market forces alone determine the success or failure of new commercial methods. The best means by which neutrality can be achieved is through an approach which adopts and adapts existing principles — in lieu of imposing new or additional taxes.

Recent technological developments may appear to be radical innovations primarily because they have evolved within a relatively short period of time. However, careful examination may very well reveal that few, if any, of these emerging issues will be so intractable that their resolution will not be found using existing principles, appropriately adjusted.

Impact of technical features of the Internet

The policies and rules governing the taxation of electronic commerce cannot be developed without an understanding of the underlying technical features. The basic technical structure of the Internet has some important implications for tax policy and administration. These aspects are restated here.

Radically decentralized; no central control

The Internet has no physical location. Users of the Internet have no control and in general no knowledge of the path traveled by the information they seek or publish. Many participants in the system are administrators or intermediaries who have no control over what type of information travels over their computers; rather they offer interconnectivity which enables the system to operate. In practical terms, it would therefore be difficult to monitor or prevent transmissions of information or electronic cash across the Internet. From a technical perspective, in principle and generally in practice, it makes no difference whether the information or electronic money sought to be transmitted are within one jurisdiction or between several,



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a broad term, and just as electronic money systems differ in their technical features, they also differ in the extent to which they create issues for tax administrators. Depending on the type of system used, electronic money can be either an advantage or a disadvantage for tax administrators.

As discussed below, electronic money poses a tax evasion potential similar to that created by paper money. This raises the issue of whether the evasion potential is manageable and what must be done to manage it. As discussed below, it is possible that the techniques that have been developed over time to combat evasion using paper money can be adapted and expanded to combat evasion through electronic money. In particular, it may be necessary to consider the role that issuers of electronic money can play in this effort, since they represent the interface between the physical economy and the electronic economy. In general, however, the extent to which electronic cash will be a problem will likely depend on the extent to which it results in an extensive payment system outside of normal banking channels.

Comments on these issues, including the extent to which (i) current techniques can be adapted to combat tax evasion using electronic-cash, (ii) new audit techniques will be necessary, and (iii) information reporting and similar requirements can and should be imposed on issuers of electronic money.

Accounted systems

Electronic money systems in part based on whether they are accounted or unaccounted systems. In accounted systems, the electronic money issuer maintains a central record of the flow of its electronic money through the economy. In unaccounted systems no such central record exists. Accounted systems are unlikely to present substantial tax administration concerns because the central record of transactions, if it is available for examination on audit, will permit tax administrators to match payments and receipts to specific taxpayers. In fact, the growth of accounted systems will be an advantage for both taxpayers and tax administrators since the central records maintained by an accounted system could be used by taxpayers and auditors to verify payments. Some taxpayers may therefore choose to use accounted systems when a record of the transaction is necessary for tax or other purposes.

Comments on how the records maintained by accounted systems can be integrated into the system of tax administration and the standards that should be applied to determine whether the records maintained by an accounted system are acceptable for tax purposes are welcome.

Unaccounted systems

In contrast to accounted systems, problems may arise with unaccounted systems which maintain no such central record and are therefore analogous to cash. The extent of this problem will be measured by the extent to which

unaccounted systems are used instead of accounted systems. It may be that unaccounted systems will be used primarily for certain types of small transactions, just as cash is used primarily for certain types of transactions. In many cases consumers will prefer existing payment mechanisms, such as credit cards, for the payment terms and the consumer protection that they provide. In other situations, consumers will use electronic money but will use accounted systems in order to have a central record in case a dispute arises with the merchant. While unaccounted electronic systems are unlikely to completely displace other payment systems, the tax evasion potential they create could be substantial.

Transactions using unaccounted electronic money create the opportunity for both not reporting or underreporting the resulting income because detection of these transactions is difficult. For example, a taxpayer might sell physical goods in exchange for unaccounted electronic money, which might be transferred via a card-based system. This problem currently exists for paper currency-based businesses. However, it has been historically possible to examine a business' flow of inventory and similar physical indicia of the magnitude of the taxpayer's business. This may not be possible for a taxpayer who sells electronic goods or services: there is unlikely to be any physical indicia of the amount of the taxpayer's receipts.

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Bank secrecy

Finally, electronic money creates increased opportunities to deposit unreported income in a bank or other financial institution. As a result of electronic money's advantage in transmitting large amounts of money with relative ease, combined with the continued use of cash, the problem of an underground, unaccounted for economy is likely to be exacerbated.

Electronic money and the Internet substantially increase the ease and safety with which bank accounts can be opened abroad, letterbox companies and trust accounts can be established abroad, and funds transferred anonymously. Unlike paper currency, electronic money can be securely and instantaneously transmitted anywhere in the world. It is now possible to open a bank account over the Internet in a bank secrecy jurisdiction, without actually traveling to the bank's location. Electronic money could be instantaneously and anonymously transferred to such an account, thereby eliminating the risks and reporting requirements involved in transferring cash. Alternatively, a smart card encoded with a large amount of unaccounted electronic money could be slipped into a pocket and taken anywhere in the world without the bulk and weight of cash. However, in the case of a bank or financial institution located in Malaysia or a country with which Malaysia has a tax treaty or Tax Information Exchange Agreement, it may be possible in most cases to gain access to the taxpayer's bank records or records of the funds' transmittal.

Identity verification

A cartoon once featured two dogs sitting in front of a computer with a caption that read "[O]n the Internet, nobody knows you're a dog." Tax administrators face a similar issue. On the Internet it is possible to use a false identity and it is not currently possible to independently verify a party's identity. This raises a number of issues because the identity of a counterpart is important for numerous tax provisions. For example, if securities are purchased electronically the issuer is still subject to information reporting and record keeping requirements. If the purchasers are nonresidents or foreign corporations, payments of interest and dividends are subject to withholding and reporting. This withholding may be reduced or eliminated by a tax treaty if the beneficial owner is entitled to treaty benefits. Claiming an expense deduction requires proof of the payee and the transaction. The identity of the purchaser of goods is relevant in determining whether the sale creates foreign base company sales income. For example, a seller of electronic goods could route sales through a Web site maintained by a base company and claim that the purchases were for use within the base company's country of incorporation. Therefore, it will be necessary to develop techniques to verify that the purchases were indeed for use within that country. Finally, if tax returns and other documents are to be electronically filed, an acceptable form of digital signature will be required.

Verification of identity is also a problem for consumers, who want to be

assured that the persons with whom they do business are who they claim to be. As a result, companies engaged in electronic commerce are developing "digital certificates" or "digital IDs" that can be used to verify a person's identity over the Internet. "Digital certificates" are issued by a trusted intermediary who verifies the identity of a person and performs appropriate background checks, depending on the level of assurance to be granted. Once a person's identity has been verified, he is issued a digital ID, which is the on-line equivalent of a driver's license or passport which can be transmitted to a potential customer. The certificate is created using public key encryption techniques which makes it independently verifiable by the recipient and immune from tampering.

If they operate as designed, these digital IDs are likely to represent an important means by which taxpayers and tax administrators can prove the identity of electronic counter parties. For example, if it were necessary for tax purposes to prove the identity of an electronic counter party or comply with an information reporting requirement, a taxpayer could be required to obtain a digital ID from the counterparty and maintain a record of that ID which could be examined on audit. However, because some issuers of digital IDs may not perform sufficiently thorough identity checks prior to issuing a digital ID, the IRB may be required to develop standards for issuers of digital IDs and certify issuers. In order to do so, the IRB may be required to issue its own digital

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IDs to issuers of digital IDs so that they can electronically prove that they have received IRB certification. Comments on the extent to which digital IDs can be utilized for tax purposes, including the extent to which they can serve as signatures on electronically filled documents, the extent to which their use should be required for certain purposes, and the role that the IRB should play in certifying issuers of digital IDs.

Record keeping and transaction verification

Taxpayers are required to keep accurate books and records, which are subject to examination by the IRB in order to verify the income and expenses reported on the taxpayer's return. Although many taxpayers rely on computerized record keeping systems to a large extent, many transactions still originate as paper records which can be used to verify the accuracy of the electronic records. However, for taxpayers engaged in the sale of electronic goods or services, no paper records are likely to be created because customer orders are placed and fulfilled electronically and therefore the only record that exists of these transactions could be an electronic one. As all users of computers know, this creates the possibility for tax evasion and fraud because computerized records can be altered without a trace. Even taxpayers engaged in the sale of physical, as opposed to electronic, goods may soon receive orders and issue invoices electronically.

Electronic "documents" must be verifiable in order to minimize the poten-

tial for tax evasion.

This is also an issue for non-tax businesses reasons. For example, a recipient of an electronic order needs to verify both that the order was sent by the proper person, and also needs to verify that the order was not altered in transit. Public key encryption techniques, which are used to create digital identity certificates, can also be used to verify that electronic documents and records have not been tampered with. For example, "digital notarization" systems have been developed which are intended to make it possible to verify that electronic documents and records have not been altered. One such system purports to provide the digital equivalent of a notary stamp which can be used to certify and seal digital records in content and time so that it can later be proved that the electronic record was created when claimed and was not altered after the fact are welcome.

Comments on the extent to which such technologies can, in fact, be used to verify the authenticity of electronic transactions and on the role that Treasury should play in the development of these systems are welcome.

Disintermediation and information reporting

Tax reporting and compliance relies in part on the use of centralized institutions and intermediaries that can be used to comply with information reporting and withholding requirements. For example, withholding on payments to foreign persons relies on the use of "withholding agents" who

will generally be sophisticated persons who understand their obligations and can be identified, and the ability of the IRB to audit them. As discussed above, it is now possible for individual and relatively unsophisticated taxpayers to engage in cross-border investment and licensing transactions that previously would have taken place through traditional intermediaries, if at all. Disintermediation refers to the elimination of these traditional intermediaries. For example, a payment made for the right to download and reproduce a digitized image may be a royalty, depending on the transferee's rights. The parties to these transactions may be unfamiliar with their withholding obligations and current technology does not yet provide a means for computing and paying such taxes electronically. Such a system is, presumably, technically feasible but may not be accepted by electronic merchants and consumers. The small amounts involved will also complicate tax administration. In addition, the parties may be unfamiliar with their information reporting requirements. Information reporting plays an important role in tax administration and it may also be necessary to integrate these transactions into our system of information reporting.

Comments are welcome on how the tax system can be adapted to deal with such disintermediated micro-transactions, and the role of information reporting in such transactions.



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TAX ISSUES IN CYBERSPACE

Adapted By Harpal S Dhillon

INTRODUCTION

Current tax concepts, such as the Malaysian trade or business, permanent establishment, and source of income concepts, were developed in a different technological era. The US government has proposed that the principle of neutrality be used as the basis to be used.

Principle Of Neutrality

Based on the principle of neutrality between physical and electronic commerce requires that existing principles of taxation be adapted to electronic commerce, taking into account the borderless world of cyberspace.

An advantage of an approach based on existing principles, in addition to neutrality, is that such an approach is suitable for adaptation as an international standard. Existing principles are, in broad outline, common to most countries' tax laws.

Malaysian Bases For Taxation

Malaysia taxes income on the basis of both the source of the income and the residence of the person earning that income (e.g. as in the case of sea and air transport undertaking).

Malaysian source income is subject to Malaysian tax, irrespective of the tax residence of the person, subject to double taxation agreements. In the case of non Malaysian source income, it is subject to Malaysian income tax, when remitted. However an exemption is available in the case of a Malaysian tax resident company. Special rate of taxes are available of Offshore Companies in Labuan and under Malaysian tax incentives. Our international tax treaty network, while attempting to minimize taxation at source, also

protects against double taxation.

Sources Of Income

Source of income concepts play a central role in international taxation since the country of source generally has a right to tax income and residence countries generally avoid double taxation through either a credit system or an exemption system. Sources of income principles are generally similar worldwide.

In general, the source of income is located where the economic activities creating the income occur. For example, income derived from the use of intellectual property has its source in the location where the intellectual property is utilized. Compensation for labour or personal services has its source in the location where the labour or personal services are performed. Furthermore, residence-based source rules have been adopted for certain types of income such as capital gains and swap income because the country of residence represents the location where the economic activity that produces the income occurs. Generally, the nature of an item of income is important for determining source because the source of income flow forms its nature.

Role Of Tax Treaties

Malaysia currently has comprehensive income tax treaties with a number of countries. The rules embodied in these tax treaties generally give the residence country an unlimited right to tax income while limiting or eliminating the source country's right to tax. One of the most important concepts in tax treaties is that of a "permanent establishment." Source countries tend to give up their source-based taxing rights over business profits if

they are not attributable to a "permanent establishment" or "fixed base" in their jurisdiction. Treaties generally limit the rate of taxation at source that can be applied to interest, dividends and royalties paid to a resident of a treaty partner.

Residence Based Taxation

Malaysia, as do most countries, asserts jurisdiction to tax based on principles of both source and residence. If double taxation is to be avoided, however, one principle must yield to the other. Therefore, through tax treaties, countries tend to restrict their source-based taxing rights with respect to foreign taxpayers in order to exercise more fully their residence based taxing rights. This occurs in a number of ways. The permanent establishment concept represents a preference for residence based taxation by setting an appropriate threshold for source based taxation of active business income. By setting an appropriate threshold, in most cases it is not necessary to identify the source of active business income and the income is only subject to tax in the country of residence.

In the case of interest, dividends, and royalties, the income is still potentially subject to source based taxation but in many cases is effectively subject to only residence based taxation because of a nil rate of withholding tax.

The country of residence also agrees to take appropriate steps to ameliorate any possible double taxation resulting from the limited source based taxation.

The growth of new communications technologies and electronic commerce will likely require that principles of residence based taxation assume even

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greater importance. In the world of cyberspace, it is often difficult, if not impossible, to apply traditional source concepts to link an item of income with a specific geographical location. Therefore, source based taxation could lose its rationale and be rendered obsolete by electronic commerce. By contrast, almost all taxpayers are resident somewhere. An individual is almost always a citizen or resident of a given country and all corporations must be established under the laws of a given jurisdiction. However, a review of current residency definitions and taxation rules may be appropriate.

In situations where traditional source concepts have already been rendered too difficult to apply effectively, the residence of the taxpayer has been the most likely means to identify the jurisdiction where the economic activities that created the income took place, and thus the jurisdiction that should have the primary right to tax such income.

In the United States, in the Tax Reform Act of 1986, Congress adopted residence based sourcing rules for sales of non inventory property. This reflected Congress' belief that source rules for sales of personal property should generally reflect the location of the economic activity generating the income, taking into account the jurisdiction in which those activities are performed. In the case of certain sales of personal property, the residence of the seller was thought to best represent the location where the underlying economic activity occurred. Similar rules were adopted for certain space and ocean activities. The United States tax policy has already recognized that as traditional source principles lose their significance, residence based taxation can step in and take their place. This trend will be acceler-

ated by developments in electronic commerce where principles of residence based taxation will also play a major role.

MALAYSIAN INCOME

Taxation Of Non Residents

Non residents are generally only subject to tax on their Malaysian source income, including income derived from the performance of personal services in Malaysia. Unless a treaty applies, non residents are taxed at a flat rate of tax on their net income effectively connected with a trade or business in the Malaysia.

In the United States, non residents aliens and foreign corporations are generally only subject to tax on their U.S. source income, including income derived from the performance of personal services in the United States, and certain foreign source income that is attributable to a U.S. trade or business. Unless a treaty applies, non residents aliens and foreign corporations are taxed at ordinary graduated rates on their net income effectively connected with a trade or business in the United States, and are taxed at a flat rate on the gross amount of their U.S. source fixed or determinable annual or periodical gains, profits and income. A U.S. trade or business includes the performance of personal services within the United States. Therefore being engaged in a trade or business in the United States is a threshold requirement for the taxation of active business income earned by foreign persons.

Trading In / With Malaysia

In many cases, it is clear that a foreign person is engaged in a trade or business but it is not clear whether they

are so engaged in a trade in or with Malaysia. If they are engaged in a trade in Malaysia, there is Malaysian tax liability but if they are engaged in a trade with Malaysia, there is no Malaysian tax liability.

A foreign person not physically present in Malaysia, who merely solicits order from within Malaysia only through advertising and then sends tangible goods to Malaysia in satisfaction of the orders is unlikely to be engaged in a trade or business in Malaysia, even though such a person is clearly engaged in a trade or business.

A person who is not directly engaged in a Malaysian trade or business activity may nevertheless be deemed to be engaged in a Malaysian trade or business as a result of the activities of an agent.

Tax Treaties & The PE Concept

Tax treaties adopt a different and generally higher threshold for source basis taxation of active income. Malaysian source active income (business profits) of non residents who are entitled to benefits under a Malaysian tax treaty is only subject to Malaysian tax if the income is attributable to a permanent establishment located in Malaysia.

A permanent establishment is a fixed place of business through which the business of an enterprise is wholly or partly carried on. It has come to be accepted in international fiscal matters that until an enterprise of one State sets up a permanent establishment in another State it should not properly be regarded as participating in the economic life of that other State to such an extent that it comes within the jurisdiction of that other State's taxing rights.

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Therefore, a foreign person who is entitled to benefits under a tax treaty with Malaysia will not be subject to Malaysian tax on the income arising from a trade or business in Malaysia if the income is not attributable to a permanent establishment in Malaysia. This however does not apply to special class income under section 4A of the Malaysian income tax act, as the income is deemed not to be business income.

Tax Jurisdiction In The Context Of Electronic Commerce

The concept of Malaysian trade or business was developed in the context of conventional types of commerce, which generally are conducted through identifiable physical locations. Electronic commerce, on the other hand, may be conducted without regard to national boundaries and may dissolve the link between an income producing activity and a specific location. From a certain perspective, electronic commerce doesn't seem to occur in any physical location but instead takes place in the nebulous world of cyberspace. Persons engaged in electronic commerce could be located anywhere in the world and their customers will be ignorant of, or indifferent to, their location. Indeed, this is an important advantage of electronic commerce in that it gives small businesses the potential to reach customers all over the world.

Electronic commerce permits a foreign person to engage in extensive transactions with Malaysian customers without entering Malaysia. Although such a person is clearly engaged in a trade or business, questions will arise as to whether he is engaged in a trade or business in Malaysia or has a permanent establishment in Malaysia. Therefore, it is nec-

essary to clarify the application of the Malaysian trade or business and permanent establishment concepts to persons engaged in electronic commerce. In developing principles to classify these activities, it will be important to consider the extent to which electronic commerce simply represents an extension of current means of doing business, the tax consequences of which are understood.

For example, to the extent that the activities of a person engaged in electronic commerce are equivalent to the mere solicitation of orders from Malaysian customers, without any other Malaysian activity, it may not be appropriate to treat such activities as a Malaysian trade or business. It will also be necessary to consider whether it is appropriate or practical to treat foreign person engaged in electronic commerce with Malaysian customers as being engaged in a Malaysian trade or business if they are physically located outside Malaysia.

Another example is the treatment of foreign persons who maintain or utilize a computer server in Malaysia. Computer servers can be located anywhere in the world and their users are indifferent to their location. It is possible that such a server, or similar equipment, is not a sufficiently significant element in the creation of certain types of income to be taken into account for purposes of determining whether a Malaysian trade or business exists. It is also possible that if the existence of a Malaysian based server is taken into account for this purpose, foreign persons will simply utilize servers located outside Malaysia since the server's location is irrelevant.

Finally, consideration may also be given to the role other activities should play in determining whether a Malay-

sian trade or business exist. For example, it may ultimately be decided that a foreign person who operates a computerized research service through computers located outside Malaysia might not be engaged in a Malaysian trade or business unless other Malaysian situs activities exist. However, Malaysian based individuals engaged in providing marketing and support services for a foreign based provider of computerized research may create a Malaysian trade or business for the foreign person even if the computer servers and other activities are located outside Malaysia.

Permanent Establishment

To the extent that a foreign person is not engaged in a Malaysian trade or business, then the absence of a permanent establishment is irrelevant since Malaysia will not tax that person's active business income. However, some persons entitled to benefits under a Malaysian income tax treaty will not be subject to Malaysian tax due to the lack of a permanent establishment, notwithstanding the fact that they may be engaged in a Malaysian trade or business. A Malaysian permanent establishment generally requires a fixed place of business in Malaysia although a permanent establishment can also arise by imputation from the activities of an agent.

Therefore, persons engaged in electronic commerce may not have a Malaysian permanent establishment because they do not have a fixed place of business in Malaysia unless a permanent establishment is created by imputation.

Telecommunication or computer equipment owned or used by a foreign person engaged in electronic commerce raises a question as to whether

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this equipment could constitute a fixed place of business of the foreign person in Malaysia, taking into account that there would not necessarily be any employees present. It will be necessary to consider whether a foreign person who owns or utilizes a computer server located in the Malaysia should be deemed to have a Malaysian permanent establishment. Again, it is useful to review the treatment of existing, traditional commercial activities and consider whether any existing exclusions from permanent establishment treatment should apply in this situation. For example, a permanent establishment generally does not include the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise. For a business which sells information instead of goods, a computer server might be considered the equivalent of a warehouse. Examination and interpretation of the permanent establishment concept in the context of electronic commerce may well result in an extension of the policies and the resulting exceptions to electronic commerce.

Telecommunications & Internet Service Providers

A Malaysian trade or business or permanent establishment can also arise by imputation from an agent's activities. Agency issues arise from the relationship between a foreign person and a computer online service or telecommunication service provider. Even if a person is engaged in electronic commerce does not maintain a computer server or similar equipment in Malaysia, issues of Malaysian trade or business or permanent establishment would also arise. In most cases, information will be transmitted to the customer's computer through telephone lines.

For example, a foreign person who operated a computerized research service might contract with a Malaysian telecommunications company to provide local dial access service so that the foreign person's Malaysian customer can access its computerized databases. Alternatively, the Malaysian customer might access the foreign information seller's Web site using a Malaysian based Internet service provider. Presumably, the foreign person's relationship with a local telecommunication service provider is such that the telecommunications service provider would not even be considered an agent of the foreign person.

Even if an agency relationship were deemed to exist, the service provider would likely be considered an independent agent, with the result that a Malaysian trade or business or permanent establishment would not arise. Nevertheless, it may be necessary to further clarify the applicable principle in this area and seek to create an international consensus on this issue.

Taxation Of Telecommunications Service Providers

The principles used to determine whether a person is engaged in a Malaysian trade or business or maintains a Malaysian permanent establishment might differ if the person is primarily engaged in providing telecommunication services, in contract to a business which is primarily engaged in selling goods or services for whom the telecommunications services are merely incidental. A distinction is generally recognized between activities that contribute to the productivity of the enterprise and activities that involve the actual realization of profits. In the case of a foreign telecommunication service providers,

the operation of a computer server in Malaysia or the sale of computing services and Internet access to Malaysian and foreign customers is clearly integral to the realization of its profits, in contrast to the case of a foreign person who is primarily engaged in selling data which is stored on a Malaysian based server.

DIGITIZED INFORMATION - CLASSIFICATION OF INCOME

Transactions In Digitized Information

Any type of information that can be digitized, such as computer programs, books, music or images can be transferred electronically. For example, a Malaysian could via the Internet, communicate with a computer located in a foreign country and download a computer program or digitized image or video in exchange for a fee. The purchaser's rights in the information transferred could vary depending on the contract between the parties.

The purchase of a digitized image could obtain the right to use a single copy of the image, the right to reproduce ten copies of the image for use in a corporate report, the right to reproduce the image for use in an academic work that is expected to have a limited press run, or the right to reproduce the image in a mass circulation magazine. Depending on the facts and circumstances, some of these transactions may be viewed as the equivalent of the purchase of a physical copy or copies of the photograph, which would probably not subject the seller to Malaysian taxation, while other of these transactions would result in royalty income because they involve payments for the use of or the privilege of using copyrights or similar property in Malaysia, which could be taxable in Malaysia.

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Technological developments have necessitated a reexamination of existing income classification principles in light of the ease of perfectly reproduced and disseminating digitized information. Classifying transactions involving digitized information may require a more complex analysis that disregards the form of the transaction, without regard to whether tangible property is involved, in favour of an analysis of the rights transferred. This is necessary to ensure neutrality between the taxation of transactions in digitized information and transactions in traditional forms of information, such as hard copy books and movies, so that decisions regarding the form in which information is distributed are not affected by tax considerations.

Classification Of Income Issues

Information that can be digitized is generally protected by copyright law. Payments made for the use of or for the privilege of using copyrights are considered royalties.

Similarly the U.S. Model Tax Convention defines "royalties" as payments of any kind received as consideration for the use of or the right to use any copyright of literary, artistic or scientific work including cinematograph films. It is not always clear how this definition applies to the sale of digitized information. Yet, it is clear that some of these transactions, such as the electronic purchase of computer programs, are merely substitutes for conventional transactions involving physical objects.

Digitized information also presents unique issues because it can be perfectly reproduced, often by the purchaser. Although someone desiring to purchase ten copies of a bound

book will generally purchase ten copies from a publisher, someone wishing to purchase ten copies of an electronic book may simply purchase one copy and acquire the right to make nine additional copies. This transaction might literally be considered to create royalty income, at least in part, since the right to make reproductions is a right reserved to the copyright holder and by allowing a third party to make reproductions, the payment is, at least in part, in consideration for the use of the copyright. However, this transaction may also be viewed as merely a substitute for the purchase of ten copies from the publisher in which the purchaser has undertaken to make the copies, a process which would not be feasible were the information not digitized. Therefore, it is necessary to apply the definition of "royalties" in a manner that takes into account the unique characteristics of digitized information.

U.S. Proposed Regulations On Computer Program Transactions

The U.S. Treasury has proposed regulations on the classification of income from transactions involving computer programs represent an initial attempt to resolve this issue. Although these regulations are proposed to be limited to transactions involving computer programs they may establish a framework applicable to any type of digitized information, at least to the extent it is protectable by copyright.

These proposed regulations do not seek to make determinations based on whether property is "tangible" or "intangible" because those concepts do not properly capture the unique features of digitized information.

For example, when a computer disk containing a program is transferred,

that would appear, on its face, to be a transaction in a tangible object. When the same program is transferred by means of electronic impulses transmitted over a telephone line, it would seem to be an intangible. Both of these classifications, however, ignore the substance and the analysis of the proposed regulations avoids this confusion, in part by treating the means of transfer as irrelevant.

The proposed regulations treat transactions involving computer programs as being either:

- 1 transfer of copyright rights;
- 2 transfer of copies of the copyrighted program;
- 3 the provision of services for the development or modification of a computer program;
- 4 the provision of know how regarding computer programming techniques.

Because computer programs are protected under copyright law and the rights that transferees of computer programs obtain are primarily rights created by copyright law, the proposed regulations take copyright law rights as the starting point for the analysis. They demonstrate that an understanding of these rights makes it possible to analyze computer program transactions in the framework of existing principles of tax analysis.

The primary distinction established by the proposed regulations is between transfers of copyright rights and transfers of copyrighted articles. The proposed regulations use copyright law principles to determine whether the rights transferred are rights in the underlying copyright or are rights in a copyrighted work. However, the proposed regulations depart from copyright law when appropriate to take into account the special

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characteristics of computer programs.

Tax law principles are then applied to determine whether or not there has been a partial or complete transfer of these rights, which will determine the tax classification of the resulting income. If a transaction is considered to involve copyright rights, it is either a sale or exchange of the copyright, or a license, depending on whether "all substantial rights" in the copyrights have been transferred. If the transaction is a transfer of a copyrighted article, then it is either a sale or exchange, or a lease of the copyrighted article, based on an application of the "benefits and burdens" test. Because this comprehensive framework is based on an analysis of the underlying rights, it may be flexible enough to handle transactions in computer programs and other types of digitized information that are yet to be invented.

These concepts and distinctions can, of course, be found in existing law. The novel aspect of the proposed regulations is that they take into account the unique characteristics of digitized information.

For example, for copyright law reasons, computer programs are generally sold pursuant to "license" agreements. Software developers transfer rights in computer programs to individual users through licenses, rather than sales, to prevent transferees from claiming the rights that would be provided under copyright law to purchasers of copies of the program. Therefore, the proposed regulations seek to determine whether the rights obtained by a "licensee" are copyright rights or are substantially equivalent to the rights that would have been obtained had the transferee acquired a program copy.

The proposed regulations take the unique characteristics of digitized information into account in departing from a strict copyright law analysis.

For example, computer programs are frequently distributed through site licenses. Under a site license, a licensee might obtain only one disk containing the program but also obtains the rights to make a certain number of copies for internal use.

Notwithstanding the term applied to the transaction or the grant of a copyright right under U.S. copyright law, the regulations propose to treat this transaction as a sale of goods for tax purposes. Although the right to reproduce a computer program is a right granted to the owner of the copyright, which would make the transaction a license (resulting in royalties) under a pure copyright law analysis, the proposed regulations recognize that the bare right to copy a program is not relevant for purposes of this analysis. Since digitized information can be perfectly copied at little cost, the bare right to reproduce is disregarded for tax purposes. The proposed regulations provide that the right to reproduce is only relevant when it is coupled with the right to sell the copies so made to the public. This is the case where existing tax principles have been adapted to take into account the unique features of electronic commerce.

Definition Of Services Income

Digitized information may also further complicate existing difficulties in defining services income, as distinguished from sales of goods income or royalties.

This distinction is important for purposes of determining the source of

income, and for the application of various Code provisions including the Subpart F rules. Under subpart F, the definition of foreign lease company sales income differs from the definition of foreign base company services income, as distinguished from services income, may affect whether such income will be subpart F income that will be subject to current tax.

The distinction between services income and other types of income is a pervasive issue throughout the Code. For example, in many cases, the distinction between service contracts and other arrangements is unclear. Although many commercial transactions involve elements of both the provision of tangible property and the performance of services, these transactions are generally classified in accordance with their predominant characteristic. For example, a transaction involving the performance of professional services may result in the provision of a letter or other document. The aspect of the transaction consisting of the provision of the tangible property is treated as incidental to the performance of the services. In contrast, if a retail establishment sells a suit to a customer but agrees to make slight alterations as part of the purchase price, the performance of services would be viewed as an integral part of a transaction consisting of the sale of goods.

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NOTE :
Sourced from a US Treasury Report

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CONCLUSION

As the communications revolution continues to sweep through the world economy, tax principles and systems of tax administration will have to adapt. This paper represents an attempt to further that process. It is not intended to resolve the tax policy and administration issues posed by the communications revolution but is intended to identify and assess some of these issues. Certain issues may initially appear to be so complex that they cannot be dealt with by existing principles. Further study is likely to result in the conclusion that one or more existing principles are more flexible than they may seem and they remain relevant notwithstanding technological developments. However, some of these technological developments, such as the potential growth of extensive anonymous transactions involving electronic cash, do raise certain existing administration and compliance issues to new levels of concern.

I hope Treasury looks forward to receiving comments from, and working with taxpayers and their advisors, including both tax law specialists and computer technology specialists, academics, and foreign tax policy makers and administrators, to better understand these technologies and develop rational and enforceable tax rules. This can play an important role in fostering the growth of these technologies and transactions. Clear and rational principles will ensure that the tax law will not be an impediment to the growth of these exciting technologies that have such a great potential to improve our lives.

GLOSSARY

Bandwidth:

(Also known as "capacity") In simple terms, how much information or traffic can be carried on the Internet in a given amount of time. The simple rule is that the greater the bandwidth, the greater the opportunities for commerce. As a specific example: with low bandwidth, transferring the contents of a music CD via the Internet is not feasible; with higher bandwidth, it is entirely feasible.

Browsers: A program used to access the World Wide Web.

Bit: A contraction of the term "binary digit," a unit of information represented by a zero or one. The speed of information transmission is measured in bits per second.

CD-ROM: Compact Disc with Read Only Memory; compatible with computers, compact discs are inexpensive, high-capacity storage devices for data, text and video.

Commercial Web Site: A computer site, attached to the Internet, which sells Internet merchandise.

Convergence: The "coming together" of formerly distinct technologies, industries or activities; the most common usage refers to the convergence of computing, communications and broadcasting technologies.

Cyberspace: The three-dimensional expanse of computer networks in which all audio and video electronic signals travel and users can, with the proper addresses and codes, explore and download information.

Digital: Information expressed in binary patterns of ones and zeros.

Digital Signature: Data appended to a part of a message that enables a recipient to verify the integrity and origin of a message.

Digitization: The conversion of an analog or continuous signal into a series of ones and zeros, i.e., into a digital format.

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Electronic Commerce: Consumer and business transactions conducted over a network, using computers and telecommunications.

Encryption: The coding of data for privacy protection or security considerations when transmitted over telecommunications links, so that only the person to whom it is sent can read it.

Fiber Optic: A modern transmission technology using lasers to produce a beam of light that can be modulated to carry large amounts of information through fine glass or acrylic fibers.

Global Information Infrastructure or GII: The convergence of previously separate communications and computing systems into a single global network of networks.

Hypermedia: Use of data, text, graphics, video and voice as elements in a hypertext system. All the forms of information are linked together, so that a user can easily move from one form to another.

Hypertext: Text that contains embedded links to other documents or information.

Information Superhighway: See Global Information Infrastructure.

Intellectual Property: A collective term used to refer to new ideas, inventions, designs, writings, films and others: protected by copyright, patents, trade-marks, etc.

Internet: A vast international network of networks that enables computers of all kinds to share services and communicate directly.

Internet Merchandise: Goods, services or other property (typically property in which intellectual property rights subsist, such as music, software etc.) sold via commercial Web sites. A distinction can be drawn between those cases where delivery is effected via the Internet itself (e.g. downloaded software) and where delivery is effected via conventional means.

Internet Service Providers (ISPs): Organizations which provide individuals and businesses with access to the

Internet (including commercial web sites). ISPs may be wholesalers or retailers or both. A wholesaler normally resells bandwidth and certain other services to smaller ISPs who act as retailers. The most significant component of the sale price is the amount of bandwidth purchased.

Modem: A contraction of "mo(dulator)" and "dem(odulator)," an accessory that allows computers and terminal equipment to communicate through telephone lines or cable; it converts analog data into the digital language of computers.

Protocol: A standard procedure for regulating data transmission between computers.

Server: Computers which store information for access by users of a network, including the Internet.

Virtual Reality: An interactive, simultaneous electronic representation of a real or imaginary world where, through sight, sound and even touch, the user is given the impression of becoming part of what is represented.

World Wide Web, Web, or WWW: The graphical, hypertext portion of the Internet.

This article provides an introduction to certain income tax policy and administration issues presented by developments in communications technology and electronic commerce. This paper is a discussion document, designed to elicit views on the issues presented as well as suggestions as to solutions for new problems. This paper is neither intended, nor should be taken as an expression of the legal or policy views of the Malaysian Government, including the Treasury and the Inland Revenue Board and the Inland Revenue Department. In addition, no inference is intended as to current law.

Comments on any of the issues raised by this paper should be addressed to:

Editor, Tax Nasional.
Malaysian Institute of Taxation

INTERVIEW WITH Y BHG DATO' MOHD ALI BIN HASSAN, THE EXECUTIVE CHAIRMAN INLAND REVENUE BOARD, MALAYSIA

Good Morning, Y Bhg Dato'. On behalf of the Council of MIT, I would like to thank Y Bhg Dato' for granting us this Interview Session.

Q1: *As the Executive Chairman of the IRB, what are your comments on the tax system of our country?*

A1: The tax system currently in place has become a primary tool not only for generating the amount of revenue needed to fund government expenditures but also for directing the economy and bringing about social change. Besides being wide based and progressive to ensure as many people as possible contribute towards public finance for nation building, it is also able to respond to changing circumstances. The comprehensive scheme of tax incentives and competitive corporate tax rate has helped maintained our national economic competitiveness, attract foreign investment and for business to locate here.

Q2: *What are the roles and activities of the IRB and how have the IRB been working towards their achievement?*

A2: The Inland Revenue Board of Malaysia is responsible to the Government for the effective administration of the income tax legislation. Its main activities are assessing and collecting taxes by encouraging voluntary compliance and by deterring tax evasion. IRB recognises and accepts

the fact that the change of status or the conversion from a Government Department to a Statutory Board poses new and exciting challenges for the Board. First and foremost, it is its responsibility to demonstrate to the Government and public at large that this change that it has gone through will be more than a change in organisational form from a government department to a statutory board, it will be a change to an organisation working towards excellence in tax administration. To realise this goal, it is necessary for the Board to embark on a change programme aimed towards benefiting the government taxpayers and its employees.

Q3: *What are the efforts taken by the IRB to educate the public on their responsibilities as a tax payer and how does the IRB update its information to the public?*

A3: IRB recognises that it is vital to help taxpayers understand their tax obligations and to make it easier for them to deal with the IRB by way of better service, communication, information and education. Since the establishment of IRB on 1 March 1996, IRB has been responsive to taxpayers' demands for a system they can understand and is continually upgrading its services to taxpayers. Some of the new services and products introduced for the convenience of taxpayers in its first year of operations are:

(a) **Reach Out To Taxpayers Programme** - opening more branches to provide easy access to taxpayers. Since March 1996, a total of 5 new branches have been established.

(b) **Income Tax Infoline** - jointly developed with Telekom Malaysia, it provides instant tax information via the telephone.

(c) **Reviewing the legislation** pertaining to retention of salaries by the employer when an employee terminates his employment in view of salary deductions already made under the Monthly Tax Deduction Rules.

(d) **Preprinted forms for employers** for ease of compliance with the monthly tax deduction payments.

(e) **Taxpayer Education Programmes** through radio talks and education programmes at the Universities and also at the National Tax Academy.

IRB is prepared for tax reform implementation to improve still further its service to taxpayers.

Q4: *Could you explain to us on the types of tax assessment methods being used by the IRB and on the possibilities of applying the self assessment system?*

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Y BHG DATO'
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MALAYSIA

A4: Presently, taxpayers are required to furnish their returns of income and the Board is responsible for evaluating the return and making the assessment. For the future, the IRB is seriously considering self-assessment under which the taxpayers would be responsible for the correct calculation of their own tax and would be required to pay the amount due at the same time they file their declarations. The task before IRB now is to enhance public awareness of the requirement under the law to furnish a true and correct return and the activities carried out by the IRB's field audit teams have achieved encouraging results.

Q5: *The Institute has formed a Study Group on self-assessment and hopes to have a representative from the IRB. How does Y Bhg Dato' see the Institute playing its role on this matter?*

A5: I believe that tax administration and the tax community would benefit greatly from the research work to be done by your Study Group and I would seriously consider your proposal for our participation.

Q6: *We also understand that the IRB has come up with a system called 'smart partnership'. Could Y Bhg Dato' elaborate further on this?*

A6: "Smart Partnership" reflects the initiative taken by the IRB to have closer working relationship, coopera-

tion and understanding with taxpayers, employers and tax practitioners for mutual benefit. IRB has organised high tea sessions with a number of exemplary employers as well as accountants in appreciation of their positive support in assisting the IRB in fulfilling its functions.

Q7: *What are Y Bhg Dato's views of our Institute and how does Y Bhg Dato' see the relation between the IRB and the Institute?*

A7: The Institute as practitioners share with the IRB an overriding responsibility to see that the tax laws operate properly in the interest of the nation. This means working together to strengthen the principles of tax administration especially with regard to making the laws comprehensible for ordinary taxpayers and to enhance the administration of our tax system. I intend to encourage and support communication between us with a view to assist each other to meet our respective and common goals.

Q8: *The Council of MIT would also like to take this opportunity to know on how the Institute can be of assistance to the IRB and vice versa.*

A8: I would like to offer the MIT a suggestion to work with us in developing a professional training programme to promote specialist training for the advancement of tax administration in this country.

Q9: *The Institute is currently working on the recognition as a national taxation body. What would Y Bhg Dato' consider as the best course that the Institute can take in gaining such recognition?*

A9: The Institute should continue to uphold the integrity of our tax system and to assist taxpayers in the discharge of their obligations under the tax laws by providing practical and accurate explanations of the law through talks, seminars and training programmes.

Thank you for your time Dato'. I would also like to take this opportunity to thank you for nominating En Nujumuddin as an advisor to our Editorial Board Committee and Pn Asmah binti Ahmad as a member to our Islamic Financial Instruments & Transactions Study Group.

SUMMARY OF OTHER ISLAMIC FINANCIAL INSTRUMENTS

IJARA(LEASING) DEFINITION AND ITS ADVANTAGES

Ijara means a lease contract as well as a hire contract. In the context of Islamic banking it is a lease contract under which the bank or financial institution leases equipment or a building to one of its clients against a fixed charge.

The primary advantage of *Ijara* over the conventional forms of borrowing to finance equipment is that ownership of the asset remains with the lessor. The financing is largely unrelated to the size of assets and the capital base of the lessee and depends principally on the ability of his cash flow to service payments of lease rentals.

Ijara is probably the most suitable means to raise investment funds especially for industries where rapid technological innovation is either underway or desired and for top class firms which are quickly expanding their business or small and medium enterprises and firms which have normally insufficient assets and capital base to meet normal collateral requirements of most other forms of long term financing. The basic security under the *ijara* arrangement is the "ownership of the equipment". The title of ownership to the equipment

remains with the leasing company and in case of serious default the equipment is repossessed.

The Modern Concept of *Ijara*

Leasing is the modern technique that can be compared with the Islamic technique of *ijara*. Leasing is based on the same fundamental concept of *ijara* according to which one does not have to own an asset in order to enjoy the benefits of it. It is now being applied on a large scale to business activity. There are obvious examples of businesses which have benefitted from their investment in fixed assets over the years. Some businesses have made substantial capital profits from the sale of assets or have been able to improve the look of their balance sheets by the revaluation of assets. In the main, the profitability of a business lies in the use to which the resources are put. It is the use not necessarily the ownership which matters. Once a business decision for example, the investment appraisal has been made on some new venture the choice of purchasing or leasing is partly a matter of arithmetic, partly a question of the availability of capital.

A comparison between leasing and other similar forms of transactions such as rental will give a clearer picture. "Rent" as is shown by the rent a

car business, is a contract according to which the objects are leased to individuals or a number of users for a much shorter period than their actual useful life.

In contract law, the "rental contract" specifies the lease and usage for an indefinite period. A typical example is IBM's computer sales system. This system was initiated by the company which has an over-whelming world market share to promote sales in an attempt to outstrip its competitors, in the belief that it could control the progress of technological innovation of computers. While the users of the equipment leased on a rental system are major enterprises and their usage is continuous, the rented equipment is usually used in a transient manner, whether the case is "rental" or "rent" the lessor is charged with the responsibility for maintenance. Especially, in the case of "rental" the lessor is also charged with the responsibility for coping with the products obsolescence, so that it may be termed a service-oriented business.

Economic Role of *Ijara*

Lease financing because of its special features can supplement the existing conventional forms of financing and further accelerate investment in the private sector.

Summary Of Other Islamic Financial Instruments

There is a large requirement of balancing and modernization of the existing industry. As a supplementary source of term credit, lease financing through balancing and modernization of the existing industry, with improve capacity utilization, quality, production cost, profitability, internal generation of cash for future investment and international competitive capability to increase exports.

Lease financing is most suited to the programmes of balancing, modernization and replacement. It would involve a small dosage of investment which would carry relatively smaller investment risk but would result in a quick value added production. It would increase capacity utilization and thus contribute to the growth of the economy.

MURABAHA (COST PLUS FINANCING)

Murabaha is generally defined as the sale of a commodity for the price at which the vendor has purchased it, with the addition of a stated profit known to both the vendor and the purchaser. It is a cost-plus-profit contract. Islamic financial institutions aim to make use of *Murabaha* in circumstances where they will purchase raw materials, goods or equipment etc. and sell them to a client at cost, plus a negotiated profit margin to be paid normally by instalments. With *Murabaha*, Islamic financial institutions are no longer to share profits or losses, but instead assume the capacity of a classic financial intermediary.

The legality of *Murabaha* is not questioned by any of the schools of law. There are of course differences in the details. However, the use of *Murabaha* as a credit vehicle by the Islamic financial institutions has been regarded with apprehension by some Muslim economists, for example M. Siddiqi, who contended that the simple fact that *Murabaha* enables a buyer to finance his purchase with deferred payments, as against accepting a mark-up on the market prices of the commodity, means that the financier, in this case the Islamic bank, earns a predetermined profit without bearing any risk.

This form of contract is widely used for import finance. So the bank sells a commodity to the client for a predetermined amount or rate of profit over and above the total costs. Usually, goods or commodities are provided to the order of the client according to definite specification, but, following the rules of the *Shariah Supervisory Board* (SSB) (which is established in each bank under the bank's articles of association in order to make sure that each bank's transactions confirm to *Islamic shariah*), the client is not obliged to accept the goods or commodities, even if they are provided according to the given specification.

QARD AL-HASANAH

(BENEFACTANCE LOANS)

Qard al-Hasanah means an interest-free loan which is the only loan permitted by *shariah* principles. Funds are advanced without any profit or charge for humanitarian and welfare purposes. Repayments are made over a period agreed by both parties. A levy of a modest service charge on such a loan is permissible provided it is based on the actual cost of administering the loan.

One may wonder how lending could be a business proposition once interest is abolished. The Islamic financial institutions are advised to make use of *Qard al-Hasanah* in the following circumstance:

- In the case of *musharakah* be-

tween the institution and the client, it often happens that not all of the institution's shares in the project can be earmarked for the right to participate in profits; otherwise no substantial share would be left to the other partner, namely the client. Therefore the institution's participation is split into two parts; one constitutes a share in the partnership capital and the other a share in the working capital provided through *Qard al-Hasanah*.

- A *Qard al-Hasanah* can also be provided to a client of the institution who has cash-flow problems, either in order to protect the institution's investment, or, when the client is reliable, to boost the

institution's image and reputation at no great risk.

- A third use of *Qard al-Hasanah* may occur when a client who has with the financial institution a blocked savings account which generates no interest, encounters an urgent need for short-term finance, making recourse to the *mudarabah* concept useless. The necessary funds can be provided to him by the institution through *Qard al-Hasanah*. There are probably other circumstances where *Qard al-Hasanah* has its value for the lender; these circumstances will gradually develop with the day to day business of the Islamic financial institutions.

BAI MUAJJAL

(DEFERRED PAYMENT SALE)

This transaction allows the sale of a product on the basis of deferred payment installments or in a lump-sum payment. The price of the product is agreed to between the buyer and the seller at the time of the sale and cannot include any charges for deferring payments.

BAI SALAM

(PURCHASE WITH DEFERRED DELIVERY)

In this transaction the buyer pays the seller the full negotiated price of a specific product which the seller promises to deliver at a specified future date. This transaction is limited to products whose quality and quantity can be fully specified at the time the contract is made.

TADAMUN OR TAKAFUL

(SOLIDARITY)

Takaful literally means "mutual guarantee". In the context it is the Islamic answer to the modern concept of insurance, which is one of the most important subject among scholars. This type of contract represents Islamic insurance based on a collective sharing of risk by a group of individuals whose payments are akin to premiums invested by the Islamic banking institution in a *mudarabah* for the benefit of the group. After a certain period, the group may expect to stop making further payments while remaining insured. The purpose of this solidarity *mudarabah* may be life assurance and it may also be risk insurance covering a property. If the assured person dies before the end of his covered time, or an insured risk on the property materializes, then

payment is made out of the account of the insured person; if there is not enough money in that account, the outstanding balance is covered by the money of the other participants inside the same pool. This is what is meant here by solidarity; the participants in a solidarity *mudarabah* share the consequences of a mishap. In other words, the participants in a given solidarity *mudarabah* have the right to share the surplus profits generated by such a *mudarabah* but at the same time they are liable for contributing to amounts in addition to the premiums they have already disbursed, if their initial premiums paid in during a particular year are not sufficient to meet all the losses and risks incurred during that year.

Research & Development Incentives

By Clements V I Joseph

INTRODUCTION

As our nation is rapidly enjoying economic growth and moving towards being an industrialised nation by 2020, research and development (R&D) activities become inseparable in the 'person' of the private sector. Thus, numerous R&D incentives are made available by the Government to encourage the R&D activities.

The Incentives At A Glance. Incentives under Income Tax Act, 1967 (ITA)

DOUBLE DEDUCTIONS

1. Double Deductions For Approved Research Projects

Section 34A of the ITA says "expenses of revenue nature incurred by a person on research directly undertaken by him or on his behalf, approved by the Minister Of Finance is eligible for double deductions"

Allowable Expenditure

- Only expenses of a revenue nature are eligible for double deductions
- Consequently, capital expenditure do not qualify

The Procedures for Application for:

(i) Approved Research Projects

Application should be made in Application Form DD1/RD/1997 to the Technical Division of the Inland Revenue Board (IRB):

- * within three (3) months from the end of the financial year in which the R&D expenditure was incurred.
- * for on-going research projects which have been approved by the Minister of Finance for

three years and the period has not expired, the applicant can directly claim double deduction using Form DD1/RD/1997 without reapplying for the particular approved R & D project.

- * Applicants are to make a declaration in the application form that the project /activity for which the application is made is an R & D project.
- * Applicants are to give permission in the application form for officers of the IRB and accompanying experts to examine the documents relating to the R & D project/activity and the expenditure claimed thereof at the applicant's business premises or at locations where the research is undertaken.
- * Declaration by applicant in the application form must be made by a director of the company. However, expenditure on approved R & D project/activity for which the double deduction is claimed must be verified by Certified Auditors.
- * Applicants are advised to furnish correct information as required in the application form. If the information furnished later is found to be incorrect or false, the IRB will immediately withdraw the approval for double deduction claims allowed. In addition, in appropriate cases, the IRB will take legal action as provided under Sections 113 and 114 of the ITA against the applicant.
- * If the application is made for more than one R & D project, then the information as required in Parts B and C of the form must be provided for each individual R & D project. If

numerous R & D projects are taken concurrently under a specific research programme, the programme and overall objective must be specified.

- * A holding company which undertakes R & D project/activity at its Research Centre for companies within its group may submit an application for approved R & D project/activity and for allowable expenses thereof on behalf of its subsidiary companies. However, the details for each company should be separately and clearly stated.
- * The Technical Division of the IRB will issue the approval or rejection letter to the applicant with a copy to the relevant IRB branch. Approvals are subjected to the terms stated in the letter.
- * Appeals on rejection must be made within 30 days of the date of letter of rejection.

(ii) Claiming Double Deductions

Claim should be made to the IRB:

- * In the Tax Return to be filed in.
- * Application should be submitted after the letter of approval on the status of approved research under section 34 of the ITA is obtained from the IRB.

Section 34B of the ITA says that a person can claim double deduction against his business income on revenue expenses incurred by him in respect of:

- contribution in cash to approved research institutes, approved research companies,

Research & Development Incentives

R&D companies or Contract R&D companies.

On the above mentioned subject of procedures for application for claiming double deductions, we now proceed to items 2 & 3.

2. Double Deductions For Cash Contribution To Approved Research Institutes

Only cash contribution and /or donations will qualify. Contribution in kind does not qualify for double deduction.

Claims for double deduction can be made by submitting the original official receipt to the IRB when the Tax Returns are filed in.

3. Double Deductions For The Payment For The Use Of The Services Of Approved Research Institutes, Research Companies, R&D Companies, Or Contract R&D Companies

Revenue expenses incurred for the use of the services of any of the R&D centres will qualify for double deductions. However, this does not extend to a related company of the R&D company which has been granted and still enjoying the Investment Tax Allowance incentive and the period has not expired. Capital expenditure will not qualify for double deductions. Claims for double deductions can be made by submitting the Application Form DD 2/95 to the IRB together with the Tax Returns.

ALLOWANCES

Generally, capital expenditure such as cost of purchase of assets employed in a business do not rank for deduction against the profit of the business. It is also the same for depreciation of these assets. However, for the purpose of carrying out R&D activities, capital and industrial building allow-

ances are given for these expenditure at prescribed rates. As in the usual case, capital and industrial building allowances of one business source cannot be used to off set against a different business source. As such, should the business source which has the allowances cease permanently, the unabsorbed allowances will be lost for good.

Capital Allowance

Conditions for claiming capital allowance:

- * The claimant must carry out R&D activities
- * The capital expenditure incurred must have been incurred on plant and machinery
- * The plant and machinery must be used for the purpose of carrying out R&D activities.
- * The claimant must be the owner of the asset at the end of the basis period.

Industrial Building Allowance (IBA)

Conditions for claiming IBA:

- * The capital expenditure must have been incurred on the construction or the purchase of the building.
- * The building must be in use or about to be used for carrying out R&D activities.

The Procedures for Application for Capital Allowance and IBA:

- Claims for the allowances must be made to the IRB by completing the relevant columns for claiming capital allowance and IBA in the Tax Returns being filed in.

INCENTIVE UNDER PROMOTION OF INVESTMENT ACT, 1986 (PIA)

A. Pioneer Status Or Investment Tax Allowances of 100% For Contract R&D Companies.

A Contract R&D company means

a company which provides research and development services in Malaysia only to companies other than its related companies.

1. Pioneer Status

Under the PIA, a contract R&D company is eligible to apply for Pioneer Status for a period of (5) five years full tax exemption on the statutory income. The five years tax holiday will commence from the Production Day which is the first day the income is received by the company.

2. Investment Tax Allowance of 100%

Under the PIA, a Contract R&D company is also eligible to apply for Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of (10) ten years. The allowance will be abated from the statutory income. However, the abatement for each year of assessment is restricted to 70% of the statutory income. Please refer to Schedule A for the qualifying capital expenditure for this allowance.

It should be noted that Pioneer Status and Investment Tax Allowance are mutually exclusive.

Application for the above incentives should be made in Form R&D 1 to Malaysian Industrial Development Authority (MIDA).

Kindly refer to Schedule B for the criteria for eligibility for the above incentives.

B. Investment Tax Allowance Of 100% For R&D Companies

An R&D Company means a com-

Research & Development Incentives

pany which provides research and development services in Malaysia both for its related company or to any other company.

A related company means a company which is the holding company, a subsidiary company or a subsidiary of the holding company of the R&D company.

Under the PIA, an R&D company is eligible to apply for Investment Tax Allowance of 100% on the qualifying capital expenditure incurred within a period of 10 years. The allowance will be abated from the statutory income. However, the abatement for each year of assessment is restricted to 70% of the statutory income.

The related companies concerned would not qualify for double deductions for payments made to the R&D company. However, the related companies concerned would enjoy the double deductions if the R&D company chooses NOT to avail itself for the Investment Tax Allowance. Please refer to Schedule A for the qualifying capital expenditure for this allowance and to Schedule B for the criteria for eligibility for this allowance.

Application for the above incentive should be made in the Form R&D 1 to MIDA

C. Investment Tax Allowance of 50% for In-House Research

In-house research means research and development carried out in Malaysia within a company for the purpose of its own business.

Under the PIA, a company which carries out in-house research is eligible to apply for Investment Tax Allowance of 50% on the qualifying capital expenditure incurred

within a period of 10 years. The allowance will be abated from the statutory income. However, the abatement for each year of assessment is restricted to 70% of the statutory income.

The following criteria must also be met for eligibility:

- * research undertaken must be in accordance with the needs of the country and bring benefit to the Malaysian economy.
- * research undertaken is as defined under the PIA. (Please refer to Schedule C for definition)

Please refer to Schedule A for the qualifying capital expenditure for this allowance.

Application for the above incentive should be made in the Form R&D 2 to MIDA.

INCENTIVES UNDER CUSTOMS ACT, 1967 (CA)

EXEMPTION OF IMPORT DUTY, SALES TAX AND EXCISE DUTY ON MACHINERY/MATERIALS USED FOR RESEARCH AND DEVELOPMENT

Machinery/equipment, materials, raw materials/component parts and sample used for research and development purposes which are imposed with import duty, sales tax and excise duty are eligible for full exemption from the duty/ tax.

Criteria for Eligibility:

- * Companies/Institutions which are eligible for the consideration of duty/tax exemption are Companies/Institutions which specifically carry out R&D. Companies/Institutions which carry out in-house research and development irrespective of whether or not they are enjoying incentives under the Promotion of Investments Act

1986 or the Income Tax Act 1967 are also eligible to apply.

- * Machinery/equipment, materials, raw materials/component parts and samples eligible for the consideration of duty/tax exemption on all machinery/equipment, materials, raw materials/component parts and samples imported or purchased locally and used for R&D activities.
- * The definition of research for the purpose of this application is as defined in the Promotion of Investments Act 1986. (Please refer to Schedule C for definition)

Procedures for Application

Applications for the above exemption from duty/tax must be submitted and received by MIDA in Form R&D 4 before the import or the purchase of any machinery/equipment, materials, raw materials/ component parts and samples. The import must be under the name of the company. Application made by a third party will not be considered.

Conclusion

The application process which appears to be rather too simple for R & D incentives shows the season of grace we are in and those concerned should take full advantage of the Government's encouragement for R & D activities.

Research & Development Incentives

Schedule A

QUALIFYING CAPITAL EXPENDITURE FOR INVESTMENT TAX ALLOWANCE PURPOSES

In Relation To Manufacturing - Based Research

Qualifying capital expenditure include capital expenditure incurred on factory or any plant and machinery used in Malaysia in connection with and for the purpose of an activity relating to research and development.

In Relation To Agriculture - Based Research

Qualifying capital expenditure include capital expenditure incurred in respect of the clearing and preparation of land, the planting of trial crops, the provision of irrigation or drainage systems, the provision of plant and machinery used in Malaysia in connection with and for the purposes of an activity relating to research and development, the construction of access roads including bridges, the construction or the purchase of buildings (excluding those provided for the welfare of persons or as living accommodation for persons) and structural improvements on land for the purposes of activity relating to research and development.

Schedule B

CRITERIA FOR ELIGIBILITY FOR PIONEER STATUS

OR INVESTMENT TAX ALLOWANCE OF 100%, FOR CONTRACT R & D COMPANIES AND FOR INVESTMENT TAX ALLOWANCE OF 100% FOR R & D COMPANIES

1. The Company should undertake research as defined in the Promotion of Investments Act 1986. (Please refer to Schedule C for definition)
2. Research undertaken should be in accordance with the needs of the country and bring benefit to the Malaysian economy.
3. At least 70% of the income of the company should be derived from research and development activities.
4. For manufacturing -based R&D, at least 50% of the workforce of the company must be appropriately qualified personnel performing research and technical functions.
5. For agriculture-based R&D, at least 5% of the workforce of the company must be appropriately qualified personnel performing research and technical functions.

Schedule C

DEFINITION OF R & D

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

- quality control of products or routine testing materials, devices, products or produce;
- research in the social sciences or humanities;
- routine data collections;
- efficiency surveys or management studies; and
- market research or sales promotion"

Research & Development Incentives

SUMMARY OF R & D INCENTIVES The Basic Requirements For Applications

INCENTIVES	ITA	PIA	CA
A INCOME Revenue			
1. Pioneer Status of 5 years tax exemption on statutory income	-	Companies which carry-out R&D services in Malaysia only for non-related companies. Applications to MIDA	-
B EXPENDITURE Revenue			
1. Section 34A (7) single deduction	Normal Deduction	-	-
2. Section 34A double deduction on revenue expenditure for approved research projects	Companies whose research projects are approved by the Minister of Finance. Application to MIDA	-	-
3. Section 34B Double deductions on cash contribution to approved research institutes.	The research institutes must have the approved status by the Minister of Finance. All claims to the IRB	-	-
* Double deductions on payments for the use of the services of R&D centres	R&D Centres include approved research institutes, approved research company, Contract R&D company & R&D Company All claims to the IRB	-	-
Capital			
1. Investment Tax Allowance of 100% on capital expenditure incurred within 10 years for contract R&D Companies. Abatement is restricted to 70% of the statutory income	-	Companies which carry out R&D services in Malaysia only for non-related companies. Application to MIDA	-
2. Investment Tax Allowance of 100% on capital expenditure incurred within 10 years for R&D companies. Abatement is restricted to 70% of the statutory income.	-	Companies which carry out R&D services in Malaysia for related & non-related companies. Application to MIDA	-
3. Investment Tax Allowance of 50% on capital expenditure incurred within 10 years for in-house R&D. Abatement is restricted to 70% of the statutory Income.	-	Companies which carry out R&D in Malaysia for its own business. Application to MIDA	-

Research & Development Incentives

SUMMARY OF R & D INCENTIVES The Basic Requirements For Applications

INCENTIVES	ITA	PIA	CA
4. Capital Allowances on plant & Machinery used for R&D	The capital expenditure incurred must be on plant & and machinery used for R&D All claims to the IRB	-	-
Industrial Building Allowance on the construction or purchase of building for R&D	The building must be used for R&D purposes. All claims to IRB	-	
Exemption on import duty, sales tax & excise duty on machinery/ materials used for R&D.	-	-	Machinery/equipment materials, raw materials/component parts and samples used for R&D purposes only Application to MIDA

Coming Seminars

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12 May 1997 • Shangri-la, PENANG

For more information:

please call **03-2745055** and ask for **Ms Angelia Dass**

INCOME TAX ACT 1967

INCOME TAX (EXEMPTION / AMENDMENT / DOUBLE TAXATION AGREEMENT) ORDERS 1996

NO.	TITLE	REFER P.U. (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE / REMARKS
31.	Income Tax (Exemption) (No. 24) Orders 1996	215	16/5/96	Tax exemption for 15 foreign artistes from Nuova Cameristica Group who are in Malaysia solely for the purpose of performing in the Muzik Klasikal held on 27/10/06at the Regent Ballroom Kuala Lumpur.	
32.	Income Tax (Exemption) (No. 25) Order 1996	216	16/5/96	Tax exemption for 182 foreign artistes who were in Malaysia solely for the purpose of performing in the ASEAN Music Festival held on 16 & 17 August 1995 at the Stadium Badminton, Kuala Lumpur.	
33.	Income Tax (Exemption) (No.26) Order 1996	250	30/5/96	<p>1. The Minister exempts MBF Finance Bhd., in an exercise to acquire the assets and liabilities of Kewangan Usahasama Makmur Bhd from payment of income tax in respect of:-</p> <p>a. all income derived from the soft loan placed by Bank Negara Malaysia amounting to RM135 million;</p> <p>b. accumulated income howsoever derived from the soft loan and</p> <p>c. net recoveries of non-performing loans and advances taken over from KUM and income from such recoveries and in respect of such accumulated net recoveries made by MBF Finance Bhd.</p> <p>2. The Computation of income and accumulated income in respect of the soft loan and the income in respect of the net recoveries and accumulated net recoveries shall be in accordance with the formula as agreed with Bank Negara Malaysia and MBF Finance Bhd.</p> <p>3. The Minister also exempts MBF Finance Bhd from payment of income tax in respect of all income and accumulated income derived from the soft loan and in respect of net recoveries and accumulated net recoveries referred to in subparagraph 2(1) for the period commencing from the date of placement of the soft loan until acquired deficit in assets is reduced to nil or upon maturity if soft loan, which ever is earlier or on such date as Bank Negara Malaysia may determine.</p>	Come into force on 10/0/92

NO.	TITLE	REFER P.U. (A)	GAZETTE NOTIFICATON	DATE OF SUBJECT	EFFECTIVE DATE / REMARKS												
34.	Income Tax (Exemption) (No.27) Order 1996	251	30/5/96	<p>1. The Minister exempts the financial institutions listed in column (1) of the Schedule in an exercise to acquire the assets and liabilities of the respective finance companies listed in column (3) of the Schedule, from payment of income tax in respect of:-</p> <p>a. all income derived from the soft loan placed by Bank Negara Malaysia for the amounts specified in column (2) of the Schedule and in respect of accumulated income howsoever derived from the soft loans and</p> <p>b. net recoveries of non-performing loans and advances taken over from the finance comanies and income from such recoveries and in respect of such accumulated net recoveries made by financial institutions.</p> <p>2. The computations of income and accumulated income in respect of the soft loan and the income in respect of the net recoveries and accumulated net recoveries in accordance with the formula as agreed with Bank Negara Malaysia and the financial institutions appearing in column (1) of the Schedule.</p> <p>3. The Minister also exempts financial institutions listed in colummn (1) of the Schedule from payment of income tax in respect of all income and accumulated income referred to in subparagraph of the soft loans until the acquired deficit assets is reduced to nil or upon maturity of the soft loans, whichever is earlier, or on such date as Bank Negara Malaysia may determine:-</p> <table><tr><th><i>Name of Financial Institution</i></th><th><i>Amount of Soft loan (RM million)</i></th><th><i>Name of Finance Company</i></th></tr><tr><td>1. Southern Finance Co. Bhd</td><td>120</td><td>Eu Finance Bhd</td></tr><tr><td>2. Arab-Malaysian Finance Bhd</td><td>180</td><td>First Malaysia Finance Bhd</td></tr><tr><td>3. UMBC Finance Bhd</td><td>97</td><td>Kuala Lumpur Finance Bhd</td></tr></table>	<i>Name of Financial Institution</i>	<i>Amount of Soft loan (RM million)</i>	<i>Name of Finance Company</i>	1. Southern Finance Co. Bhd	120	Eu Finance Bhd	2. Arab-Malaysian Finance Bhd	180	First Malaysia Finance Bhd	3. UMBC Finance Bhd	97	Kuala Lumpur Finance Bhd	Come into force on 1/7/91
<i>Name of Financial Institution</i>	<i>Amount of Soft loan (RM million)</i>	<i>Name of Finance Company</i>															
1. Southern Finance Co. Bhd	120	Eu Finance Bhd															
2. Arab-Malaysian Finance Bhd	180	First Malaysia Finance Bhd															
3. UMBC Finance Bhd	97	Kuala Lumpur Finance Bhd															

NO.	TITLE	REFER P.U. (A)	GAZETTE NOTIFICATION	DATE OF SUBJECT	EFFECTIVE DATE / REMARKS
				4. Mayban Finance Bhd 115 Supreme Finance (M) Bhd 5. BBMB Kewangan Bhd 30 JP Finance (M) Bhd 6. Hong Leong Finance Bhd 145 Visia Finance Bhd	
35.	Double Taxation Relief (The Government of Saudi Arabia) Order 1996	270	6/6/96	Agreement between the Government of Malaysia and Saudi Arabia for reciprocal exemption with respect to taxes on income of air transport enterprises of the two countries.	-made on 22/5/96 -date of entry into force refer to the article 6 of this agreement.
36.	Tax (Exemption) (No. 28) Order 1996	347	18/7/96	Tax Exemption, for the following officials in respect of official emoluments received, who are in Malaysia solely for the purpose of serving with the Sarawak Forest Dept. NAME 1. Encik Donald Robinson Morris INTERNATIONAL P/P NO: E058669 2. Encik Robert Butler Stuebing P/P NO: Z4970068 3. Encik Adam Ewing John Ferrie INTERNATIONAL P/P NO: EM270142	15/10/95 - 15/11/95 3/11/95 - 22/1/96 INTERNATIONAL 19/12/95 - 13/1/96
37.	Income Tax (Exemption) (No. 29) Order 1996	348	18/7/96	Tax exemption for fifteen (15) artiste, in respect of income in the form of benefits-in-kind received by them who are in Malaysia solely for the purpose of performing in a concert by the Orchestra "Camerata BERN" at the Regent Hotel, K.L. on 17/4/96.	
38.	Income Tax (Exemption) (No. 30) Order 1996	356	25/7/96	Tax exemption for thirty one (31) officials in respect of official emoluments received by them, who is in Malaysia for the purpose of serving in the representative office of the Moscow Aircraft Production Organisation (MAPO)	- Various dates - refer to the Government Gazette P.U(A) 356
39.	Tax (Exemption) (No. 31) Order 1996	368	8/8/96	Tax Exemption, for the following officials who are in Malaysia for the purpose of performing in a concert with the National Symphony Orchestra at the Experimental Theatre, Kompleks Budaya Negara on 21 April 1996 NAME 1. Encik Johnnes Schlaefli P/P NO: 7114257	

NO.	TITLE	REFER P.U. (A)	GAZETTE NOTIFICATION	DATE OF SUBJECT	EFFECTIVE DATE / REMARKS
40.	Income Tax (Exemption) (No. 32) Order 1996	369	8/8/96	2. Encik Regula Schneider P/P NO: 6521207 Tax exemption for thirteen (13) artistes, who are in Malaysia solely for the purpose of performing in the Swiss Highlights held from 19 to 28 April 1996 at the Lot 10, Kuala Lumpur.	- Refer to the Government Gazette P.U(A) 369
41.	Income Tax (Exemption) (No. 33) Order 1996	366	8/8/96	Tax exemption for four (4) foreign artistes, who are in Malaysia solely for the purpose of performing in the Solo Guitar Concert by Spain's Child's Club Prodigy "Rayito" held on 14 to 15 March 1996 at the Hotel Regent, K.L. and University Malaya.	
42.	Tax (Exemption) (No. 34) Order 1996	380	15/8/96	Tax exemption for thirty-two (32) members of the XG Shenyang China Acrobatic Group who were in Malaysia for the purpose of acrobatic performances held from 3 May to 2 June 1996	Refer to the Governemnt Gazette - P.U(A) 380 15/8/96
43.	Income Tax (Exemption) (No. 35) Order 1996	381	15/8/96	Tax exemption for eighteen (18) artistes who are in Malaysia in connection with the South East Asian Travel Mission performing in Kuala Lumpur from 21 to 25 March 1996.	Refer to the Governemnt Gazette - P.U(A) 381 15/8/96
44.	Income Tax (Exemption) (No. 36) Order 1996	382	15/8/96	All income of the Pos Malaysia Berhad (excluding dividend income) are exempt from tax.	Y/A 1996 to Y/A 1997
45.	Double Taxation Relief (The Government Of The Czech Republic) Order 1996	393	22/8/96	Agreement between the Government of Malaysia and the Government of the Czech Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.	- made on 26/7/96 - date of entry into force , refer to the article 29 of this Agreement.
46.	Income Tax (Exemption) (No. 37) Order 1996	445	5/9/96	Tax exemption for thirty three (33) members of The China National Song and Dance Ensemble, who were in Malaysia solely for the purpose of performing in Kuala Lumpur from 22 to 28 June 1996.	- Refer to the Government P.U(A) 445 5/9/1996
47.	Income Tax (Exemption) (No. 39) Order 1996	459	12/9/96	Tax exemption for sixty nine (69) foreign artistes, who are in Malaysia for the performance of the Sofia University Orchestra held at the Oditorium Besar Dewan Bandaraya Kuala Lumpur on 11 February 1996.	
48.	Income Tax (Exemption) (No. 38) Order 1996	446	5/9/96	The following officials who are in Malaysia solely for the purpose of serving with the Sarawak Forest Department, are exempt from tax, in respect of the official emoluments received by them. NAME 1. Encik Robert Butler Stuebing INTERNATIONAL P/P NO: E058669	5/3/96 to 30/3/96 17/6/96 to 22/6/96

NO.	TITLE	REFER P.U. (A)	GAZETTE NOTIFICATION	DATE OF SUBJECT	EFFECTIVE DATE / REMARKS
49.	Income Tax (Exemption) (No. 40) Order 1996	462	12/9/96	2. Encik Pual Anthony Charles Holmes INTERNATIONAL P/P NO: 740033595 Tax exemption for for the Bangsar Hill Development Company Sendirian Bhd (BHDC) (including development tax) in respect of the income of RM7,544,248.59 arising from the sale of land to Syarikat Perumahan Pegawai- Pegawai Kerajaan Sendirian Bhd under the agreement between BHDC and Syarikat Perumahan Pegawai-Pegawai Kerajaan Sendirian Bhd dated 1 April 1971	8/4/96 to 20/4/96
50.	Income Tax (Exemption) (No. 41) Order 1996	463	12/9/96	Tax exemption for the seventeen (17) lessors, in respect of the interest paid by the Malaysian Airline System Bhd (MAS) under the Leveraged Lease Arrangement for the lease of aircraft and equipment specified.	- Various dates of lease Agreement - refer to the Government Gazette P.U(A) 463 12/9/96
51.	Double Taxation Relief (The Government Of The Republic of Turkey) Order 1996	489	3/10/96	Agreement between the Government of Malaysia and the Government of the Republic of Turkey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.	- made on 9/9/96 - date of entry into force , refer to the article 27 of this Agreement.
52.	Income Tax (Exemption) (No. 42) Order 1996	496	10/10/96	a) All income of the Menara Kuala Lumpur Sdn. Bhd. are exempt from tax. b) Tax exemption for the shareholders of Menara Kuala Lumpur in respect of dividend paid out of the income of the above (1).	Y/A 1997 to Y/A 2006 Y/A 1997 to Y/A 2006
53.	Income Tax (Exemption) (No. 43) Order 1996	497	10/10/96	Tax exemption for thirty-eight (38) foreign artists who are in Malaysia in connection with the performance of "The Young Ambassadors" in Kuala Lumpur on 10 and 11 May 1996	Refer to the Government Gazette - P.U(A) 497
54.	Income Tax (Exemption) (No. 44) Order 1996	498	10/10/96	All income of the Malaysian Derivatives Clearing House (excluding dividend income) are exempt from tax	Y/A 1996 to Y/A 2000
55.	Income Tax (Exemption) (No. 45) Order 1996	499	10/10/96	Tax exemption for the thirty seven (37) foreign artistes who are in Malaysia in connection with the performance of "The Prague Chamber Orchestra" in Kuala Lumpur from 8 to 13 June 1996.	Refer to the Government Gazette - P.U(A) 499

THE CERTIFIED TAX ACCOUNTANT SYSTEM IN JAPAN

MISSION AND ROLE OF A CERTIFIED PUBLIC TAX ACCOUNTANT

As it states in Article 1 of the Certified Public Tax Accountant Law, "A CPTA, as an expert in taxation matters, shall endeavour, on a basis of independency, fairness and justice and in accordance with the doctrine of a self-tax assessment system, to realize a proper compliance with the laws and ordinances relating to taxes, as his mission.", a CPTA owes allegiance to the social welfare of the general public in fulfilling this mission. Also, a CPTA performs an important role in the smooth and effective management of the self-tax assessment system as well as in ensuring adequate tax income for the national finance.

QUALIFICATIONS OF A CPTA

A person who falls under any one of the following categories shall qualify as a CPTA:

1. A person who has passed the CPTA examination;
2. A person who is exempted from the CPTA examination due to academic degrees, experience, or other special circumstances;
3. An attorney;
4. A certified public accountant.

To become a registered CPTA, those with the necessary qualifications must register with the official list of CPTA which is kept by the Japan Federation of Certified Public Tax Accountant's Associations and join a CPTA Association established within the area which covers the location of the CPTA office. Otherwise, no person, even though who possesses the qualification of CPTA, is supposed to do business as CPTA and anyone who violates this rule will be

punished according to the law. The work done by CPTAs is legally protected as the exclusive domain of registered CPTAs because of its vital importance to the public.

PROFESSIONAL DUTIES

1. Tax Agency

To act as an agent or a deputy for return, application, claim and appeal, etc. to be filed with tax offices in accordance with the provisions of the laws and ordinances relating to taxes and contention or statement to tax offices in respect to the said tax report, etc. or investigation or assessment of tax offices.

2. Preparation of tax documents

To prepare tax documents, etc. to be filed with tax offices.

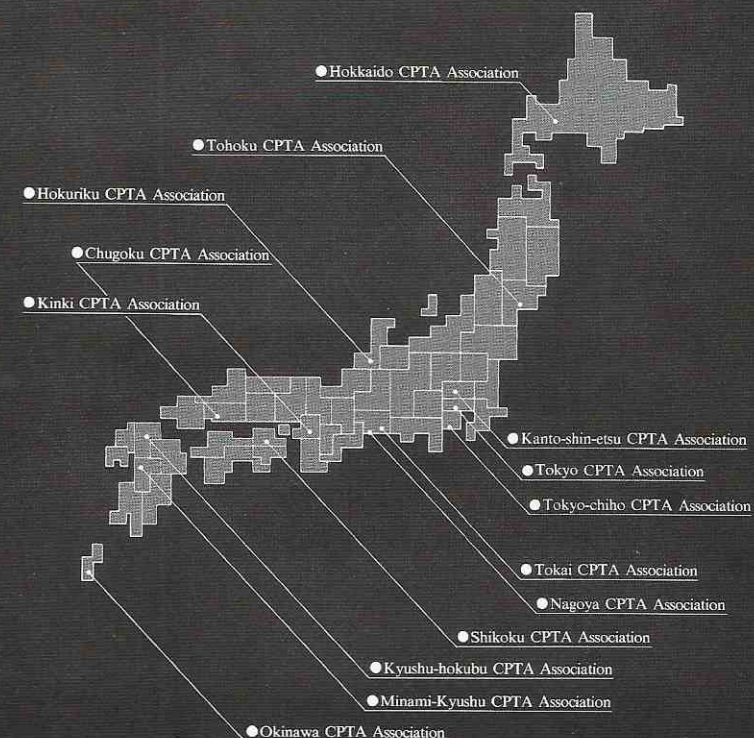
3. Tax Consultation

To give consultation on tax report, contention or statement, preparation of tax documents, etc. or the matters relating to the calculation of a tax base, etc.

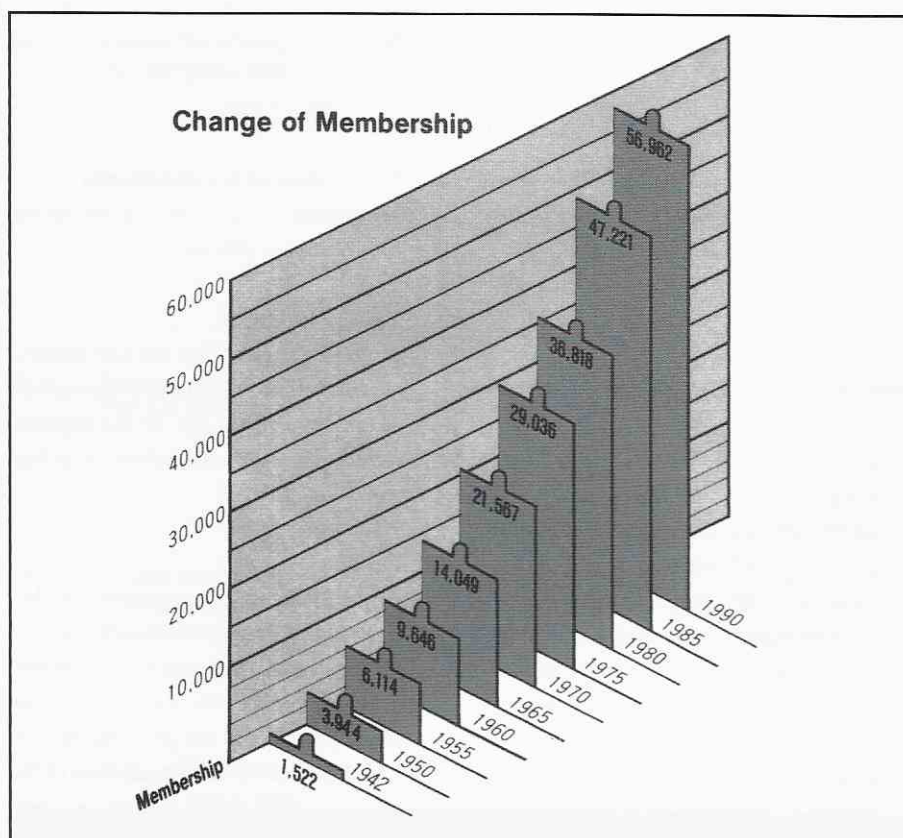
4. Others

In addition to the professions described above, a CPTA may conduct, as a business at the request of a second party, under the title of a CPTA and in conjunction with the profession of a CPTA, activities of preparation of fi-

The 14 Regional Associations



THE CERTIFIED TAX ACCOUNTANT SYSTEM IN JAPAN



Membership (as of July 31, 1993)

Tokyo CPTA Association	15,286
Tokyo-chiho CPTA Association	5,593
Kanto-shin-etsu CPTA Association	6,120
Kinki CPTA Association	11,425
Hokkaido CPTA Association	1,893
Tohoku CPTA Association	2,597
Nagoya CPTA Association	3,169
Tokai CPTA Association	3,290
Hokuriku CPTA Association	1,271
Chugoku CPTA Association	3,085
Shikoku CPTA Association	1,536
Kyushu-hokubu CPTA Association	2,653
Minami-Kyushu CPTA Association	1,809
Okinawa CPTA Association	230
Total	59,957

nancial documents, making of entries to books of account on behalf of a second party and other business relating to financial affairs.

FOUNDATION OF THE TAX PRACTITIONER SYSTEM

The Tax practitioner System was legislated by the Tax Practitioner Law on February 23, 1942, which means an autho-

rized system, that certified professionals do tax practice for taxpayers, put into place for the first time in Japan.

ESTABLISHMENT OF THE CPTA LAW

The self-tax assessment system was adopted in place of the official assessment system in 1947, and a drastic tax reform was carried out along the lines suggested by the Shoup Recommendations* in 1950. Likewise, various reforms were undertaken in the aftermath of World War II, under the movement of "democratization", the new CPTA Law was established in place of the former Tax practitioner Law in 1951.

* The Shoup's Recommendations:
The recommendations relating to the revision of Japanese tax system, which American doctor Carl S. Shoup, who came to Japan with his mission in 1949 and 1950, advised to the Japanese government.

REVISIONS OF CPTA LAW

Since its inception, the CPTA Law has been revised several times. The major revisions are:

- In 1956:**
The voluntary admission system was shifted to the indirect compulsory enrollment system, which means no person who does not belong to a CPTA Association is able to do business as CPTA.
- In 1961:**
The administrative procedures for the registration of CPTAs were transferred to the Federation from the National Tax Administration.
- In 1980:**
Established were various rules such as the clarification of the mission of the CPTA, the increase in the number of tax items that CPTAs are allowed to deal with, a registration- cum-enrollment system (whereby a registered

CPTA must at the same time be a member of a CPTA Association), the obligation to give advice to a client, and the establishment of branches of a CPTA Association.

ORIGIN OF THE TAX PRACTITIONER LAW

In the eras of Meiji, Taishō and early Shōwa, as the new taxes (income tax, inheritance tax, business income tax, corporation tax) were introduced, the conventional simple tax structure, which had traditionally been land oriented, became more complicated. During this transitional period, the tax experts who handled tax matters on behalf of taxpayers began to appear. Since then, the number of those tax experts increased and the Tax Practitioner Law was promulgated in order to coordinate the relations with tax authorities and with taxpayers.

HISTORY OF THE FEDERATION

23 February 1942

Creation of the Tax Practitioner Law.

11 November 1942

Founding of the Japan Federation of Tax Practitioners Associations.

15 June 1951

Issuing of the CPTA Law.

15 July 1951

Implementation of the CPTA Law.

8 December 1951

Dissolving of the Japan Federation of Tax Practitioners Associations.

8 December 1951

Founding of the Japan Federation of CPTA Associations (aggregate corporation).

15 February 1957

Dissolving of the Japan Federation of

CPTA Associations (aggregate corporation).

16 February 1957

Founding of the Japan Federation of CPTA Associations.

OUTLINE OF THE JAPAN FEDERATION OF CERTIFIED PUBLIC TAX ACCOUNTANT'S ASSOCIATIONS

ORGANIZATION

The Federation is the special juridical person established by the CPTA Law, which is the integrated body of 14 regional Associations. On November 11, 1942, the Federation's predecessor, Japan Federation of Tax Practitioners' Associations was born, which consisted of 12 regional associations.

The General Meeting, as a supreme decision making organ, is summoned once a year and is attended by the representatives from the 14 regional Associations. The General Meeting decides the annual projects, the budget, the revisions of statutes, the annual report, the account, etc.

The officers of the Federation are Chairman, Vice Chairmen (not more than 14 persons), Directors (100 persons) and Auditors (14 persons). The term of office for each position is 2 years and the holders are elected by the General Meeting. The Chairman is entitled to assign Senior Managing Directors (not more than 3 persons) among the Directors.

OBJECTIVES

The Federation, in consideration of the mission, duties and responsibilities of the CPTA, shall have the objective of carrying out the business concerning guidance of, communication with and supervision toward CPTA Associations and their members and the business concerning the registration of CPTAs, for facilitating the obe-

dience of a CPTA's responsibilities, and the improvement and progress of the profession of the CPTA.

ACTIVITIES

1. To give advice to the CPTA Associations and their members about the appropriate matters concerning the guidance of, communication with and supervision of the CPTA Associations and their members.
2. To study and survey matters concerning tax administration, taxes or the CPTA system.
3. To study and survey matters concerning improvement of the professional duties of the members of the CPTA Associations.
4. To carry out public relations activities concerning the system and professional duties of CPTAs.
5. To publish a journal and topical papers for the members of CPTA Associations.
6. To conduct administrative matters on the registration of CPTAs.
7. To implement appropriate measures concerning education for the members of the CPTA Associations.
8. To implement appropriate measures concerning the professional duties of a CPTA towards small-sized entrepreneurs.
9. To implement appropriate measures concerning remuneration and record keeping toward the professional duties of the members of the CPTA Associations.
10. To make proposals and replies to the competent authorities about tax administration, taxes, or systems on the CPTA.



CPTA must at the same time be a member of a CPTA Association), the obligation to give advice to a client, and the establishment of branches of a CPTA Association.

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ROYAL CUSTOMS AND EXCISE DEPARTMENT TRANSFER OF SENIOR OFFICERS

(with effect from 24 December 1996)

Bil	Nama	Dari	Ke
1.	Vickneswaran a/l Mala Perumal	Penolong Kanan Pengarah Kastam Bahagian Pencegahan (Risikan), Johor Bahru Johor	Penolong Kanan Pengarah Kastam Import/Eksport dan Perindustrian, Kuching Sarawak
2.	Mohd. Ibrahim bin Bahari	Penolong Kanan Pengarah Kastam LTASAAS Subang	Penolong Kanan Pengarah Kastam LTA Sepang
3.	Mohamed bin Sulong	Penolong Kanan Pengarah Kastam Sandakan Sabah	Penolong Kanan Pengarah Kastam Import/Eksport Wil. Persekutuan Kuala Lumpur
4.	Zaharah bt. Jaal	Penolong Kanan Pengarah Kastam Import/Eksport Wil. Persekutuan Kuala Lumpur	Penolong Kanan Pengarah Kastam Cawangan Perolehan Ibu Pejabat
5.	Choong Kon Sim	Penolong Kanan Pengarah Kastam Bahagian Pencegahan Selangor	Penolong Kanan Pengarah Kastam Bahagian Perindustrian Selangor
6.	Bani bin Roslan	Penolong Kanan Pengarah Kastam Cawangan Import/Eksport Ibu Pejabat	Penolong Kanan Pengarah Kastam Bahagian Cukai Dalam Selangor
7.	Othman bin Ibrahim	Penolong Kanan Pengarah Kastam Cawangan Zon Bebas Dan Kawalan GPB Ibu Pejabat	Penolong Kanan Pengarah Kastam Bahagian Pencegahan Selangor
8.	Ghazali bin Osman	Penolong Kanan Pengarah Kastam Miri Sarawak	Penolong Kanan Pengarah Kastam Sg. Petani Kedah
9.	Yeap Hock Sun	Penolong Kanan Pengarah Kastam Cawangan Perolehan Ibu Pejabat	Penolong Kanan Pengarah Kastam Bahagian Pemeriksaan Akaun Kota Kinabalu Sabah
10.	Mahyuddin bin Mahmud	Penolong Kanan Pengarah Kastam Import/Eksport Pulau Pinang	Penolong Kanan Pengarah Kastam Wil. Persekutuan Labuan, Sabah

11. Ajip bin Busro	Penolong Kanan Pengarah Kastam Cawangan Perjawatan Ibu Pejabat	Penolong Kanan Pengarah Kastam Cawangan Pungutan dan Tuntutan Ibu Pejabat
12. Norhaini bt. Sopian	Penolong Kanan Pengarah Kastam Sg. Petani Kedah	Penolong Kanan Pengarah Kastam Bahagian Pencegahan (Risikan) Pulau Pinang
13. Ahmad Zakaria bin Yob	Penolong Kanan Pengarah Kastam Import/Eksport Kuching Sarawak	Penolong Kanan Pengarah Kastam Import/Eksport Pulau Pinang
14. Zainal bin Rajan	Penolong Kanan Pengarah Kastam Wil. Persekutuan Labuan, Sabah	Penolong Kanan Pengarah Kastam Sandakan Sabah
15. Abd. Rashid bin Palil	Penolong Pengarah Kastam Import/Eksport Selangor	Penolong Kanan Pengarah Kastam Cawangan Perjawatan Ibu Pejabat
16. Baharuddin bin Md. Yusof	Penolong Pengarah Kastam Bahagian Pencegahan Ibu Pejabat	Penolong Kanan Pengarah Kastam Bahagian Pencegahan (Risikan) Johor Bahru
17. Md. Salleh bin Said	Penolong Pengarah Kastam Bahagian Cukai Dalam Selangor	Penolong Kanan Pengarah Kastam Cawangan Import/Eksport Ibu Pejabat
18. Salahuddin bin Ab. Rahman	Penolong Pengarah Kastam AKMAL Melaka	Penolong Kanan Pengarah Kastam Import/Eksport dan Perindustrian Kota Kinabalu Sabah
19. Ahmalu Rajah a/l Rajagopal	Penolong Pengarah Kastam Cawangan Zon Bebas Dan Kawalan GPB Ibu Pejabat	Penolong Kanan Pengarah Kastam Cawangan Zon Bebas Dan Kawalan GPB Ibu Pejabat
20. Nor Pipah bt. Ayob	Penolong Pengarah Kastam Cukai Dalam (Penguatkuasaan Perlesenan) Johor Bahru	Penolong Kanan Pengarah Kastam Unit Khas Cukai Jualan dan Perkhidmatan Ibu Pejabat
21. Patimah bt. Kamari	Penolong Pengarah Kastam Bahagian Cukai Dalam Cukai Jualan Ibu Pejabat	Penolong Kanan Pengarah Kastam LTASAAS Subang
22. Abd. Rahman bin Nordin	Penolong Pengarah Kastam Cawangan Pengurusan Penumpang dan Penggundangan Ibu Pejabat	Penolong Kanan Pengarah Kastam Miri Sarawak
23. Noor Farid bin Mohd. Yusof	Penolong Penguasa Kastam Pelabuhan Klang Selangor	Penolong Penguasa Kastam Pulau Pinang
24. Nordin bin Mat	Penolong Penguasa Kastam Pulau Pinang	Penolong Penguasa Kastam Padang Besar Perlis

25. Jusoh bin Abdullah	Penolong Penguasa Kastam Pulau Pinang	Penolong Penguasa Kastam Padang Besar Perlis
26. Mohamad bin Latif	Penolong Penguasa Kastam Alor Setar Kedah	Penolong Penguasa Kastam Pengkalan Kubor Kelantan
27. Zamhuri bin Mohd. Hussin	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur	Penolong Penguasa Kastam Kangar Perlis
28. Othman bin Satir	Penolong Penguasa Kastam Johor Bahru Johor	Penolong Penguasa Kastam Rantau Panjang Kelantan
29. Rokiah binti Ibrahim	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur
30. Asman binti Sudin	Penolong Penguasa Kastam Kuala Perlis Perlis	Penolong Penguasa Kastam Kuala Perlis Perlis
31. Ruben Saktiraj Murthy	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur	Penolong Penguasa Kastam Kulim Kedah
32. Vasantha Kumary a/p S. Velliah	Penolong Penguasa Kastam Ipoh Perak	Penolong Penguasa Kastam Ipoh Perak
33. Bong Sian Tin	Penolong Penguasa Kastam Kuching Sarawak	Penolong Penguasa Kastam Kuching Sarawak
34. Ganesan a/l Khotendapani	Penolong Penguasa Kastam Cawangan Pungutan Dan Tuntutan Ibu Pejabat	Penolong Penguasa Kastam Padang besar Perlis
35. Hazizah binti Marzuki	Penolong Penguasa Kastam Cawangan Pungutan Dan Tuntutan Ibu Pejabat	Penolong Penguasa Kastam Pelabuhan Klang Selangor
36. Khairudin bin Suyono	Penolong Penguasa Kastam Pelabuhan Klang Selangor	Penolong Penguasa Kastam Ipoh Perak
37. Noruddin bin Yaacob	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur	Penolong Penguasa Kastam Pelabuhan Klang Selangor
38. Rosmina binti Omar	Penolong Penguasa Kastam Pelabuhan Klang Selangor	Penolong Penguasa Kastam Pelabuhan Klang Selangor
39. Syed Zamzuri bin Syed Mohamad	Penolong Penguasa Kastam Pelabuhan Klang Selangor	Penolong Penguasa Kastam Pulau Pinang

40. Peng Siau Hua	Penolong Penguasa Kastam Johor Bahru Johor	Penolong Penguasa Kastam Johor Bahru Johor
41. Abdul Khalim bin Bawok	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur
42. Abdul Khalek bin Haji Hashim	Penolong Penguasa Kastam Johor Bahru Johor	Penolong Penguasa Kastam Alor Setar Kedah
43. Harith bin Raim	Penolong Penguasa Kastam Kota Kinabalu Sabah	Penolong Penguasa Kastam Bukit Kayu Hitam Kedah

(with effect from 15 January 1997 unless otherwise stated)

Bil	Nama	Dari	Ke
1.	Fauziah bt. Abu Zarim	Penguasa Kastam Pulau Pinang	Penguasa Kastam Wil. Persekutuan Kuala Lumpur
2.	Roszita bt. Dim	Penguasa Kastam Wil. Persekutuan Kuala Lumpur	Penguasa Kastam Melaka
3.	Ong Bak Hin	Penguasa Kastam Pulau Pinang	Penguasa Kastam Melaka
4.	Md. Zain bin Awang	Penguasa Kastam Melaka	Penguasa Kastam Pulau Pinang
5.	Junaidah bt. Abdullah	Penguasa Kastam Melaka	Penguasa Kastam Wil. Persekutuan Kuala Lumpur (w.e.f 6 Jan 1997)
6.	Zainah binti Ab. Kamat	Penguasa Kastam Melaka	Penguasa Kastam Wil. Persekutuan Kuala Lumpur
7.	Syed Esa bin Syed A. Rahman	Penguasa Kastam Wil. Persekutuan Kuala Lumpur	Penguasa Kastam Pulau Pinang
8.	Rosland Pang Onn Gee	Penguasa Kastam Caw. Cukai Jualan Ibu Pejabat	Penguasa Kastam Pelabuhan Klang Selangor
9.	Jamal bin Paiman	Penguasa Kastam Pelabuhan Klang Selangor	Penguasa Kastam Kuching Sarawak
10.	Misbahudin bin Parmin	Penguasa Kastam Ipoh Perak	Penguasa Kastam Kuching Sarawak
11.	Mohd. Shahar bin Mohd Khalil	Penguasa Kastam Ipoh Perak	Penguasa Kastam Telok Intan Perak
12.	Jeffri bin Abd. Rahman	Penguasa Kastam Teluk Intan Perak	Penguasa Kastam (Pencegah) Teluk Intan Perak
13.	Mohd. Ismail bin Sopardi	Penguasa Kastam (Pencegah) Teluk Intan Perak	Penguasa Kastam Ipoh Perak

Bil	Nama	Dari	Ke
14.	Siti Zauyah bt. Syed Abd. Bakar	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur	Penolong Penguasa Kastam Pelabuhan Klang Selangor
15.	Hazizah bt. Marzuki	Penolong Penguasa Kastam Caw. Pungutan dan Tuntutan Ibu Pejabat	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur
16.	Fauziah Begum bt. Mohideen Batcha	Penolong Penguasa Kastam Wil. Persekutuan Kuala Lumpur	Penolong Penguasa Kastam Seremban Negeri Sembilan
17.	Nasaruddin bin Othman	Penolong Penguasa Kastam Johor Bahru Johor	Penolong Penguasa Kastam Caw. Pungutan dan Tuntutan Ibu Pejabat
18.	Santhana Das a/l Sinnappan	Penolong Penguasa Kastam Melaka	Penolong Penguasa Kastam Ipoh Perak
19.	Faridah bt. Wasli	Penolong Penguasa Kastam Kota Kinabalu Sabah	Penolong Penguasa Kastam Kuching Sarawak
20.	Ruslan bin Saidon	Penolong Penguasa Kastam Kuching Sarawak	Penolong Penguasa Kastam Pulau Pinang

NOTICE

The following has been issued by the
The Secretary of the Tax Analysis Division, Ministry of Finance

***Extension of the Provision of 'Tax Sparing Credit'
Under The Double Taxation Agreement Between Malaysian and Japan***

The Double Taxation Agreement (DTA) between Malaysia and Japan was signed in January 1970. The DTA provides tax benefits to residents of both countries. Under Article XVIII of the Agreement, tax sparing credit is available to Japanese investors enjoying tax incentives in Malaysia. The provision for tax sparing credit under the DTA is for a limited period. Both the Malaysian and the Japanese Governments have agreed to extend the said period, which expired in the year of assessment 1996, for another two years up to the year of assessment 1998.

Tax sparing credit is available to the residents of Japan in respect of the following incentives under the Promotion of Investments Act 1986 (Act 327):

- (i) Sections 22 and 23 - relating to exemption from income tax of the income of a pioneer company and the dividends attributable to that exempt income;
- (ii) Sections 29, 29A, 29B, 29C, 29D, 29E, 29F, 29G and 29H - relating to exemption from income tax of income equivalent to the investment tax allowance of a company and the dividends attributable to such exempt income;
- (iii) Section 45 (only to the extent that the provisions of the Investment Incentives Act 1968 (Act 13) referred to therein are relevant to exemption from income tax under section 21, section 22, and section 26 - relating to the transitional measures concerning exemption from income tax granted in accordance with the provisions of Investment Incentives Act 1968

Finance Act 1997

The Finance Act 1997 has become law, having received the Royal Assent on 6 February 1997 and been gazetted on 6 March 1997. There are no changes of any consequence from the provisions of the Finance Bill. We would like to point out that the Budget 1997 article which appeared in the December 1996 issue of the TAX NASIONAL on

***Deduction For Own Medical Costs
(Page 3)***

The sentence:

"Where, in the case of a married couple, both are eligible to claim, the total deduction cannot exceed RM5,000.00"

to be replaced with:

"In the case of the married couple, both are eligible to claim. However, where the wife has no total income, the total deduction shall not exceed RM5,000.00."

A SURVEY ON THE PROFESSIONAL NEEDS OF FIRMS THAT OFFER TAX SERVICES

Introduction

The objective of the survey is to examine the professional development needs of firms that offer tax services in relation to the roles of the MIT in meeting these needs. The views pertaining to the professional development needs of firms that offer tax services were obtained through a questionnaire survey. Only one set of questionnaire was mailed to each firm, and was addressed to a senior executive or senior partner. He/she was requested to respond to the questionnaire on behalf of his/her firm.

RESULTS

The responding firms

A total of 84 usable questionnaires were received, representing about 10% of the questionnaires distributed. Besides offering tax services, most of these firms also offered a combination of accounting, auditing, management consultancy and company secretarial services [see Table 1]. The other services offered include company insolvency matters, liquidation, receivership, corporate recovery, computer risk management, software implementation and information technology services.

TABLE 1:
SERVICES OFFERED BY FIRMS

Services Offered	Firms Offering The Services N(%)
Tax Services	84(100%)
Accounting Services	73(86.9%)
Auditing Services	81(96.4%)
Company Secretarial Services	61(72.6%)
Management Consultancy Services	48(57.1%)
Other Services	7(8.3%)

PROFESSIONAL DEVELOPMENT

On the scale of 1 to 5, (where 1 = definitely yes; 2 = probably yes; 3 = not sure; 4 = probably not and 5 = definitely not) the respondents were requested to express his/her views as to whether certain attributes were considered effective in enhancing the professional knowledge and skills of a tax practitioner [see Table 2].

The results revealed that of the five at-

tributes, practical training/experience was considered as the most effective in enhancing one's professional knowledge and skills, followed by reading the latest authoritative publications, attending seminars/talks on taxation and in-house training. Attending the National Tax Conference was considered as the least effective attribute.

TABLE 2:
EFFECTIVE PROFESSIONAL DEVELOPMENT

	DY n(%)	PY n(%)	NS n(%)	PN n(%)	DN n(%)
1 Attending the National Tax Conference would be effective in enhancing the professional knowledge & skills of a tax practitioner	12 (14.3%)	37 (44.0%)	22 (26.2%)	10 (11.9%)	3 (3.6%)
2 Attending in-house training courses would be effective in enhancing the professional knowledge & skills of a tax practitioner	42 (50.0%)	30 (35.7%)	9 (10.7%)	2 (2.4%)	1 (1.2%)
3 Attending seminars/talks on Taxation would be effective in enhancing the professional knowledge & skills of a tax practitioner	37 (44.0%)	41 (48.8%)	5 (6.0%)	0	1 (1.2%)
4 Practical training/experience acquired in the course of duty would be effective in enhancing the professional knowledge & skills of a tax practitioner	62 (73.8%)	18 (21.4%)	3 (3.6%)	0	1 (1.2%)
5 Reading the latest authoritative publications would be effective in enhancing the professional knowledge & skills of a tax practitioner	49 (58.3%)	25 (29.8%)	8 (9.5%)	1 (1.2%)	1 (1.2%)

DY=Definitely yes; PY=Probably yes; NS=Not Sure; PN=Probably Not; ND=Definite not

TALKS & SEMINARS ON TAXATION

In terms of attending talks/seminars organised by MIA and/or MIT, on average, over the last three years, 12 (14.3%) of the firms revealed that their staff never attended any, while some of the staff of 34 (40.5%) of the firms attended once a year and that of 26 (31.0%) of the firms attended twice a year. As for talks/seminars not organised by MIA and/or MIT, on average, over the last three years, 44 firms (52.4%) disclosed that their staff never attended any, while for 34 firms (40.5%), some of their staff attended only once a year [see Table 3].

IN-HOUSE TAX TRAINING PROGRAMMES

Of the 84 responding firms, only 27 con-

ducted in-house tax training programmes for their staff. Out of those firms that had in-house training programmes, on average, over the last three years, the staff of 25 (29.7%) of these firms attended talks/seminars on taxation organised by MIA and/or MIT, while the staff of 12 (14.3%) of these firms also attended similar talks/seminars not organised by MIA and/or

MIT. On the other hand, out of those firms that did not have in-house training programmes, on average, over the last three years, the staff of 47 (56.0%) firms attended talks/seminars on taxation organised by MIA and/or MIT, while the staff of 28 (34.4%) also attended similar talks/seminars not organised by MIA and/or MIT [see Table 4].

ROLES OF FIRMS & PROFESSIONAL BODIES

On a scale of 1 to 5 (where 1 = definitely yes; 2 = probably yes; 3 = not sure; 4 = probably not; 5 = definitely not) each respondent was requested to indicate whether his/her firm would send its staff to talks/seminars, courses or conferences on taxation and whether the talks/seminars organised by MIA and/or MIT were

A SURVEY ON THE PROFESSIONAL NEEDS OF FIRMS THAT OFFER TAX SERVICES

TABLE 3:
STAFF ATTENDING TALKS/SEMINARS

AVERAGE FREQUENCY OF ATTENDANCE OVER THE LAST THREE YEARS	FIRMS WHOSE STAFF ATTENDED TALKS/SEMINARS ON TAXATION ORGANISED BY MIA AND/OR MIT N(%)	FIRMS WHOSE STAFF ATTENDED TALKS/SEMINARS ON TAXATION NOT ORGANISED BY MIA AND/OR MIT N(%)
Never	12(14.3%)	44(52.4%)
Once A Year	34(40.5%)	34(40.5%)
Twice A Year	26(31.0%)	2(2.4%)
Three Times A Year	7(8.3%)	2(2.4%)
More Than 3 Times A Year	5(6.0%)	2(2.4%)
	84(100%)	84(100%)

TABLE 4:
IN-HOUSE TRAINING & STAFF ATTENDING TALKS/SEMINARS

		FIRMS WHOSE STAFF ATTENDED TALKS/SEMINARS ORGANISED BY MIA AND/OR MIT		FIRMS WHOSE STAFF ATTENDED TALKS/SEMINARS NOT ORGANISED BY MIA AND/OR MIT	
		NEVER ATTENDED	ATTENDED	NEVER ATTENDED	NEVER
Firms Conducting In-House Tax Training Programmes?	Yes	2(2.4%)	25(29.7%)	15(17.8%)	12(14.3%)
	No	10(11.9%)	47(56.0%)	29(34.5%)	28(34.4%)
		12(14.3%)	72(85.7%)	44(52.3%)	40(48.7%)

TABLE 5:
FIRMS SENDING STAFF TO TALKS, SEMINARS & CONFERENCES

	DY n(%)	PY n(%)	NS n(%)	PN n(%)	DN n(%)
1 Would your firm send professional tax staff to talks/seminars on Taxation that may be organised by MIA and/or MIT	33 (39.3%)	44 (52.4%)	3 (3.6%)	3 (3.6%)	1 (1.2%)
2 Would your firm send professional tax staff to talks/seminars that may be organised by organisations other than MIA and/or MIT?	15 (17.9%)	31 (36.9%)	19 (22.6%)	13 (15.5%)	6 (7.1%)
3 Would your firm send professional tax staff to attend basic taxation courses organised by MIA and/or MIT?	24 (28.6%)	38 (45.2%)	10 (11.9%)	10 (11.9%)	2 (2.4%)
4 Would your firm send professional tax staff to the National Tax Conference organised by MIT?	5 (6.0%)	29 (34.5%)	26 (31.0%)	20 (23.8%)	4 (4.8%)

DY=Definitely yes; PY=Probably yes; NS=Not Sure; PN=Probably Not; ND=Definite not

useful in meeting his/her firm's professional development needs.

There is a very strong possibility that most of the responding firms would send their staff to talks/seminars on taxation and basic taxation courses that may be organised by MIA and/or MIT. However, there is only a slight possibility that these firms would send their

staff to talks/seminars not organised by the two professional bodies or to the National Tax Conference [see Table 5]. In fact, over the last three years only 13.1% of the firms disclosed that their staff have attended the National Tax Conference.

The majority (76.2%) of the firms expressed positively that talks/seminars on taxation organised by MIA and/or MIT have been useful in meeting their needs. Except for the National Tax Conference, this survey revealed that courses, talks and seminars on taxation have met the professional development needs of the firms. The majority of the firms also felt that MIA and/or MIT should continue to organise talks/seminars that meet the needs of firms, and that such talks/seminars should also complement in-house training (if any) of firms [see Table 6].

MIT PROFESSIONAL EXAMINATION

Although the examination is relatively new, 70 (83.4%) out of the 84 firms were aware of the examination, but only 23 (27.4%) of these firms were aware of the examination syllabus. There is a very strong possibility that most of the firms would employ, upgrade or promote staff who have passed the examination, and encourage and sponsor staff to sit for the examination [see Table 7].

In fact, of the firms that were not aware of the MIT examination, about three quarter of them indicated a strong possibility of upgrading or promoting staff who have passed the examination, and that they would encourage and sponsor their staff to sit for the examination.

CONCLUSION

This survey revealed that the majority of the firms felt that MIA and/or MIT should conduct talks/seminars on taxation that can complement in-house training programmes (if any) and that can meet the professional development needs of firms. The majority of these firms are also prepared to send their staff to courses, talks or seminars on taxation, but not to the National Tax Conference. In fact, staff of most firms also attended talks/seminars on taxation, especially those organised by the MIA and/or MIT, but not the National Tax Conference. Most of the firms are prepared to give positive recognition and support to the MIT Professional Examination.

A SURVEY ON THE PROFESSIONAL NEEDS OF FIRMS THAT OFFER TAX SERVICES

TABLE 6:
TALKS, SEMINARS & COURSES ORGANISED BY MIA/MIT

	DY n(%)	PY n(%)	NS n(%)	PN n(%)	DN n(%)
1. Should MIA and/or MIT organise talks/seminars on Taxation that meet the needs of your firm?	63 (75.0%)	15 (17.9%)	5 (6.0%)	0	1 (1.2%)
2. Should MIA and/or MIT organise talks/seminars on Taxation that can complement the in-house training (if any) of your firm?	47 (56.0%)	18 (21.4%)	12 (14.3%)	5 (6.0%)	2 (2.4%)
3. Were the talks/seminars on Taxation organised by MIA and/or MIT to date useful in meeting the needs of your firm?	29 (34.5%)	35 (41.7%)	16 (19.0%)	3 (3.6%)	1 (1.2%)

DY=Definitely yes; PY=Probably yes; NS=Not Sure; PN=Probably Not; ND=Definite not

TABLE 7:
RESPONSES ON THE MIT EXAMINATION

	DY n(%)	PY n(%)	NS n(%)	PN n(%)	DN n(%)
1. Would your firm employ those who have passed the MIT Professional Examination?	40 (47.6%)	35 (41.7%)	7 (8.3%)	1 (1.2%)	1 (1.2%)
2. Would your firm encourage staff to sit for the MIT Professional Examination?	45 (53.5%)	32 (38.1%)	7 (6.0%)	1 (1.2%)	1 (1.2%)
3. Would your firm sponsor staff to sit for the MIT Professional Examination?	27 (32.1%)	39 (46.4%)	13 (15.5%)	5 (6.0%)	0
4. Would your firm upgrade or promote staff who have passed the MIT Professional Examination?	49 (58.3%)	30 (35.7%)	3 (3.6%)	1 (1.2%)	1 (1.2%)

DY=Definitely yes; PY=Probably yes; NS=Not Sure; PN=Probably Not; ND=Definite not

tion based on their readiness to employ and upgrade those who passed the examination and their willingness to encourage and sponsor their staff to sit for the examination.

** The Malaysian Institute of Taxation would like to thank all those who have responded to our survey on the professional needs of members and firms. Your views on the issues raised have definitely helped the Institute to draw up plans and strategies to meet your needs. The report on the survey pertaining to the professional needs of members will be published in the next issue of the Tax Nasional.*

The Institute would also like to thank Mr Ho Juan Keng and Ms Loo Ern Chen, who are both lecturers at the School of Accountancy, Institut Teknologi MARA (ITM) for their assistance in conducting the survey for the Institute.

Q U O T E

'If there is
no wind,
Row.'

Latin Proverb

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

"Selamat Hari Wesak"

VISIT TO MOF

On 31 January 1997, a delegation led by the Institute's President, En Ahmad Mustapha Ghazali paid a courtesy call to Y Bhg Dato' Iskandar Dzarkunain Badarudin at his office. The visit which was organised by the Government Affairs Committee, was also attended by Vice President, Mr Chow Kee Kan, Chairperson of the Government Affairs Committee, Ms Teh Siew Lin and Council member Mr Harpal Singh Dhillon. The delegation was also met by Y Bhg Dato' Iskandar's senior officers, Pn Kamariyah Hussain, Tn Hj Ithnin b. Hj Hassan, En G. Parameswaran, En Awang b. Che Saman, En Khazali b. Hj Ahmad and Pn. Kamariah Ahmad.

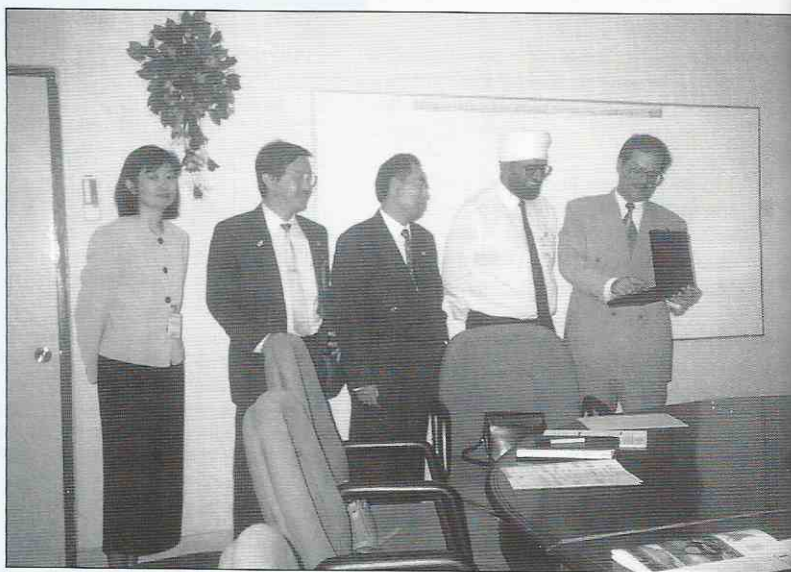
The highly interactive meeting was littered with anecdotes of tax issues faced by tax payers and the profession. A discussion on articles in the December 1996 issue of the *Tax Nasional* also contributed to an interesting meeting. Mr Harpal Singh Dhillon, who is also the Chairman of the Editorial and Research Committee informed that the Ministry could send circulars to Institute whenever they need to inform members on any issues.

The meeting also gave an opportunity for the delegation to highlight the activities of the Institute which included participation at various government organised events. The delegation also touched on the subject of recognition of the Institute as the national tax body.

At the end of the visit which lasted more than an hour, a plaque representing the Institute's logo was presented to Y Bhg Dato' Iskandar.



President, En. Ahmad Mustapha Ghazali (left) presenting a momento to Y. Bhg. Dato' Iskandar Dzarkurnain Badarudin.



One for the album ... Ms Teh Siew Lin, Mr Chow Kee Kan, En. Ahmad Mustapha Ghazali, Mr Harpal Singh Dhillon, Y. Bhg Dato' Iskandar Dzarkurnain Badarudin (from left to right)

Q U O T E

'The art of taxation consist in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing.'

Jean Baptiste Colbert

Visit To The Chartered Institute Of Taxation & The Institute Of Indirect Taxation

On 2nd January 1997, Mr Tony Seah, a Council Member of the Institute, visited the Chartered Institute of Taxation (CIOT), a senior professional body in the United Kingdom which is concerned solely with all aspects of taxation. He was received by Mr Robert A Dommet who is the Secretary-General to the CIOT, UK.

During this meeting, many areas were looked into especially areas in which both

the Institutes can work together for the betterment of the tax profession. Mr Tony Seah was briefed on the structure of the CIOT and was impressed on the interest shown by the CIOT on the activities of MIT and their willingness to assist MIT in promoting the AOTCA Conference which is to be held in Kuala Lumpur next year.

On the following day, Mr Tony Seah met with Mr Robert Maas of the Institute of Indirect

Taxation. This is a small body, which comprises mainly customs practitioners. Since its formation, this Institute has become a consultative group on indirect taxation and is involved in fiscal matters beyond VAT.

Through these meetings, the Institute was able to share ideas and form better cooperation with both the overseas bodies.

Consortium Of Australian Tax Schools - Postgraduate Tax Studies

The Consortium of Australian Tax Schools (CATS) was established by the University of Sydney, the University of Melbourne, the Queensland University of Technology and the Taxation Institute of Australia to provide high level education in taxation to Australia and the Asia Pacific, especially at the postgraduate level.

Its associate director, Mr Nick Petroulias who visited the Institute on 21 January 1997, informed the Institute on the consortium's intention to conduct international and comparative tax courses in Kuala Lumpur which will lead to a degree of Masters of International Taxation from the University of Sydney.

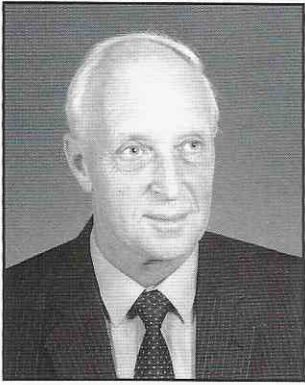
The Institute was represented by the Deputy President & Chairman of the Education and Training Committee, Mr Michael Loh, Vice President & Chairman of the Examination Committee, Mr Chow Kee Kan, Council Member Mr Veerinderjeet Singh and Mr Ho Juan Keng, a lecturer from MARA Institute of Technology.

The MIT representatives were briefed on the courses being offered through the consortium as well as their teaching methods and the level of the programmes being offered which ranges from a Master of International Taxation to postgraduate Diplomas and Certificates of Taxation. An interesting feature of the programmes is the possibility of studying the taxation systems of other countries, which could include studying the subject in that particular country. For example, the consortium expressed its interest to have students from University of Sydney coming to Malaysia to study the taxation system of this country.

Mr Chow and Mr Veerinderjeet, in turn briefed Mr Petroulias on the professional examination of the Institute. Mr Loh and Mr Ho, members of the Institute's Education & Training Committee informed Mr Petroulias on courses and seminars currently conducted as well as being planned for members.

The group discussed the possibilities of fitting the courses offered by the consortium with the professional examination of the Institute. This could take the form of exemptions from the consortium's programmes. Therefore, it will make it possible for students of the MIT Examination to not only gain a local qualification but also an overseas qualification, if he plans to further his studies. The post graduate programmes offered by the consortium may also be of interest to middle and senior tax personnel. The consortium intends to structure courses in a short intensive format that will be most suitable to the working professional.

The meeting which lasted for almost 1¹ hours ended with a proposal to run the first of such programme sometime in Mid January 1998 to determine the interest of the Malaysian tax profession regarding such programmes. The consortium hopes to get the Institute and its members support in making the programme a success.



RESIDENCE AND NON-RESIDENCE - INDIVIDUALS

Prepared by:
Richard Thornton

IDENTIFYING THE PERSON

As we saw in the earlier article in this series (September 1996), we need to identify with certainty four elements (who, what, where and when) before we can apply the rules of income tax to a particular situation. First, we must focus our attention on a particular person and that person may be an individual, a company or a body of persons. But this is not sufficient. In every case, we need to know whether the person is resident in Malaysia or not.

Categorising the person as resident or non-resident is important for several reasons. For example, a non-resident is subject to tax at special rates on certain types of income derived, or deemed to be derived, from Malaysia (e.g. interest and royalties); a resident individual is entitled to use the personal deductions and the reduced rates of income tax but, except in special circumstances, a non-resident is not; a resident individual is liable to tax on overseas income when it is received in Malaysia whereas a non-resident is not.

THE RULES OF RESIDENCE

For an individual, the question of whether he is a resident or not is determined by applying the rules contained in the Income Tax Act 1967 ("the Act") although, in some cases, the outcome may be affected by the provisions of a double taxation agreement as we shall see later. Tax residence has little to do with a person's status as a citizen or permanent resident of Malaysia, which are matters to be decided separately by the Department of Immigration.

Unlike some countries which have different categories of residence such as ordinary residence or permanent residence, Malaysia uses only two descriptions, either resident or not resident. Furthermore, the question of tax domicile is not relevant for Malaysian income tax purposes.

Residence is decided for a basis year for a year of assessment and there is no provision for splitting the basis year into resident and non-resident portions.

There are two sets of rules, those contained in section 7 which apply to individuals, and those contained in section 8 which apply to companies, bodies of persons and Hindu joint families. At this stage, we shall be considering the rules relating to individuals. Residence of companies will be dealt with in a later article.

APPLICATION TO INDIVIDUALS

For an individual, it is necessary to look at each of the four rules contained in section 7, the first three of which are expressed in terms of the number of days of presence in Malaysia. As "Malaysia" is defined for the purposes of income tax, there is no room for uncertainty as to whether a person is inside or outside. Malaysia includes the territories of the Federation of Malaysia (including Labuan), the territorial waters and the designated zone of exploration and exploitation.

Every day on which a person is present in Malaysia for a part or parts counts as a day of presence. This means that if you catch the early morning flight to Singapore on

Monday and return on the last flight on Tuesday, you never left Malaysia!

Before looking in detail at the three quantitative rules, it is worth noting the fourth rule under which an individual can be treated as being resident in Malaysia even though he never set foot in Malaysia during a particular year. This applies where the individual has been resident (under any of the four rules) in four out of five consecutive basis years, being the first three of those years and the last one. In that case, he is treated as being resident in the fourth year.

EXAMPLE 1

An individual was resident in Malaysia in 1989, 1990, 1991 and 1993 but he never set foot in Malaysia in 1992. He is deemed to be resident in Malaysia in 1992.

After that, he was resident by being present in Malaysia in 1994 and 1996, but he never set foot in Malaysia in 1995. Because he was deemed to be resident in 1992, and was resident in 1993, 1994 and 1996, he is deemed to be resident in 1995 also.

PRESENT IN MALAYSIA

For most people, it is not necessary to look beyond the first rule. If, during a basis period for a year of assessment, you are in Malaysia for 182 days or more, you are resident. These days might be in one continuous period or split into different periods. Even one day counts.

EXAMPLE 2

An Malaysian individual, who had been present in Malaysia all of his life, was seconded to work in Hong Kong and left Malaysia on 28th June 1996. At that point he had been in Malaysia for 180 days during 1996. He returned for a family funeral on 1st December 1996 and left again on 2nd December 1996.

He will be resident in Malaysia in 1996 under the first rule (180 days plus 2 days).

Under the second rule, an individual can be resident even though he is in Malaysia in a basis year for less than 182 days. This applies where he is present for a period of less than 182 days (the short period) but that period is linked by or to a (long) period of presence in the previous or the following basis year. The long period will be a continuous period of at least 182 days.

The second rule is not concerned with the total number of days of presence in a basis year, only with the length of the linked short and long periods.

All four rules must be looked at. If a person is found to be resident under any one of them, then he is resident. In fact, the individual in Example 2 would have been resident in Malaysia in 1996 under the second rule even if he had not come back for the funeral because his short period in 1996 was linked by or to his longer period in 1995.

The long period must be a continuous period. Any absence from Malaysia would be sufficient to break the continuity but, for this purpose, the following periods of temporary absence are treated as being part of the long period:

- connected with his service in Malaysia owing to service matters or attending conferences or seminars or study abroad
- owing to ill-health involving himself or a member of his immediate family
- social visits not exceeding fourteen days in aggregate

EXAMPLE 3

A foreign individual who had never been to Malaysia before arrived on 1st October 1995 to take up employment. He stayed in Malaysia until 1st April 1996, when he left to attend a conference in America, returning to Malaysia on 15th April 1996. He left Malaysia again on 1st May 1996 to accompany his wife for medical treatment in Singapore, returning on 7th May 1996. On 20th May 1996, he left Malaysia once again to pay a visit to his home country returning on 15th June 1996 and did not leave again until 30th December 1996, when he left for a holiday overseas returning on 8th January 1997. On 31st March 1997, he left Malaysia without returning.

periods of presence	days	total in the year	residence status
1995 1/10/95 to 31/12/95	92	92	not resident
1996 1/1/96 to 1/4/96	92		
15/4/96 to 1/5/96	17		
7/5/96 to 20/5/96	14		
15/6/96 to 30/12/96	199	322	resident
1997 8/1/97 to 31/3/97	83	83	not resident

For 1996, but not for 1995 and 1997, the individual is resident under the first rule.

Looking at the second rule, his (short) period of presence in 1995 is less than 182 days but it is linked to a (longer) continuous period in 1996. This longer period is not broken by the trip to America to attend the conference or by the trip to Singapore due to his wife's illness. However, it is broken by the visit to his home country which exceeded the maximum time of 14 days. Consequently, the long continuous period is only 162 days and he will not be resident for 1995.

For 1997, there is again a short period of presence but this period is not linked to the long continuous period of 199 days in 1996, because the link has been broken. Therefore, the individual will not be resident in 1997.

The third rule is again a test of continuity. Where an individual is present in Malaysia for a period or periods in a basis year amounting to at least 90 days, he will be resident for that year if in any three out of the previous four years he was either resident within the meaning of any of the four rules or was in Malaysia for a period or periods in any basis year amounting to at least 90 days.

The individual in Example 2 would also have been resident in Malaysia in 1996 under this rule, even if he had not come back for the funeral.

EXAMPLE 4

An individual was resident by being present in Malaysia for every year up to 1993. In 1994, 1995 and 1996 respectively, he spent 95, 78 and 100 days in Malaysia.

For 1994, he is resident because he spent at least 90 days in Malaysia and was resident in each of the four previous years.

For 1995, he is not resident under this rule because, although he was resident in all four of the previous years, he was in Malaysia in 1995 for less than 90 days. However, in 1996 he is resident under the third rule, having been resident in three out of the previous four years (1992, 1993 and 1994). This will be sufficient to make him resident for 1995 under the fourth rule (resident in 1992, 1993, 1994 and 1996).

MARRIED INDIVIDUALS

Husbands and wives are separate persons for the purposes of income tax. Residence status will be determined for each of them individually. Unless the wife elects for her total income to be aggregated with that of her husband, they will be taxed as separate persons. However, a wife who is non-resident for a basis year may not make the election unless she is a Malaysian citizen.

DUAL RESIDENCE

Because different countries have different rules to decide on residence, an individual might find that he is treated as being resident in two countries at the same time. Malaysia is not particularly concerned about this and will continue to tax him as a resident according to the law of Malaysia, unless a double taxation agreement gives him some relief.

In some cases dual residence operates harshly and most of the double taxation agreements entered into by Malaysia with other countries provide a 'tie-breaker' clause to prevent double taxation resulting from dual residence.

EXAMPLE 5

An individual is resident in Malaysia and also resident in Australia under Australia's residence rules. He has income derived from Malaysia which, in addition to being taxable in Malaysia, can also be taxed by Australia on the basis that he is resident there.

If, under the tie-breaker clause, he is found to be resident only in Malaysia, Australia will forfeit the right to tax the income. The converse does not apply. If found to be resident only in Australia, Malaysia is not obliged to forfeit the right to tax income derived from Malaysia.

Most tie-breaker clauses work on the basis of applying a number of successive tests. An inconclusive answer on one test means moving on to the next one. In the case of Australia the tests, in order, are based on:-

- where does the individual have a permanent home available to him?
- where does he have an habitual abode?
- with which country are his personal and economic relations closer?

When it becomes necessary to apply the third test, the individual's citizenship is taken into account.

The Council of the Malaysian Institute of Taxation
wishes all muslim readers

"Selamat Hari Raya Aidil Adha"

RULES AND REGULATIONS (ON PROFESSIONAL CONDUCT AND ETHICS)

These 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.

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CONFIDENTIALITY

- 10-1 A member shall treat as confidential any information about a client's business affairs acquired in the course of professional work and neither use nor appear to use that information for his personal advantage or for the advantage of a third party.

Explanatory Note:-

There are many ways in which a member could, if he were so minded, turn to his own personal advantage or to the advantage of a third party, information acquired in the course of his professional duties. A member should not only refrain from misuse of such information but should also refrain from acting in such a manner as might make it appear that he has misused such information.

- 10-2 Notwithstanding paragraph 1, a member may disclose or produce such information, documents, or records without the consent of his client:-

- (a) for the purpose of discharging his duties to his client;
- (b) in accordance with the provisions of any written law or where disclosure is compelled by process of law;
- (c) where disclosure is reasonably necessary to protect the member's interest.

Explanatory Note:-

- (i) In the course of his work a member may find himself faced with conflicts between his loyalty to his employers or colleagues on the one hand, and his duties as a member of a profession or as a citizen on the other hand. When faced with conflict a member should make disclosure only with proper authority or where there is a professional obligation, a right, a legal requirement or a public duty to disclose.
- (ii) Where a member is in doubt as to whether he has a right or duty to disclose he should, if appropriate, initially discuss the matter fully within the organisation in which he works. If that is not appropriate, or if it fails to resolve his problem, he should take legal advice.
- (iii) If a member is invited to appear in court as a witness against a client or former client, he should normally refuse until served with a subpoena or other form of witness summons.
- (iv) He must answer any questions that are put to him, even though he may thus disclose information obtained in a confidential capacity but he may appeal to the Court for guidance on whether he is obliged to answer particular questions.
- (v) If the Court directs a member to produce any documents in his ownership or possession in Court, then he must do so. He will generally be warned in advance of the intention to call for such documents.

(vi) If a member is requested to assist the police, the Inland Revenue Department or other authority by providing information about a client's affairs in connection with enquiries being made, he should first enquire under what statutory authority the information is demanded. Unless he is satisfied that such authority exists he should decline to give any information until he has obtained his client's authority. If the client's authority is not forthcoming and the demand for information is pressed the member should not accede unless so advised by his solicitor. The position is the same whether the enquiries relate to a civil or criminal matter.

(vii) A member may disclose or produce such information, documents, or records without the consent of his client where disclosure is reasonably necessary to enable him to sue for fees, or to defend an action for negligence or otherwise, or to clear himself of suspicion of a criminal offence, or to resist a penalty under section 114(1) of the Income Tax Act, 1967.

10-3 A member shall not use specific confidential information acquired by virtue of his position as a tax agent, tax adviser or tax consultant to gain directly or indirectly, an advantage for himself or for any other person.

Explanatory Note:

Information acquired by a member in the course of his duties and to which he would not otherwise have access should not be used for personal advantage nor for the advantage of a third party.

CHANGES IN PROFESSIONAL APPOINTMENTS

11-1 No member shall act in relation to another member in any way or manner as to lower the dignity or honour of the profession or to discredit the profession.

11-2 A member invited to undertake professional work additional to that already being carried out by another member, who will still continue with his existing duties, should, as a matter of professional courtesy, notify the other member of the work he is undertaking unless the client gives a valid reason as to why such notice should not be given.

11-3 The client has an indisputable right to choose its tax agent, tax consultant or tax advisers and to change to others if it so decides.

11-4 A member who is asked to accept nomination as tax agent must, save where the client has not previously had an existing tax agent, request the prospective client's permission to communicate with the existing tax agent. If such permission is refused he should

decline the appointment.

11-5 No member shall accept appointment as tax agent without communicating with the existing tax agent, if any, who is to be superseded.

11-6 The existing tax agent, on receipt of communication referred to in paragraph 11-5, should forthwith reply, preferably in writing, advising whether there are any professional reasons why the proposed tax agent should not accept the appointment.

11-7 (i) The existing tax agent should transfer all books and papers of the client which are or may come into his possession to the new tax agent promptly after the change in appointment has been effected and should advise the client accordingly.

(ii) The new tax agent will often need to ask his predecessor for information as to the client's affairs, lack of which might prejudice the client's interest. Such information should be promptly given and, unless there is good reason to the contrary, such as an unusual amount of work involved, no charge should be made.

11-8 Notwithstanding paragraph 11-7, where a legal right of lien exists, a member may exercise that lien in appropriate circumstances. A right of lien will only exist where all four of the following circumstances apply:

(a) the documents retained must be the property of the client who owes the money and not of a third party, no matter how closely connected with the client;

(b) the documents must have come into possession of the member by proper means;

(c) work must have been done by the member upon the documents; and

(d) the fees for which the lien is exercised must be outstanding in respect of such work and not in respect of other unrelated work.

Accordingly, where a member does work for a company and also for the directors of that company in their private capacities, if the fees for work done for a director in his private capacity are unpaid, no right of lien exists over the company's documents in the light of (a) and (d) above.

Members should consult their solicitors before seeking to exercise a lien in any but the most straightforward of cases. Similarly a client disputing the right of lien of a member might be persuaded to consult his own solicitors. Where the member's right is well founded the advice the client receives may change his attitude both to the lien and the bill.

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