

● Price RM30.00  
US\$17.00

# TAX NASIONAL

OFFICIAL JOURNAL OF THE  
MALAYSIAN INSTITUTE OF TAXATION  
ISSN 0128-7850 KDN PP 7829/12/97  
<http://www.mia.org.my>  
QUARTERLY MARCH 1998

## ARTICLE

- Overview of Malaysian Tax System:  
An Examination of Deliberate Non-Compliance
- The Assessability of Interest Income as a Business Source
- The Financial Advantages and Benefits of The Isle of Man as an International Finance Centre
- Trading with The European Community through The Isle of Man

## IRB NEWS

- Notes of Dialogue Discussion

## CIRCULAR

- 1998 Programme for Submission of Return Forms
- Bayaran Pampasan kerana Diberhentikan Kerja
- Manfaat Berupa Barangan

## IRB GUIDELINES

- Garis Panduan Bagi Polisi Perubatan Dan Pendidikan
- Guidelines on Applications for Double Deduction for Research and Development Expenditure Under Section 34A of The Income Tax Act 1987

## SUBSIDIARY LEGISLATION

## CUSTOMS NEWS

## QUESTIONS & ANSWERS

## MIT EXAMINATION

## RESULTS OF MIT EXAMINATION 1997

## INSTITUTE'S NEWS

## INTERNATIONAL NEWS

## STUDENTS' SECTION

## RULES AND REGULATIONS



The Malaysian Institute of Taxation (MIT) is a company limited by guarantee incorporated on October 1, 1991 under Section 16(4) of the Companies Act, 1965.

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.

#### COUNCIL MEMBERS

**President :**

Ahmad Mustapha Ghazali PA(M), FTII, FCCA, CPA.

**Deputy President:**

Micheal Loh FTII, MBA.

**Vice Presidents:**

Hamzah HM Saman KMN, FTII.

Chow Kee Kan PA(M), FTII, ACCA.

**Secretary:**

Chuah Soon Guan RA(M), ATII, CPA

**Members:**

Abdul Hamid bin Mohd Hassan ATII, FBIM.

Atarek Kamil Ibrahim PA(M), FTII, FCCA.

Harpal S. Dhillon RA(M), ATII, FCCA, LLB (HONS)., LLM.

Kang Beng Hoe ATII.

Lee Yat Kong PA(M), ATII, AASA, CPA.

Quah Poh Keat PA(M), FTII, CIMA, ACCA.

Ranjit Singh FTII, B. ECONS. (HONS).

Seah Cheoh Wah PA(M), FTII, ACA.

Teh Siew Lin PA(M), ATII, B.Sc (ECONS.), ACA.

SM Thanneermalai PA(M), FTII.

Veerinderjeet Singh RA(M), ATII, CPA (M), B. Acc. (Hons).

#### EDITORIAL AND RESEARCH BOARD

**Advisors:**

Ahmad Mustapha Ghazali PA(M), FTII, FCCA, CPA.

Nujumudin bin Mydin

Hamzah HM Saman KMN, FTII.

Teh Siew Lin PA(M), ATII, B. Sc. (ECONS), ACA.

**Editor:**

Harpal S Dhillon RA(M), ATII, FCCA, LLB (HONS)., LLM

**Deputy Editor:**

Chuah Soon Guan RA(M), ATII, CPA.

**Practitioners' Division Associate Editors:**

**Banking & Finance**

Baldev Singh FTII.

**Case Law**

Ranjit Singh FTII, B. ECONS. (HONS).

**Incentives**

Chooi Tat Chew ATII.

**Indirect Tax**

Fabian Pereira

**International Tax**

Richard Thornton RA (M), ATII (UK), FCA.

**Legislation**

Lee Lee Kim FTII, B. ECONS. (HONS).

**Oil & Gas**

Chin Pak Weng FTII.

**Stamp Duties**

E. J. Lopez

**Research Division Associate Editors:**

Chan Yoong Lai Thye

Dr. Siti Normala

Veerinderjeet Singh

**Revenue Chamber:**

Arjunan Subramaniam

WSW Davidson

P. S. Gill

James Loh Ching Yew

Teoh Lian Ee

**Secretary & Advertisements Officer:**

Ho Foong Chin B. ECONS, LLB (HONS)

#### OFFICE & ADDRESS

**The Secretariat**, Malaysian Institute of Taxation, Level 4, Dewan Akauntan, No. 2, Jalan Tun Sambanthan 3, Brickfields, 50470 Kuala Lumpur. Tel: 03-274 5055. Fax: 03-274 1783.

The Tax Nasional is the official publication of the Malaysian Institute of Taxation and is distributed free to all members of the Institute. The views expressed in this Journal are not necessarily those of the Institute or its Council. All contributions, inquiries and correspondence should be addressed to the Secretariat of the Institute.



# Contents

---

## ARTICLE

Overview of Malaysian Tax System: An Examination of Deliberate Non- Compliance	2
--	---

The Assessability of Interest Income as a Business Source	8
--	---

The Financial Advantages and Benefits of The Isle of Man as an International Finance Centre	13
---	----

Trading with The European Community through The Isle of Man	15
--	----

IRB NEWS	
Notes of Dialogue Discussion	17

CIRCULAR	
1998 Programme for Submission of Return Forms	20

Bayaran Pampasan kerana Diberhentikan Kerja	23
--	----

Manfaat Berupa Barangan	24
-------------------------	----

IRB GUIDELINES	
Garis Panduan Bagi Polisi Perubatan Dan Pendidikan	28

Guidelines on Applications for Double Deduction for Research and Development Expenditure Under Section 34A of The Income Tax Act 1987	29
--	----

SUBSIDIARY LEGISLATION	32
------------------------	----

CUSTOMS NEWS	37
--------------	----

QUESTIONS & ANSWERS	45
---------------------	----

MIT EXAMINATION	48
-----------------	----

RESULTS OF MIT EXAMINATION 1997	51
------------------------------------	----

INSTITUTE'S NEWS	53
------------------	----

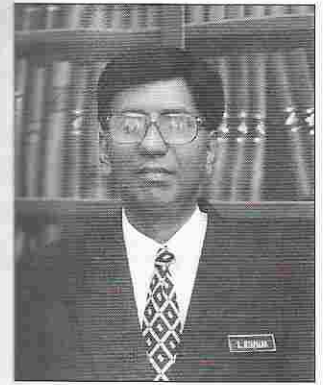
INTERNATIONAL NEWS	54
--------------------	----

STUDENTS' SECTION	55
-------------------	----

RULES AND REGULATIONS	60
-----------------------	----

# OVERVIEW OF MALAYSIAN TAX SYSTEM: AN EXAMINATION OF DELIBERATE NON-COMPLIANCE

by  
**Dr. Jeyapalan Kasipillai,**  
Associate Professor, School of Accountancy, Universiti Utara Malaysia  
E-mail: jeya@sintok.uum.edu.my



## INTRODUCTION

It is generally accepted that tax non-compliance exists in every country. Although methods for measuring omission of taxes and estimating the determinants of taxpayer compliance have been the subject of research in several developed and developing countries, very few studies have been carried out in the specific area of tax evasion and non-compliance in Malaysia.

Evasion of income tax involves deliberate non-compliance. Within the framework of tax laws, "non-compliance" has been defined as the "failure, intentional or unintentional, of taxpayers to meet their tax obligations" (Kinsey, 1985).

This paper describes the Malaysian taxation system as a basis for discussion of deliberate non-compliance (tax evasion) that follows. To understand deliberate non-compliance, one really needs to know something about the history and current functioning of the tax system in Malaysia. As argued by Schmolders (1970), for a better understanding of tax evasion, one also needs to understand the tax mentality of the people who have to abide by the system. The remainder of the paper is organised as follows. Section 2 traces the history and background of Malaysian taxation. The following section (Section 3) outlines the current functioning of the taxation system.

This section also discusses the (i) basis of taxation on income; (ii) rates of tax; and (iii) outlines the nature of assessments issued. Section 4 critically evaluates deliberate non-compliance in Malaysia and reports on the findings of a survey that gives some indication of where deliberate non-compliance is likely to take place. Some concluding comments are contained in Section 5.

## HISTORY AND BACKGROUND

Taxation as we know it now, as opposed to taxes introduced by early Malay rulers, came about in 1910. Prior to 1910, export taxes were levied in Malaya. Initially, the duties were subordinate to excise, import and land taxes as a source of government revenue but the extensive exploitation of tin-ore deposits dramatically reversed relative tax shares after 1875 (Edwards, 1970). The upsurge in rubber production after 1900, and the

imposition of a tax on rubber exports in 1907, further increased the dependence on export duty revenue.

The introduction of income tax in Malaya was clouded with uncertainty as it faced strong opposition from the general public. For instance, the draft bill for imposing a tax on income that was introduced by the Straits Settlements (comprising Singapore, Malacca and Penang) Legislative Council in 1910 was withdrawn the following year as it did not receive the support of the tax-paying public. Such a hostile reception characterised subsequent attempts (1922, 1940 and 1942-45) to introduce a tax system until the introduction of Income Tax in its modern form in 1948.

In 1946, Heasman was appointed to draft a tax legislation for Malaya and completed a comprehensive report the following year. From the comprehensive draft bill came the Income Tax Ordinance 1947, effective from 1 January 1948. This date, nearly half a century after the proposal was first mentioned in the Straits Settlements, marked the beginning of a new era in taxation on a permanent basis in Malaya.

The provisions of the Ordinance were based substantially on the Model Colonial Territories Income Tax Ordinance 1922 (UK) which was designed for the British colonies at that time. The tax laws of a number of Commonwealth countries such as India and Burma (as it was then known) were initially based on this model legislation. The Income Tax Ordinance, 1947 was subsequently repealed and replaced by the Income Act 1967 (hereafter ITA) which came into effect for the year of assessment 1968 and subsequent years of assessment. The 1967 Act actually consolidated the three laws of income taxation which were then in existence in Malaysia, viz the Income Tax Ordinance, 1947 which was only applicable to Peninsular Malaysia, the Sabah Income Tax Ordinance, 1956 which was only applicable to Sabah, and the Sarawak Inland Revenue Ordinance, 1960 which was applicable only to Sarawak. Since the formation of Malaysia in 1963, the taxation systems of the three territories continued in existence side by side until the introduction of the ITA.

Even then, it must be frankly acknowledged that the balance of press opinion was hostile to the introduction of Income Tax.



For instance, Heasman (1947), who was the Special Income Tax Adviser to the Malayan Government, said the following:

"It is alleged, owing to the varying systems under which Asiatic business are carried on, and to the absence or unorthodox form of the records, that evasion will be practised on a considerable scale by the non-European trading community. It is perhaps not unnatural to wonder on these circumstance why the Asiatic trading community so consistently opposes the imposition of a tax which they are expected easily to evade".

(*The Straits Times, Singapore 11.11.1947*)

## TAXATION IN MALAYSIA

The types of taxes imposed by the Government are generally divided into two broad classifications, namely direct and indirect taxation. In Malaysia, the responsibility to administer direct taxation lies with the Director General of Inland Revenue while indirect taxation is administered by the Director General of the Royal Customs and Excise Department. This paper tends to concentrate on direct tax. With effect from 1 March 1996, the Inland Revenue Department (IRD) became a statutory board and is now known as the Inland Revenue Board of Malaysia (abbreviated as IRB)<sup>2</sup>. Since this paper uses 1996 data as well, the abbreviation IRB will be used.

Tax revenue will continue to be the main source of income for the government of Malaysia as the country continues to experience rapid economic growth. In 1996, 43.3 percent of the total Federal Government revenue was from direct taxes and the remainder was from indirect taxes (38.0 percent) and non-tax revenues (18.7 percent) (Table 1). Examples of non-tax revenues are stamp duty, film hire duty and registration fees. It is interesting to note that personal income tax is the second largest source of direct taxes in Malaysia, following corporate tax. In 1996, personal income tax was 23.4 percent of total direct taxes (Table 2).

Table 1: Federal Government Revenue (1996)

	RM(Million)	Per cent
Direct Taxes	24,853	43.3
Indirect Taxes	21,476	38.0
Non-Tax Revenues	10,163	18.7
Total Revenue	56,492	100.0

Source: IRB Annual Report (1996)

Table 2: Source of Direct Taxes (1996)

	RM(Million)	Per cent
Corporate Tax	14,286	55.4
Personal Income Tax	6,031	23.4
Petroleum Income Tax	2,370	9.2
Other Direct Taxes	3,119	12.0
Total Direct Taxes	25,806	100.0

Source: IRB Annual Report (1996)

Personal income tax in Malaysia is imposed on individuals either employed in their personal capacity or as individuals operating business as sole-proprietors and also as partners in any partnership. Under the Malaysian Income Tax Act, 1967 (ITA) income that is subject to tax not only includes business and employment income but other unearned income such as rent, dividend, interest, royalty and premium.

Direct taxes collected in 1996 mounted to RM25.8 billion compared to RM22.7 billion in 1995, which is a increase of 13.8 percent (Table 3). In real terms, however, the increase was 11.7 percent. That amount accounts for 44.2 percent of the Federal Government revenue for 1996. This illustrates the importance of direct taxes to the Government coffers. In 1997, the IRB collected RM30.47 billion, a 18.1 percent (RM4.67 billion) increase compared to the previous year (The Star, 25.2, 1998).

Table 3: Trend in Revenue Collection from Direct Taxes\* (1988-1997)

Year	Billion Nominal (1980:100)	(Ringgit) Real**
1988	7.5	5.8
1989	7.7	5.8
1990	10.4	7.5
1991	13.2	9.2
1992	15.4	10.2
1993	17.1	10.9
1994	20.2	12.5
1995	22.7	13.1
1996	25.8	15.3
1997	30.47	17.3

Source: IRB Annual Reports (1988-1997)

\*Direct taxes include non-tax revenues.

\*\*Consumer Price Index (See Appendix)

### Basis of taxation on income

The basis of income taxation in Malaysia is the derived scope. Income is only assessed if it is derived in Malaysia or remitted to Malaysia from overseas. However, income that is remitted to Malaysia by a non resident is wholly exempt. Only income of a non-resident that is derived from Malaysia is subject to tax. Foreign sourced income received by resident companies in Malaysia (except banks, insurance, sea and air transport companies) are, however; exempted by virtue of an exemption order.

The general operations of the Inland Revenue Board (IRB) in Malaysia are highly decentralised. The Director General of the IRB exercises her advisory and supervisory function from the Head Office located in the Federal Territory. The operational functions of issuing, obtaining and examining annual returns; tracing new taxpayers; computing the tax payable and issuing notice of assessments devolve on the staff in the branches. Currently, there are 33 branches located in major towns to enforce the provisions of the Income Tax Act.



The assessment functions of the IRB are subdivided into the following three categories:

- (i) Assessment based on returns submitted without any queries.
- (ii) Assessment made after some form of field or desk audit. Written queries are made and taxpayers are expected to respond in writing before assessments are raised and reviewed.
- (iii) Investigation of cases on a selective basis.

Most branches have an investigation and intelligence centre and they are staffed by at least 6-15 senior officials, depending on the size of branches and the concentration or density of taxpayers. The collection function, however, is centralised.

Currently, there are plans to introduce a self-assessment system in Malaysia. An important function of the self assessment system (SAS) is the underlying premise that taxpayers are expected to comply with their obligations under the tax law. The concept of taxpayers protecting themselves by making full and correct disclosure in lodging their returns would no longer be possible, rather taxpayers are expected to determine the taxable income, compute the tax payable and submit their returns to the Revenue authorities. For IRB, it would entail a shift in focus away from the examination of returns and the computation of tax liabilities to reviewing, auditing and investigation work. Precise dates, for the implementation of SAS have not been fixed but it is possible that such a system would be in place by the year 2000.

### Rates of Tax

The rates of income tax are to be found in Schedule 1 ITA. Income tax is assessed on the chargeable income of a person. Basically there are two types of rates, that is fixed rates and graduated rates.

Income tax at the fixed rate of 28 per cent is charged on the following:

- a resident company
- a non-resident company
- a trust body
- an executor of an estate of a deceased individual who was domiciled outside Malaysia at the time of his death.
- a receiver appointed by a court.

A non-resident individual will, however, be taxed at a fixed rate of 30 percent on his chargeable income.

Resident individuals are subject to income tax at graduated rates ranging from zero per cent to 30 percent on their chargeable income within the relevant range.

A remarkable feature of personal taxation is the tangible reduction of tax rates since assessment year 1985. The contrasting income tax rates and tax payable for assessment years 1980-84 and 1998 are presented in Table 4.

Table 4: Income Tax Rates & Tax Payable for Resident Individuals

Chargeable Income	Assessments Years 1980 to 1984		Chargeable Income	Assessment Years 1998	
	Tax Rate(%) Payable	Tax		Tax Rate(%) Payable	Tax
First 2,500	6	150	First 2,500	0	0
2,501-5,000	9	225	2,501-5,000	2	50
5,001-7,500	12	300	5,001-10,000	4	200
7,501-10,000	15	375	-	-	-
10,001-15,000	20	1,000	10,001-20,000	6	600
15,001-20,000	25	1,250	-	-	-
20,001-25,000	30	1,500	20,001-35,000	10	1,500
25,001-35,000	35	3,500	35,001-50,000	16	2,400
35,001-50,000	40	6,000	50,001-70,000	21	4,200
50,001-70,000	45	9,000	-	-	-
70,001-75,000	45	2,250	70,001-100,000	26	7,800
75,001-100,000	50	12,500	-	-	-
100,001-150,000	50	25,000	100,001-150,000	29	14,500
		63,050			31,250
above 150,000	55			30	

Note: Tax payable in the columns refers to that applicable to the upper limit of taxable income.

Source: Compilation of figures from various Budget Reports.

A comparison of income tax liability in Malaysia with selected Commonwealth countries is also shown below (Table 5). An assumption is made that the individual taxpayer is married with two children and a common currency in US dollars is used to determine the effective tax rates.

Table 5: Comparison of Effective Tax Rate

	Total Remuneration US\$50,000* Tax Liability US\$	Average Tax Rate %	Total Remuneration US\$100,000* Tax Liability US\$	Average Tax Rate %
Singapore	3,115	6.2	12,900	13.9
Malaysia	8,850	17.7	24,700	24.7
UK	11,315	22.6	31,320	31.3
Australia	16,725	33.4	40,225	40.2

Source: Compilation of figures and 1996 tax rates from various sources

\*US Dollar to one unit of foreign currency

Singapore Dollar	1.48
Malaysian Ringgit	2.55
Sterling Pound	0.63
Australian Dollar	1.32

Source: New Straits Times, Kuala Lumpur dated October 14, 1996.

Given a total remuneration of US\$50,000, the average tax rate in Australia is approximately twice as high as that of Malaysia and five times the average rate of Singapore. When the total remuneration increases to US\$100,000, however, the average tax rate in Australia is 1.6 times that of Malaysia and three times the average of Singapore.



### Assessments Issued

In 1996, the total number of assessments issued was 1,691,141 and the tax assessed was RM20,421 million. Compared to the previous year, the number of assessments in 1996 increased by 76,768 (4.8 percent). Correspondingly, the tax assessed (nominal) also increased by RM1,922 million, that is by 10.4 percent. The improvement in these figures are probably attributed to the increase in per capita income of taxpayers as a result of the nation's constant economic growth.

**Table 6: Comparison of Number of Assessments issued and Tax Assessed (1990 to 1996)**

Year of Assessment	No. of Assessments	Nominal	Tax Assessed (Million Ringgit) Real (1980:100)*
1990	1,485,655	10,066	7,305
1991	1,490,595	8,906	6,189
1992	1,500,890	14,641	9,720
1993	1,570,010	14,879	9,483
1994	1,590,650	17,737	11,003
1995	1,614,373	18,499	11,252
1996	1,691,141	20,421	12,148

Source: IRB Annual Reports (1990-1996)

\* See Appendix for Consumer Price Index

### EVALUATION OF DELIBERATE NON-COMPLIANCE

Some critical views by way of background to the extent of deliberate non-compliance in personal and corporate income tax sectors, are worth mentioning. As far as the extent of deliberate non-compliance is concerned, it is clear that it is increasing although precise figures are difficult to obtain (Kasipillai 1998). The following facts are indicative of the problems of deliberate non-compliance in Malaysia:

The total number of taxpayers investigated in 1995 and 1996 were 504 and 514, respectively. The 1996 figure reflects a marginal increase of two per cent over the previous year. However, the back duty taxes and penalties (nominal) collected in 1996 relative to 1995 was greater by 34.4 percent (Table 7).

In 1996, 27.5 percent of the 866,982 million income declaration forms issued to taxpayers were not returned (1996 IRB Annual Report). While this fact does not necessarily imply non-compliance (for example there may be duplication of files or taxpayers may have passed away) some non-compliance may be indicated.

In 1996, fines imposed by the courts for failure to furnish returns was RM826,377 reflecting a decrease of RM140,525 or 14.5 percent from that of 1995. Although the fines imposed was less than the previous year, the compound fees collected in 1996 was RM4,874,331 reflecting an increase of RM1,097,403 or 29 percent from that of 1995 (Table 8). Compounding refers to the Director General's

powers to charge a person a certain amount of money as deemed fit, thus absolving the need to resort to the courts. The substantial increase in compound fees collected, averaging 26.2 percent annually over the four year period up to 1996, indicate the seriousness of the Board's efforts to curtail deliberate non-compliance (See Table 8).

**Table 7: Additional Tax and Penalties Recovered (1985 to 1996)**

YEAR	MILLION NOMINAL	(RINGGIT) REAL (1980:100)
1985	42.6	33.9
1986	40.4	32.0
1987	52.7	41.6
1988	62.5	48.1
1989	126.8	94.8
1990	154.8	112.3
1991	207.0	143.9
1992	226.6	150.4
1993	210.3	134.0
1994	270.0	167.6
1995	302.2	174.4
1996	426.0	253.4

Sources: IRB Annual Report, Various Issues

**Table 8: Number of Cases Prosecuted and compounded (1992 to 1996)**

	1992	1993	1994	1995	1996
Number of cases prosecuted	5,463	5,242	4,421	3,847	2,976
Number of cases compounded	9,680	12,036	11,541	14,634	15,980
Total	15,143	17,278	15,962	18,481	18,956
	RM	RM	RM	RM	RM
Penalties imposed by Courts	895,856	933,654	1,280,055	966,902	826,377
Compound fees	1,883,751	2,382,313	2,620,005	3,776,928	4,874,331
Total	2,779,607	3,315,967	3,900,060	4,743,830	5,700,708

Source: IRB Annual Reports (1992 to 1996)

The following sub-section briefly traces the link between deliberate non-compliance and personal income tax and then reports on the findings of a survey that was carried out by the author.

### Non-Compliance and Personal Income Tax

Personal income tax does not occupy the central position in the tax structure of Malaysia that it holds in industrial nations. However, it is an important part of the tax system, especially as it applies to the modern sector of the economy. Pending the development of a comprehensive system of indirect tax, such as the Sales and Service Tax, personal income tax is a major component of the tax structure in Malaysia that permits intro-



duction of a moderate progression into the tax burden distribution. The primary concern is the belief that typically there are large holes in the income tax base, with certain taxpayers such as the self-employed, escaping substantial income tax coverage compared to fixed income earners and those subject to withholding taxes. This characteristic offends the premise that a uniform and equitable payment towards the tax burden is desirable.

### Survey Findings

A research that was carried out by the author in 1995 gives some indication of where deliberate non-compliance (tax evasion) takes place. A selected sample of well informed professionals comprising mainly of senior accountants and tax managers<sup>3</sup> were asked to identify the most significant sectors of the economy in terms of "hidden income"<sup>4</sup>. For the purposes of the survey, "hidden income" comprises both income from legal activities which evades tax, as well as income from illegal activities such as smuggling, prostitution, etc, which also is, in principle, subject to tax but presumably is not declared. Since hidden economy refers to the unreported portion of income generated in an economy, this portion of income will by definition be precluded from any form of taxation. Therefore, these funds become a major portion of the total amount of tax that is evaded. Since measuring tax evasion per se is often marred by very approximate estimates and also because estimates of hidden economies are more readily available, the size of the hidden economy could be used as a proxy for tax evasion.

Table 9 summarises, for each sector, the views of the sample in terms of the percentage who believe that it is a "most important" or "very significant" sector for generation of hidden income. Sectors are ranked in terms of the professionals' consensus, for example, 57 out of 60 (or 95 percent) of respondents believe that the construction industry is important in this regard. This was followed by income from professions such as doctors, engineers, etc. 85 percent cuts and kickbacks on contracts 75 percent and from multinational companies 70 percent. Additional prominent sectors were restaurants 68 percent smuggling, under-invoicing of foreign trade 65 percent and money lending activities that are unlicensed 58 percent and licensed 57 percent. An interesting feature is that income from the restaurant sector, smuggling and illegal money lending activities are mainly dealt with in cash and these sectors are within the top eight prominent groupings for hidden income generation.

Perhaps surprisingly, one-half of the respondents regarded hidden income generation in retail trade to be important enough to be ranked in the tenth position, while only 23 respondents did the same for the wholesale trade. The sectors or activities that the respondents ranked lower in the rung for hidden income generation are the rental sector, banking and finance, plantation and mining sectors.

While the survey focussed on opinions rather than (unobtainable) hard facts, the degree of consensus among the respondents is remarkable. Such evidence of opinions, however well-informed, is a fragile basis for an enforcement strategy. However, it does define a starting point for the IRB to target investigations, that is concentrating on particular sectors of the economy.

Table 9: Sectors Generating Hidden Income: Ranking Of Questionnaire Responses \*

Sectors/activities	Percentage of total respondents who indicated this sector/activity to be Most Important/Very Significant
(i) Construction sector	95
(ii) Professions: doctors, engineers etc	85
(iii) Cuts & kickbacks on contracts	75
(iv) Multinational companies	70
(v) Restaurants	68
(vi) Smuggling, under invoicing	65
(vii) Money lending (Unlicensed)	58
(viii) Money lending (Licensed)	57
(ix) Manufacturing (Small scale)	55
(x) Retail trade	52
(xi) Wholesale trade	38
(xii) Prostitution/ unlicensed social escort	38
(xiii) Manufacturing (Large scale)	35
(xiv) Motor vehicle transport	35
(xv) Hotel & entertainment centres	32
(xvi) Illegal logging	22
(xvii) Illegal gambling	18
(xviii) Insurance & real estate	18
(xix) Drug trafficking	15
(xx) Rental income	8
(xxi) Banking & other finance	7
(xxii) Plantation sector	5
(xxiii) Mining and quarrying	5
(xxiv) Others	5

\*Total number of respondents: 60

### CONCLUDING COMMENTS

While the evidence is patchy, deliberate non-compliance can be seen to be as significant in Malaysia as it is in developed countries. It can be concluded that the extent of deliberate non-compliance does not depend on isolated factors, but on a complex combination of circumstances. In as much as paying income taxes is an integral part of individuals lives, minimising problems that are associated with non-compliance have an importance beyond their accounting context and deserve the finest efforts of academic researchers.

>>>>>>



## ENDNOTE

## Income Tax: 1917-1922

Due to the unfavourable reception of the 1910 draft bill, proposals to introduce income tax were concealed in a more agreeable language not of raising revenue, but to "Fund the Imperial War Expenditure". Towards this purpose the War Tax Ordinance was introduced, and remained in force up to the year 1919. In the following year, this legislation was converted into the Income Tax Ordinance 1920 effective from 1 January 1920. As part of the 1922 revenue was used to meet local expenditure rather than for the war purposes of the Imperial government, the Ordinance was effectively opposed by the taxpayers (Malayan Union Papers, 1946-48). This resulted in the premature repeal of the ordinance in 1922.

## Period: 1923-1940

During this period, there was no income tax in the Straits Settlements.

## Period: 1941-1945

A tax on profit and income was reimposed in the Straits Settlements in 1941. The act was renewed in the following year but further attempts to collect taxes were forestalled by the Japanese Occupation. The collection of taxes during the Japanese Occupation (1942-1945) was not well documented. Heasman, however, estimated that between \$70,000 and \$80,000 (Malayan dollars) worth of assessments were made and collected during the Japanese occupation period (Chin, 1976).

2. The aim of converting IRD to IRB is to give the latter more autonomy and flexibility of operation. Such a move would improve the quality and effectiveness of income tax administration in Malaysia.

3. The questionnaire was administered to a relatively homogenous sample, namely tax managers and senior personnel employed by the "Big Six" accounting firms in Malaysia.

4. The term hidden economy is used interchangeably with 'underground', 'subterranean': 'irregular' 'black', 'unofficial' 'submerged', 'parallel' economy with its corollaries of 'black' or 'grey' labour and moonlighting. Essentially, the designation refers to those activities that go unreported or are unmeasured by the available current techniques for monitoring economic activity. A simple and convenient definition of the underground economy provided by Tanzi (1983), is the gross national product which because of unreporting or underreporting, is not measured by official statistics.

## About the Author

Dr. Jeyapalan Kasipillai is currently Associate Professor at the School of Accountancy in Universiti Utara Malaysia (UUM). He completed his doctoral thesis in taxation at The University of New England, Armidale, Australia. After graduating from the University of Malaya in May 1974 he joined the New Straits Times Group as a Journalist. In 1975, Dr. Jeyapalan began his employment with the Inland Revenue Department, serving the Assessment Branch for five (5) years and the Investigations Unit for another eleven (11) years. He held the post of Assistant Director (Tax Investigations), prior to joining UUM as a full time lecturer on 01 August, 1991.

Besides serving the education and examination committees set up by the tax profession, he has published numerous articles and papers on taxation in both local and international journals. He is also a fellow member of the Malaysian Institute of Taxation.

## APPENDIX

## Malaysia: Consumer Price Index (CPI)

Year	CPI
1980	100.0
1981	109.7
1982	116.1
1983	120.4
1984	125.1
1985	125.5
1986	126.4
1987	126.8
1988	130.0
1989	133.7
1990	137.8
1991	143.9
1992	150.6
1993	156.9
1994	161.2
1995	164.4
1996	168.1

## REFERENCES

- Bank Negara Malaysia (Central Bank of Malaysia), Kuala Lumpur, Annual Report, Malaysia printers, 1994.
- Bird, R. M. and Oldman, O., (1990), *Taxation in Developing Countries*, The Johns Hopkins University press, Baltimore and London.
- Chin Kee On, (1976), *Malaya Upside Down*, 3rd. edition, Federal Publications, Kuala Lumpur.
- Edwards, C.T. (1970), *Public Finances & Malaysia and Singapore*, Australian National University Press
- Heasman's Report, (1947), R.B. Heasman was author of the Income Tax Report, Government Press, Kuala Lumpur.
- Kasipillai, J. (1998) 'Malaysia's Plan To Introduce A Self Assessment System ' Asia-Pacific Tax Bulletin, The Netherlands, (Paper accepted but yet to be published).
- Kinsey, K.A. (1985) 'Theories and Models of Tax Cheating', Taxpayer Compliance Project Working Paper 84-2 (Chicago: American Bar Foundation).
- Income Tax Act, 1967, (1994), (Act 53), Laws of Malaysia, International Law Book Services, Kuala Lumpur.
- Inland Revenue Department, Annual Reports, Malayan National printers, Kuala Lumpur, 1982 to 1995.
- Malayan Union papers, Introduction of Income Tax, 7 December 1948, National Archives, Kuala Lumpur.
- Ministry of Finance, Kuala Lumpur, Malaysia, Economic Reports, 1985-1994.
- Musgrave, R. (1987), 'Tax Reform in Developing Countries', in *The Theory of Taxation for Developing Countries*, ed. Newbury, D. & Stern, N, A World Bank Research Publication, pp. 242-263.
- Schmolders, G. (1970), Survey research in public finance: A behavioural approach to fiscal theory, *Public Finance*, 24, pp. 300-306.
- The Star (1998), Star Publications (M) Bhd., Penang, 25 February
- The Straits Times, (1947), 'Joint Committee Approves Draft Tax Bill: Report Agrees on 1947 Income As Assessment Basis', Singapore, 11 November.



# THE ASSESSABILITY OF INTEREST INCOME AS A BUSINESS SOURCE

Choong Kwai Fatt  
Taxation Lecturer, University of Malaya

Ng Kok Thye  
Lecturer, University of Malaya

## Introduction

The placement of deposits in financial institutions is an integral part of funding activities and common in the business arena. The object is either to take advantage of their idle/excess liquidity or to be used as security for borrowings. The issue whether such interest income derived therefrom is business income within the meaning under section 4(a) of the Income Tax Act 1967 (the Act) or interest income under section 4(c) of the Act has always been debatable.

## The meaning of 'business'

Business is defined in section 2 of the Act to include:

"profession, vocation and trade and every manufacture, adventure or concern in the nature of trade, but excludes employment"

In general, interest income would be chargeable to tax as income under Section 4(a) of the Act if it can be shown that it is:-

- (i) part and parcel of the taxpayer's business income or
- (ii) ancillary to its business, or
- (iii) it is business income arising out of an adventure or concern in the nature of trade.

## The criterion

There are various judicial decisions on whether a particular source of income is business income [sec 4(a)]

---

In addition, if profit making motive can be clearly established, coupled with high volume/frequency of transaction, circumstances leading to the realisation, period of ownership would further strengthen the business activity or an adventure or concern in the nature of trade.

---

or investment income [sec 4(c)]. To distinguish the two is not an easy task. Thus in **Liverpool and London and Globe Insurance Co v Bennett (1913) AC 610**, Lord Loreburn said at p.620:

*"I know of no formula which can discriminate in all circumstances what are and what are not profits of a trade."*

The distinction between the two lies on the merit of each case. Nonetheless, the analysis can be broadly (i) to (v) below.

### i. Objects of the company

The business objects are set out in the articles and memorandum of association of a company. Where there exists articles allowing the company to place deposits and that is a business object, interest income derived therefrom would be business income under Section 4(a).

In **Hanover Agencies (1967) 1 All ER 954** the Privy Council in

commenting on the word "business" and objects of a company held as follows:

*"The word 'business' is of wide import and must be given its ordinary meaning, unless the context otherwise requires. The respondents' objects include inter alia acquiring of freehold property and the leasing of all or any of the company's property. If a company's objects are business objects and are in fact carried out, it carries on business...."*

In the Malaysian Privy Council case, **American Leaf Blending Co Sdn Bhd v DGIR (1979) 1 MLJ 1**, it is a settled law that an incorporated company is given the prima facie presumption of carrying on a business.

The prima facie presumption has also been followed in **Sekong Rubber Co Ltd v DGIR (1980) 2 MLJ 198**, where Salleh Abas FJ said on p.199

*"... the principle is that in the case of a company incorporated for the purpose of making profits for its shareholders, any gainful use to which it puts any of its assets prima facie amounts to a carrying on of a business, and that, in practice, where the company is following their own objects contained in the Memorandum of Association, this prima facie inference is not easily displaced".*



In the case of **Commissioner of Inland Revenue v The South Behar Railway Co Ltd (12 TC 657)**, the taxpayer had a railway which was operated by another company. The taxpayer was entitled to a share in the profits in the operation of the railway. Later, it relinquished the possession of the railway and it was arranged that it should be paid an annuity in lieu of the share of profit. Thereafter, the taxpayer did nothing but receive and distribute the said annuity to its shareholders.

It was held by the House of Lords that the taxpayer was carrying on a trade or business or undertaking of similar character and was therefore liable to corporation profits tax. Lord Sumner held that:

*"(1) To ascertain the business of a limited liability company one must look at its Memorandum and see for what business that provides and whether its objects are still being pursued. (Korean Syndicate's Case 12 T.C. 181, [1921] 3 KB 285). (Page 710).*

*(2) I do not attach much importance to the domestic operations of declaring and paying dividends, remunerating directors and presenting reports, but the operation of receiving and thus discharging the annuity payments goes on continuously, and however simple, it is not a mere passive acquiescence. It is the transaction of business between debtor and creditor resulting periodically in the discharge of a debt. The present is not the case of a company existing to do one act only and once for all. Not only did the Company make the agreement of 1906, but it plays its recurring part in every payment and receipt of gains, and there is here, therefore, that 'repetition of acts,' which Lord Justice Brett says (15 Ch. D. at p.277) is implied in 'carrying on business'. (Page 711).*

*(3) Business is not confined to being busy: in many businesses long*

*intervals of inactivity occurred. (Page 712)."*

The test laid down by Lord Sumner in **Commissioner of Inland Revenue v The South Behar Railway Co Ltd** is further approved and adopted in a recent Hong Kong High Court decision, **CIR v Bartica Investment Ltd (HC) (1996) HKRC 90-080**. (see Commonwealth decisions)

---

*The income from investments held by a trader is prima facie investment income; but it may in certain circumstances be brought into account as a trading receipt. Whether it may or may not be so treated depends on the nature of the trade*

---

## ii. Activity Test

In general, business source should be an active one although it is not a conclusive factor. If the placing of deposits and lifting of deposits continued on a regular and repetitive basis (daily basis, week in and week out in each month) for the relevant years of assessment, it would indicate that it is a business source unless it is proven otherwise.

The 'repetition of acts' implied the carrying on of business. Such activity amounts to dealing in cash and making profit therefrom. It would be a business activity as Lord Harsworth MR Said in **Pickford v Quirke (13 TC 251):-**

*"When, however, you come to look at your successive transactions you may hold that what was, considered separately and apart, a transaction to which the words 'trade or concern in the nature of trade' could not be applied, yet when you have that transaction reported, not once or twice but three times, at least, you may draw a completely different inference from these incidents taken together".*

Basing on the above facts, repeated transactions of the placement of deposits are more likely to be assessed as business income.

## iii. Adventure or concern in the nature of trade

Since the definition of business includes 'adventure or concern in the nature of trade', one would use the 'badges of trade' to support the finding of 'adventure or concern in the nature of trade'.

In **Leeming v Jones (1929) 15 TC 333** the conditions to support a finding of "adventure" or "concern in the nature of trade" were laid down. These conditions were:

- (i) the existence of an organisation;
- (ii) activities which led to the maturing of the asset to be sold; and
- (iii) the fact that the nature of the asset itself should lend itself to commercial transactions.

In addition, if profit making motive can be clearly established, coupled with high volume/frequency of transaction, circumstances leading to the realisation, period of ownership would further strengthen the business activity or an adventure or concern in the nature of trade.

It is a settled law that all badges of trade need not be present in order for trade to exist. In **PCEO Sdn Bhd v ketua Pengarah Hasil Dalam Negeri (1997) MSTC 2,891**, the tax authorities attempt to argue that all badges of trade ought to be present in order to establish the interest income consisting a business source was rejected by the Special Commissioners.



iv. Ancillary to its main trade

Where a taxpayer can demonstrate that interest income arises out of the carrying on of a business activity, then the interest income would be assessed under sec. 4(a).

**Example 1**

Leong Kang Sdn Bhd, a trading company imports air conditioner equipment from China to be sold locally in Malaysia. The suppliers in China require the Malaysian company to place a deposit of RM200,000 as security in Malayan Banking Bhd. The interest income derived is said to be an activity ancillary to the trading activity.

In the case of **Reid's Brewery Co Ltd v Male (1891) 2 QBD 1** the taxpayer, brewers of beer, lent money to their pub houses, such lending was considered ancillary to their trade of brewing.

In **Smith v M.N.R. 55 DTC 101** it was observed:

*"Various judicial decisions on the subject have made it clear that where, what a taxpayer does extra-morally, so to speak, is closely allied to his ordinary occupation, the gain from his additional activities will be treated as though arising from his regular business".*

In **PCEO Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Sp Comm) (1997) MSTC 2,891**, the Special Commissioners held that the money earned or excess cash from the palm oil business is being placed in fixed deposits cannot be said to be an activity ancillary to the processing and refining of palm oil.

Millet L.J. in **Nuclear Electric v Bradley (CA) (1995) STC 1125**, held that the making and holding of investments was not an integral part of the business of generating and supplying electricity by nuclear reaction. In addition, the investment which it did were in no sense employed in the business

of producing electricity during the year. Millet L.J., in delivering the judgement of the court, said, at pp. 1139-1140:

*"The income from investments held by a trader is prima facie investment income; but it may in certain circumstances be brought into account as a trading receipt. Whether it may or may not be so treated depends on the nature of the trade. What the authorities show is that the nature of the trade must be such that it can fairly be said that the making and holding of investments at interest is an integral part of the trade."*

---

While ultimately it is a question of fact whether the taxpayer was carrying on business, the prima facie inference for a company incorporated for the purpose of making profits for its shareholders and puts its assets to gainful use is that it is carrying on a business

---

The taxpayer appeal the decision of the Court of Appeal to the House of Lords. The House of Lords affirmed the decision of the Court of Appeal and held that the investment activity was not part of the taxpayers' business and in the year of assessment it had not in

fact used the fund to meet its future liability of backend costs or employed it in any other way in its business of generating electricity, the income had not been trading income.

v. Specific allocation of fund

If the taxpayer has specifically set aside funds to place in time deposit, (whether on the savings/ fixed deposits), then the intention for investment is established. Interest income derived therefrom would be assessed under sec 4(c) of the Act unless the taxpayers can proof otherwise.

On the other hand, if the company merely did what is prudent i.e.

utilising idle funds from the business in order to maximise profits for the company by placing the surplus/excess funds in time deposits, the intention of "investment" is therefore not present.

**Malaysian experience**

In **PCEO Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Sp Comm) (1997) MSTC 2,891**, the company was incorporated on 1 April 1997 and is carrying on the business of refining and processing of palm oil. The Memorandum and Articles of Association provide authority to advance deposits or lend money.

The company has retained certain portion of cash proceeds to acquire the raw materials, namely, the crude palm oil. In view of the price of crude palm oil, the raw material for the Appellant's business fluctuates from time to time. The volume of cash needed to purchase the raw material, crude palm oil, therefore, varies from time to time.

When less cash is needed when the price of raw material falls, the excess cash is placed on short-term and long-term deposits and on Negotiable Certificate of Deposits, that is, on very short-term negotiable deposits. The object of placing on short-term deposits is to deal with excess money on hand, to turn over and make a profit. In order to place all the deposits, the Appellant exercised managerial and organisational skills by monitoring the fluctuating prices of palm oil by resorting to Reuters reports, newspaper reports and bankers' advice daily.

The Appellant contended that the interest income from the short-term and long-term deposits is part and parcel of the Appellant's business income or ancillary to its business or it is business income arising out of an adventure or concern in the nature of a trade and should be chargeable to tax as income under section 4(a) of the Act.

The tax authorities however, on the other hand, contended that such



interest income should be taxed as income under section 4(c) of the Act, on the basis that such interest income was clearly "interest" and not gains or profits from a business.

The issue raised before the Special Commissioners was whether the interest income of the Appellant is business income under section 4(a) or is interest income under section 4(c) of the Act.

The Special Commissioners arrived at the unanimous decision that the interest income satisfy the test laid down in the badges of trade and thus qualify as business income or alternatively as income from an adventure or concern in the nature of trade.

Pn. Noor Azian (Chairperson of the Special Commissioners) said on p.2899:

*"Considering the motive which was and still is profit making and the high volume and frequency of transactions coupled with the organisation and the system adopted (details of transactions, accounts etc. in Exhibit "B"), we are of the view that the transactions are indicative of business or an adventure or concern in the nature of trade."*

It is of interest to note that in arriving at the decision, the Special Commissioners have taken the anti avoidance measures to ensure that transaction is capable of commercially justified and not solely set up to take advantage of the fiscal benefit. The Special Commissioners further said:

*"We were further satisfied that the transaction were ..carried out through a genuine structure and not an artificial structure set up especially to take advantage of the fiscal benefit ...under section 43 of the Act."*

In this respect, reference may be made to **Lupton v F.A. & A.B. Ltd (1972) AC 634**, where Lord Morris approved the statement of the law by Megarry J. at first instance:

*"If upon analysis it is found that the greater part of the transaction consists of*

*elements for which there is some trading purpose or explanation (whether ordinary or extraordinary), then the presence of what I may call 'fiscal elements', invented solely or mainly for the purpose of producing a fiscal benefit, may not suffice to deprive the transaction of its trading status. The question is whether, viewed as a whole, the transaction is one which can fairly be regarded as a trading transaction. If it is, then it will not be denatured merely because it was entered into with motives of reaping a fiscal advantage. Neither fiscal elements nor fiscal motives will prevent what in substance is a trading transaction from ranking as such. On the other hand, if the greater part of the transaction is explicable only on fiscal grounds, the mere presence of elements of trading will not suffice to translate the transaction into the realms of trading. In particular, if what is erected is predominantly an artificial structure, remote from trading and fashioned so as to secure a tax advantage, the mere presence in that structure of certain elements which by themselves could fairly be described as trading will not cast the cloak of trade over the whole structure."*

---

Income becomes a trading receipt when it arises from capital activity employed and at risk in the business, capital which is employed in the business because it is required for its support or, perhaps, to attract customers looking to the credit of the business. Trading income is 'the fruit' of the capital employed in the business in a present and active sense

---

#### Commonwealth decisions

In **CIR v Bartica Investment Ltd (HC) (1996) HKRC 90-080**, an individual and his family used Bartica Investment Ltd (BIL) as a vehicle to provide back to back loan facility to a hotel in Australia which is owned by the individual and his family.

Various funds have been transferred from the individual and his family to

BIL as a shareholder's loan who in turn invest in various designated banks as time deposits. These banks would in turn lend money to the hotel in Australia. The activities in the placement of time deposits into the various banks are high and rapid. Interest income was derived from these deposits and the assessor was of the opinion that BIL had carried on business in Hong Kong and derived interest on deposits in Hong Kong which were assessable to profit tax.

The High Court relied on the principles propounded in **American Leaf Blending Co Sdn Bhd v DGIR (PC)** and held that BIL is carrying on business. The prime facie presumption is given to the company. P. Cheung J. said on p.100,748:

*"While ultimately it is a question of fact whether the taxpayer was carrying on business, the prima facie inference for a company incorporated for the purpose of making profits for its shareholders and puts its assets to gainful use is that it is carrying on a business. This is something that the Board in its analysis of the evidence had clearly overlooked."*

The taxpayer was acquired by the family for the purpose of carrying out the business scheme of the family in order to achieve the tax benefit. This involved the placing of off-shore deposits, and the pledging of the deposits as securities for the loans advanced by the banks. The asset of the taxpayer was the money which was advanced to it by the family. The placing of deposits by the taxpayer with the Westpac Bank and the Citibank was made pursuant to the terms of the Articles of Memorandum. The deposits were used as securities of the loans advanced by the banks to the hotel company. Interest arose out of the deposits and most of the interest earned by the taxpayer was used by the family to offset interest which was paid by the hotel company in Australia. These clearly show that there was a gainful use of the assets of the taxpayer which, in the words of Lord Diplock, constitutes prima facie a carrying on of a business. If evidence is required for the commercial motive, then the placing of deposits and the



*furnishing of the deposits as securities are the best evidence one could possibly obtain. Under the Memorandum, the taxpayer is entitled to provide security whether with or without consideration. The activities were carried out over a long period between 1984 and 1989 and involving at least two banks. This means that there was a continuous repetition of the business activities. The holding of deposits whether considered on its own or in connection with the giving of securities did constitute the carrying on of a business.*

*There is nothing from the facts which would displace this inference. On the contrary the evidence serves only to reinforce the prima facie inference that the taxpayer was carrying on business. The conclusion of the Board was clearly in error. I am satisfied that the true and only reasonable conclusion from the evidence contradicts the determination of the Board which entitles me to interfere."*

The High Court in Hong Kong reversed the decision of the Board of Income Tax and held that interest income derived by the company constitute business income.

#### UK decisions

**Liverpool and London and Globe Insurance Co v Bennett [1913] AC 610** offers some assistance in relation to the assessability of interest income as business income.

In Bennett the taxpayer was a United Kingdom-based insurance company which carried on business both at home and abroad. In certain foreign countries it was required by law to deposit sums of money with the relevant governments and to invest them according to local law. It also invested certain other sums derived from accumulated profits of the business in the country in question and received the interest on all these investments abroad. As this interest was not remitted to the United Kingdom it was only taxable if it was a trading profit for the purposes of Case I of Schedule D.

The special commissioners [1911] 2 K.B. 577 found that the investments in

question were made in the carrying on of, and were part of, its business transactions and that the interest therefrom was taxable under Case I. In relation to the compulsory deposits Hamilton J. quoted with approval, at p.593, the following dictum of Wright J. in an earlier case (**Norwich Union Fire Insurance Co v Magee (1896) 73 L.T. 733**):

*"If there is a trade which cannot be carried on without making investments abroad, the interest arising on the investments necessarily made for the purposes of the trade is, as it seems to me, part of the gains of that trade."*

The judge observed in relation to the voluntary investments, at p.594:

*"And I think it is clear that the investments which this fire insurance company voluntarily makes abroad are made not merely for investment's sake, but for the sake of having a fund readily realisable abroad to meet the liabilities of their business if need should be."*

The Court of Appeal [1912] 2 K.B. 41 affirmed Hamilton J. and Buckley L.J., at p.60, posed the question as being "whether the interest and dividends are profits of the business as fruit derived from a fund employed and risked in the business."

The House of Lord [1913] A.C. 610 dismissed the taxpayer's appeal and affirmed the decision of the Court of Appeal. Lord Mersey said, at p.621:

*"These temporary investments are also required for the formation of the reserve fund, a fund created to attract customers and to serve as a stand-by in the event of sudden claims being made upon the insurers in respect of losses. It is, according to my view, impossible to say that such investments do not form part of this company's insurance business, or that the returns flowing from them do not form part of its profits."*

The use of Norwich case is restricted to insurance business and may be difficult to apply in general situation. For insurance companies, it would be easy to establish the investment in deposits is closely connected to the business.

The investment funds were available at any time during the relevant years of assessment to meet the requirement of the taxpayer's business.

In **Bank Line Ltd v CIR (49 TC 307)**, the court held that a fund set aside by a ship owning company to replace some years hence obsolete ships was not to be treated as trading income. Lord Avonside said, at p.333:

*"Income becomes a trading receipt when it arises from capital activity employed and at risk in the business, capital which is employed in the business because it is required for its support or, perhaps, to attract customers looking to the credit of the business. Trading income is 'the fruit of the capital employed in the business in a present and active sense'."*

#### Tax planning

It is important to distinguish whether the interest income falls under section 4(a) or under 4(c). By virtue of section 43 of the Act, adjusted losses from a business of a taxpayer for previous years of assessment can be set off from a source consisting of a business under section 4(a) but not against income from any other source.

Reading both the Malaysian, United Kingdom and Hong Kong cases, one should structure its interest income to be assessed under sec 4(a) if there exists unabsorbed business loss. The anti avoidance measures taken by the tax authorities under sec 140 of the Act should be considered with great care.



# The Financial Advantages and Benefits of The Isle of Man as an International Finance Centre

Larry Kearns

*Ernst & Young, Isle of Man*

For the past ten years the Isle of Man has enjoyed continued steady growth as an offshore financial centre. Investment linked life assurance, captive insurance, fund management and shipping management companies have all seen growth in their businesses operated through the Isle of Man. To support this growth, banking legal, accounting and other professional services have improved the quality of the infrastructure available on the Island. In addition to this a number of new items of legislation and government incentives have increased the awareness of the Island to the international market.

In the 1980's the Island's business increased primarily because of the taxation advantages offered to United Kingdom residents by the use of trusts and exempt companies. Such structures were useful for the avoidance of Capital Gains Tax, however, recent changes in legislation have made the trusts and guarantee companies less effective in the future. Nevertheless, the use of trusts in the Isle of Man and exempt companies and non-resident companies still continues to increase as the advantages are made aware to people throughout the world. The Island is also a suitable base to operate international invoicing companies from, due to its links with the United Kingdom and the European Union.

The Isle of Man is now a significant centre for aircraft leasing and financing arrangements. Around £2 billion of business was handled in January

alone for five different international airlines. The Island's attraction for such operations will be further enhanced by a new financing vehicle, the Purpose Trust Act which provides corporations operating in sensitive political areas with the means of separating their financing arrangements from the company operating the aircraft. Provisions apply equally to ships, rolling stock or other such assets.

The Isle of Man shipping sector has expanded significantly in recent years and several of the world's leading ship groups base important arms of their global operations here. The island is a member of the European Union Alliance of Maritime Regional Interests in Europe and this presents a suitable platform to raise the profile of the Isle of Man marine administration in promoting quality while maintaining international safety standards. Consequently the Isle of Man is now regarded as having the highest quality of administration in addition to the lowest costs. It was recently announced that San Francisco based Chevron Shipping, the biggest importer of crude oil into the United States, is moving all of its European crew management operation to the Isle of Man. The contract involves 650 European officers on 30 ships in addition to other marine assignments.

The Islands status as one of the fastest growing centres for Captive Insurance has received a further boost as new Manx re-domicile rules come into effect. The new legislation provides the

virtual free movement of captives between qualifying jurisdictions. Previously companies operating on a permanent basis still had to retain incorporation in the original foreign jurisdiction. The Island also provides captives with another option in meeting requirements laid down by the United Kingdom's Controlled Foreign Companies Legislation. Captives can now apply for registration as international companies following the approval of new rules under the Isle of Man's International Business Act. To fall outside the CFC provisions, an offshore insurance company must pay tax in its domicile jurisdiction that amounts to at least 75% of that which would be liable in the United Kingdom. Under the IBC option, captives can meet United Kingdom revenue requirements by electing to pay more than the standard 20% corporate rate - rather than paying out a 90% dividend on profits which is required to comply with the Acceptable Distribution Test. The Isle of Man already has more captives belonging to the United Kingdom's top 100 companies than any other financial centre. Now the Island's new re-domicile rules are boosting numbers switching from rival jurisdictions.

The Isle of Man's Limited Partnership legislation has been further enhanced to provide greater flexibility. The Limited Partnerships (Unrestricted Size) (Ships and Aircraft manage-



ment) Regulations have just come into force removing the 20 member limitation for partnerships involved in the management, ownership or charter of ships and aircraft. The latest move follows last year's removal of the 20 member provision where a partnership is formed as a collective investment scheme. Manx legislation already permits partnerships of more than 20 for accountants and lawyers via the Companies Act. In addition the 1994 International Business Act not only allows such partnerships to be exempt from Manx tax, but also allows limited partners a large measure of involvement in the management of the partnership without affecting their limited liability.

The Isle of Man Professional Investor Fund, launched almost a year ago, is already proving one of the fastest growth areas in the Islands fund management sector. The Professional Investor Fund is a new category of unregulated fund that was designed exclusively for international institutional investors. A key feature of the scheme is that it fully recognises the expertise and requirements of the institutional investor and it can be established quickly and inexpensively and is free from detailed regulation and any restriction on the number of permissible investors. The PIF is particularly suited to a number of collective investment activities and arrangements which include venture capital funds, management buy-out schemes, real property schemes and hedge funds. It also provides a framework for sponsors to create new types of "designer funds" intended for the specialist institutional/professional market. It is designed specifically for the professional investor who wants to operate out of a reputable centre where he is not

going to be restricted by red tape.

The Isle of Man has also become the first offshore financial centre in Europe to introduce a new American style Limited Liabilities Companies Act aimed at attracting tax planning business from the USA and Europe doing business in joint ventures with American companies. The legislation introduces a new concept in Manx law - a company which operates and is taxed like a partnership. Limited Liability Companies are common in the USA where they are regarded as "transparent" for tax purposes but provide limited liability. In the Isle of Man liability is limited to the extent of the capital introduced by the members. It is a condition that management rests with the members although a manager can be appointed. Taxation is similar to that of a partnership where profits are divided amongst the members and taxed in their hands. The operation and the members are tax exempt provided the income source is outside the Isle of Man. In addition the LLC will have a life of not more than 30 years.

Approximately 18 months ago the Isle of Man Government decided to step in with tax incentives denied the film industry in the United Kingdom. The Manx film industry is now providing a serious boost to the Isle of Man Exchequer. The incentive is based on a transferable tax credit calculated at the rate of 20% of specified investment in the film production approved by the newly constituted Isle of Man Film Commission. A transferable tax credit of up to £350,000 per production is available and the level is determined by the budget level of the production. The tax credits are not repayable and can be treated as a grant. To enable an offshore investor to take up the incentive, the tax relief may be transferred to an Isle of Man resident who has a tax liability. In addition loans of up to £150,000 per production are available against commercial sales

estimates and in exceptional circumstances the loans can exceed £150,000. The Department of Trade and Industry can take an equity position in the production normally up to 35% of the budget. The equity investment is based on the commercial viability of the production. In addition to this there are a number of other incentives, including:-

- a) No withholding taxes for visiting actors.
- b) Tax holidays for up to 5 years for production companies.
- c) Tax holidays for off-Island investors.
- d) Favourable tax treatment for pre-production expenditure.
- e) 100% Capital Allowances on all plant and equipment.

The response to this initiative has been so great that the Treasury and Industry Departments are now looking at ways to boost its success.

In conclusion the Island is pleased to have been named as the top off-shore jurisdiction for the second year running by United Kingdom intermediaries with international businesses. Approximately 8,000 independent financial advisors were asked to vote for the offshore centres they considered most highly for investment, insurance and trust services and the Isle of Man was voted top in all three. The annual survey was carried out by the magazine International Money Marketing and also asked questions about efficiency and user friendliness. This is particularly satisfying for an offshore financial centre that has seen significant growth and success in the past 10 years.



# TRADING WITH THE EUROPEAN COMMUNITY THROUGH THE ISLE OF MAN

By  
Larry Kearns  
Ernst & Young, Isle of Man

## The Isle of Man: A Brief Outline

Located midway between England and Ireland in the Irish Sea, the Isle of Man measures approximately 33 miles long and 13 miles wide with a total land-mass of 227 square miles.

As a self governing Crown dependency the Island enacts its own legislation. It is not part of the United Kingdom although it is part of the British Isles and the Queen is the sovereign. Its Parliament, Tynwald, governs internal matters and has been established for more than one thousand years.

In international law, the United Kingdom is responsible for the Island's external relations and the Manx Government is consulted before any international treaty that would affect the Island is finalised in the United Kingdom.

There are no customs barriers between the Isle of Man and the United Kingdom and the Island enjoys a special relationship with the European Community ("EC") which makes the Island part of the community for purposes of trade but relieves it of liability to contribute to EC Funds.

The Island's reputation as an offshore financial centre has been enhanced considerably over the past ten years with the introduction of sophisticated modern legislation in the field of shipping, insurance, fund management and banking. The Island has recently been voted the top offshore centre for business dealings by United Kingdom financial intermediaries.

## The Isle of Man as an Offshore Invoicing Centre

The Isle of Man is an ideal tax neutral location for trading companies.

The Isle of Man trading company would buy goods from related companies or third parties, selling them at a profit to the EC customer. This would result in a shift of profits into the Isle of Man company where they would be subject to a lower tax rate.

The goods would have to be purchased at arms length prices but the ability of the Isle of Man company to earn profits would be justified by the fact that, for example, it had exclusive buying arrangements enabling it to on-sell its goods at a higher price.

The use of a company established outside the main trading countries of the EC means that the high tax and administration costs of setting up in those territories can be reduced or avoided altogether.

Depending on the requirements of the parent group the Isle of Man company can be organised so that its tax rate is anywhere between 0% and 35%. This means that it can still be used where the parent company is subject to domestic Controlled Foreign Company legislation.

## VAT and the Isle of Man

Changes in the Value Added Tax (VAT) introduced on 1 January 1993 mean that if supplies of goods and services between EC members are to be effectively zero rated, enabling VAT

to be accounted for on acquisition in the member states of destination, one of the conditions is that the customer must be registered for VAT and quote his VAT identification number to the supplier.

The problem with using most offshore jurisdictions is that they will find it difficult to obtain VAT registrations for their companies without jeopardising offshore tax advantages. The Isle of Man is unique in this respect in that it can offer effective taxation planning and VAT registration. The Customs & Excise Division in the Isle of Man operates independently from the United Kingdom but legislation is identical to the United Kingdom with the jurisdictions considered one area for VAT purposes.

## Customs and the Isle of Man

In certain situations an Isle of Man company can be used to reduce import duties into the EC. This would involve the Isle of Man company acquiring the relevant goods at a discounted value from the manufacturer. The import duties would then be based on the lower price invoiced to the Isle of Man company, rather than the subsequent sale price to the ultimate customer.

Alternatively, if the customer imports the goods and is able to use the invoice from the Isle of Man company as evidence for valuation purposes it may be possible to ensure that import duties are only payable on the lower price paid by the Isle of Man company and not on the marked up price invoiced by the Isle of Man company to the customer.



As discussed above, the discount could be justified by virtue of the specific buying arrangements between the companies.

### Tax Structures Used

#### 1. Isle of Man Exempt Company

A company will be considered exempt and not liable to Manx income tax if the following basic conditions are satisfied:-

- the company is managed and controlled from within the Isle of Man;
- the beneficial owner is not resident in the Isle of Man;
- the income from the company's trade or business originates from outside the Isle of Man, with the exception of bank interest.

An annual exemption fee of £300 is payable by the company.

#### 2. Isle of Man International Company

An International Company is essentially the same as the Exempt Company above with the exception that the rate of taxation chargeable is varied according to the specific requirements of the International Company. This can range from a minimum rate of 1% to a maximum of 35% of assessable profits, subject to a minimum income tax charge of £300.

#### 3. Isle of Man Non-Resident Company

A company is considered Isle of Man non-resident and not liable to Manx income tax if:-

- management and control is carried on from outside the Isle of Man, (usually by the directors being non-resident);
- the beneficial owner is not resident in the Island; and
- no trade or business is carried on in the Island, apart from the receipt of bank interest.

It is necessary to file a declaration of non-residence at the Companies Registry together with payment of the non-resident duty.

#### Services Offered by the Isle of Man Office

1. Management and administration of trading companies, including:-
  - a) Provision of directors and secretary for companies controlled in the Isle of Man.
  - b) Administration of business including the issue of invoices for payment, checking receipts, dealing with customers' correspondence and execution of various business documents.
  - c) Opening of company banking facilities with an Isle of Man branch of a major United Kingdom clearing bank. As authorised signatories on the account, will be responsible for

the issue of cheques and instructions to the bank for the transfer of funds by SWIFT payments.

- d) Maintenance of accounting records, which are required by Company Law and the preparation of annual financial statements.
- e) Co-ordinating the opening of Letter of Credit facilities.

2. Management of property and investment holding companies, including those activities mentioned above and also dealing with stockbrokers, property agents, solicitors and other professional intermediaries.

#### Confidentiality

Unlike other offshore Financial Centres there is no requirement to disclose the beneficial owner of any company or trust to the Government or Regulatory Authorities. The use of nominee shareholders is permissible and is a popular method of registration of shareholders. Only registered shareholders are disclosed on the annual return of an Isle of Man company. Nominee shareholders execute a "Declaration of Trust" stating on whose behalf the nominee is holding shares. This document is normally retained by the beneficial owner or held at the registered office. Neither the Declaration of Trust nor the information it contains is filed, or submitted, to any third party.

Q U O T E

'Lose no time; be always employed in something useful'

Benjamin Franklin



# NOTES OF DIALOGUE DISCUSSION

The Dialogue with the Inland Revenue Board (IRB) held on February 1998 to discuss the programme for submission of 1998 returns, the Malaysian Institute of Accountants and the Malaysian Institute of Taxation raised several issues on operational matters for discussion. The following are the issues raised and the responses from the IRB.

## 1. Extension of time to file Form E

It appears that different Branches have different practices with regard to granting extension of time to file Form E. For example, some Branches grant extension to 31 May provided a written request is made. Others go strictly by the time limit of 30 days after the date of issue.

- Could the IRB make it a uniform practice to grant extension of time to 31 May for the filing of Form E?

### Response

Application for extension of time to file Form E is not normally encouraged, since delay by the employer in submitting Form E will affect the employee's ability to submit his/her return on time. In practice such applications are dealt with on a case to case basis. In order to facilitate timely submission of Forms E by employers, the IRB has simplified procedures for submission. The IRB will continue with the present practice of allowing extension of time on a case by case basis.

## 2. Issue of Notices of Assessment (NA) without a tax computation

The issue of NAs with a tax computation has always been a standard practice in all assessment Branches of the IRB. However, it appears that in recent times, the issue of a NA without a tax computation has become very common. Consequently, tax agents have to write to request for the tax computation.

- Could the IRB ensure that the issue of NAs together with a tax computation (where adjustments have been made) is a uniform procedure in all assessment branches?

### Response

The IRB has taken note of this request and will take steps to ensure that adjustments made to tax computations will be communicated to taxpayers or their tax agents.

## 3. Schedular Tax Deduction - Directors' fees

Previously, in Ipoh, schedular tax is deducted only on payment of Directors' fees and not when the provision is made or fees accrued. There has been a change of practice, and tax is now deductible on declaration or provision of such fees. In addition, an officer from the unit concerned has informed verbally that employers have to seek clearance from the IRB on payment of directors' fees formerly accrued if no STD is to be deducted.

Enquiries have been made at the STD unit in Kuala Lumpur, and it was verbally confirmed that STD for Director's fees is only required when the fees are paid and not when declared.

Could the IRB please confirm that

- STD on Directors' fees is only required when the fees are paid?
- the same practice would be adopted in all Branches?

### Response

The IRB has checked with its Ipoh Branch and confirmed that there has been no change of practice in that Branch. The incident related above may be an instance where special circumstances called for special treatment. STD is required when directors' fees are paid and not when declared or provision made.

## 4. Form CP 38SA

Form CP38SA for some taxpayers with income tax reference numbers ending with odd numbers were received during the week January 12 to 16, 1998. As these taxpayers have to settle the January 1998 bimonthly installments by January 30, 1998, they have less than a week to arrange for funds, more so with the festive holidays at the end of January. Taxpayers would appreciate if the IRB could send the CP 38SA out early in future.

### Response

Under normal circumstances, CP38SA are sent out in November/December of each year, which should allow ample time for taxpayers or their agents to be notified, barring unforeseen delays.

## 5. Schedular Tax Deduction

Presently there are no provisions in the Income Tax Act 1967 for tax to be deemed paid by an employee if the



employer deducts the tax but did not remit the tax to the IRB. The regulations (Rule 11) only provide for recovery by civil proceedings.

- What action would the IRB take in the event that the employer's business fails and the amount is irrecoverable?
- Would the IRB seek to recover the tax from the employee?
- Would IRB accept evidence from the employee that tax has been deducted? If so, what kind of evidence is acceptable to IRB in order to satisfy the IRB that tax had been deducted from employees' remuneration?

**Response**

In ensuring that tax deducted under the STD Scheme is collected, the IRB's primary concern is to improve enforcement. An important aspect of enforcement is the provision for the amount due from the employer to be treated as a debt due to the government, and the power to prosecute offending employers. If there is sufficient evidence that employees have suffered deduction of tax from their salaries, it is not the intention of the IRB to seek to recover unremitted tax from the employee. However, evidence must be produced that tax has been deducted.

**6. Penalty imposed on repayment cases**

It is the practice for IRB to impose penalty for late submission of returns for repayment cases. In the application of this rule, a taxpayer may at times suffer unnecessarily. For example, in one case, a taxpayer is issued with the repayment for YA 1989 after 9 years (in 1997). On the other hand, a penalty for late submission was imposed for YA 1994 and 1996, which are also repayments of tax. It would seem not in order for a taxpayer to receive no compensation for delay in refund of tax overpaid, while having to suffer penalty for late submission of return in a situation where no tax is payable, where in fact, a repayment of tax is due to him.

We would therefore appeal to the IRB to review the rule on imposing penalty for late submission of returns, and waive all penalties for late submission of returns in all repayment cases.

**Response**

The IRB pointed out that penalty imposed for late submission of returns is imposed because the taxpayer has committed an offence in submitting his return late, even where the case is a repayment case. There is no indication from the IRB of any intention to change the present practice.

**7. Registration of "C" files in Companies Branch**

The KL Companies Branch has stopped issuing permanent file reference numbers for companies that have not

commenced operations. There are some companies which have tax liabilities due to interest income, and would like to make installment payments of tax. However, because such companies are not able to submit audited accounts as yet, their requests for the registration of a permanent file have been rejected by the Companies Branch. As a result, these companies are unable to make installment payments or to apply for extension of time to submit their returns.

- Could the Companies Branch allow some flexibility in the application of the above rule to allow a "C" file to be registered at the request of the taxpayer or his agent?

**Response**

If there is a specific case in which the company is liable to pay tax, the taxpayer or his agent should inform the Companies Branch of the specific nature of the case. In a case where a company has actually commenced operation (say, for several months) and then decides to wind up, the Companies Branch in K.L. will normally request for draft accounts to be submitted. Based on such submissions, the taxpayer's/tax agent's request may be granted.

**8. Acceptance of cheques for stamp duty purposes**

Presently the Stamp Office accepts only cheques from solicitors and not professional firms.

- Would the IRB accept cheques issued by professional firms instead of bank drafts?

**Response**

The IRB informed that it will continue with its present practice.

**9. Guidelines on Reinvestment Allowance**

Tax agents who have to apply for Reinvestment allowance for their clients have to commence work on preparation for the applications now, and are uncertain how this is to be done as guidelines have yet to be issued. Could the IRB indicate when the Guidelines are expected to be issued? In the absence of guidelines on the new provisions, can applications be prepared based on the old provisions?

**Response**

The representative from the Technical Division of the IRB explained that Guidelines have been drawn up, but they will not be issued before the Finance Act, 1998 is gazetted. With regard to the suggestion that applications be prepared based on the old provisions pending issue of the guidelines, the Chairman proposed that the matter be taken up to the appropriate authority by the representative of the Technical Division of the IRB, who will then inform each agency represented at the dialogue, of how they should proceed.



APPENDIX A

Follow-up on issues discussed at the Dialogue with Operations Division on 29 September 1997.

STD and imposition of penalty under section 103(4) and (5)

The issue is explained in our Appendix A. What is IRB's position with regard to this matter?

Response

It was confirmed that no penalty will be imposed.

Liaison with IRB officers

Participants at the above dialogue was informed that a Public Relations Officer will be appointed for each Branch, and that the public will be informed of their names and telephone numbers. Can the IRB now provide us with the list for dissemination to members?

Response

A list of telephone numbers and fax numbers of the PR personnel in the respective Branches of the IRB will be provided. (Please see Appendix B.)

Annual Statement of Tax Paid

Feedback from our members indicate that an annual statement of tax paid, assessments raised and reduced and balance in the account is very much desired. Is the IRB in a position to issue such a statement?

Response

The IRB is presently in the process of developing an updated computer information system. It is working towards the development of a new format for the Notice of Assessment, which will show the amounts of tax payable, tax paid and the balance of tax to be paid.

Schedular Tax Deduction and imposition of penalty under Section 103(4) and (5), Income Tax Act 1967

Before the introduction of the Schedular Tax Deduction (STD) scheme, the Inland Revenue Department's practice was to collect tax in advance from expatriates by issuing directive (Form CP 38) to the expatriates' employers to deduct tax for two years of assessment on commencement of employment. With the introduction of the STD scheme, this practice has apparently stopped.

An expatriate like all taxpayers is required only to pay tax when a notice of assessment is issued to him and no penalty under Section 103(4) and (5) ITA can be imposed on him if he has no outstanding tax liability.

However, it would appear that there is a practice by the Collections Branch of the Inland Revenue Board to disregard all the STD made in a current calendar year on the basis that the deductions are for the subsequent year. This results in outstanding tax for the current year, which is artificial rather than real. This can be seen from the following example.

	RM	RM
Notice of assessment for YA 1996 (say)		50,000
Deductions made by employer:		
(i) CP38 and STD made in 1995	40,000	
(ii) STD made in 1996	60,000	100,000
Credit		50,000

In the above example, there is a credit balance of RM50,000 in the account. However, the STD made in 1996 is disregarded, on the ground that the 1996 STD is to be used for the tax payable for the year of assessment 1997, and penalty is imposed under section 103(4) and (5) on RM10,000 (RM50,000- RM40,000) on the taxpayer.

We believe that this practice is not supported by any provision in the ITA and there is no basis for imposing a penalty on a taxpayer when he has a credit balance in his account. There is no provision in the ITA to treat an expatriate employee differently from a local employee.

We would like to seek clarification from the IRB on the above practice, and make a request to stop the practice of imposing penalty on a taxpayer who has a credit balance in his account.

Continuation on page 36



# 1998 PROGRAMME FOR SUBMISSION OF RETURN FORMS

## 1. SCOPE OF EXTENSION OF TIME

1.1. Application for extension of time to file return forms after 31 May 1998 should be made on or before **15 April 1998**.

1.1.1. No extension of time beyond 31 May 1998 will be allowed in respect of the following:-

- (a) All partnership (D) cases.
- (b) All salary (SG) cases.
- (c) All cases where the accounting year ends on or earlier than 30 September 1997.
- (d) All cases which are not under the instalment payment scheme (Section 107B) other than:

- repayment/loss cases
- exempt company cases
- cases where tax has been deducted under Section 107A.

1.2. Except for cases mentioned in paragraph 1.1.1., extension of time in respect of cases other than company cases will be allowed only up to 31 July 1998 while Company (C) cases will be allowed up to 30 August 1998.

1.3. No extension of time will be allowed beyond the above dates **except:-**

- (a) In Company (C) cases where certain companies are required by law to have that accounts approved by the respective authorities.
- (b) In all other cases, where the filing date could not be met due to genuine extenuating circumstances.

Separate applications for extension of time must be made for such cases and each case will be considered on its own merits.

## 2. APPLICATION FOR EXTENSION OF TIME

2.1. The applications for extension of time must adhere to the following:

- (a) Extension of time for submission of returns for

Company (C) cases will be considered up to the end of August 1998 but the programme for submission should be such that 35 percent of the returns will be submitted by the end of June 1998, another 35 percent of the returns in July 1998, and the remaining 30 percent in August 1998.

- (b) In cases other than Company cases the programme should be such that 50 percent of the returns ought to be submitted by June 1998 and the extension of time up to 31 July 1998 would be considered for the balance of the cases.

This programme must be strictly adhered to. Requests for changes to the programme will normally not be considered.

2.2. For an extension to be granted, the following conditions would have to be met:-

- (a) One programme listing cases and dates of filing must be submitted in triplicate for approval. **A clear statement must be made that all cases applied for comply with the agreed conditions namely:**

- (i) that the financial / accounting year ends after 30 September 1997.

- (ii) that the case is under the instalment scheme (Section 107B), **repayment/loss case, exempt company cases or cases where tax is deducted under Section 107A.**

- (b) Separate lists should be prepared for each category of cases and the cases listed in numerical order. (These lists are to be sent to the respective Branches).

2.3. No extension of time will be granted beyond 31 May 1998 where a Notice of Instalment Payment (Section 107B) has not been issued or where tax has not been deducted under Section 107A. Where arrangements are made to make instalment payments on account of estimated tax payable, not more than five (5) instalments will be permitted, the final instalment to be made not later than October 1998.



2.4 When extension of time has been granted in respect of a loss case or repayment case and subsequently it is found that there is liability to tax, immediate arrangements should be made for payment of the estimated tax by instalment, the final instalment to be made not later than 30 September 1998. Where such an arrangement has been made the relevant assessment branch must be informed. In such a circumstance the extension of time will not be withdrawn.

- (a) Any Return Form to be filed within the extended time agreed must be a **complete** Return Form which means a Return Form supported by audited/certified accounts, tax computation and all the required details as stipulated in the Return Form. Any **incomplete** return form submitted will be considered as a late lodgement and be thus subject to penalty.
- (b) There must be an indication on the return form that extension of time has been approved. This is to be indicated on the front page of the return form above the taxpayer's address column as follows

"Lanjutan masa dibenarkan sehingga .....".

A Return Form addressed to a particular taxpayer who is no longer a client should not be used for submission of income of another taxpayer. Instead it should be returned with an appropriate notation.

Failure or delay by taxpayer to prepare accounts or supply information to the Accountant or Tax Agent will not be considered as valid grounds for any extension of time or waiver of penalty unless there are extenuating circumstances.

- (a) Where the extension of time has been granted upon claims made that a taxpayer is under an instalment scheme or that tax has been deducted under Section 107A and if subsequently this is found to be incorrect, then it will be considered that no extension of time had been given and an appropriate penalty will be imposed on any late submission.
- (b) All cases in respect to clubs, trade associations and trust will be subject to the conditions applicable to OG cases.

## 7. COLLECTION POLICY

7.1. The policy is to collect the tax within the stipulated period and also by means of the instalment scheme under Section 107B Income Tax Act 1967 as well as the monthly deduction from salaries of employees.

7.2. Any credit available to a taxpayer and arising from prior years can also be set-off against instalments due

but prior arrangements must be made with the Collections Branch.

7.3. No penalty will be imposed on employees who pay their tax by monthly deductions as required by the Income Tax (Deduction from Remuneration) Rules 1994. There may be cases where the total deduction is insufficient to meet the tax payable based on the notice of assessment. In such cases penalty will be imposed if the taxpayer fails to pay the outstanding tax by January 31 of the following assessment year.

7.4. Accountants and Tax Agents should advise that clients of the necessity to make sufficient provisions for the payment of tax to avoid the late payment penalty. Taxpayers other than SG cases have been made aware that they should commence payment from January or February. A taxpayer who has not been issued with a Notice of Instalment Payment may request to be included in the scheme provided a notice of assessment for the current year has not already been issued to him. However, the instalment payments will not be extended beyond September or October 1998.

8. The auditors who are not the tax agents of the companies they are auditing should inform the clients of the above programme.
9. Tax agents are required to comply with the Code of Ethics for Tax Agents.
10. The Board reserves the right to withdraw or modify any of the concessions agreed upon.

Tarikh: 27 Februari 1998

LHDN.01/32/(S)/193/21 Klt. II

LEMBAGA HASIL DALAM NEGERI MALAYSIA.



# 1988 FILING PROGRAMME - APPLICATION FOR EXTENSION OF TIME

The Inland Revenue Board (IRB) has informed the Institute that, in order to facilitate application for extension of time for submission of 1998 Returns, the following guidelines should be followed:-

ANNEXURE

## DATA ENTRY FORMAT FOR APPLICATION OF EXTENSION OF TIME

Field Type	Position	Length
Ref. Number	1-10	10
(Space)	11	1
Company Name	12-71	60
(space)	72	1
Accounting Date [YYMMDD]	73-78	6
(space)	79	1
Extension of time (Date) [YYMMDD]	80-85	6
(space)	86	1
Section 107B [Y/N]	87	1
(space)	88	1
Section 107A [Y/N]	89	1
(space)	90	1
Repayment case [Y/N]	91	1
(space)	92	1
Loss case [Y/N]	93	1
(space)	94	1
Exempt Co. [Y/N]	95	1

1. Those submitting applications to IRB Branches in the Klang Valley (i.e. KL Companies Branch, Non-Resident Branch and Branches in Jalan Duta, Kampung Attap, Cheras, Wangsa Maju, Shah Alam and Klang) can either

- (i) submit the application in triplicate in accordance with paragraph 2.2(a) in the 1998 Programme for Submission of Returns, or

- (ii) Submit (a) one hard copy and
    - (b) one copy in a diskette (1.44MB)

The IRB has indicated that option (ii) is for those with more than 20 clients.

2. The list of cases submitted (hard copy and diskette) should be arranged according to Income Tax file reference number. A separate list should be prepared for each category of file, which are as follows:

- i) SG
    - ii) OG
    - iii) D
    - iv) C
    - v) CS
    - vi) T
    - vii) F
    - viii) J

3. The format for the records submitted should be as specified in the attached annexure.

- Data should be in text format (.txt or ASCII) and can be prepared using Microsoft WORD or WordPerfect.

- Diskette size : 1.44MB

\* Y - Yes, N - No.

YYMMDD - Year, Month, Day

Q U O T E

‘Excellence is an art won by training and habituation.  
We are what we repeatedly do.  
Excellence, then, is not an act but a habit’

Aristotle



# Bayaran Pampasan Kerana Diberhentikan Kerja

## COMPENSATION FOR LOSS OF EMPLOYMENT

The letter dated 11 March 1998 reproduced below was addressed to the Federation of Malaysian Employees. A copy of the letter was sent to the Institute by the IRB. A translation of the letter was also done by the Institute.

Yang terhormatnya saya merujuk kepada perkara di atas.

Seperti yang Y. Bhg. Tan Sri sedia maklum mengikut undang-undang yang sedia ada, majikan dikehendaki membuat Potongan Bejadual (PCB) daripada saraan bulanan pekerja berdasarkan jadual yang menetapkan amaun cukai yang perlu dipotong. Dalam pada itu mengikut para 15(l)(b), Jadual 6, Akta Cukai Pendapatan, 1967, pampasan kerana kehilangan pekerjaan dikecualikan daripada cukai pendapatan sebanyak empat ribu ringgit untuk tiap-tiap tahun genap perkhidmatan dengan majikan yang sama. Untuk tidak menyukitkan pihak majikan daripada datang ke Cawangan penaksiran untuk mendapatkan surat pelepasan cukai bayaran pampasan dan untuk mengelakkan potongan cukai yang berlebihan, pihak majikan dikehendaki membuat potongan cukai daripada baki bayaran pampasan setelah ditolak empat ribu ringgit untuk tiap-tiap tahun genap perkhidmatan dengan majikan yang sama. Bagi pengiraan PCB daripada bayaran pampasan ini, sila gunakan formula yang sama untuk bonus.

Jika nasihat atau keterangan lanjut mengenai PCB daripada bayaran pampasan diperlukan, Pejabat LHDN yang terdekat atau Unit Khidmat Majikan, Cawangan Pungutan boleh dihubungi melalui telefon.

Sila sampaikan kandungan surat ini kepada ahli-ahli Y.Bhg. Tan Sri.

Selamat, terima kasih kasih.

**"BERKHIDMAT UNTUK NEGARA"  
BERSAMA MENYUMBANG UNTUK PEMBANGUNAN  
NEGARA"**

Saya yang menurut perintah,

(NUJUMUDIN BIN MYDIN)  
Timbalan b.p. Ketua Pengarah,  
b.p. Ketua Eksekutif/Ketua Pengarah Hasil Dalam Negeri,  
Lembaga Hasil Dalam Negeri,  
Malaysia.

### (English translation)

In a letter to the Federation of Malaysian Employers, the Inland Revenue Board (IRB) has outlined procedures to be followed in making Schedular Tax Deductions where employees are paid compensation for loss of employment. The procedures are as follows:-

2. Presently employers are required to make Schedular Tax Deductions from monthly remuneration of employees, based on schedules which predetermine the amount to be deducted. Under paragraph 15(l)(b) of Schedule 6 of the Income Tax Act 1967, compensation for loss of employment is exempted from income tax on the amount of RM4,000 for each completed year of service with the same employer. To save employers from the inconvenience of having to go to the assessment branch of the IRB to obtain the letter of clearance for the payment of compensation to employees, and to avoid overdeduction of tax, employers are only required to deduct tax from the balance of compensation payments that remains after deducting RM4,000 for each completed year of service with the same employer. For purpose of computing STD from compensation payments, the same formula as that used for bonus payments should be followed.

3. For advice or further details concerning STD from compensation payments, please telephone the nearest IRB office or the Employer Service Unit (Unit Khidmat Majikan) of the Collections Branch in Kuala Lumpur.



# Manfaat Berupa Barangan (MBB)

## BENEFITS-IN-KIND (BIK)

*In a letter dated 12 March 1998 addressed to the Malaysian International Chamber of Commerce and Industry (MICCI) the Inland Revenue provided clarifications on certain issues pertaining to benefits-in-kind and some other matters. A copy of this letter was sent to the Institute by the IRB. The letter is reproduced below. The Institute has also translated the letter into English.*

Lanjutan kepada sesi dialog yang telah diadakan dengan pihak tuan pada 10.2.1998, sila ambil perhatian akan keputusan yang dibuat untuk perkara-perkara berikut:-

### 1. Telefon Bimbit

#### 1.1 Telefon Bimbit yang disediakan oleh majikan untuk tujuan perniagaan

Majikan dikehendaki melaporkan telefon bimbit sebagai MBB dengan catatan untuk kegunaan rasmi sahaja.

#### 1.2 Sekiranya pekerja dapat membuktikan bahawa telefon bimbit digunakan untuk kegunaan rasmi sahaja dan manfaat persendirian tidak timbul disebabkan semua panggilan persendirian dibayarbalik kepada majikan, nilai MBB sebanyak RM600 akan dikurangkan sewajarnya mengikut fakta sesuatu kes.

#### 1.3 Sekiranya telefon bimbit kepunyaan pekerja tetapi majikan telefon dan semua panggilan rasmi, pekerja akan dikenakan cukai ke atas nilai RM600.

### 2. Tukang Kebun/Pemandu/Pembantu Rumah

#### 2.1 Sekiranya tukang kebun/pemandu/pembantu rumah diambil dan dibayar gaji oleh pekerja yang kemudiannya dibayarbalik oleh majikan atas tuntutan pekerja, jumlah yang dibayarbalik oleh majikan akan dikenakan cukai di bawah seksyen 13(l)(a) Akta Cukai Pendapatan, 1967.

#### 2.2 Dalam kes di mana pemandu tidak diberi khusus untuk seorang pekerja tetapi diambil daripada kumpulan pemandu majikan untuk urusan perniagaan sahaja, nilai MBB tidak akan dikenakan ke atas pekerja tersebut

#### 2.3 Sekiranya pembantu rumah disediakan oleh majikan untuk tujuan perniagaan (sebagai contoh pekerja dikehendaki meraikan pelanggan di tempat kediamannya), nilai MBB sebanyak RM4800 akan ditaksir ke atas pekerja akan tetapi pekerja boleh membuat tuntutan untuk mengurangkan jumlah tersebut sekiranya pembantu rumah disediakan untuk tujuan perniagaan. Pertimbangan akan diberi mengikut fakta sesuatu kes.

#### 2.4 Nilai MBB mengikut KCP 1997/2 yang ditetapkan adalah untuk tiap-tiap seorang tukang kebun/pemandu/pembantu rumah.

### 3. Faedah Pinjaman

Pengenaan cukai ke atas manfaat ini akan dibuat berdasarkan kepada fakta tiap-tiap kes. Secara umumnya, manfaat ini dikenakan cukai berdasarkan kepada kos yang ditanggung oleh majikan apabila memberi pinjaman tanpa faedah, faedah ditanggung sebahagian atau faedah dikenakan di bawah kadar pasaran.

Dalam keadaan di mana majikan memperoleh kadar utama (preferential rate) disebabkan kedudukan kredit yang baik dengan pihak bank, kadar utama tersebut akan dianggap sebagai kadar pasaran untuk majikan itu.

#### 3.1 Pinjaman tanpa faedah

##### 3.1.1 Sekiranya majikan mengambil pinjaman daripada pihak ketiga untuk membiayai pinjaman tanpa faedah kepada pekerja, nilai MBB yang ditaksir atas pekerja adalah kos yang dibayar oleh pihak majikan kepada pihak ketiga untuk mendapatkan pinjaman.

##### 3.1.2 MBB tidak timbul sekiranya majikan tidak menanggung sebarang kos apabila memberi pinjaman tanpa faedah kepada pekerja. Misalnya pinjaman tanpa faedah yang dibuat daripada wang berlebihan daripada perniagaan tanpa pinjaman daripada mana mana pihak.

#### 3.2 Subsidi faedah/faedah dibayar di bawah kadar pasaran

##### 3.2.1 Dalam kes di mana majikan mengambil pinjaman daripada pihak ketiga untuk membiayai pinjaman kepada pekerja yang membayar sebahagian daripada faedah yang dikenakan sementara baki faedah ditanggung oleh majikan, nilai MBB yang dikenakan ke atas pekerja ialah perbezaan faedah di antara apa yang dikenakan oleh peminjam dan faedah yang dibayar oleh pekerja.

##### 3.2.2 Sekiranya pinjaman kepada pekerja diberi pada kadar yang hampir sama dengan kos yang dibayar oleh majikan, tiada MBB dikenakan. Nilai MBB akan ditaksir ke atas pekerja sekiranya kadar yang dikenakan ke atas pekerja kurang daripada kadar yang ditanggung oleh majikan.



## Premium Insurans

- 4.1 Premium insurans bagi skim insurans yang menamakan pekerja, ahli keluarga pekerja atau nomini yang dilantik sebagai benefisiari, akan ditaksir sebagai MBB yang dikenakan cukai. MBB tidak akan ditaksir ke atas pekerja sekiranya benefisiari polisi insurans adalah majikan.
- 4.2 Premium insurans yang dibayar oleh majikan untuk Aviation Travel Accident Insurance untuk pekerja tidak akan ditaksir sebagai MBB ke atas pekerja.
- 4.3 Sumbangan yang dibuat oleh majikan kepada Healthcare Management Organization (HMO) tidak dikenakan cukai sebagai MBB ke atas pekerja.

## Yuran tuisyen/sekolah

- 5.1 Yuran tuisyen/sekolah yang layak dikenakan cukai sebagai MBB adalah yuran yang dibayar oleh majikan untuk anak-anak pekerja.
- 5.2 Jumlah yang dibelanjakan untuk tujuan Education Refund Plan (ERP) tidak dianggap sebagai MBB yang dinikmati oleh pekerja.

## Keahlian dalam Kelab Rekreasi

Pengenaaan cukai ke atas MBB ini dibuat berdasarkan fakta tiap-tiap kes.

## 6.1 Keahlian individu

Staf/pengarah syarikat dikenakan cukai ke atas yuran kemasukan dan yuran bulanan yang dibayar oleh majikan. Kedua-dua yuran ini dikenakan cukai sepenuhnya tidak kira sama ada dibayar oleh majikan atau dibayar dahulu oleh staf/pengarah dan dibayarbalik oleh majikan kemudian.

## 6.2 Keahlian Korperat

## 6.2.1 Yuran kemasukan/keahlian

Tidak dikenakan cukai.

## 6.2.2 Yuran bulanan

Di mana keahlian dalam kelab rekreasi dibayar oleh majikan dan diberikan kepada pegawai kanan syarikat untuk menyempurnakan objektif perniagaan syarikat, **yuran bulanan** untuk **satu** kelab rekreasi dikecualikan sepenuhnya daripada cukai pendapatan.

Sekiranya yuran bulanan yang dibayar oleh majikan untuk lebih daripada satu kelab rekreasi, hanya yuran bulanan yang tertinggi sahaja dikecualikan daripada cukai pendapatan.

## Perkara Lain

## 7.1 Sekatan bonus

7.1.1 Sekiranya bonus **dibayar** selepas 17.10.1997 dan jumlah

tersebut melebihi 2/12 daripada upah atau gaji yang dibayar kepada tiap-tiap pekerja, sekatan bonus mengikut seksyen 39(l)(h), Akta Cukai Pendapatan, 1967 adalah terpakai.

7.1.2 Untuk tujuan perkiraan sekatan bonus mengikut seksyen 39(l)(h), gaji atau upah bermaksud gaji/upah yang tetap tanpa mengambilkira elaun yang berubah-ubah.

## 7.2 Elaun Pelaburan Semula (EPS)

7.2.1 Tempoh menikmati EPS adalah berdasarkan kepada sesuatu syarikat dan bukan berdasarkan sesuatu projek.

7.2.2 Bagi maksud pengiraan PER:-

- (i) Syarikat yang memulakan perniagaan dipertengahan tahun, PER tidak akan dikira secara pro rata.
- (ii) Kerugian tukaran wang asing tidak diambilkira dalam pengiraan PER.

## 7.3 Potongan Dua Kali Untuk Pengiklanan Jenama Tempatan

Perkara ini masih dalam peringkat perbincangan dengan Perbendaharaan Malaysia.

## 7.4 Potongan Bagi Hakmilik Empunya

Perkara ini juga masih dalam peringkat perbincangan dengan Perbendaharaan Malaysia.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

"BERSAMA MENYUMBANG UNTUK PEMBANGUNAN NEGARA"

Saya yang menurut perintah,

(NUJUMUDIN BIN MYDIN)

Timbalan Ketua Pengarah,

b.p. Ketua Eksekutif/Ketua Pengarah Hasil Dalam Negeri,

Lembaga Hasil Dalam Negeri,

Malaysia.



*(English Translation)*

## BENEFITS-IN-KIND (BIK)

## 1. Mobile Telephone

- 1.1 Mobile telephone provided by employer for business purpose

Employers are required to report the mobile telephone as a BIK with the Note "For official use only".

- 1.2 If the employee can prove that the telephone is only for official use and no private benefit arises because all private calls are reimbursed to the employer, the value the BIK amounting to RM600 will be reduced appropriately, according to the facts of each case.

- 1.3 If the mobile telephone belongs to the employee but rental and all official calls are paid by the employer, the employee will be assessed on the value of RM600.

## 2. Gardeners/Drivers/Domestic Help

- 2.1 If the gardener/driver/domestic help is hired and paid by the employee, who then claims the amount expended as reimbursement from the employer, the amount of reimbursement paid by the employer will be assessed under section 13(1)(a) of the Income Tax Act 1967.

- 2.2 In a case where the driver is not provided solely for the use of a particular employee but comes from a pool of drivers provided by the employer only for purposes of the business, the value of BIK will not be assessed on the employee concerned.

- 2.3 If domestic help is provided by the employer for business purpose only (for example, where the employee is required to entertain clients at his place of residence), the amount of RM4800 will be assessed on the employee as BIK. However, the employee may make a claim for reduction of the amount assessed if the domestic help is provided for business purpose. Each case will be considered on its own facts.

- 2.4 The value of BIK as given in ITR 1997/2 is in respect of each gardener/driver/domestic help.

## 3. Loan Interest

The taxation of this BIK will be based on the facts of each case. In general, the taxation of this benefit will be based on the cost borne by the employer in giving the interest-free loan, or loan where interest is subsidized by the employer, or interest charged according to market rates.

In a case where the employer obtains a preferential rate because of his good credit standing with the bank, that preferential rate will be regarded as the market rate for that employer.

## 3.1 Interest-free loans

- 3.1.1 If the employer obtains a loan from a third party for the purpose of giving interest-free loans to his employees, the value of BIK to be assessed on the employees is the cost paid by the employer to the third party for the loan taken by the employer.

- 3.1.2 BIK does not arise if the employer does not incur any cost in giving interest free loans to his employees. For example, interest-free loans that are given out of excess funds of the business, without borrowing from other parties.

## 3.2 Subsidized interest/interest below market rate

- 3.2.1 In a case where the employer obtains a loan from a third party, which he utilizes to provide loans to employees who pay a portion of the interest charged while the balance of interest is borne by the employer, the value of BIK assessed on the employee is the difference between the interest charged by the lender (to the employer) and the interest paid by the employee.

- 3.2.2 If a loan is given to an employee at a rate which is approximately the same as the cost to the employer, no BIK arises. An amount in respect of BIK will be assessed on the employee if the rate charged on the employee is less than the rate borne by the employer.

## 4. Insurance Premiums

- 4.1 Insurance premium in an insurance scheme where the employee, a member of his family, or an appointed nominee is named as the beneficiary, will be assessed as BIK. The employee will not be assessed on BIK if the beneficiary of the policy is the employer.

- 4.2 Insurance premium paid by the employer for Aviation Travel Insurance for employees will not be assessed on the employee as BIK.

- 4.3 Contributions by employer to the Healthcare Management Organization (HMO) will not be taxed as BIK on the employee.



## Tuition/ School fees

- 5.1 Tuition/School fees which will be assessed as BIK on the employee are fees for the employee's children which are paid by the employer.
- 5.2 Amounts expended under the Education Refund Plan (ERP) is not regarded as BIK to the employee.

## Membership in Recreation Club

Assessment of BIK will be based on the facts of each case.

### 6.1 Individual membership

A staff/director of a company will be taxed on entrance fees and monthly subscriptions paid by the employer. Both these fees will be taxed in full regardless of whether they are paid by the employer or paid initially by the employee, who is then reimbursed by the employer.

### 6.2 Corporate Membership

#### 6.2.1 Entrance/Membership fee

This is not taxable.

#### 6.2.2 Monthly subscription

Where the membership in a Recreation club is paid by the employer and utilized by senior staff of the company for the purpose of fulfilling business objectives of the company, **monthly subscription for one recreation club** is exempted in full from income tax.

If the employer pays monthly subscription for more than one recreation club, only fees paid for the club which charges the highest amount will be exempted from income tax.

## 7. Other Matters

### 7.1 Bonus restriction

7.1.1 If bonus is **paid** after 17. 10.97 and the amount exceeds 2/12 of the worker's wages or salary, bonus restriction under section 39(l)(h) of the Income Tax Act 1967 is applicable.

7.1.2 For the purpose of computing bonus restriction under section 39(l)(h), wages and salary is taken to mean fixed wages/salary, without taking into account allowances that are variable ("elaun yang berubah-ubah").

### 7.2 Reinvestment Allowance

7.2.1 The period of eligibility for reinvestment allowance is based on the company and not based on a specific project.

7.2.2 For the purpose of computing PER. -

- (i) For a company that commences business in the middle of a year, PER will not be computed on a pro rata basis.
- (ii) Foreign exchange losses are not to be taken into account in the computation of PER.

### 7.3 Double deduction for advertising local brand names

The matter is still under discussion with the Ministry of Finance.

### 7.4 Deduction for acquisition of proprietary rights (intangible property)

The matter is in under discussion with the Ministry of Finance.



## Garis Panduan Bagi Polisi Perubatan Dan Pendidikan

### 'GUIDELINES ON CRITERIA FOR AN EDUCATION POLICY AND A MEDICAL POLICY'

(Issued on 4 February 1998)

#### 1. Objective

These guidelines serve to explain the various criteria applied with regard to claims for tax deduction under Section 49(1B) of the Income Tax Act, 1967. Section 49(1B) was introduced from the year of assessment 1996 to provide for a further deduction of an amount not exceeding two thousand ringgit on premiums paid for any insurance on education or medical benefits in respect of an individual, his wife or child.

#### 2. Procedure For Claim

A certified true copy of the insurance premium receipt must be submitted with the Return Form every year. A copy of the insurance policy must be submitted when making a claim for the first time.

#### 3. Criteria

To qualify as an education policy and a medical policy for the purpose of section 49(1B) and sub-section 49(4), Income Tax Act, 1967, the following criteria will have to be satisfied:-

##### 3.1 Education Policy

- i) The beneficiary should be the child;
- ii) The insured can be the parent or the child:-

##### Where the parent is the insured

Where the insured is the parent, the child must be the nominee.

##### Where the child is the insured

- (a) Where the insured is the child, a payor benefit rider is compulsory, which means that the life of the person paying the premium i.e. the parent must also be covered. On the death of the parent, all future premiums are assumed to have been paid in full.
- (b) The rider must also have the same duration as the basic policy.
- (c) Where the payor benefit is attached as a rider (i.e. a separate premium is paid in addition to the premium for the basic policy) or is packaged together with the basic policy (i.e. single premium), the premium paid will qualify for tax deduction.
- (d) Where the payor of the policy does not qualify for payor benefit (due to high risk), the premium paid for the basic policy will not qualify for tax deduction.

(iii) In respect of a takaful policy, the participant is the parent and proceeds of the policy must be made "hibah" (gift) to the child.

(iv) The maturity amount or periodical payment of maturity amount in respect of both conventional or takaful policy, must be scheduled to be payable when the child is between the ages of 13 to 25.

##### 3.2 Medical Policy

- (i) The expenses should be related to the medical treatment resulting from a disease or an accident or payment of benefits for total or partial disability arising out of a disease or sickness. The medical expenses need not necessarily be on a reimbursement basis and can also cover out-patient treatment
- (ii) The policy coverage should be for a period of 12 months or more;
- (iii) The policy can be as a rider or a stand-alone policy. If it is a rider, only the rider premium can qualify for deduction. For example, a dread disease rider attached to a basic policy, the whole amount of the rider premium paid by an individual may be allowed as deduction. In the case where a dread disease cover is packaged together with a term life cover or personal accident cover, 60% of the packaged premium paid by an individual may be allowed as deduction;
- (iv) Group medical policy where the employee pays the premium for the medical benefit also qualifies for deduction; and
- (v) Premium waiver benefit rider and travel medical expenses insurance are not allowable as tax deduction.

#### 4. Effective Date

The above guidelines will be applied to existing policies. Assessments which have not been finalised will be dealt with following these guidelines. Assessments that have been finalised but are under appeal (including objection under section 131), will be reviewed accordingly.

(NUJUMUDIN BIN MYDIN)

Timbalan Ketua Pengarah,  
b.p. Ketua Eksekutif/Ketua Pengarah Hasil Dalam Negeri,  
Lembaga Hasil Dalam Negeri,  
Malaysia.

s.k. LHDN.01/35/(S)/42/51/224-36.2



# Guidelines On Applications For Double Deduction For Research And Development Expenditure Under Section 34A Of The Income Tax Act 1987

The Inland Revenue Board has informed the Institute that the above guidelines have been amended as follows:- Under paragraph 5.4, the words "... three (3) months" should be changed to "... six (6) months." The original version of the guidelines are reproduced for your easy reference.

## Objective

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

## Background

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

## Application For Approved Research Project/Activity

### 3.1. Criteria for eligibility

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

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

- i) quality control of products or routine testing of materials, devices, products or produce;
- ii) research in the social sciences or the humanities;
- iii) routine data collections;
- iv) efficiency surveys or management studies; and
- v) market research or sales promotion.

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

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

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

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

## 4. Guidelines On Allowable Expenditure For Double Deduction

### 4.1. Non-Allowable Expenditure:

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

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

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

### 4.2. Allowable Expenditure:

#### 4.2.1. Raw materials used in research

Excluding the purchase of fixed assets used in the research.



#### **4.2.2. Manpower in the research project**

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

#### **4.2.3. Technical services**

Inclusive of:-

- i) Consultancy fee paid to a particular research organisation or individual for obtaining information/advice pertaining to the research being undertaken.
- ii) Payment to a particular organisation for use of testing equipment such as those available in SIRIM, FRIM and universities.
- iii) Payment to a particular organisation or individual for analytical services and data evaluation processing.

The above payments will be subjected to the following restrictions :

- a) If 30% or more of the allowable expenditure for a particular research project is for technical services undertaken in Malaysia, then the expenditure for the technical services will be allowed for double deduction.
- b) If more than 70% of the allowable expenditure for a particular research project is for technical services undertaken outside Malaysia, then the expenditure for the technical services will not be allowed for double deduction. However, ordinary allowable expenditure incurred locally such as raw materials, travelling, transportation etc. will be allowed for double deduction.
- c) For technical services obtained from overseas but undertaken in Malaysia, the expenditure for the technical services will be allowed for double deduction.

#### **4.2.4. Travelling Cost**

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

- ii) Travelling cost related to attending courses/seminars relevant to research projects, locally or overseas. Allowable expenditure include travelling cost and daily allowance and course/seminar fee. Daily allowance is restricted to RM400.00 per person or the actual cost incurred, whichever is lower. The allowance includes the cost of food and lodging.

In the case of air travel only economy class rate will be allowed.

#### **4.2.5. Transportation cost**

Cost of transporting materials used in the research.

#### **4.2.6. Maintenance cost**

- i) Motor vehicles,
- ii) Buildings,
- iii) Equipments and machinery

which are directly used for the research project

#### **4.2.7. Rental**

- i) Motor vehicles.
- ii) Buildings,
- iii) Equipments and machinery

which are directly used for the research project

#### **4.2.8. Other expenditure**

Claims for expenditure other than those categorised under paragraph 4.2.1 to 4.2.7 above can be made as long as it is not against the principle of allowing double deduction under section 34A of Income Tax Act 1987.

Detailed information on the types of expenditure and their relevance to the research project should be furnished.

### **5. Application Procedure**

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



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

Executive Chairman,  
Inland Revenue Board,  
Technical Division,  
15th Floor, Block 11,  
Jalan Duta,  
50800 Kuala Lumpur.

- 5.3. Form DD1/RD/1997 can be obtained from the Technical Division, IRB Headquarters, Kuala Lumpur or any IRB branch office. Applicants may reproduce the form. A copy of the form is attached with these guidelines for your ease of reference.
- 5.4. Application forms should be submitted within **six (6) months** from the end of the financial year in which the R&D expenditure is incurred.
- 5.5. Applicants are required to make a declaration in the application form that the project/ activity for which the application is made is a R&D project/ activity.
- 5.6. Applicants are required to give permission in the application form for officers of IRB and accompanying experts to examine documents relating to the R&D project/activity and the expenditure claimed thereof at the applicant's business premises or at locations where the research is undertaken.
- 5.7. Declaration by applicant in the application form must be made by a director of the company. However expenditure on approved R&D project/activity for which the double deduction is claimed must be verified by Certified Auditors.
- 5.8. Applicant are advised to furnish correct information as required in the application form. If the information furnished is later found to be incorrect or false, IRB will immediately withdraw the approval for double deduction claims. In addition, in appropriate cases, IRB will take legal action as provided under Sections 113 and 114 of the Income Tax Act 1967 against the applicant.

- 5.9. If the application is made for more than one R&D project, then the information as required in Part B and C of form must be provided for each individual R&D project. (In cases where numerous R&D projects are undertaken concurrently under a specific research programme, please specify the programme and the overall objective).
- 5.10. A holding company which undertakes R&D project/activity at its Research Centre for companies within its group may submit an application for approved R&D project/activity and for allowable expenses thereof on behalf of its subsidiary companies. However, the details for each company should be separately and clearly stated.
- 5.11. For R&D project/activity which has been approved by the Minister of Finance for three (3) years and the period has not expired, the applicant can directly claim double deduction using Form DD1/RD/1997 without reapplying for the particular approved R&D project/ activity. However, applicants are required to furnish basic information as required in questions 2 and 3.7 of part B and to state the period and reference of the approval in the application form.
- 5.12. The Technical Division, IRB will issue a letter of approval or rejection as the case may be to the applicant and a copy will be sent to the relevant IRB branch office. Approvals given will be subjected to the terms stated in the letter.
- 5.13. Appeals on applications rejected must be made to IRB within 30 days from the date of the rejection letter.
- 5.14. For further information, applicants may contact the following officers at the Technical Division, IRB Headquarters, Jalan Duta, K.L: -

En. Md. Daud	Tel. No.: 6503163
Pn. Halimah	Tel. No.: 6503115

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

December 1996.

## INCOME TAX ACT 1967 INCOME TAX (EXEMPTION / AMENDMENT / DOUBLE TAXATION AGREEMENT) ORDERS 1997 (Income Tax Orders, Amendments and Treaties for the months of July to December 1997)

NO	TITLE	REFER P.U (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARKS
37	Petroleum (Income Tax)(Deductions of Abandonment Expenditure) Rules 1997	240	6/12/97	<p>For the purposes of ascertaining the adjusted income of a chargeable person, other than Petroleum Nasional Berhad or the Malaysia - Thailand Joint Authority, under the Act, there shall be allowed as a deduction under section 15 any contractual payment of abandonment cess made under a Petroleum Agreement.</p> <p>For the purposes of ascertaining the adjusted income of Petroleum Nasional Bhd or the Malaysia - Thailand Joint Authority, under the Act, there shall be allowed as a deduction under section 15 any payment made to the Abandonment Cess Fund in respect of abandonment cess collected under a Petroleum agreement.</p>	Y/A 1984 and Subsequent Y/A
38	Double Taxation Relief (The Government of The United Kingdom Of Great Britain And Northern Ireland) Order 1997	251	19/6//97	Agreement Between The Government of Malaysia And The Government Of the United Kingdom Of Great Britain And Northern Ireland For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With "Respect To Taxes On Income.	Entry into Force' refer to 'Article 30 of this agreement.
39	Income Tax (Qualifying Plant Allowances) Rules 1997	265	3/7/97	<p>1. Qualifying plant expenditure incurred by:</p> <p>a) a public transport company on the provision of buses using natural gas for the purpose of the business of public Transportation.</p> <p>b) a person on the provision of natural gas refuelling equipment used at a natural gas refuelling outlet.</p> <p>natural gas refuelling outlet includes a public natural gas refuelling outlet where the natural gas is made available to the public and a private natural gas refuelling outlet where natural gas is not made available to the public but only for specific vehicle types based at a depot or factory premises.</p> <p>2. Initial allowance shall be calculated at a rate not exceeding 40% of that qualifying plant expenditure. (Sch. 3 para 10)</p> <p>3. Annual allowance shall be calculated at a rate not exceeding 20% of that qualifying plant expenditure (Sch. 3 para 15)</p>	from 1 January 1997
40	Income Tax (Exemption)(No.34) Order 1997	270	10/7/97	Tax exemption for 4 foreign officials in respect of income (being an amount contributed by the International Tropical Timber Organisation) received by them.	Refer to the Gazette: P.U. (A) 270



**INCOME TAX ACT 1967**  
**INCOME TAX (EXEMPTION / AMENDMENT / DOUBLE TAXATION AGREEMENT) ORDERS 1997**  
(Income Tax Orders, Amendments and Treaties for the months of July to December 1997)

NO	TITLE	REFER P.U (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARKS
35	Income Tax (Exemption)(No.35) Order 1997	271	10/7/97	Tax exemption for four (4) lessors in respect of the interest paid by the Malaysian Airline system Berhad (MAS) under the Leveraged Lease Arrangement for the lease aircrafts.	Refer to the Gazette: P.U. (A) 271
36	Income Tax (Exemption)(No.36) Order 1997)	272	10/7/97	Tax exemption for three (3) foreign artistes for their performance at the concert by the Japanese Soprano Singers held by 21/7/96 in Penang & 26/7/96 in Ipoh.	
38	Income Tax (Exemption)(No.38) Order 1997	307	7/8/97	All income of the Permodalan Nasional Berhad (PNB) are exempt for tax.	Y/A 1997 to Y/A 1999
38	Income Tax (Exemption)(No. 38) Order 1997	308	7/8/97	All income of the National Unit Trust Scheme are exempt from tax.	Y/A 1997 to Y/A 1999
39	Income Tax (Exemption)(No. 39) Order 1997	309	7/8/96	All income of the Skim Amanah Saham Wawasan 2020 are exempt from tax.	Y/A 1998 to Y/A 2000
40	Income Tax (Exemption)(No. 40) Order 1997	382	9/10/96	Tax exemption up to an amount equivalent to 50% of the gross income derived by an individual who is a non-citizen, from an employment exercised in Labuan, in managerial capacity in an offshore company.	Y/A 1998 to Y/A 2000
41	Income Tax (Exemption)(No. 41) Order 1997	383	9/10/96	<p>The Minister exempts:</p> <p>(a) an individual from payment of income tax-</p> <p>i) on gains or profits up to an amount equivalent to gains or profits accruing on a deposit of RM100,000.00 for a calendar year which accrues for the basis year for a year of assessment in respect of money deposited in any savings account under the Interest - Free Banking Scheme with Bank Kerjasama Rakyat Malaysia Berhad.</p> <p>ii) On gains or profits up to an amount equivalent to gains or profits accruing on a deposit of RM100,000.00 for a calendar year which accrues for the basis year for a year assessment in respect of money deposited in any investment account for a period not exceeding twelve months with Bank Kerjasama Rakyat Malaysia Bhd; and</p> <p>iii) On gains or profits which accrues for the basis year for a year of assessment in respect of money deposited in any investment account for a period of twelve months or more under the Interest - Free Banking Scheme with Bank Kerjasama Rakyat Malaysia Bhd.</p> <p>(b) a non-resident from payment of income tax on interest which is paid or credited for the basis year for a year of assessment by Bank Kerjasama Rakyat Malaysia Bhd.</p>	Y/A 1997

**INCOME TAX ACT 1967**  
**INCOME TAX (EXEMPTION / AMENDMENT / DOUBLE TAXATION AGREEMENT) ORDERS 1997**  
(Income Tax Orders, Amendments and Treaties for the months of July to December 1997)

NO	TITLE	REFER P.U (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARKS						
48	Income Tax (Exemption)(No. 42) Order 1997	384	9/10/96	Tax exemption for the Penang Territory Development Authority up to an amount equivalent to 50% of all income.	Y/A 1997 to Y/A 2001						
49	Income Tax (Exemption)(No. 43) Order 1997	385	9/10/97	All income of the Institut Kajian Pembangunan (Sabah) (excluding dividend income) exempt form tax.	Y/A 1996 to Y/A 1998						
50	Income Tax (Exemption)(No. 44) Order 1997	386	9/10/97	<p>Tax exemption for the following foreign artistes, for their performance in the 'Konsert Pertunjukan / Nyanyian held on 19/07/1997 at the Hokkien Association Building, Klang, Selangor in respect of income in the form of benefit-in-kinds received by them.</p> <table><thead><tr><th>Name</th><th>International Passport No.</th></tr></thead><tbody><tr><td>1. Neo Chee Keong</td><td>S1438892 C</td></tr><tr><td>2. Li Jinguang</td><td>1535122</td></tr></tbody></table>	Name	International Passport No.	1. Neo Chee Keong	S1438892 C	2. Li Jinguang	1535122	
Name	International Passport No.										
1. Neo Chee Keong	S1438892 C										
2. Li Jinguang	1535122										
51	Income Tax (Exemption) (No. 45) Order 1997	387	9/10/97	Tax exemption for the Sarawak Foundation in respect of an amount equivalent to an amount up to 70% of all income. (excluding dividend income) exempt form tax.	Y/A 1997 to Y/A 2001						
52	Income Tax (Exemption)(No. 46) Order 1997	388	9/10/97	All income of the Selangor Human Resource Development Centre (excluding dividend income) exempt form tax.	Y/A 1997 to Y/A 2001						
53	Income Tax (Exemption)(No. 47) Order 1997	425	30/10/97	<p>Tax exemption for the lenders of loans specified in schedule below in respect of the interest paid by the Malaysian Airline System Bhd (MAS) under the Facility Agreement entered into on the dates specified in column (3) to finance the purchase of the aircrafts specified in column (2) against their respective names:-</p> <p style="text-align: center;"><b>SCHEDULE</b></p> <p><b>Lenders</b></p> <p>i. Bayerische Landesbank Girozentrale (Labuan Branch), Norddeutsche Landesbank Girozentrale and Helaba Frankfurt Landesbank Hessen Thuringen</p> <p><b>Aircraft (Registration No.)</b> Airbus A330-320 (Maek 9M-MKC)</p> <p><b>Date of Facility Agreement</b> 28-5-96</p> <p><b>Lenders</b></p> <p>ii. Landesbank Berlin Gironzentrale and Societe General (Labuan Branch)</p> <p><b>Aircraft (Registration No.)</b> Airbus A330-320 (Mark 9M-MKA)</p> <p><b>Date of Facility Agreement</b> 10-7-96</p>							



**INCOME TAX ACT 1967**  
**INCOME TAX (EXEMPTION / AMENDMENT / DOUBLE TAXATION AGREEMENT) ORDERS 1997**  
(Income Tax Orders, Amendments and Treaties for the months of July to December 1997)

NO	TITLE	REFER P.U (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARKS
46	Income Tax (Exemption)(No. 48) Order 1997	469	27/11/97	<p>Tax exemption for a resident company (Other than a company carrying on the business of banking, insurance, sea and air transport) and a unit trust, in respect of income derived from sources outside Malaysia and received in Malaysia by that resident company or unit trust.</p> <p>This exemption is applicable to 'paragraphs 5 and 6 of Schedule 7A of the Income Tax Act 1967'</p> <p><b>(Income Tax (Exemption) (No. 31) Order 1995 (P.U.(A) 450/95 is revoked) Refer P.U. (A) 471 of 27/11/97</b></p>	Y/A 1998
47	Income Tax (Exemption)(No. 49) Order 1997	470	27/11/97	The Minister exempts the Majlis Amanah Rakyat from the payment of income tax in respect of an amount equivalent to an amount up to 70% of the all income (excluding dividend income)	Y/A 1997 to Y/A 2001
48	Income Tax (Revocation of Exemption) Order 1997	471	27/11/97	The Income Tax (Exemption) (No. 31) Order 1995 published on 28/12/95 is revoked.	Y/A 1998
49	Income Tax (Exemption)(No. 50) Order 1997	472	27/11/97	All income of the Khazanah Nasional Berhad exempt from tax.	Y/A 1995 to Y/A 1997
50	Income Tax (Exemption)(No. 51) Order 1997	473		Tax exemption for individuals, on interest which accrues for the basis year for a year of assessment in respect of bonds issued under the Bon Simpanan Malaysia Siri Kedua (BSM 2) by the Bank Simpanan Nasional.	Y/A 1998
51	Income Tax (Qualifying Plant Allowance) (No. 2) Rules 1997	474	27/11/97	<p>An initial allowance and an annual allowance of 10 per cent respectively, shall be calculated on the qualifying plant expenditure in respect of imported heavy machinery as set out in Schedule below:</p> <p><b>Schedule</b></p> <ol style="list-style-type: none"> <li><i>Building and Construction Industry</i> - Earth-moving plant and heavy equipment - bulldozers, ditches, excavators, graders, loaders, rippers, rollers, rooters, Scrapers, shovels, tractors.</li> <li><i>Mining Industry</i> - Earth-moving plant and heavy equipment.</li> <li><i>Plantation - Industry</i> - Earth moving plant and heavy equipment.</li> <li><i>Timber Industry</i> - Heavy equipment - bulldozers, tractors engines, tractors and timber haulage vehicles.</li> </ol> <p><i>Law:</i> para(s) 10 and 15 of Schedule 3 of the Income Tax Act 1967.</p>	on or after 17/10/97

**INCOME TAX ACT 1967**  
**INCOME TAX (EXEMPTION / AMENDMENT / DOUBLE TAXATION AGREEMENT) ORDERS 1997**  
**(Income Tax Orders, Amendments and Treaties for the months of July to December 1997)**

NO	TITLE	REFER P.U (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARKS
60	Double Taxation Relief (The Government Of The Democratic Socialist Republic of Sri Lanka) Order 1997	491	1/12/97	Agreement between the Government Of Malaysia and The Government Of The Democratic Socialist Republic of Sri Lanka for the Avoidance of the Double Taxation and The Prevention of Fiscal Evasion with respect to taxes on income.	
61	Income Tax (Exemption)(No. 52) Order 1997	492	1/12/97	Tax exemption up to an equivalent to 70% of all income of the Yayasan Selangor (excluding dividend income).	Y/A 1995 to Y/A 1999

Continuation from page 19

APPENDIX I

**PEGAWAI-PEGAWAI UNTUK DIHUBUNGI  
 DI CAWANGAN-CAWANGAN LHDN 1998**

Bil.	Cawangan	No. Telefon	No. Fax	Bil.	Cawangan	No. Telefon	No. Fax
1	Kangar	04-9777048	04-9765798	17	Seremban	06-7671103	06-7625339
2	Alor Setar	04-7328163	04-7329481	18	Melaka	06-2818981	06-2841181
3	Sungai Petani	04-4237260	04-4231905	19	Johor Bahru	07-2359545	07-2359527
4	Pulau Pinang	04-2620280	04-2628406	20	Kluang	07-7724644	
5	Bukit Mertajam	04-5305975				samb. 332	07-7723133
		samb. 318	04-5305811	21	Muar	06-9527000	
6	Ipoh	05-2411589	05-2541780			samb. 502	06-9536814
7	Teluk Intan	05-6227022	05-6213482	22	Kuantan	09-520996	09-527340
8	Taiping	05-8072685	05-8086118	23	Raub	09-3558502	
9	Shah Alam	03-5527072	03-5502328			samb. 305	09-3558511
10	Kelang	T/T: 03-3325569		24	K. Terengganu	09-6242133	09-6227829
		03-3335227x300	03-3335245	25	Kota Bahru	09-7431310	09-7487131
11	Jalan Duta	T/T:03-6531558		26	Kuching	082-424976	082-244475
		03-6503455	03-6513823	27	Miri	085-418714	085-413824
12	Jln. Kg. Attap	03-2741233	03-2736675	28	Sibu	084-332292	084-320894
13	Wangsa Maju	T/T:03-4136713		29	Bintulu	086-316601	086-316608
		03-4126022x113	03-4127022	30	Kota Kinabalu	088-238511	
14	Cheras	T/T:03-9829451				samb 331	088-241207
		03-9848022x136	03-9875466	31	Keningau	087-339441	087-339451
15	Pungutan, K.L.	03-6514696	03-6515997	32	Sandakan	089-668554	089-669616
16	Tidak Bermastautin	T/T:03-6531404		33	Tawau	089-777177	089-776390
		03-6517055x3477	03-6519745	34	Labuan	087-417294	087-415385



The following is an extraction of the minutes of meeting of the Consultative Panel between the Royal Customs and Excise Department and Private Sector which was held on 28 November, 1997.

## Jabatan Kastam Dan Eksais Di Raja Malaysia

KERTAS MINIT  
BAHAGIAN CUKAI DALAMAN  
CAWANGAN CUKAI PERKHIDMATAN  
IBU PEJABAT KASTAM DAN EKSAIS DIRAJA MALAYSIA

SESI DIALOG PELAKSAAN CUKAI PERKHIDMATAN SEPERTI DALAM CADANGAN BELANJAWAN 1998

### KATA-KATA ALUAN.

Tuan Pengerusi mengalu-alukan kehadiran semua peserta dialog 'Pelaksanaan Cukai Perkhidmatan (CP) Seperti Cadangan Belanjawan 1998'. Sepertimana yang telah diumumkan bahawa skop cukai perkhidmatan telah diperluaskan dengan menambah 3 perkhidmatan baru iaitu perkhidmatan pekerjaan, perkhidmatan penyediaan kereta sewa dan pandu dan kereta sewa dan perkhidmatan pengurusan. Dialog ini bertujuan membincangkan hal-hal pelaksanaannya bagi mengelak salahfaham dan kekeliruan di antara pemungut-pemungut cukai (pemegang lesen) dan pihak Jabatan (penguatkuasa). Dengan adanya dialog ini diharapkan pelaksanaan tersebut adalah mudah bagi semua peringkat serta memantapkan cara pelaksanaannya.

Seterusnya tuan pengerusi memperkenalkan pegawai-pegawai Jabatan dari Bahagian Cukai Dalaman Ibu Pejabat serta Ketua-Ketua Bahagian Cukai Dalaman dari Stesen Wilayah Persekutuan, Selangor dan Negeri Sembilan yang turut serta dalam dialog ini.

### TAKLIMAT OLEH PENOLONG KANAN PENGARAH KASTAM CAWANGAH CUKAI PERKHIDMATAN, IBU PEJABAT. (PKPK. (CP))

Pn. L. Wong, PKPK (CP) memberi taklimat seperti kertas nota bertajuk 'Pelaksanaan Cukai Perkhidmatan Sepertimana Cadangan Belanjawan 1998' yang dilampirkan dan diedarkan kepada para hadirin.

### ISU-ISU YANG DIBANGKITKAN

Pn. L. Wong, PKPK. (CP) memberikan penjelasan kepada beberapa isu yang dibangkitkan oleh pihak MIA/MIT. Sebenarnya jawapan kepada isu-isu ini telahpun diterangkan secara tidak langsung semasa taklimat yang diberikan.

### 4. SESI DIALOG

4.1 En. Harpal mewakili MIT/MIA ingin mendapatkan penjelasan berhubung perkhidmatan pengurusan dimana dalam keadaan tertentu, **tiada perkhidmatan dibekalkan (no service provided)**. Adakah ianya tertakluk kepada cukai perkhidmatan? Merujuk kepada Seksyen 3 Akta Cukai Perkhidmatan, 1975 (ACP 1975) menjelaskan cukai perkhidmatan hanya perlu dikenakan atas pembekalan atau penyediaan perkhidmatan yang ditetapkan.

Pn. L. Wong, PKPK. (CP) menerangkan bahawa sekiranya perkhidmatan diberi/dibekalkan oleh entiti yang berlainan, maka ianya tertakluk kepada cukai perkhidmatan. Walaubagaimanapun, kes yang dikemukakan adalah tidak begitu jelas, apakah maksud *perkhidmatan tidak dibekalkan* tetapi diambil kira dalam 'cost sharing' sesuatu syarikat.

Tuan Pengerusi meminta Cawangan Cukai Perkhidmatan mengkaji dan menyelesaikan perkara ini sekiranya ia timbul kelak.

4.2 En. Kang Bang Hoe mewakili MICCI memberi pandangan beliau berhubung perkhidmatan pengurusan bagi syarikat-syarikat dalam kumpulan yang sama (*intra-companies*). Pengenaan cukai perkhidmatan yang dibekalkan kepada syarikat dalam kumpulan yang sama akan menambahkan kos syarikat (*additional cost*) dan bertentangan dengan konsep pensyarikatan. Memandangkan syarikat multi-nasional terlibat, perkara ini akan mendatangkan kesan kepada pelaburan (*investment*). Syarikat dalam kumpulan yang sama mempunyai visi/matlamat yang seiring. Oleh yang demikian, dalam keadaan ekonomi yang lembab (*economic downturn*), pengenaan cukai perkhidmatan kepada syarikat-syarikat ini adalah tidak wajar. Jabatan perlulah melihat perkara ini secara makro, bukan mikro. Ini juga melibatkan syarikat-syarikat milik penuh (*wholly-owned*).

Pn. L. Wong, PKPK (CP) menjelaskan bahawa penyediaan



perkhidmatan pengurusan kepada syarikat-syarikat dalam kumpulan (*intra-companies*) adalah tidak terkecuali daripada pengenaan cukai perkhidmatan. Walaubagaimanapun, Jabatan akan memberikan perhatian sewajarnya atas perkara ini.

Tuan Pengerusi menjelaskan bahawa perkara ini adalah berhubung dengan polisi dan akan dirujuk kepada pihak Perbendaharaan untuk tindakan mereka.

- 4.3 **En. Mathew** mewakili FMM menyokong pandangan/isu yang dibangkitkan oleh MICCI. Pengenaan cukai akan mewujudkan 'anomalies' dan 'discouragements' terhadap syarikat 'intra-companies'. Beliau mencadangkan supaya perkara ini diberi perhatian dan ketetapan supaya syarikat 'intra-companies' tidak dikenakan cukai/dikecualikan.

**Pn. L. Wong PKPK. (CP)** mengesahkan perkara ini memang dalam perhatian Jabatan.

- 4.4 **En. Mathew** juga membangkitkan masalah 'disbursement' bagi perkhidmatan pengurusan sepertimana yang diterangkan dalam taklimat. Dari segi praktikal adalah sukar bagi melaksanakannya memandangkan syarikat terpaksa membuktikan bahawa perkhidmatan diberi, iaitu dengan menunjukkan penghasilan kerja (*trace the output*) dimana 'output' bagi perkhidmatan pengurusan tidak nampak secara fizikal.

**Pn. L. Wong, PKPK (CP)** memberikan jawapan bahawa 'disbursement' hendaklah ditunjukkan dengan jelas dalam invois. Pihak syarikat bertanggungjawab untuk membuktikan bayaran yang telah dibuat sebagai 'disbursement' dengan dokumen sokongan.

Tuan Pengerusi memaklumkan bahawa pihak syarikat perlu memberikan penjelasan dan dokumen sokongan bagi 'disbursement' untuk kelulusan oleh pegawai Jabatan.

- 4.5 **En. Mathew** juga merujuk kepada Seksyen 7 ACP 1975 yang menyatakan bahawa cukai perkhidmatan dikenakan kepada perniagaan (*imposed on business transaction*). Perkhidmatan pengurusan yang dibekalkan kepada syarikat dalam kumpulan yang sama atas dasar 'cost basis' dan tidak melibatkan pengeluaran bil/invois, dan sama sekali tidak melibatkan keuntungan. Adakah perkhidmatan ini dianggap sebagai 'business transaction'?

**Pn. L. Wong, PKPK (CP)** menjelaskan bahawa Seksyen 3 ACP 1975 menjelaskan bahawa cukai perkhidmatan dikenakan atas penyediaan dan pembekalan perkhidmatan yang ditetapkan oleh tempat perniagaan yang ditetapkan/tempat perniagaan profesional yang ditetapkan walaupun tiada invois dikeluarkan atau tiada keuntungan dibuat (*on cost basis only*). Dalam kes tersebut didapati perkhidmatan yang telah ditetapkan telah

dibekalkan, walaupun tiada caj/'cost basis' sahaja dikenakan namun cukai perkhidmatan perlu dikenakan.

- 4.6 **En. Eugene Cheng** mewakili CRAM meminta penjelasan sama ada terdapat sebarang peruntukan bagi hutang lapuk (*bad debts*) dan sama ada 'delivery and collection charges' perlu dikenakan cukai?

**Pn. L. Wong, PKPK. (CP)** memberitahu bahawa tiada peruntukan hutang lapuk dalam Akta. Pihak syarikat perlu menjelaskan cukai atas bil-bil yang melebihi 12 bulan yang belum dijelaskan oleh pelanggannya. Namun begitu, pihak syarikat mempunyai hak untuk membuat permohonan untuk meremitkan CP di bawah Seksyen 22 ACP 1975.

- 4.7 **En. Ng Chee Kheong** juga dari CRAM memberikan pandangan beliau bahawa adalah tidak adil pengenaan cukai kepada syarikat kereta sewa dan pandu dan kereta sewa yang berlesen sahaja. Terdapat banyak syarikat yang beroperasi tanpa lesen dan tidak akan dikenakan cukai.

**Pn. L. Wong, PKPK. (CP)** menjelaskan bahawa undang-undang telah menetapkan syarikat-syarikat yang berdaftar dan mempunyai lesen yang dikeluarkan oleh Lembaga Pelesenan Kenderaan Perdagangan dikenakan cukai perkhidmatan. Sekiranya terdapat 'illegal operators' yang dikesan, pihak yang berkenaan akan mengambil tindakan sewajarnya.

**En. Mohd Othman, Pegawai daripada Bahagian Pelesenan Kenderaan Perdagangan** memaklumkan bahawa pihak mereka sedang menjalankan operasi mengesan 'illegal operators' ini dan meminta supaya maklumat lanjut dimajukan kepada pihaknya untuk tindakan sewajarnya.

- 4.8 **Ms. Joyce Yap** mewakili Association of Shopping & High Rise Complex Management memaklumkan terdapat kes di mana pihak pemaju (*developer*) akan mengurus kompleks membeli-belah yang dibina bagi sesuatu tempoh masa sebelum diserahkan kepada 'valuers'. Beliau juga ingin tahu sama ada ianya tertakluk kepada cukai perkhidmatan?

**Pn. L. Wong, PKPK (CP)** menjelaskan tidak kira sama ada pihak pemaju menguruskan sendiri atau menubuhkan syarikat 'subsidiary' bagi menguruskan kompleks berkenaan, maka ianya tertakluk kepada cukai perkhidmatan. Apa yang dinyatakan sebagai perkhidmatan pengurusan adalah bercukai dan amaunnya setelah di'net-off'.

- 4.9 **Ms. Yap** juga membangkitkan kesan sampingan atas industri pelancongan negara akibat masalah 'currency devaluation' yang memberi kesan 'multiplier effect' atas kompleks membeli-belah.

Tuan Pengerusi memaklumkan bahawa undang-undang jelas



menetapkan pengenaan cukai termasuk pengurusan atas kompleks membeli belah walaupun terdapat kesan-kesan sampingannya.

En. Ng. Chee Kheong mewakili CRAM ingin mendapatkan penjelasan atas perkhidmatan pengurusan kenderaan 'fleet management'. Terdapat juga syarikat pelancongan 'travel agency' yang menguruskan dan membekalkan perkhidmatan kereta sewa dan pandu. Adakah ianya juga dikenakan cukai perkhidmatan?

Pn. L. Wong, PKPK (CP) memberi penjelasan bahawa perkhidmatan pengurusan 'fleet management' tidak dikenakan cukai. Namun begitu, perkhidmatan pengurusan dan pembekalan kereta sewa dan pandu tersebut perlu dikenakan cukai.

En. Andrew Kok mewakili MISA ingin mendapatkan penjelasan berhubung dengan maksud 'tax management' dibawah pengurusan 'financial management' seperti yang dicatit dalam nota yang diedarkan.

Pn. L. Wong, PKPK (CP) menerangkan ianya bermaksud sesuatu syarikat yang menguruskan urusan percukaian bagi sesuatu syarikat yang lain.

En. Charles Tan mewakili PIKOM ingin mendapatkan penjelasan berhubung pengenaan cukai atas latihan 'training, EDP' dan 'Office Automation'.

Pn. L. Wong, PKPK (CP) menjelaskan bahawa sekiranya 'training' untuk staff sendiri tidak dikenakan cukai, tetapi sekiranya menyediakan 'training' untuk lain-lain syarikat/anak syarikat tertakluk kepada cukai. Berkenaan EDP, 'development of software' tidak dikenakan cukai tetapi sekiranya ianya meliputi keseluruhan projek (*part & parcel of the project*) maka ianya tertakluk kepada cukai. Berhubung 'OA' pula, pengurusan otomasi pejabat perlu dikenakan cukai dan pihak yang menjalankannya lebih mahir dengan perkhidmatan-perkhidmatan tersebut.

En. Aruldass mewakili PAPA ingin mendapatkan penjelasan berhubung aktiviti pelancongan yang memberi perkhidmatan kereta sewa.

Pn. L. Wong PKPK. (CP) menjelaskan bahawa ianya tertakluk kepada cukai perkhidmatan.

Ms. Joyce Yap mewakili Association of Shopping & High Rise Complex Management ingin mendapatkan penjelasan cara pengenaan dan kiraan cukai perkhidmatan bagi bangunan/kompleks membeli belah kerana bayaran dikenakan kepada pelanggan adalah berdasarkan kepada keluasan ruang

pengurusan yang disewa (per square feet). Bayaran tersebut adalah termasuk bayaran sewa, elektrik, air, penyenggaraan, dll.

Pn. L. Wong, PKPK (CP) menjelaskan bahawa 'disbursement' dibenarkan dengan syarat mendapat kelulusan dari Jabatan. Bayaran sewa, elektrik, air tidak dikenakan cukai. Oleh yang demikian, bagi bayaran yang dibuat berdasarkan 'square feet' maka amaun bercukai boleh ditentukan mengikut peratusan setelah ditolak sewa, api dan air (*apportioned*).

4.15 En. AJ Mathew mewakili FMM mencadangkan supaya wakil FMM dimasukkan ke dalam Jawatankuasa Jabatan untuk membawa isu-isu yang dibangkitkan dialog ini ke Pebendaharaan untuk keputusan YAB Menteri.

Tuan Pengerusi memaklumkan bahawa Jabatan akan mengambil tindakan sewajarnya untuk membawa perkara ini kepada Perbendaharaan. Cadangan di atas tidak dapat dipertimbangkan atas sebab dasar. Namun begitu, pihak/wakil persatuan boleh membawa perkara ini sendiri kepada Perbendaharaan bagi menguatkan dan menyegerakan keputusan berhubung perkara berkaitan.

## 5. RUMUSAN

5.1 Tuan Pengerusi menegaskan bahawa terdapat banyak perkara/ isu yang telah dibangkitkan, dibincang dan diberi penjelasan dalam sesi dialog ini berhubung pelaksanaan cukai perkhidmatan terutamanya bagi perkhidmatan pengurusan. Pada masa kini, perkhidmatan pengurusan dalam kumpulan (*intra-companies*) perlu juga dikenakan cukai. Perkhidmatan kereta sewa dan pandu dan kereta sewa serta perkhidmatan pekerjaan tidak mempunyai masalah rumit.

5.2 Diakui terdapat berbagai masalah dalam pelaksanaan cukai bagi perkhidmatan baru ini. Pihak-pihak yang berkenaan dinasihatkan supaya berhubung dengan pegawai pelaksana di stesen/negeri yang terdekat. Hasil daripada dialog ini akan dijadikan panduan kepada pegawai pelaksana di stesen/negeri.

5.3 Tuan pengerusi berharap apa-apa keputusan dan penjelasan dan maklumat yang telah diberikan akan disampaikan oleh wakil-wakil persatuan yang hadir kepada ahli-ahlinya.

## 6. UCAPAN PENUTUP

Tuan Pengerusi mengucapkan penghargaan atas kehadiran semua peserta dan menjayakan dialog ini dengan semangat kerjasama yang baik. Segala penjelasan dan maklumbalas yang diperolehi akan diberikan perhatian sewajarnya.

- i. Disediakan oleh:-  
(BADARUDDIN AHMAD)  
Setiausaha Dialog  
Bahagian Cukai Dalam  
Cawangan Cukai Perkhidmatan  
Ibu Pejabat.  
11 Disember 1997
- ii. Disahkan Oleh.  
(TN. HJ MADEHI B. HJ. KOLEK)  
Tim. Ketua Pengarah Kastam  
(Pelaksanaan)  
b.p Ketua Pengarah Kastam  
Malaysia.  
15 Disember 1997

#### LAMPIRAN

#### PELAKSANAAN CUKAI PERKHIDMATAN SEPERTI CADANGAN BELANJAWAN 1998

#### 1. PENGENALAN

Cadangan Belanjawan 1998 melibatkan perluasan skop cukai perkhidmatan dengan menambahkan 3 perkhidmatan/perkhidmatan professional yang baru sebagai perkhidmatan yang ditetapkan tertakluk kepada cukai perkhidmatan

##### 1.1 PERKHIDMATAN PEKERJAAN (EMPLOYMENT SERVICES)

##### 1.2 PERKHIDMATAN KERETA SEWA DAN PANDU DAN KERETA SEWA (HIRE AND DRIVE CAR AND HIRE CAR SERVICES)

##### 1.3 PERKHIDMATAN PENGURUSAN (MANAGEMENT SERVICES)

#### 2. PERUNDANGAN

2.1 Pindaan kepada Jadual Kedua, Peraturan-Peraturan Cukai Perkhidmatan 1975 melalui Peraturan-peraturan Cukai Perkhidmatan (Pindaan) (No. 4) 1997, dan hendaklah mula berkuatkuasa mulai 1.1.1998.

2.2 Jadual Kedua di bawah Peraturan 3, kepada Peraturan-Peraturan tersebut dipinda dengan memasukkan:-

2.2.1 butiran 10 & 11 di bawah kepala A - '*Tempat-tempat Perniagaan yang ditetapkan.*'

Butiran 10- Syarikat-syarikat, firma-firma dan pemilik-pemilik tunggal yang menyediakan perkhidmatan pekerjaan, termasuk syarikat-syarikat, firma-firma dan pemilik-pemilik tunggal yang menyediakan perkhidmatan pekerjaan dan mempunyai jualan perolehan tahunan kurang daripada RM150,000 dan perkhidmatan-perkhidmatan yang ditetapkan

Butiran 11- Syarikat-syarikat, firma-firma dan pemilik-pemilik tunggal yang menyediakan perkhidmatan kereta sewa dan pandu dan kereta sewa, tidak termasuk syarikat-syarikat, firma-firma dan pemilik-pemilik tunggal yang menyediakan perkhidmatan kereta sewa dan pandu dan kereta sewa dan mempunyai jualan perolehan tahunan kurang daripada RM300,000 dari perkhidmatan-perkhidmatan yang ditetapkan.

#### 2.2.2 butiran 17 di bawah kepala B - '*Tempat-tempat Perniagaan Professional yang ditetapkan*'

Butiran 17- Syarikat-syarikat, firma-firma dan pemilik-pemilik tunggal yang menyediakan perkhidmatan pengurusan, termasuk syarikat-syarikat, firma-firma dan pemilik-pemilik tunggal yang menyediakan perkhidmatan pengurusan dan mempunyai jualan perolehan tahunan kurang daripada RM300,000 dan perkhidmatan-perkhidmatan yang ditetapkan

#### 2.2.3 butiran 25, 26 & 27 di bawah kepala C - '*Perkhidmatan perkhidmatan yang ditetapkan*'

Butiran 26- Penyediaan segala perkhidmatan pekerjaan

Butiran 27- Penyediaan perkhidmatan kereta sewa dan pandu dan kereta sewa sama ada dengan pemandu atau tidak yang dilesenkan di bawah Akta Lembaga Pelesenan Kenderaan Perdagangan 1987.

Butiran 28- Penyediaan segala jenis perkhidmatan pengurusan termasuk pengurusan projek dan koordinasi projek.



## PERKHIDMATAN PEKERJAAN

### Siapa perlu dilesenkan

Syarikat, firma dan pemilik tunggal yang menyediakan perkhidmatan pekerjaan yang mempunyai jualan perolehan tahunan RM150,00.00 atau lebih (iaitu yang terlibat dengan *'business that finds employers or employees for those seeking them'*).

Antaranya ialah:

- 3.1.1 Syarikat berdaftar bagi perkhidmatan pekerjaan sama ada menguruskan pekerja tempatan atau asing, kecuali Jabatan Tenaga Rakyat
- 3.1.2 Agensi pekerjaan
- 3.1.3 Syarikat yang terlibat dengan 'head hunting' seperti syarikat perhubungan awam
- 3.1.4 Syarikat yang terlibat dengan 'contract labour'/'secondment of staff, e.g. syarikat komputer, firma 'consulting engineers', dll.

### Perkhidmatan yang bercukai

- 3.2.1 Perkhidmatan mencari pekerjaan
- 3.2.2 Perkhidmatan mencari/mendapatkan pekerja
- 3.2.3 'Secondment of staff' termasuk mengurus pekerja kontrak

### Caj-caj yang dikenakan cukai perkhidmatan

- 3.3.1 Bayaran pendaftaran
- 3.3.2 Bayaran prosesan
- 3.3.3 Komisyen
- 3.3.4 Bayaran kontrak
- 3.3.5 Bayaran 'secondment of staff/personnel fees'
- 3.3.6 Lain-lain caj berkaitan penyediaan perkhidmatan pekerjaan

## PERKHIDMATAN KERETA SEWA DAN PANDU DAN KERETA SEWA

### Siapa yang perlu dilesenkan

- 4.1.1 Syarikat, firma dan pemilik tunggal yang menyediakan

perkhidmatan kereta sewa dan pandu dan kereta sewa sama ada dengan pemandu atau tidak, yang dilesenkan di bawah Akta Lembaga Pelesenan Kenderaan Perdagangan 1987 dan mempunyai jualan perolehan tahunan RM300,00.00 atau lebih.

### 4.2 Tafsiran

- 4.2.1 Seksyen 2 Akta Lembaga Pelesenan Kenderaan Perdagangan 1987 (*Commercial Vehicles Licensing Board Act 1987*) memberi tafsiran 'kereta sewa dan pandu' dan 'kereta sewa' seperti berikut:

"kereta sewa dan pandu" ertinya kenderaan motor yang disewakan bagi maksud dipandu oleh penyewa atau penamanya;

"kereta sewa" ertinya kenderaan motor yang muatan duduknya tidak melebihi enam orang atau, dalam kawasan yang dibenarkan oleh Lembaga, dua belas orang, (dalam semua keadaan termasuk pemandunya) yang digunakan untuk membawa penumpang pada satu perjalanan sebagai balasan kepada bayaran berasingan yang dibuat oleh mereka;

"hire and drive car" means a motor vehicle let on hire for the purpose of being driven by the hirer or his nominee;

"hire car" means a motor vehicle having a rating capacity of not more than six persons or, in areas approved by the Board, twelve persons (in all cases including the driver) used for carrying person on any journey in consideration of separate payments made by them;

### 4.3 Perkhidmatan yang bercukai

- 4.3.1 Sewa harian/mingguan (*short term*)
- 4.3.2 Sewa bulanan/tahunan (*long term*)
- 4.3.3 Sewaan secara kontrak (*package*) kepada syarikat untuk kegunaan pengurus, jurutera, dll.
- 4.3.4 Sewaan secara kontrak kerajaan - SPANCO
- 4.3.5 Sewaan untuk persidangan, dll.

### 4.4 Jenis-jenis kenderaan untuk sewa dan pandu dan kereta sewa

- 4.4.1 Kereta biasa
- 4.4.2 Pacuan empat roda (4WD)

4.4.3 Van

(kecuali bas)

4.5. Caj-caj yang dikenakan cukai perkhidmatan

4.5.1 bayaran sewa kenderaan - 'time/mileage'

4.5.2 bayaran perkhidmatan pemandu

4.5.3 bayaran "drop-off" / 'delivery'

4.5.4 bayaran 'child seat'

4.5.5 Lain-lain bayaran berkenaan penyediaan perkhidmatan kereta sewa dan pandu

**5. PERKHIDMATAN PENGURUSAN**

**5.1 Siapa perlu dilesenkan.**

Syarikat, firma dan pemilik tunggal yang menyediakan perkhidmatan pengurusan termasuk pengurusan projek dan koordinasi projek yang mempunyai jualan perolehan tahunan RM300,00.00 atau lebih.

Perkhidmatan pengurusan-  
(*Management services -*)

Perkhidmatan yang terlibat dalam mengelolakan dan menyelenggarakan sesebuah perniagaan/perusahaan.  
(*Services rendered in respect of managing the operations of businesses and other activities (of another person, company, etc)*)

Function of managers (basically) are around the essentials involved in the following questions:

- what is the nature of the function
- what is the purpose of the function
- what explains the structure of the function
- what explains the process of the function

**5.2 Perkhidmatan bercukai**

5.2.1 'Management Services' -jenis dan skopnya (tidak terhad)

5.2.1.1 **Corporate Affairs Management**

- i. Coordination of Group-Wide Strategic and Business Planning
- ii. Coordination of Group-Wide Management Policies
- iii. Monitoring of Group-Wide Performance and Coordination

- iv. Mergers and Acquisitions
- v. Privatization Proposal/Studies
- vi. Feasibility Studies

5.2.1.2 **Human Resource Management**

- i. Management/Organization Studies
- ii. Compensation Structures
- iii. Group Key Manpower Planning and Control
- iv. Recruitment of Key/Senior Management Staff
- v. Training Planning and Administration
- vi. Group Manpower Development and Planning (and Group Planning Centre)

5.2.1.3 **Internal Audit**

- i. Financial Audit
- ii. Management Audit
- iii. EDP Audit
- iv. Special Investigations

5.2.1.4 **Management Information Systems**

- i. Group Management Information Services
- ii. Support in EDP System Development and Implementation/Turnkey System (process of setting up and then pass to the owner)
- iii. Office Automation
- iv. Outsourcing - contract to do all the work on information system
- v. Facilities management - managing of computer department/staff

5.2.1.5 **Productivity & Quality Improvements**

- i. Productivity Improvement and Control Programs
- ii. Quality Management
- iii. Customer Services Enhancement
- iv. Operational System and Control

5.2.1.6 **Administration Secretarial**

(*secretarial services cover services provided by company secretaries, accountants, lawyers, etc*)

- i. Accounting
- ii. Liaison with government/other agencies
- iii. Filing of statutory forms and returns
- iv. Maintain and update statutory records
- v. Preparation of agenda and issue notice of statutory meeting, and board resolutions
- vi. Attending to share registration



#### 5.2.1.7 Sales and Marketing Management

- i. Formulation of marketing plans/strategies
- ii. Planning/coordination of promotion materials
- iii. Set up sales offices
- iv. Coordinate with lawyers on sale & purchase agreement
- v. Assist in billing as well as debt collection.

#### 5.2.1.8 Property Management (e.g. by developers/valuers)

- i. High-rise buildings/condominiums
- ii. Business centres/shopping complexes
- iii. Stadiums/sports & exhibition complexes
- iv. Recreations/Theme Parks & Gardens

#### 5.2.1.9 Financial Management

- i. Preparation and management of accounting system and reports
- ii. Tax administration
- iii. Budgetary controls
- iv. Prepare payments, banking documents and management of cash flow
- v. Monitoring utilisation of banking facilities

#### 5.2.1.10 Asset Management

- i. Acting as receivers & liquidators
- ii. Trustees
- iii. Management of estate duty

### 5.2.2 'Project Management Services- Project Coordinator/Manager' - Jenis dan skopnya

#### 5.2.2.1 Preliminary Development Services

- i. Feasibility Study/Investigation and Research
- ii. Recommendation/Proposal
- iii. Preparation of Agreement

#### 5.2.2.2 Project Management Services

- i. Management Facilities
  - Appointment of Staff/Consultants
  - Secondment of Staff
- ii. Project Planning and Control
- iii. Project implementation and Administration
- iv. Coordination with relevant authorities - for approvals, certificates, etc.
- v. Supervision
- vi. Regular report on work progress

#### 5.2.2.3 Construction Management Services

- i. Establish tendering procedures
- ii. Call for submission of tender quotations
- iii. Coordination with relevant authorities for inspection of sites, etc.
- iv. Overall administration of progress and collection of contract works
- v. Monitor costing and site expenses
- vi. Control and supervision at site

### 5.3 Perkhidmatan yang tidak terlibat dengan cukai perkhidmatan.

5.3.1 Memandangkan suasana ekonomi yang tidak begitu sihat, masyarakat digalakkan supaya berjimat cermat dan menabung, maka perkhidmatan yang terlibat dengan perkara berikut dipersetujui tidak akan dikenakan cukai perkhidmatan:

5.3.1.1 Pembelian dan penjualan saham, waran, bon, dll.

5.3.1.2 Penyimpanan wang (*savings*) seperti *unit trust*, *bank saving*, *trust fund*.

### 6. Perkara-perkara Penting Yang Berkaitan

#### 6.1 Pelesenan

6.1.1 Tiap-tiap cawangan tempat perniagaan yang ditetapkan atau tempat perniagaan profesional yang ditetapkan dikehendaki dilesenkan secara berasingan. Melainkan dalam kes dimana tidak praktikal untuk melesenkan cawangan-cawangan secara berasingan, kelulusan boleh diberi atas permohonan kepada Bahagian Cukai Dalam, Cawangan Cukai Perkhidmatan, Ibu Pejabat, tertakluk dalam keadaan berikut:-

- i. Cawangan tidak menyelenggara sebarang rekod akaun/kewangan
- ii. Semua urusan invoie, mengeluarkan resit, pembayaran dan akaun disimpan oleh Ibu Pejabat atau Pejabat Pusat.
- iii. Cawangan ditubuhkan hanya sebagai saluran jualan sahaja.

#### 6.2 Pengiraan 'threshold'

6.2.1 'Threshold' dikira berasaskan kepada semua jualan perolehan tahunan di bawah satu entiti (cawangan-cawangan yang didaftarkan sebagai satu syarikat/firma) dan bukan jualan perolehan tahunan bagi tiap-tiap cawangan.



6.2.2 Jualan perolehan tahunan ditentukan atas semua perkhidmatan yang ditetapkan yang disediakan. Perkhidmatan yang bukan dari jenis perkhidmatan yang ditetapkan jika ada disediakan tidak diambil kira dalam menentukan 'threshold'.

6.2.3 Sila lihat lampiran berkembar bagi kaedah pengiraan 'threshold'.

### **6.3 Pengeluaran inbois**

6.3.1 Inbois hendaklah dikeluarkan bagi penyediaan/ pembekalan perkhidmatan bercukai. Dalam kes di mana tiada bil/invois dikeluarkan, cukai perkhidmatan dikenakan apabila kos berkenaan di akaunkan (accounted for).

6.3.2 Kelulusan perlu diperolehi sekiranya bil/invois tidak dikeluarkan.

### **6.4 Disbursement adalah dibenarkan bagi:**

6.4.1 Kos barang seperti bahan binaan, dll. (tidak termasuk jentera dan mesin yang digunakan dalam penyediaan perkhidmatan berkenaan)

6.4.2 Lain-lain bayaran perkhidmatan yang telah dibayar cukai perkhidmatan seperti caj guaman, perunding, dll.

Dengan syarat:

- i. sekiranya boleh ditunjukkan secara berasingan
- ii. mendapatkan kelulusan bagi penolakan sekiranya kerja melibatkan sub-kontrak.

### **6.5 Syarikat Kumpulan**

Bagi syarikat kumpulan atau syarikat korporat/holding terdapat

syarikat yang menyediakan/memberi perkhidmatan pengurusan kumpulan (group management services) kepada syarikat-syarikat bergabung dalam kumpulannya.

6.5.1 Pengurusan kumpulan dilaksanakan oleh Ibu Pejabat Korporat atas beberapa sebab, antaranya-

- i. Keperluan memantau apa yang patut untuk Kumpulan keseluruhannya supaya matlamat dicapai.
- ii. Mengawasi operasi bagi Kumpulan keseluruhannya.
- iii. Aktiviti pengurusan secara berpusat adalah untuk kecekapan\pengurusan yang konsisten.

6.5.2 Kos yang terlibat bagi perkhidmatan pengurusan kumpulan didapatkan kembali di bawah rancangan/mekanisme pembahagian kos yang sesuai/wajar (appropriate cost sharing/recovery arrangement). Kebiasaannya invois tidak dikeluarkan. Caj adalah melalui akaun antara syarikat.

6.5.3 Telah ditetapkan bahawa cukai perkhidmatan dikenakan sekiranya suatu syarikat memberi perkhidmatan yang ditetapkan kepada syarikat yang lain, walaupun keduanya adalah dalam kumpulan yang sama. Perkara ini telah ditimbulkan semasa cukai perkhidmatan diperluaskan kepada perkhidmatan professional pada tahun 1992. Penjelasan telah diberi dalam Buku Panduan 'Prosedur Cukai Perkhidmatan' seperti berikut:-

'.... Perkhidmatan-perkhidmatan yang ditetapkan yang disediakan oleh mana-mana firma atau syarikat kepada firma atau syarikat lain yang mempunyai entiti yang berasingan adalah tertakluk kepada cukai perkhidmatan. Keadaan yang sama juga dipakai bagi perkhidmatan perkhidmatan yang disediakan oleh anak-anak syarikat kepada anak-anak syarikat yang lain dalam satu kumpulan syarikat.

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

*"Selamat Hari Raya Aidil Adha"*



## Q & A on Service Tax Proposals in the 1998 Budget

The following issues were submitted by the Malaysian institute of Taxation for clarification at the dialogue session with the Royal Customs and Excise Department held on 28 November 1997.

QUESTION	ANSWER
Service tax on hire and drive cars	
The amendment under "Prescribed Services" reads as follows:  <i>The provision of hire and drive car and hire car services, with or without chauffeur licensed under the Commercial Vehicles Licensing Board Act 1987.</i>	
Q Does the amendment intend to tax the limousine taxi cab service as well?	No. The business must be licenced under the Motor Vehicles Licencing Board
Q Does the amendment intend to tax the provision of motor vehicles let out on lease (long or short term)?	Yes
Q In determining the turnover for companies providing hire and drive car and hire car services, whether optional services charges relating to the following are to be included:  i. collision damage waiver ii. personal accident insurance iii. drop-off fees	No No Yes
Q Will the following be subject to service tax?  Monthly leasing charges Time & mileage charge Collision damage insurance Chauffeur driving fees Drop/delivery fees Petrol charged to customers Some maintenance charges to customers Outside repairs charged to customers Child seat fees Traffic summons Parking fees Vehicle exit permit (to Singapore) fee Tolls Vouchers sold to customers for renting cars overseas	Yes Yes No Yes Yes No No No Yes No No No No No

Services tax on management services	
<p>There is no definition or guidelines as to what constitutes "management services;" It would appear that Customs has unofficially indicated that the types of management services that would be caught as prescribed services would include the following:</p> <ul style="list-style-type: none"> <li>i. secretarial</li> <li>ii. corporate affair</li> <li>iii. construction management</li> <li>iv. project management</li> <li>v. project development services</li> <li>vi. internal and management audits</li> <li>vii. management information services</li> <li>viii. productivity and quality management</li> <li>ix. accounting services</li> <li>x. human resources management</li> </ul>	
Q Would there be a different threshold for each type of service?	No
<p>Service Tax Department has indicated that the tax will be applicable to intra group charges. As most Groups would have a common management team to service their subsidiaries/related companies for operational efficiency purposes, the proposal to impose service tax on the intra group charges would have the following implications:</p> <ul style="list-style-type: none"> <li>i. a negative impact on the Government's move to encourage Group companies to utilise their resources more efficiently.</li> <li>ii. there may be cross charges within a group or multi tiered services. This will result in multiple level tax and the resulting cascading effect.</li> <li>iii. Service tax is being applied in cost sharing situations whereby the holding company charges the subsidiary for common costs incurred which is clearly a reimbursement of expense. The Service Tax Department has verbally advised that allocation of cost will also be chargeable to service tax.</li> </ul>	
<p>Service Tax was intended as a consumption tax and to levy service tax on intra group charges would be a departure from the concept.</p>	
<p>Q The Service Tax Act provides that service tax is to be levied on any taxable service provided by or in any prescribed establishment or prescribed professional establishment. We are of the view that Group companies are not in the business of providing management services but instead are managing their investments and as such although the charges may be for management services but the companies are not prescribed establishments.</p>	<p>Each company in a group is a separate legal entity. When one entity renders service to another for which a charge is made (with or without profit) that charge is regarded as a charge that is subject to service tax.</p>



The following are some suggestions of ways by which the Customs Department can assist Group companies to overcome the problem: -

- (a) by recommending to the Minister of Finance to exempt the above management services from service tax by virtue of section 6 of the Service Tax Act 1975, or
- (b) by registering Group companies under one Service Tax registration number and treat the provision of management services between companies in group companies as internal services similar to internal services provided by inter-departments and therefore not subject to Service tax, and
- (c) by accepting our proposal that management services provided by management companies in group companies be valued at nominal value of RM1.00 and the rest of the costs billed as disbursements which are not subjected to Service Tax.

The issue of exempting intra group charges is a matter which has been deliberated at the appropriate level of authority. The inclusion of intra group charges is a policy decision.

Q Will the following be subject to service tax?

- Reimbursement/allocation of cost;
- Provision of management services to different Divisions in the same Company;

Yes

No

Q Please confirm whether the following are subject to service tax.

- Provision of management services to:
  - FIZ
  - LMW;
- Provision of management services to overseas countries;

Yes

No

No

## SPONSORING OF STUDENTS FOR EXAMINATION OF THE MALAYSIAN INSTITUTE OF TAXATION

As you may be aware, the Institute has develop an examination which it hopes will overcome the present shortage of qualified tax professionals in the country. This is often the result of staff leaving the practice for another once they are fully trained. The continuous migration of staff from one firm to another is not healthy. Thus to avoid this, the Institute has come out with a plan to train more tax specialists and thereby minimising this problem.

As a start, the Institute is encouraging all practicing firms to sponsor their staff, who are not yet professionally qualified as tax practitioners, to sit for the MIT examination. The Institute has arranged with various commercial colleges in organising various courses leading to the students qualifying as associate members upon passing its examinations.

Should you be interested to know more about the MIT examination please do not hesitate to contact the MIT Secretariat. Our staff will also be pleased to meet with you should you so require.

We look forward to hearing from you. Let us together make our profession a success.



# Professional Examinations

of  
The Malaysian Institute of Taxation

## Now Open For Registration

### Professional Examinations

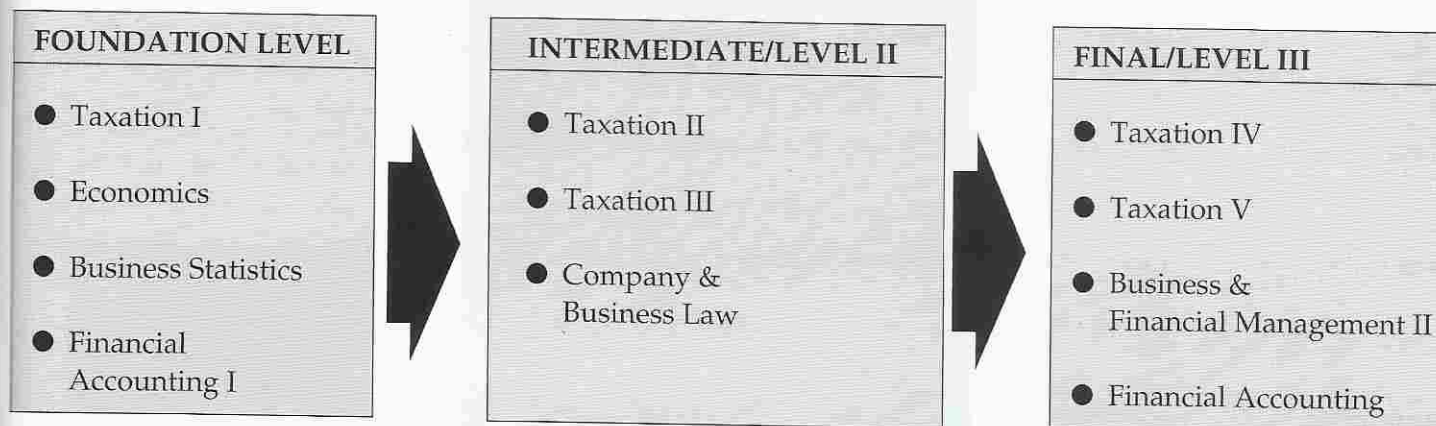
One of the main objectives of the Malaysian Institute of Taxation (MIT) is to train and build up a pool of qualified tax personnel as well as to foster and maintain the highest standard of professional ethics and competency among its members.

One avenue of producing qualified tax personnel is through professional examinations. As such, MIT conducted its first professional examinations in December 1995. To date, the MIT had successfully conducted three examinations. This is the only professional examination in Malaysia in the discipline of taxation. The professional examinations also seeks

to overcome the present shortage of qualified tax practitioners in the country.

### Examination Structure

The professional examination is currently held annually and comprises of three levels.



### How to Register

You can contact the Institute's Secretariat for a copy of the Students' Guide. The Guide contains general information on the examinations and a set of registration forms which must be completed and submitted with the necessary documents to the Secretariat.

### Entrance Requirements

- (a) Minimum Entry
  - At least 17 years old.
  - At least two principal level passes of the HSC/STPM examination (excluding Kertas Am/Pengajian Am) or the equivalent.
  - Credits in English Language and Mathematics and an ordinary pass in Bahasa Malaysia at MCE/SPM.
- (b) Degrees, diplomas and professional qualifications (local/overseas) recognised by the Institute to super-

secede minimum requirements in (a).

- (c) Full Members of local and overseas accounting bodies.
- (d) Matured Age Entry (Minimum 23 years).

### Exemptions

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

### Exemption Fees

Level I	RM50.00 per subject
Level II	RM60.00 per subject
Level III	RM70.00 per subject

### Examination Fees

Level I	RM40.00 per subject
Level II	RM50.00 per subject
Level III	RM60.00 per subject

### DATES TO REMEMBER

#### September 1

Closing date for registration as a student to sit for the examination of that year.

#### October 15

Closing date for submission of examination entry form for the examination of that year.

#### December

#### EXAMINATION

# Calender for 1998

January 1	Annual Subscription for 1998 payable.
February 12	Release of the 1998 Examination results. Students will be notified by post. No telephone enquiries will be entertained.
March 31	Last date for payment of annual subscription fee for 1998 without penalty (RM50).
April 30	Last date for payment of annual subscription for 1998 with penalty (RM100). Students who fail to pay will be removed from the Student Register and will have to Re-Register.
May 31	Question & Answer Booklets available for distribution.
September 1	Closing date of registration of new students who wish to sit for the December 1998 examination sitting.
September 15	Examination Entry Forms will be posted to all registered students.
October 15	Closing date for submission of Examination Entry Forms. Students have to return the Examination Entry Form together with the relevant payments to the Examinations Department, before 15 October 1998.
November 30	Despatch of Examination Notification Letter.
December (dates to be confirmed)	MIT Examinations

Please direct all inquiries pertaining to MIT Examinations to  
Ms. Tam Kam Peng or Ms. Sharon Koh at Tel: 03-2745055, Fax: 03-2737533,  
email: [education@mia.org.my](mailto:education@mia.org.my)



## PRIZE WINNERS



**Ms Wong Li Ming**  
Best Overall Performance  
in Foundation Level  
Prize sponsored by  
Kassim Chan & Co



**Ms. Lim Ai Wah**  
Best Overall Performance  
in Intermediate Level  
Prize sponsored by  
Price Waterhouse



**Ms Teoh Siew Hoon**  
Best Overall Performance  
in Final Level  
Prize sponsored by  
KPMG Peat Marwick



**Ms Tang Hwee Fong**  
Taxation I  
Prize sponsored by  
Atarik Kamil Ibrahim &  
Co

### Graduation & Prize Presentation Ceremony

The Institute will be holding a Graduation & Prize Presentation ceremony for the 1997 examination session. The ceremony will be held on the 2 April 1998 at a leading hotel in Kuala Lumpur.

#### Note:

There are no prize winners for Taxation II, Taxation III, Taxation IV and Taxation V.

## GRADUATES

Ms Tang Yeth Fong  
Mr. Koh Kheng Boon  
Ms Cheh Chooi Jing

Mr. Deep Singh s/o Gorpall Singh  
Ms Chan Yet Chen

Ms. Koo Wan Foong  
Ms Teoh Siew Hoon

The following candidates completed the relevant examination papers to the satisfaction of the Examination Committee for the 1997 Examination Session.

**FOUNDATION LEVEL****Taxation 1**

Teh Siew Ngau  
Tang Hwee Fong  
Meera Sivarajah  
Wong Li Ming  
Ng Lin Yean  
Lim Wei Foon  
Lee Pui Kee  
Yap Mei Ling  
Hong Swee How  
Sim Chee Kiong  
Liaw Ah Lee  
Yeong Yoon Wai  
Tan Mui Hong  
Lee Fook Li  
Hong Li Pan  
Chan Weng Hoe  
Khoo Keng Jin  
Selvakumaran Muthu  
Lim See Chong  
Tham Yew Wai  
Maheshkumar a/l  
Sanghrajka  
Vanitha Periyasamy  
Ng Kah Choong  
Soori Bapoo Kuandiah

**Financial Accounting I**

Tang Hwee Fong  
Meera Sivarajah  
Wong Li Ming  
Yap May Ling  
Lim Wei Foon  
Soori Bapoo Kuandiah  
Soon Chen Lim  
Vanitha Periyasamy  
Lee Fook Li  
Selvakumaran Muthu

**Economics and  
Business Statistics**

Soon Chen Lim  
Chan Ai Hoon  
Wong Li Ming

**INTERMEDIATE LEVEL****Taxation II**

Wong Cheng Jam  
Yeap Boey Peng  
Lim Ai Wah  
Lee Chee Seong, James  
Gurdaranshan Singh Kler  
Kok Chooi Fung  
Low Saw Heok  
Soh Lee Nie, Betty  
Chew Sok Lee

**Taxation III**

Tang Yeth Fong  
Lily Chin  
Lim Ai Wah  
Tea Sor Hua  
Wong Peng Seong, Peggy  
Low Saw Heok  
Chan Bee Hong, Eileen  
Koo Wan Foong  
Cheam Lea Pheng  
Lai Yok Foong  
Teng Yook Chin  
Lee Chee Seong, James

**Company and Business Law**

Foong Kok Keong  
Lim Ai Wah  
Ng Chew Nam  
Tea Sor Hua  
Chow Mei Lai, Meriel  
Teng Yook Chin  
Ng Hock Soon  
Lee Boay Eng  
Abdul Salam Chandran-  
Abdullah

**FINAL LEVEL****Taxation IV**

Koh Kheng Boon  
Chan Yat Chen  
Lim Huan Siang  
Wong Peng Seong, Peggy  
Tong Lai Fun  
Wong Cheng Jam  
Loh Ee Sum  
Koo Wan Foong

**Taxation V**

Deep Singh s/o Gorpall Singh  
Cheh Chooi Jing  
Chan Yat Chen  
Koh Kheng Boon  
Lee Yon Chong  
Tang Yeth Fong

**Financial Accounting II**

Teoh Siew Hoon  
Cheh Chooi Jing  
Wong Cheng Jam  
Pang Mei Yun  
Prabhutva Jaya Krishnan

**Business & Financial  
Management**

Tang Yeth Fong  
Teoh Siew Hoon  
Wong Cheng Jam  
Loh Ee Sum  
Tang Hwee Fong  
Lim Wei Foon  
Sim Chee Kiong  
Yap Mei Ling  
Lim See Chong  
Chan Weng Hoe  
Liaw Ah Lee



# INSTITUTE'S NEWS

## MEMBERSHIP OF MIT AS AT 21 JANUARY 1998

The following persons have been admitted as associate members of the Institute as at 21 January 1998.

NAME	MEMBERSHIP NO.
Ng Chee Loong	1456
Lau Chai Yap	1457
Wong Yii Chiong	1458
Chan Liang Chuang	1459
Lim Siang Leh	1460
Loh Chye Teik	1461
Lim Lip Chin	1462
Choo Kok Liong	1463
Dr Ahmad Faisal bin Zakaria	1464
Chay Siew Hun	1465
Yeo Kwee Kwang	1466
Helena Lau Gah Hui	1467
Lim Lip Meng	1468
Sum Yee Ling	1469
Loh Que	1470
Cheah Swee Chun	1471
Tham Fook Cheong	1472

The following persons have been admitted as fellow members of the Institute as at 21 January 1998.

NAME	MEMBERSHIP NO.
Foo Thiang Yoong	110
Kiu Chiong Ming	322
Sabin bin Samitah @ Sapilin	324
Tang Chin Fook	332
Chiang Sze Chea	341
Choong Kien Yeong	342
Chin Sin Beng	343
Chin Chee Kee	346
Lok Sam Wah	347
Foo San Kan	348
Lim Shaw Keong @ Alfred Lim	352
Ong Kim Son @ Ong Kim Soon	354
Lau Kiing Yiing	357
Ng Kim Long @ Ng Aba	358
Senthevadivel s/o Senteratnam	359
Wong Liong Kiat, John	360
M. Narayanan s/o KT Narayanan Chettiar	361
Michael Ong Kee Tuan	364
Kong Sam Chin	366
Kuan Wei Heng @ Kwong Wee Hon	367
Lee Ah Choon @ Lee Hong Choon	368
Lim Jiew Siew	376
Ooi Wan Eng	377
Tan Choon Hwa @ Esther Tan Choon Hwa	378
Choong Sau Ping	379
Tan Gee Toh	380

NAME	MEMBERSHIP NO.
Somaskanthan s/o Sevanthy Nathan	382
Ng Cheong Chye	385
Siva Subramaniam Nair A/I A.R. Nair	387
Liang Mui Yin	389
Cheong Pang Cheng	390
Lim Tin Chin	393
Ong Whee Tiong	394
Lim Eng Seng	397
Tan Huai Leong	401
Theresa Ngu Mee Hung	402
Teo Yong Kwang @ Teo Eng Hai	405
Cheong Nam San	407
Yeo Miow Cheng	408
Robert Lau Hoi Chew	409
Atarek Kamil bin Ibrahim	411
Wong Yok Chin	412
Hong Woon Kwee	418
Leong Lai Choon	419
Tan Phaik Guan	421
Chan Tak Man	424
Beh Tok Koay	429
Ng Man Sing	430
Jeffery Lim Hup Choon	434
Navaratnam s/o A. Ponniah	437
Sivamoorthy a/I Shanmugam	438
Tharma Iswara a/I S. Subramaniam	440
Hun Kiow	444
Lim Cheng Hong	465

### MEMBERSHIP STATUS OF MIT AS AT 21 JANUARY 1998

Honorary Fellows	7
Fellows Members*	285
Associate Members*	1176
	<u>1461</u>
<b>* Fellow and Associate Members</b>	
Public Accountants of MIA	859
Registered Accountants of MIA	165
Licensed Accountants of MIA	16
Advanced Course Exam of IRD	118
Advocates & Solicitors	7
Approved Tax Agents	123
MIT Graduate	1
Others	172
	<u>1461</u>

## TAXATION INSTITUTE OF AUSTRALIA

The Taxation Institute of Australia has provided taxation professionals with dynamic leadership, an influential voice in government and industry circles, and instant access to the latest tax information for more than 50 years.

According to the Institute's National President, respected Sydney tax lawyer Richard Gelski, the TIA's membership of more than 10,000 includes many of Australia's top lawyers, accountants, academics, managers, public servants, and other tax experts.

Formed in 1943, the Institute is Australia's leading professional tax organisation and as such it makes regular submissions on new and proposed tax legislation to the Australian Government and represents tax professionals on government committees and liaison groups.

It contributes professional expertise to reviews of tax law and administration conducted by the Australian Taxation Office, Treasury and other interested organisations.

The Institute's Chief Executive Officer, Mr. John Unkles, says that the TIA is also a leading user of new communications technology and its award winning Internet Home page - which can be found at <http://www.taxia.asn.au> - is accessed by thousands of members and non-members daily.

The Institute communicates with its members through its Internet home page and a series of publications, including:

- a regular monthly practical journal, *Taxation in Australia*, which is delivered free to every member;
- a more academic bi-monthly, *The Tax Specialist*;



**Taxation  
Institute  
of Australia**

- a monthly National Technical Newsletter, which contains up to the minute information from the TIA's Tax Technical Division; and
- an annual set of Convention Papers which is normally published in two volumes.

The TIA also publishes the widely respected academic quarterly, *Australia Tax Forum*, which has subscribers from around the world.

The TIA is also proud of the fact that it maintains Australia's most comprehensive tax information service, *TaxLine*, which is exclusively available to members throughout Australia via a freecall telephone service.

*TaxLine* queries are researched by trained library staff with access to a vast range of internal and external databases, including the Internet, CD-ROMS, On-line Services, Legislation, bills and explanatory memoranda, Law Reports, Looseleaf services, and the TIA's own

Convention Papers, Books and Journals.

Educational functions are organised on a regular basis by the TIA in all States and Territories and range from monthly breakfast meetings, workshops and discussion groups to National Seminars and Conferences.

The highlight of the education programme, the National Conference, is held at a different venue every two years and lasts three days and attracts delegates not only from Australia but from New Zealand and Asia.

The National headquarters of the Institute are in Sydney, NSW, and there are offices in all major States. Members are encouraged to become actively involved in the organisation and development of the Institute.

"In a world experiencing substantial and continual change, no serious taxation professional can afford not to be a member," said Mr. Gelski.

The Institute is continually looking for opportunities to form strategic links with other taxation organisations throughout the world and particularly in Asia.

One organisation with which it has particularly strong connections is the Asia-Oceania Tax Consultants' Association.

The former president of the Institute - Mr. David Russel QC and Mr. Peter Cowdroy - are President and Secretary General respectively of the organisation.

For further information please contact the TIA at:

Level 7 64 Castlereagh Street  
Sydney NSW Australia 2000  
Tel: + 61 2 9232 3422  
Fax: + 61 2 9221 6953  
Email: [tline@taxia.asn.au](mailto:tline@taxia.asn.au)



## EMPLOYEE'S EXPENSES

by:

*Choong Kwai Fatt, Tax Lecturer, University of Malaya*

### INTRODUCTION

When an employee receives the gross employment income [section 13(1) (a) to (e) of the Income Tax Act, 1967], he is allowed to deduct expenses that are 'wholly and exclusively' (section 33) incurred in the performance of the employee's duties. The onus is on him to prove to the satisfaction of tax authorities that such expenses satisfied the section 33 test (incurred in the course of the performance of his duties) and at the same time is not prohibited by section 39 of the Act.

The mathematical formula would be:

Gross Income	
[section 13(1)(a) - (e)]	xx
Less : Wholly and exclusively expenses (not prohibited by section 39)	(xx)
Adjusted income	<u>xx</u>

The deduction test "wholly and exclusively" must be referred to an expenditure which is of revenue nature and which is solely incurred in the production of employment income. " Wholly" refers to the quantum of the expenditure i.e. the sum of money spent and "exclusively" refers to the motive or object behind the expenditure. Thus, unless such motive or object is exclusively solely in the production of income, the expenditure will fail the deductibility test.

In order to fulfil section 33 "wholly and exclusively" test, the employees are required to show that the employee duties cannot be performed without incurring the particular outlay. Sometimes, it is by reference to industry practice. If each and every employee of that particular industry is obliged to incur particular expense in the performance of its duties, then such expenses would fall into the ambit of "wholly and exclusively". The test is an objective test.

The use of the word "wholly and exclusively" are rigid, narrow and restricted in their operation. Employees must be able to provide evidence that such expenses are "wholly and exclu-

sively" incurred in the performance of the official duties before it can be ranked for deduction. It would be sufficient for the tax payers to show that the outlay was for the purpose of earning the income. So long as there was a close or real connection between the expenditure incurred and the income earning operation of the tax payer, it would be suffice.

### COMMISSION PAID TO EMPLOYMENT AGENCIES

In **Short v Mcilgorm** (HC) (26 TC 261), an individual obtained a position of secretary accountant through an employment agency. He was required to pay 5% of the remuneration for the first year to employment agency and claimed that it should be allowed as a deduction from the employment income. Wrottesley J held that the expenditure was not money spent wholly, exclusively and necessary in the performance of the employee's duties. The expense was incurred to secure his appointment with the company and incurred preliminary to taking up the appointment.

### TRAVELLING EXPENSES

Generally, travelling expenses incurred from the employer's home to the office is not deductible as such expenses would be private and domestic in nature. However, travelling expenses incurred to visit the customer of the company or discharging the employee's duties would be deductible.

In **Burton v Rednall** (HC) (35 TC 435), the court held that travelling expenses between the home and office is not deductible as he is not performing the duties of his office. He is either going to perform his duties or he is going home after performing his duties.

In **Newsom v Robertson** (CA) (33 TC 452), a barrister exercised his profession partly at his chambers in London and partly at home. When the courts were sitting he did the greater part of his work at his chambers but at other times he worked at home except for an occasional journey to his chambers. He claimed a deduction for Income Tax purposes in respect of the expenses incurred in travelling between his home and his chambers.



The Court of Appeal held that the travelling expenses were not incurred wholly and exclusively for the purposes of his profession as there was a dual purpose. Romer L.J. commented on p 465 regarding the deductibility

*"A man's 'profession is not exercised' until he arrives at the place of which it is carried on". In my judgement this proposition is, in general, true. Moreover, it cannot be said even of the morning journey to work that it is undertaken in order to enable the traveler to exercise his profession; it is undertaken for the purpose of neutralizing the effect of his departure from his place of business, for private purposes, on the previous evening. In other words, the object of the journeys, both morning and evening, is not to enable a man to do his work but to live away from it".*

In **Cook v Knott** (HC) (2 TC 246), a solicitor residing and carrying on his profession at Worcester is clerk to the justice at Bromyard. The High Court held that he is not entitled to deduct from the emoluments of his office the cost of travelling between Worcester and Bromyard. Mr. Baron Pollock said at p 248

*"...now suppose a gentleman lives at Worcester and lives at Torguay, it cannot be said he is travelling from the place he lives, whether near or far, to the place where he has to discharge his duties, is a traveling in the performance of those duties; he must consider that the sum he receives is to cover the expenses of traveling and he can take it or not as he likes; but having taken it he cannot charge this as a deduction."*

## SELF IMPROVEMENT EXPENSES

In **Humbles v Brooks** (HC) (40 TC 500), the headmaster was required to teach history and he incurred expenses attending a series of weekend lectures on history. It was held that the cost of attending classes for the purpose of improving background knowledge is not an allowable expense against employment. The payment was not incurred in the performance of his duties. In order to be deductible, it would need to pass through the objective test propounded by Lord Blanesburgh in **Ricketts v Colquhoun** (10 TC 118)

*"which each and every occupant of the particular office is necessarily obliged to incur in the performance of its duties."*

In **Blackwell v Mills** (HC) (26 TC 468), a student assistant in the research laboratories of a company was required by the employer to attend classes in preparation for a university degree. He claimed to deduct from his employment income the

travelling to and from the classes and in the purchase of textbooks.

Macnaghten J reverse the decision of Special Commissioners and held that the expenses were not incurred in the performance of his duties of employment and that deduction claimed was inadmissible.

Macnaghten J said on p 470

*"The facts as stated by the Commissioners are that in September, 1941, Mr. Mills commenced employment as student assistant in the company's laboratories, and that it was a condition of his employment that he should attend classes in preparation for the final examination for the degree of Bachelor of Science in the University of London. He attended evening classes at the Chelsea Polytechnic in order to comply with this condition of his employment, and the company allowed him to leave his work at the laboratories in time to have a meal and get to the Polytechnic before the classes began. He was allowed time off without deduction of pay. The company paid the tuition and examination fees for Mr. Mills and half the cost of his textbooks. Mr. Mills had to pay the cost of travelling to and from the Polytechnic and half of the cost his textbooks. Those are the expenses claimed as a deduction from his remuneration which the Commissioners have allowed."*

The deductions that can be made from remuneration received in respect of an office of profit are strictly limited by Rule 9. Few people sleep at the place where the duties of their office are performed, but it is well established that you cannot claim deduction for expenses of getting from the place where you sleep to the place where you perform the duties. The expenses permitted to be deducted must be expenses incurred in the performance of the duties of the office.

The matter has been explained by Rowlatt, J., most clearly in the cases of **Simpson v Tate**, 9 T.C. 314, and **Nolder v Walters**, 15 T.C. 380. If any further light on the subject were required, it is to be found in the decision of the Court of Appeal and House of Lords in the case of **Ricketts v Colquhoun**, 10 T.C. 118.

Following the decision it appears to me that this appeal must be allowed. It was a condition of Mr. Mills's employment that he should attend the evening classes. Mr. Honeyman contended that, since the subject-matter of the evening classes was not unconnected with the duties that Mr. Mills had to perform, he should be regarded as performing the duties of his office when



he was attending the Chelsea Polytechnic. In my opinion any such view is inadmissible. The duties of his employment were as a student assistant in the research laboratories of the General Electric Company. It seems to me impossible to say that, when he was listening to the lecturer at the Chelsea Polytechnic, he was performing the duties of a student assistant at the laboratories of the company.

*I think it is a plain case. The appeal must be allowed"*

## EXAMINATION FEES

In **Lupton v Potts** (HC) (45 TC 643), the court held that the examination fees paid by an articled clerk of a Solicitor is not deductible from the salary paid to him.

Plowman J said on p 650

*"In my judgement, the duties of the Respondent under the contract of employment were perfectly capable of being performed without incurring the particular outlay with which I am concerned in this case. I find it impossible to say that that outlay was necessarily incurred in the performance of those duties. Moreover, I am not satisfied that the expenditure was incurred exclusively in the performance of his duties under the contract of employment. If Mr. Nolan is right in submitting that the purpose of the Respondent in paying the fees is involved in this question, then it seems to me that the purpose of paying the fees for the part I subjects for which he sat after being articled cannot have been radically different from his purpose in paying the fees for the Part I subjects for which he sat before being articled. This was not to benefit or fulfil an obligation to an employer but to benefit himself because he wanted to become a solicitor.*

*In the result-and, I may say, with some regret-I feel bound to allow this appeal".*

## PROFESSIONAL SUBSCRIPTION

Employees such as accountants, lawyers, doctors etc are required to retain his professional qualification by subscribing to his professional body. As such, the subscription fees would rank for deduction.

In practice, the Director General needs to be satisfied that the duties of the employment involve the direct application of the professional knowledge of the claimant and there is a close relationship between the subscriptions claimed and the performance of employee's duties. If the subscriptions to the Associa-

tions are merely customary and it contains personal choice and private benefits, then the subscription would not be deductible.

In **Lomax v Newton** (HC) (34 TC 558),

A regimental officer was not allowed to deduct his annual mess subscription although he was obliged to be a member of the mess and would no doubt have been transferred or even cashiered if he failed to pay. An officer in the Territorial Army was not allowed his mess subscriptions or his share of mess expenditure on guests. The officer was also not allowed the cost of attending social functions given by warrant officers and other ranks. Vaisey J. Said , at p.563

*"I agree that participation in the social life of the battalion was part of the social duties of the respondent, but was it any part of his official duties? Was the respondent at the sergeants' dance in the proper sense of the expression 'on duty'? I think not. I am quite unable to see how this item can be brought within the rule. I apply to it descriptions from the contentions of the Crown as set out in the case, and say that they are expenses incurred from tradition and custom, accepted voluntarily by the officers of the unit and containing elements of personal choice and benefit, and therefore not within the rule."*

## PROFESSIONAL JOURNAL AND BOOKS

In order to maintain professional standards of conduct and keeping abreast with the current or latest development in the profession, employee may need to subscribe journals and purchase certain technical books. However, such expense would not rank for deduction in arising at the adjusted income of the employment.

In **Simpson v Tate** (1925) 2 K.B. 214 a medical officer of health joined certain medical and scientific societies in order that by means of their meetings and published transactions he might be aware of all recent advances in sanitary science and keep himself up to date on all medical questions affecting public health. Rowlatt J. said, at p.219:

*"The respondent qualified himself for his office before he was appointed to it, and he was very properly endeavored to continue qualifying by joining certain professional and scientific societies, so that by attending their meetings and procuring their publications he may keep abreast of the highest developments and knowledge of the day. He seeks to deduct from his assessable income the subscriptions paid by him to these societies as money expended necessarily in the performance*



*of the duties of the office. When one looks into the matter closely, however, one sees that these are not moneys expended in the performance of his official duties. He does not incur these expenses in conducting professional inquiries or get the journals in order to read them to the patients. If he did, the case would be altogether different. He incurs these expenses in qualifying himself for continuing to hold his office, just as before being appointed to the office he qualified himself for obtaining it...In my view the principle is that the holder of a public office is not entitled...to deduct any expenses which he incurs for the purpose of keeping himself fit for performing the duties of the office, such as subscriptions to professional societies, the cost of professional literature and other outgoing of that sort. If deductions of that kind were allowed in one case every professional office holder would claim to be entitled to deduct the payments made by him to every scientific society to which he happened to belong and the price which he paid for every professional publication, and there would be no end to it."*

The decision of **Simpson v Tate** was approved in **Ketua Pengarah Hasil Dalam Negeri v Dr Arunjit Dutt (HC) (1995) 2 MSTC 3,454** where the High Court denied a Doctor's claim on journal and magazines expense to be 'wholly and exclusively' incurred in the production of income. The technical books falls into the ambit of 'plant'. If the claimant is carrying on the business then he would be able to claim capital allowance on it. Unfortunately, employment income is not given capital allowance.

### SUBSCRIPTION OF NEWSPAPER

In **Fitzpatrick v IRC (HL) (1994 1 WLR 307)**, five journalists claiming that the purchase of newspaper and magazines were expenditure wholly, exclusively and necessarily incurred in the performance of journalist duties. The House of Lord however reversed the decision of the Court of Appeal and held that such expenses are not incurred in the performance of the journalist duties.

The House of Lords is of the opinion that the journalists is not carrying out their employee's duties when they are reading other newspapers. It does not matter whether the journalists were contractually bound to their employers to expend money in the purchase of other newspapers and magazines or whether they did so voluntarily. There is a distinction between expenses incurred 'in the performance of duties' and expenses incurred in order to enable the duties to be performed'. Applying this distinction, a journalist does not read in the performance of his duties but in order to enable his duties to be performed.

Lord Templeman said on p 316

*"The reasons for the strictness of the rule governing deductible expenses are not hard to find. If a journalist or other employee were allowed to deduct expenses incurred by him in his spare time in improving his usefulness to his employer, the imposition of income tax would be distorted and the amount of the expenses claimed by an individual would depend entirely on his own choice."*

### EXPENSE RELATES TO FURNITURE / LIVING ACCOMMODATION ( SECTION 38)

If the employee has been assessed on furniture or living accommodation as gross income under section 13, then it would be allowed to deduct :-

- (i) rental expense payable for the furniture or living accommodation
- (ii) public rates or insurance premium
- (iii) revenue expense for repair or maintenance of the premises.

Since the deduction is allowed in section 38, then it would not be allowed under section 33 of the Act. [section 38(5)] This is to prohibit double deduction on the same expense.

The amount of deduction under section 38 is restricted to the benefits in kind which are included as gross income. In addition, where living accommodation is provided for only part of a basis period, the expenses deductible shall be restricted to the extend that they relate to the part of basis period.

### ENTERTAINMENT EXPENSES (SECTION 38 A)

Where employee is provided with entertainment allowance which has been included under section 13 (1)(a), then the employee is allowed to deduct entertainment expense if they are incurred 'wholly and exclusively' in the production of employment income, ie he is under an obligation in terms of his service contract to meet expenditure of this nature.

However, the deductibility is restricted to the amount of entertainment allowance included in the gross income of the employee. If the employee is not provided with the entertainment allowance, then he cannot claim deduction of any entertainment expenses even though it can satisfy the 'wholly and exclusively test'. This is because entertainment expenses is prohibited by section 39 of the Act.



## COST OF CLOTHING

Generally, the cost of clothing is not a deductible expense even though such expenses were essential to the employment. In **Hillyer v Leeke** (HC) (51 TC 90), a computer engineer was required by the employer to wear a suit, collar and tie. He claimed a sum of 50 pound expense of his private suits incurred wholly, exclusively and necessarily in the performance of his duties. This was rejected by the High court.

Goulding J said on p 93

*"The truth is that the employee has to wear something, and the nature of his job dictates what that something will be. It cannot be said that the expense of his clothing is wholly or exclusively incurred in the performance of the duties of the employment.*

*The position is essentially different, I think, from that of a car, which is not being used for the taxpayer's private purposes when he is using it for his employer's purposes, and vice versa. There, some kind of time or mileage apportionment is not impossible. In the case of clothing the individual is wearing clothing for his own purposes of cover and comfort concurrently with wearing it in order to have the appearance which the job requires. Accordingly, in that sort of case no apportionment is possible. Does it make any difference if the taxpayers chooses, as apparently Mr. Hillyer did, to keep a suit or suits exclusively for wear when he is at work? Is it possible to say, as Templeman J. said about protective clothing in the case of **Caillebotte v Quinn** (1) 50 T.C. 222, that the cost of the clothing is deductible because warmth and decency are merely incidental to what is necessarily for the carrying on of the occupation? That, of course, was a Schedule D and not a Schedule E case, but the problem arises in a similar way.*

*The answer that the Crown makes is that where the clothing*

*worn is not of a special character dictated by the occupation as a matter of physical necessity but is ordinary civilian clothing of a standard required for the occupation, you cannot say that the one purpose is merely incidental to the other. Reference is made to what Lord Greene M.R. said in **Norman v Golder** (1944) 26 T.C. 293, at page 299. That was another case under Schedule D, but again, in my judgement, applicable to Schedule E cases, where the learned Master of the Rolls said, referring to the food you eat and the clothes that you wear: "But expenses of that kind are not wholly and exclusively laid out for the purposes of the trade, profession or vocation. They are laid out in part for the advantage and benefit of the taxpayer as living human being." In my judgement, that argument is conclusive of the present case, and the expenditure in question, although on suits that were only worn while at work, had two purposes inextricably intermingled and not severable by any apportionment that the Court could undertake."*

In practice, the tax authorities would not allow the initial cost of purchase for clothes as a deduction because it was a capital expense. The renewal of clothing expense is only allowed if it is an uniform or clothes that are unused and unsuitable for general personal wear.

## CONCLUSION

The case laws discussed above are of no means exhaustive. The deductibility of expenses would depends of the merit of each case and the application of the test provided in section 33 and 39 of the Act.

(References : A detailed discussion of the above expenses and tax planning opportunities can be found in *Advanced Malaysian Taxation*(3rd ed) and *Malaysian Taxation*(4th ed) written by the same author.)

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

*"Selamat Hari Wesak"*



## 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.

### TABLE OF CONTENTS

1. Fundamental Principles
2. Professional Independence
3. Competence and Due Care
4. Conduct of Practice
5. Member's Own Tax Affairs
6. Form of Practice
7. Descriptions And Designatory Letters
8. Clients' Monies
9. Fees
10. Confidentiality
11. Changes In Professional Appointments
12. Referrals
13. Incapacity Or Death Of A Sole Proprietor
14. Acts Discreditable To The Profession
15. Training and Continuing Professional Development

### ACTS DISCREDITABLE TO THE PROFESSION

- 14-1 Acts discreditable to the profession or "unprofessional conduct" includes gross carelessness, neglect and incapacity in the performance of professional duties and impropriety in professional conduct. A member shall not commit any acts discreditable to the profession which shall include but are not confined to the following acts:-
- (a) Retention of client records after a demand is made for them is an act discreditable to the profession. Provided always that a member may exercise his right of lien over such records in respect of unpaid fees legitimately due to him.
  - (b) A member who wilfully makes or permits or directs another to make false and misleading entries in the financial statements or records of an entity shall be considered to have committed an act discreditable to the profession.
  - (c) A member who knowingly in any manner advises any of his clients in any scheme whereby his client may evade tax is committing an act discreditable to the profession.

### TRAINING AND CONTINUING PROFESSIONAL DEVELOPMENT

- 15-1 Due to the significant growth in taxation legislation over the past ten years, and the increased awareness by individuals and businesses of the importance of taxation when considering any financial transaction, it is important that all members keep fully up to date in relation to statute and case law and Revenue practice.

The benefits of continuing professional development are:

- (a) the resultant ability to recognise the areas in which a member is competent to advise;
- (b) the possible effect on negligence claims when taking evidence as to culpability; and
- (c) the possible effect on disciplinary proceedings if a complaint is made as to professional expertise.

- 15-2 Members are recommended to achieve the required units of training each year as determined by the Council. Each hour of structured education represents 2 units, and each unstructured hour 1 unit. Structured education covers attendance at lectures and the preparation and the presentation of lectures; unstructured education includes reading. "Unstructured" continuing professional development should be planned properly. In particular, it should include regular reading of publications, such as the Institute's own journal and a reasonable selection of other tax journals and books.

- 15-3 The Institute provides a number of talks, seminars and conferences which should form part of a continuing professional development programme.

- 15-4 Whenever possible, individual firms should arrange in-house tax training sessions for students and as continuing professional development. Where this is impracticable, other arrangements ought to be considered, including membership of training consortia or attendance at training sessions organised by other firms.



Post this form to  
**MALAYSIAN INSTITUTE OF TAXATION**  
Level 4, Dewan Akauntan,  
No. 2, Jalan Tun Sambanthan 3  
Brickfields, 50470 Kuala Lumpur  
Malaysia  
Telephone : 03-2745055  
Facsimile : 03-2741783

1998 SUBSCRIPTION RATES		
	RATES	
	PER ISSUE	PER ANNUM
Non MIT member	RM 30.50	RM 92.00
Student/MIA member	RM 15.50	RM 62.00
Overseas	US\$ 17.00	US\$ 52.00

**Please Use Capital Letters**

Mr/Mrs/Miss \_\_\_\_\_ Designation \_\_\_\_\_

Address \_\_\_\_\_

Poscode \_\_\_\_\_

Tel No. \_\_\_\_\_ Fax No. \_\_\_\_\_

I enclose a cheque/money order/bankdraft payable to Malaysian Institute of Taxation for RM/US\$ \_\_\_\_\_ for \_\_\_\_\_ copy/copies or \_\_\_\_\_ year/years' subscription of Tax Nasional.

**Note:** For overseas subscription, payment is accepted by bankdraft only.

The **TAX NASIONAL**, welcomes original and previously unpublished contributions which are of interest to tax professionals, executives and scholars. The author should ensure that the contribution will be of interest to a readership of tax professionals, lawyers, executives and scholars.

Manuscripts should cover Malaysia or international tax developments. Manuscripts should be submitted in English or Bahasa Malaysia ranging from 3,000 to 10,000 words (about 10-24 double-space pages). Diskettes, (3 1/4 inches) in, Microsoft Word or Word Perfect are encouraged. Manuscripts are subject to a review procedure and the editor reserves the right to make amendments which may be appropriate prior to publication.

Additional information may be obtained by writing to the TAX NASIONAL Editor.

No person should rely on the contents of this publication without first obtaining advice from a qualified professional person.

This publication is provided on the terms and understanding that:

1. the authors, advisors and editors and the Institute are not responsible for the results of any actions taken on the basis of information in this publication, nor for any error in or omission from this publication; and
2. the publisher is not engaged in rendering legal, accounting, professional or other advice or services. The publisher, and the authors, advisors and editors, expressly disclaim all and any liability and responsibility to any person, whether a purchaser or reader of this publication or not, in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication. Without limiting the generality of the above no author, advisor or editor shall have any responsibility for any act or omission of any other author, advisor or editor.





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

### Benefits and Privileges of Membership

The Principal benefits to be derived from membership are:

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

### Qualification Required For Membership

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

### Associate Membership

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

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

### Fellow Membership

1. A Fellow may be elected by the Council provided the applicant has been an Associate Member for not less than five (5) years and in the opinion of the Council he is a fit and proper person to be admitted as a Fellow.

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

### Application of Membership

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

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

	Fellow	Associate
(a) Admission Fee:	RM300	RM200
(b) Annual Subscription:	RM145	RM120

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

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

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

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

## TAX NASIONAL ADVERTISEMENT

### The Four Ps of MARKETING - Price, Place, Product and PROMOTION -

### ADVERTISE IN THE TAX NASIONAL!

The TAX NASIONAL is the official publication of the Malaysian Institute of Taxation. The Journal which is published on a quarterly basis, will be circulated to all members, top government officials, selected public listed companies, financial institutions and also to other taxation and professional bodies overseas.

We would like you to take this opportunity to advertise in the TAX NASIONAL. Our rates are attractive and we know you will be able to reach your target market by advertising with us. The details of the advertisement rates are as follows:-

For more information,  
**CALL US TODAY at the MIT secretariat:**  
Tel. No. 03-2745055 or Fax No. 03-2741783.

### 1998 ADVERTISEMENT RATES

	Full Colour	Black & White
<b>DISPLAY ADVERTISEMENT</b>		
Full Page	RM1,500.00	RM1,000.00
Half Page	RM 800.00	RM 600.00
Back Cover	+ 20%	
Inside Front/Back Cover	+ 10%	
Centrespread	+ 20%	
<b>CLASSIFIED</b>		
Full Page	RM400.00	
Half Page	RM200.00	
Other sizes	RM 4.00 per column cm	