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Malaysian Institute of Taxation

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.

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the dawn of electronic commerce and challenges presented

By Mildred Lopez



We are at the threshold of a revolution that will go down in history as the **ELECTRONIC COMMERCE CENTURY**. Conventional businesses will be wiped out and the world will truly become a global village. The tidal wave of electronic commerce sweeping across America looks more like a ripple here in Asia. E-commerce revenue stood at US\$720 million in 1998 for the Asia Pacific region excluding Japan, compared to a US total of some USD37billion.

The US had registered some two-thirds of the world's E-commerce Web sites by August 1998, for a total of 16,663, compared to just 528 for Japan and 41 for South Korea.

Net watchers have sighted numerous factors that have slowed Asian retail E-commerce but the most significant obstacle is 'critical mass'. To put it simply, there are too few on-line stores, selling too few products to too few shoppers. Sellers do not want to just make a leap of faith if there are not enough buyers. And buyers will not start purchasing if they do not see enough choice.

But this trend is set to change as an increasing number of Asian firms realize the potent force of the Net and are setting up shop on the internet, ushering customers in. They are now filling a wide variety of retail niches the international players have not explored. Thus, even if the Web's center of gravity has traditionally been in the West, Asian E-retailers are discovering that localization is an advantage. Many US companies in trying to penetrate straight into the Asian markets do not offer local language variations of their products, and even if they do, it's just local language translations of their English language sales pitch, which doesn't work.

Further, in the aftermath of the economic crisis, Asia Pacific countries are looking at innovative ways of doing business in a tight financial situation. It is becoming increasingly easy for companies looking to get on-line, with a number of alternatives available, to do so for under US\$100. There are pre-packaged solutions, whereby companies are given the basic tools to design a Web site. This way companies get on-line easily and cheaply without high ongoing maintenance costs. Then there is the on-line catalogue service through which manufacturers can gain access to buyers. These methods do not require much technical experience.

At the high end there are major corporations like Amway Corporation, which have set up a virtual international cyber mall. Asian companies are then able to place their goods in this cyber mall thereby gaining access to a worldwide network of consumers. Web users are able to browse through the cyber mall, viewing products from all over the world ranging from

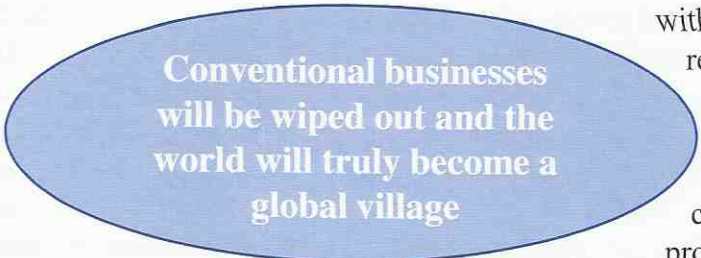
food products, computers, electronic goods, clothing, accessories, household goods, cars and property. And at the click of a key they could shop from the comfort of their homes. Goods purchased are then delivered to the doorstep of the Web user. The process saves the shopper time, travel expenditure and the chore of lugging goods as with conventional shopping. The possibilities are endless. E-commerce hastens access to a wide spectrum of customers whilst cutting advertising, market research and distribution cost significantly. This provides opportunities for price reductions that can be passed on to customers who shop on the Web resulting in enhanced competitiveness. The potential E-commerce presents are undoubtedly enormous fuelling the pace of conversion of conventional business.

E-commerce dramatically reduces the economic distance between producers and consumers.

Consumers can make their purchases without involving traditional retailers, wholesalers and in some cases distributors. Then there is the benefit of better information, which comes unadulterated from the producer, and a wide spectrum of choice, which can include products, tailored to individual requirements.

All this poses a major challenge to tax administrators who will need to develop tools to identify, register and most importantly tax businesses carried out over the Internet. Traditionally, physical presence within a country's borders has been the criteria by which a tax authority identifies and taxes a company doing business there. With multinationals, the distinction became more difficult and gave rise to a host of transfer pricing problems which tax authorities already have a problem policing.

The growth of E-commerce will provide a new and greater challenge because of the difficulty in finding the location of a taxpayer doing business through the Web and in obtaining jurisdiction. There have been proposals for a web crawling software to identify persons who are not taxpayers!



Conventional businesses
will be wiped out and the
world will truly become a
global village

Some questions that come to mind in a basic situation as follows are:

If a company situated in Malaysia or France solicits business over a Web site and delivers products to customers in the United States of America (USA).

- *Can the USA tax the Company*
- *Can the Web site be used as a basis to identify the Company's location*
- *Does the location of the Web site determine the territorial basis for Malaysian tax purposes*
- *If the situation were in reverse order, would Malaysia be able to tax all sales to USA customers.*

The fact is many existing tax systems are not equipped to cope with such situations. New taxes may have to be structured. In Europe there is the computer Bit Tax. India has indicated that it plans to tax trade done on the Internet.

Then there is the question of harmony between the countries to avoid multiple taxation, which can unduly negate the benefits of E-commerce. The USA for instance has proposed to the WTO to ban the European Bit Tax. Issues such as these may cause a very tangled Web indeed for the participants in E-commerce.

The challenge for tax authorities is to ensure that tax laws are applied equitably and effectively without inhibiting the realization of the full potential of E-commerce. Infact tax administrators should look to the Internet and the electronic media in general to cultivate more expedient systems of revenue tracking and management.

One of the significant problems for tax authorities is the identification of tax payers and linking the domain name to a particular taxpayer. If a taxpayer cannot be identified, it is difficult to impose, let alone collect

taxes. And when physical location is an issue, the problem is compounded when disputes about which jurisdiction can impose taxes.

Additionally in identifying and collecting information, information held overseas and in encrypted data may cause problems. Encryption to protect commercial secrets may also act to stymie the tax collector. With E-commerce, traditional third-party sources of information may be curtailed as the Internet encourages the process of disintermediation. With a producer dealing directly with a customer, the use of the retailer to collect information and withhold taxes will no longer be available. Tax authorities may therefore have to contend with collecting small amount of taxes from a larger number of taxpayers. This would result in higher administrative costs. Tax authorities must therefore work with industry in coming up with innovative solutions.

There have been proposals for a web crawling software to identify persons who are not taxpayers!

In 1997, for instance, Microsoft, UPS and others attempt an experiment. Christmas gifts ordered and paid for online included a sum that took into account all taxes and duties. The relevant sums were forwarded to the appropriate tax authorities. This clearly displayed that online collection of taxes were far more efficient.

E-commerce also affects existing double tax treaties, as a fundamental issue in determining a nation's right to tax is business presence. This is often referred to as a permanent establishment. The question now is does a Web site or a server constitute a permanent establishment. The real challenge is to define a permanent establishment in a digital rather than physical world.

In the case of consumption taxes, the place of supply is vital. With E-commerce it becomes difficult to establish the link between the supplier and the place where the service is consumed. In the case of the sale of software or music through a computer download will it be regarded as the sale of a product or service.

This issue is a major concern in countries with a VAT type consumption tax. In the European Union (EU), VAT accounts for approximately one fifth of EU tax receipts and 44% of the European Commission's budget. The EU approach has been one of caution. Every effort is being made to protect tax revenue without interfering with the growth of E-commerce. As the place of supply is important when applying a consumption tax, strategies will have to be developed to deal with the new compliance problems that E-commerce presents. Also, where EU VAT and non-VAT sales taxes interact regulations are required to produce consistent results.

In October 1998, when OECD finance ministers met in Ottawa they agreed on some general principles regarding E-commerce.

■ *Existing indirect taxes should be adapted to cope with E-commerce and no new taxes should be considered.*

■ *A product provided to a customer in digital form through an electronic network should be treated as a supply of services for VAT purposes.*

■ *For consumption tax purposes, taxation should take place in the jurisdiction of consumption.*

These are the generally agreed parameters but the practical application and tools to put them into place are still needed. The European Commission's view is that no useful end will be served by deferring this process or leaving E-commerce outside the coverage of the VAT system until answers can be found to all outstanding questions.

The European Union rejected the USA's view that E-commerce requires a moratorium on taxation so that its full potential can be developed. This is to say, the main question remains as to how existing taxes will be applied to E-commerce. In the current situation, which favors non European E-commerce at the expense of EU revenue, the need for a solution is urgent.

Changes to EU law need to guarantee the objective of

taxing services supplied for consumption within the EU and of relieving services supplied for consumption outside the EU from EU taxes. Then, there is also the need to have a dependable and verifiable mechanism that enables a supplier to distinguish between VAT registered businesses and private customers. Authentication is a key to generating the trust needed for E-commerce to flourish.

The development of E-commerce will require the updating of the concept of territoriality. This will accord countries their rightful share of revenue. The French Revenue administrators are very concerned with this aspect as the potential for delocation, real or apparent, of suppliers to tax havens has no practical limits.

In the USA, it is observed that E-commerce has democratized aggressive tax avoidance. The Internet facilitates cross-border operations without the need of a physical presence in a country. Multinationals can break down transactions and corresponding payments and relocate certain functions that attract the incidence of tax in one country to another which neutralises the effect.

The challenge to tax authorities is to truly understand the far reaching concepts of Electronic Commerce and to work with the E-commerce players rather than take an adversarial role as with the conventional taxpayer-tax collector relationship. Cooperation and coordination between countries through exchange of information and ideas will enhance the development of an effective tax system.

It is, essential that all organizations work together to develop and share new strategies that harmonize both the tax systems and the approach to dealing with E-commerce. As the move towards self assessment empowers tax payers with an element of trust, E-commerce provides an opportunity for Revenue authorities and taxpayers to work together in fulfilling their joint obligations in the exciting and dynamic development of E-commerce.

No.	Title	Refer P.U (A)	Date of Gazette Notification	Subject	Effective Date/Remarks
24	Income Tax (Exemption) (No. 19) Order 1998	259	7/2/98	Tax exemption for the Asianespace in respect of the income US\$37m and US\$38.5m received from Binariang Satellite Systems Sendirian Bhd for services rendered in connection with the launching of satellites MEASAT I and MEASAT II under agreement dated 7/794 and 15/6/95 respectively.	
25	Income Tax (Exemption) (No. 20) Order 1998	267	7/9/98	All income of the Khazanah Nasional Bhd (Excluding dividend income) exempt from tax.	Y/A 1998 to Y/A 1999
26	Income Tax (Exemption) (No. 21) Order 1998	268	7/9/98	All income of Badan Penyelidikan Kemasyarakatan Malaysia (excluding dividend income) exempt from tax.	Y/A 1998 to Y/A 1999
27	Income Tax (Exemption) (No. 22) Order 1998	269	7/9/98	All income of Lembaga Sumber Asli dan Persekutaran Sarawak (excluding dividend income) exempt from tax.	Y/A 1998 to Y/A 1999
28	Income Tax (Exemption) (No. 23) Order 1998	271	7/16/98	Income received in Malaysia from outside Malaysia by a resident is exempt from tax provided the Minister approves the exemption.	Y/A 1998 to Y/A 1999
29	Double Taxation Relief (The Government of The Netherlands) Order 1998	274	7/23/98	Protocol amending the Agreement between the Government of the Malaysia and the Government of the Kingdom of the Netherlands for the avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income, with protocol signed at the Hague on 7 may 1988.	Y/A 1998 to Y/A 1999
30	Income Tax (Exemption) (No. 24) Order 1998	299	8/13/98	All income of the Malaysian Muslim Women welfare Foundation (excluding dividend income) exempt from tax.	Y/A 1998 to Y/A 1999
31	Income Tax (Exemption) (No. 26) Order 1998	300	8/13/98	Tax exemption for one Hundred and Twenty Two (122) foreign artists from Asian Youth Orchestra who were in Malaysia for their performance in the 1997 Rehearsal Camp and the Tour Performance held on 29/6/97 at the PWTC Kuala Lumpur.	Y/A 1998 to Y/A 1999

Selamat Hari Raya Aidil Fitri

from
The Council of The Malaysian Institute of Taxation

No.	Title	Refer P.U (A)	Date of Gazette Notification	Subject	Effective Date/Remarks								
32	Income Tax (Qualifying Plant Allowance) Rules 1998	294	8/6/98	<p>The initial allowance in respect of qualifying plant expenditure on plant and machinery, incurred on construction work, extraction of timber and tin-ore mining shall be calculated at the following rate unless otherwise stated.</p> <p>Schedule</p> <table><thead><tr><th>Industry</th><th>Rate</th></tr></thead><tbody><tr><td>i. Building and construction</td><td>30% of qualifying plant expenditure</td></tr><tr><td>ii. Timber</td><td>60% of qualifying plant expenditure</td></tr><tr><td>iii. Tin Mining</td><td>60% of qualifying</td></tr></tbody></table>	Industry	Rate	i. Building and construction	30% of qualifying plant expenditure	ii. Timber	60% of qualifying plant expenditure	iii. Tin Mining	60% of qualifying	Y/A 1998 to Y/A 1999
Industry	Rate												
i. Building and construction	30% of qualifying plant expenditure												
ii. Timber	60% of qualifying plant expenditure												
iii. Tin Mining	60% of qualifying												
33	Income Tax (Qualifying Plant Allowances) (Control Equipment) Rules 1998	295	8/6/98	The initial allowances on qualifying plant expenditure incurred in control equipment shall be calculated at a rate of 40 and 20% respectively. Control equipment includes equipment and facility used for collecting wastes, for limiting pollution of the environment, for indicating or recording or warning of excessive pollution and for securing more efficient use of the equipment.	Y/A 1998 to Y/A 1999								
34	Income Tax (Exemption) (No. 26) Order 1998	329	9/3/98	All income of the Sarawak River Board (excluding dividend income) exempt from tax.	Y/A 1998 to Y/A 1999								
35	Income Tax (Exemption) (No. 28) Order 1998	443	12/3/98	Tax exemption for a person in respect of so much of the aggregate income of that person as is equal to the value of contribution (as determined by the Minister of International Trade and Industry) made by him to the Government in connection with the Asia Pacific of Economic Cooperation (APEC) meetings held in Malaysia in 1998 but not exceeding that aggregate income.	Y/A 1998 to Y/A 1999								
36	Income Tax (Exemption) (No. 29) Order 1998	473	12/24/98	Tax exemption for a person resident in Malaysia, in respect of statutory income derived from letting out on charter of a Malaysian ship owned by him on a voyage or time charter basis.	Y/A 1984 to Y/A 1998								

A Happy Chinese New Year

from
The Council of The Malaysian Institute of Taxation

1999 Programme for Submission of Return Forms

The Annual Dialogue between the Operations Division of the Inland Revenue Board (IRB), MIT and the Malaysian Institute of Accountants as well as representatives of other professional bodies was held on 1 March 1999. The 1999 filing programme issued by IRB is essentially the same as that of 1998 except for the extension of time for filing Form E and for settlement of tax, which has been informed to members via Circular No. 2/99. There is also a change in the data format for application of extension of time made in diskette form. A brief summary of the 1999 filing programme is attached for your reference (Appendix 1).

Below are notes on some of the issues discussed during the Dialogue:

New Form C

As you are aware, additional disclosure (Part N to Part R) is required in the 1999 Return for Form C. IRB stressed that the disclosure is **mandatory** for all taxpayers and the return forms must be completed in full. Non-availability of information will not be considered as a valid reason for further extension of time. However, IRB is aware of the constraints involved, as such taxpayers/ tax agents are allowed to use computer generated returns (in the same format) for filling information for Part N to Part R, but not for the entire Form C.

In a subsequent meeting held on 9 March 1999, IRB advised that no guidance notes will be issued on the additional information required above. The notes of the meeting is attached for your reference. (Appendix II)

In view of the issues raised, IRB has agreed to consider the suggestion that Part N to Part R be given an extension of time to file. IRB will provide the time-frame and procedures for application for extension of time to file Part N to Part R.

Acknowledgement on Cover Letter

The Institute pointed out that some branches do not acknowledge receipt of documents on the cover letter prepared by the tax agents. Instead, tax agents have to fill up an acknowledgement card for submission on behalf of each client. IRB clarified that this is due to the fact that there are instances where cases listed on the cover letter did not exist and sometimes forms were not completed. IRB will look into the matter.

It was also raised that currently some branches only accept one tax file per cover letter. It was felt that to facilitate the filing process, perhaps IRB could adopt a 10-files per covering letter system. IRB will consider the proposal.

Code of Ethics and Professional Conduct

IRB advised that the tax agent number must be indicated in all correspondence with the IRB. For professional firms, the name of the specific tax agents are needed in addition to the firm name, e.g. PWC with the name of the Tax Manager in charge (tax agent under the PWC signature. This is to facilitate review on the competency and professionalism of the tax agents by IRB when renewing tax agent's licence.

The Institute proposed that IRB should report misdemeanours by tax agents to their respective professional bodies. MIT has specific by-laws or professional code of ethics and competency to discipline its members. Members found violating the by-laws may be suspended from practising.

Certification of Photocopy of Passport

It was proposed that notaries public, lawyers and accountants **should be allowed** to certify photocopies of passport. **This is because** expatriates residing in some **countries where** certification is limited only to the Embassy. This might prove to be inconvenient because of the distance, e.g. U.S.A. IRB advised that tax agents

may apply to IRB for prior approval. IRB will consider the applications on a case by case basis.

OTHER MATTERS

Schedular Tax Deduction (STD)

1 Currently IRB is facing problems in tracing the STD to individual taxpayer's account. This is because the name, tax file number and/or identity card number of the employees in Form CP39 may not be the same as the database in IRB. As a result, IRB has developed a software for Schedular Tax Deduction to resolve the problem.

2 The program, contained in 7 diskettes, is given to employers free of charge together with the list of the details of current employees. It can be loaded onto the employer's computer systems to facilitate the preparation of Form CP39. Once the data has been updated, it can generate STD for subsequent months unless there is a change in the employees' deductions.

3 Employers are required to review the employee records provided by IRB and amend accordingly and submit the amendments in a hard copy to IRB for

updating. Employers, particularly the accountants and tax agents, are encouraged to use the software and IRB has requested for feedback on the program.

4 The specifications for running the program are as follows:

Minimum 486/66 DX
Microsoft Window 95 or Window NT
Minimum 8MB memory - 16 NB recommended
SVGA monitor (Desktop area - 800 by 600 pixels)
2 NB free disk space
Printer
Mouse

5 Members who wish to obtain a copy of the STD program and the user manual may submit their request to Encik Azizol bin Ahmad (Tel. 6503424/25/28, Fax 6515997) of Unit Perkhidmatan Majikan at Tingkat 11 (kiri), Block 8A, Kompleks Bangunan Kerajaan, Jalan Duta, Kuala Lumpur. Members may download program from the website of IRB at a later date. (hasilnet.org. my)

APPENDIX 1

SUMMARY OF 1999 FILING PROGRAMME

A Conditions

1 Application for extension of time to file return forms after 31 May 1999 must be made on or before 15 April 1999.

2 No extension of time beyond 31 May 1999 will be allowed for the following cases:

- a** All partnership (D) cases;
- b** All salary (SG) cases;
All cases where the accounting year ends on or earlier than 30 September 1998;
- c** All cases which are not under the instalment payment scheme (Section 107B) except for
 - i** repayment/loss cases
 - ii** exempt companies
 - iii** cases where tax has been deducted under Section 107A

- 3** For company cases, application for extension of time will be staggered and allowed up to 31 August 1999. The ratio is 35% of the cases for June, 35% for July and 30% for August.
- 4** For all other cases, application for extension of time will be allowed up to 31 July 1999 in the ratio of 50% for June and 50% for July.
- 5** No further extension of time will be allowed beyond the above dates (Paragraph 2,3 and 4) except:
 - a** where the companies are required by law to have the accounts approved by the relevant authority
 - b** where the filing date could not be met due to genuine extenuating circumstances.

B Procedures

- 6** One master programme listing cases (i.e. names and tax file numbers of taxpayers), payment status (whether it is a repayment/loss case, exempt company or under section 107B instalment payment scheme) or tax has been deducted under section 107A) and dates of filing must be submitted in triplicate for approval. A clear statement must be made that all cases for application for extension of time have complied with the agreed conditions.
- 7** Separate lists, in numerical order of the tax file numbers, should be prepared for each category of cases and sent to the respective branches.
- 8** Where extension of time has been granted to a repayment case or loss case which is subsequently found to have tax liability, the approval will not be withdrawn provided immediate arrangements have been made to settle the estimated tax by instalment payment and the relevant assessment branch was informed of the arrangement made.
- 9** Where extension of time has been granted based on claims that the taxpayer is under an instalment scheme or that tax has been deducted under Section 107A and this is subsequently found to be incorrect, then the approval will be withdrawn and the appropriate penalty will be imposed.
- 10** Any return form filed within the agreed extension of time must
 - a** be complete and supported by audited/certified accounts, tax computation and all information stipulated in the return form, and
 - b** indicate on the front page above the taxpayer's address the following statement:
" Lanjutan masa dibenarkan sehingga"

Members' attention is drawn to the mandatory requirement to complete the return form, particularly the additional information required for Form C. Failure to complete the return form will be considered as a late submission and penalty will be imposed.

- 11** Taxpayers who fail/delay to prepare accounts or supply information will not be considered as valid grounds for any extension of time or waiver of penalty unless there are extenuating circumstances.

12 As in the previous year, the facility is only provided to tax agents in the Klang Valley with more than 20 cases applying for extension of time.

13 Submission should be made to the relevant IRB branch in the following manner:

- a** one hard copy of the master programme; and
- b** one copy of the programme in a diskette (1.44 MB) in the new prescribed format.

The list of cases submitted should be arranged in numerical order based on the tax file numbers and categorised as follow:

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

14 IRB indicated that a significant proportion of the submissions made in 1998 did not comply with the data format required by the IRB. For example, a new name was entered where there was a change of name (but the IRB database did not have the new name), IV cases (temporary files) were included in the list of applications, the alphabets OG, T, C etc. signifying the categories of tax files were entered together with the tax file numbers, etc. and thus causing confusion. As a result, IRB has revised the format this year to facilitate compliance.

15 The IRB has advised that the following guidelines should be observed in making the submission:

- i** Extension of time for IV cases should not be applied through the diskette.
- ii** The name of taxpayers entered must be the same as that printed on the return form. No headings or notes should be included. Any change of name may be indicated in the hard copy of the application or during actual filing of the return form.
- iii** For tax file numbers, no alphabets should be entered, only the number.

16 Members who wish to seek further clarification on the application in the diskette form may contact the IRB officers, Puan Mariam. bte Mohd (Tel. 6514270/Fax 6510705) or Encik Ghazali Osman (Tel. 6503292/Fax 6518891)

NOTES ON COMPLETION OF FORM C

The Institute held a meeting with the IRB on 9 March 1999 to discuss the issues relating to completion of Form C. The IRB had advised that they would not issue any guidance notes. IRB further clarified that the additional information requested was actually a summary of accounts into a required format and shall not be interpreted in the context of tax laws.

The IRB has agreed that no action will be taken against inaccurate information furnished, provided the information given can be reasonably interpreted from the wording of the return form or can be supported by generally accepted accounting principles. The Institute however suggested to the IRB to consider treating the additional information requested as a pilot project and expressly exclude it from forming a part of the tax return and thereby absolving the tax return preparer from any legal liability. IRB agreed to look into the matter.

Below are some issues discussed during the meeting between IRB and the Institute together with representatives from other professional bodies. The guiding principle for filling up the return form is to follow the accounting presentation. Where the accounts do not have the items requested, indicate nil or not applicable.

PART N

IRB has clarified that the equity information requested would be equity holdings as at the end of basis period. The purpose would be to create the database on Non-Resident Controlled Companies (NRCC) activities in Malaysia. It was suggested that may be it would be more appropriate for other government agencies to compile the information.

It has been explained that currently the taxpayer's database may not cater for the information required by the IRB, for instance, the nationality of the shareholders was not generally available. It would pose an onerous burden on taxpayers to compile the information, particularly for the big public listed companies. It was proposed that for year of assessment 1999, the IRB should accept the disclosure on a global basis (i.e. Item 500 as total Malaysian shareholdings and 501 as total foreign shareholdings) and taxpayers would only have to provide details of the 10 major shareholders. IRB will look into the matter and arrange for a meeting between the relevant authorities and professional bodies.

IRB agreed that where foreign shareholders are more than one, they can be disclosed by way of attachment to the return form C. (In a recent telephone conversation, the Institute was informed that Public Listed Companies may be exempted from disclosure if they are unable to do so. However, they are encouraged to provide relevant information as far as they could.)

PART O

Since there was no space provided for signature and name of signatory, IRB agreed that no signature would be required. In any case, the declaration and signature on page 4 of the return form would already cover the content of Part N to Part R.

PART P

IRB informed that information required for A1 to D1 and R1 to R15 would be basically figures extracted from accounts and for E1 to Q2 the figures would be principally from tax computation. It was confirmed that this was not a tax computation and hence not all the figures stated would tie up with the accounts. All information requested should be completed. If it is not applicable or not available, indicate zero or not applicable.

A1 Sales/turnover

For companies having no sales or turnover, e.g. investment holding companies, insurance companies, etc., the gross revenue as per profit and loss account would be taken as sales or turnover.

A2 Cost of Sales

Where there would be no cost of sales, put not applicable or zero.

B1 Other Business Income

This would include rental income of company which is considered as business income pursuant to the IRB guideline.

C1 Interest

This would be the sum of all types of interests including bank borrowing interest, leasing charges and hire-purchase interest, late payment interest, commitment fees, interest on advances, etc.

C2 Professional, Technical, Management and Legal Fees

IRB advised that the amount should follow the presentation in the account. That is to say, if tax is to be classified as professional fee in the account, then it should be included. If it is to be disclosed as a separate item as tax fee, then it should not be included. IRB confirmed that audit fee would not be included since it is always separately disclosed in the account.

C3 Contract Payments

This would consist of all contract payments including local contracts. However, IRB has clarified that if the accounts do not contain such item, then put zero. It was confirmed that where the contract payments form part of the cost of sales, then it should be disclosed as cost of sale and not contract payment.

C4 Salary and Wages

This would include bonuses, allowances, leave pay, overtimes, etc.

C6 Other Expenses

This would be the balancing figure between total expenses and the disclosed expenses.

F1 Non-Taxable Income

This could be extracted from the tax computation. It would include unrealised gain, capital gain, exempt income, etc.

F1 Non-Allowable Expenses

This would be the sum of all non-allowable expenses from business source.

F2 Schedules 2 & 3 Allowances

This would include balancing allowance and unabsorbed allowance brought forward.

F4 Other Incentives and Allowances

This refers to incentives which are allowed to set off against adjusted income such as Industrial Adjustment Allowance, Deduction for Pre-Operating Expenses and Incorporation Expenses, etc.

H1 Other Incentives and Allowances

This refers to incentives which are claimed against statutory income. It represents the incentives such as Pioneer Income, Investment Tax Allowance, Reinvestment Allowance, etc. actually utilised.

L1 Net Dividends

Net dividends refer to gross dividend less attributable expenses, such as interest costs, etc. It is not gross dividends less tax deducted.

L2 Net Interest, Discounts

Similarly, this is gross interest and discount less attributable expenses.

L3 Net Rents, Royalties and Premium

This is also after deducting attributable expenses.

L4 Other Income

This includes extraordinary income.

R1 to R15

These information can be extracted from the Balance Sheet. Where the accounts do not show these items, please indicate nil or not applicable as appropriate. For R2 to R7, the amounts stated should be net of provision, unless the balance sheet showed otherwise. Inter-companies balances may be reflected in the accounts as trade debtors or other debtors (R4/R5) or trade creditors/other creditors (R9/R10) depending on the classification in the balance sheet.

R1 Fixed Assets

It was pointed out that some fixed assets may have been revalued a long time ago and the cost of these assets may not be readily available. It was agreed that the value taken would be book value of all fixed assets before any depreciation charges.

R8 Borrowing

Borrowing includes all borrowings and advances including inter-company balances. It was pointed out that there may not be an item which was separately disclosed in the accounts. Instead, it may be included in other creditors or aggregate with trade creditors. IRB clarified that in such cases, put zero or nil.

R15 Reserves Account

All reserves, including revaluation reserves, are included in this item.

PART Q

Since there is no guideline issued on the definition of related companies, IRB agreed that related companies shall have the meaning as defined under Section 6 of the Companies Act 1965 which states that "Where a corporation

- a) is the holding company of another corporation; or
- b) is a subsidiary of another corporation; or
- c) is a subsidiary of the holding company of another corporation that first-mentioned corporation and the other corporation shall be deemed to be related to each other."

Q1 Gross Payments to Non-Residents

It was agreed that this would represent those payments on existing withholding tax or is due, including accrued but would exclude provision.

Q3 Sales to Related Companies in Malaysia

Q4 Sales to Related Companies outside Malaysia

Q5 Purchase from Related Companies in Malaysia

Q6 Purchase from Related Companies outside Malaysia

The IRB has stressed that they would require an analysis of the above.

Q7 Total Payments from Related Companies in Malaysia

Q8 Total Payments to Related Companies outside Malaysia

The IRB clarified that gross payments before set off should be shown.

PART R

IRB confirmed that accounting period is required instead of basis period and where there is no gross profit, taxpayers may indicate nil or not applicable.

Extension of Time to Submit Information on Part N to Part R of the Return Form C

Taxpayers may apply for extension of time to submit information on part N to Part R of the Form C at the time of filing by indicating the date they expect to submit on the relevant pages of the Form C. No extension of time will be granted beyond 30 September 1999. Any submission later than the extended date will be treated as late submission of the whole return Form C and penalty will be imposed.

Taxpayers are reminded that the extension is only applicable to Part N to Part R of the Return Form.C. They still have to follow the initial filing programme accordingly. Failure to do so will result in penalty being imposed.

ANNEXURE I

PROGRAM TAHUN TAKSIRAN 1999 PENGEMBALIAN BORANG NYATA

1 LANJUTAN MASA

1.1 Permohonan untuk melanjutkan masa bagi mengembalikan Borang Nyata selepas 31 Mei 1999 hendaklah dibuat pada atau sebelum 15 April 1999.

1.1.1 Lanjutan masa selepas 31 Mei 1999 tidak dibenarkan bagi kes-kes berikut:-

- a** Perkongsian (Kes D)
- b** Penggajian (Kes SG)
- c** Semua kes-kes di mana tarikh perakaunan berakhir pada atau sebelum 30 September 1998.
- d** Sernua kes-kes yang tidak tertakluk di bawah Skim Pembayaran Ansuran (Seksyen 107B) melainkan:-
 - Kes-kes pembayaran balik/kerugian
 - Kes-kes syarikat yang dikecualikan
 - Kes-kes dimana cukai telah dipotong di bawah Seksyen 107A

1.2 Kecuali bagi kes-kes yang dinyatakan di perenggan 1.1.1, lanjutan masa bagi kes-kes selain dari kes-kes syarikat hanya dibenarkan sehingga 31 Julai 1999, manakala bagi kes-kes syarikat (C) dibenarkan sehingga 31 Ogos 1999.

1.3 Lanjutan masa selepas tarikh di atas (para 1.2) tidak akan dibenarkan, melainkan bagi:-

- a** kes-kes syarikat (C) di mana syarikat tertentu dikehendaki oleh undang-undang untuk mengemukakan akaun mereka kepada pihak-pihak berkenaan untuk kelulusan.

b Lain-lain kes di mana tarikh pengembalian borang nyata yang telah ditetapkan tidak dapat dipatuhi atas sebab-sebab yang munasabah.

Permohonan lanjutan masa secara berasingan hendaklah dibuat bagi kes-kes seperti itu akan setiap kes akan dipertimbangkan mengikut meritnya.

1.4 Lanjutan masa bagi pengemukaan Borang E (Majikan) adalah dibenarkan sehingga 30 April 1999.

2 PERMOHONAN LANJUTAN MASA

2.1 Permohonan untuk lanjutan masa hendaklah mematuhi perkara berikut:-

2.1.1 Bagi kes-kes C lanjutan masa untuk mengemukakan Borang Nyata akan dipertimbangkan sehingga akhir bulan Ogos 1999 tetapi program pengemukaan perlu dirancang supaya 35 peratus dari Borang Nyata dikemukakan sebelum akhir bulan Jun 1999, 35 peratus lagi dalam bulan Julai 1999 dan baki 30 peratus dalam bulan Ogos 1999.

2.1.2 Untuk kes-kes selain dari kes-kes syarikat, program pengemukaan perlu dirancang supaya 50 peratus dari Borang Nyata dikemukakan dalam bulan Jun 1998, dan lanjutan masa sehingga 31 Julai 1999 akan dipertimbangkan untuk baki kes-kes tersebut.

Pematuhan sepenuhnya ke atas rancangan tersebut hendaklah diikuti. Permintaan untuk meminda program tersebut tidak akan dipertimbangkan.

2.2 Sebelum lanjutan masa dibenarkan, syarat-syarat berikut perlu dipatuhi:-

2.2.1 Satu senarai kes dan tarikh pengembalian mestilah dikemukakan dalam tiga salinan untuk kelulusan. Satu kenyataan yang jelas perlu dibuat mengesahkan bahawa semua permohonan telah mematuhi syarat-syarat yang dipersetujui, iaitu:-

- i** Bahawa tahun kewangan/akaun berakhir selepas 30 September 1998.
- ii** Kes tertakluk di bawah skim pembayaran ansuran (Seksyen 107B), kes pembayaran balik/kerugian, kes-kes syarikat yang dikecualikan atau kes-kes di mana cukai dipotong di bawah Seksyen 107A.

2.2.2 Senarai berasingan hendaklah disediakan bagi setiap kategori kes mengikut turutan nombor (Senarai-senarai ini hendaklah dihantar kepada cawangan yang berkenaan).

2.3 Lanjutan masa tidak akan dibenarkan selepas 31 Mei 1999 di mana Notis Pembayaran Ansuran (Seksyen 107B) tidak dikeluarkan atau di mana cukai tidak dipotong & bawah Seksyen 107A. Di mana peraturan telah dipersetujui untuk membuat pembayaran ansuran berdasarkan anggaran cukai yang kena dibayar, ansuran yang dibenarkan tidak boleh melebihi lima (5) ansuran dan ansuran terakhir dibuat selewat-lewatnya dalam bulan Oktober 1999.

2.4 Bagi kes-kes kerugian atau pembayaran balik di mana lanjutan masa telah dibenarkan tetapi kemudiannya didapati dikenakan cukai, peraturan untuk menjelaskan cukai anggaran secara ansuran sehingga 30 September 1999 perlu dibuat dengan segera. Di mana peraturan sebegini dibuat, cawangan penaksiran berkenaan hendaklah diberitahu. Dalam keadaan sedemikian, lanjutan masa tidak akan ditarik balik.

3 Borang Nyata yang dikembalikan dalam tempoh lanjutan masa yang dipersetujui ialah satu borang nyata yang lengkap dan disokong dengan penyata kewangan yang telah diaudit/disahkan, pengiraan cukai dan semua butiran yang perlu sebagaimana yang telah ditetapkan dalam borang nyata.

4 Perhatian juga ditarik kepada maklumat tambahan yang diminta dalam Borang C bagi tahun taksiran 1999. Adalah mandatori Borang Nyata diisi dengan lengkap. Sebarang pengemukaan Borang Nyata yang tidak lengkap akan dianggap lewat dan dikenakan penalti.

5 Satu petanda yang menunjukkan bahawa lanjutan masa telah dibenarkan hendaklah tertera di muka hadapan Borang Nyata di atas ruangan alamat pembayar cukai seperti kenyataan di bawah:-

"Lanjutan masa dibenarkan sehingga

6 Borang Nyata yang dialamatkan kepada pembayar cukai tertentu yang tidak lagi menjadi pelanggan, ianya tidak harus digunakan untuk pembayar cukai lain. Sebaliknya, borang itu hendaklah dikembalikan dengan catatan yang sewajarnya.

7 Kegagalan atau kelewatan pembayar cukai menyediakan akaun atau memberi maklumat pada akauntan atau ejen cukai tidak akan diterima sebagai alasan yang munasabah untuk lanjutan masa atau menghapuskan penalti.

8 Di mana lanjutan masa telah dibenarkan, berdasarkan pengakuan bahawa pembayar cukai itu tertakluk di bawah Skim Pembayaran Ansuran atau cukai telah dipotong di Bawah Seksyen 107A, dan kemudiannya didapati tidak benar, dengan itu dianggap tiada lanjutan masa diluluskan dan penalti yang sesuai akan dikenakan bagi pengemukaan lewat.

9 Semua kes kelab, pertubuhan perdagangan dan amanah, adalah tertakluk kepada syarat-syarat bagi kes OG.

10 DASAR PUNGUTAN

10.1 Dasar pungutan ialah mengutip cukai dalam tempoh yang ditetapkan dan melalui skim bayaran ansuran di Bawah Seksyen 107B Akta Cukai Pendapatan 1967 dan di bawah skim Potongan Cukai Berjadual.

10.2 Apa-apa kredit yang terdapat untuk seseorang pembayar cukai dari tahun sebelumnya boleh ditolak dari ansuran yang perlu dibayar. Walau bagaimanapun peraturan hendaklah terlebih dahulu dibuat dengan Cawangan Pungutan.

10.3 Tiada penalti dikenakan bagi pekerja-pekerja yang membayar cukai mereka melalui potongan gaji bulanan di bawah Kaedah Cukai Pendapatan (potongan Daripada Saraan) 1994. Di mana terdapat kes-kes yang jumlah potongannya tidak mencukupi untuk menjelaskan cukai yang telah ditaksir, penalti akan dikenakan sekiranya cukai yang tertunggak tidak dijelaskan selewat-lewatnya pada 31 Januari dalam tahun taksiran berikutnya.

10.4 Akauntan dan ejen cukai, dikehendaki menasihatkan pelanggan mereka mengenai keperluan membuat peruntukan yang mencukupi bagi bayaran cukai untuk mengelakkan penalti kerana lewat

membayar. Pembayar cukai selain daripada kes-kes SG telahpun mengetahui bahawa mereka harus memulakan bayaran dari bulan Januari atau Februari. Pembayar cukai yang belum memasuki skim pembayaran ansuran boleh memohon supaya dimasukkan ke dalam skim seksyen 107B jika notis taksiran bagi tahun semasa belum dikeluarkan kepadanya. Walau bagaimanapun, bayaran-bayaran ansuran tidak boleh dilanjutkan selepas bulan September atau Oktober 1999.

10.5 Mulai tahun 1999 notis taksiran akan dikeluarkan mengikut tarikh dicetak. Oleh itu, kelonggaran masa akan diberi kepada pembayar cukai untuk membuat bayaran di mana tempoh bayaran akan dilanjutkan selama 14 hari lagi. Penalti akan dikenakan selepas tempoh tersebut iaitu 6 (enam) minggu selepas tarikh notis taksiran.

11 Juruaudit yang bukan ejen cukai untuk syarikat yang diaudit hendaklah memaklumkan program ini kepada pelanggan mereka.

12 Ejen Cukai perlu mematuhi Kod Etika Ejen Cukai.

13 Lembaga Hasil Dalam Negeri, berhak menarik balik atau, mengubahsuai apa-apa konsesi yang telah dipersetujui.

Tarikh:

LHDN.01/32/(S) 193/21 Klt.11

LEMBAGA HASIL DALAM NEGERI

DATA FORMAT FOR APPLICATION OF EXTENSION TIME

a. Text File Format (ASCII)

FIELD	Ref. Number	Space	Company Name/Tax Payer Name	Space	Accounting Date	Space	Extension Of Time
POSITION (Column)	1-9	10	11-70	71	72-77	78	79-84
NO. OF CHARACTER	9	1	60	1	6	1	6
EXAMPLE	023456701		ABC SDN BHD		990630		990830
NOTE	Right Alignment	Blank	Name as printed on Return Form left alignment	Blank	YYMMDD Left alignment	Blank	YYMMDD Left alignment

b. Using Spreadsheet (Lotus 1.2.3/MS-Excel)

COLUMN	Column 1	Column 2	Column 3	Column 4
FIELD	Ref. Number	Company Name/Tax Payer Name	Accounting Date	Extension of Time
NO. OF CHARACTER/ COLUMN WIDTH	9	60	6	6
EXAMPLE	023456701	ABC SDN BHD	990630	990830
NOTE	Name same as printed on Return Form		YYMMDD	YYMMDD
	Right alignment ← _____ left alignment → ← _____ Use Label/Text category. Font size: 10 _____ →			

Example

CONTOH FORMAT DATA

Text format

023456709	ABC SDN BHD	990630	990830
021234500	SYARIKAT KUALA LUMPUR- KEPONG PERABOT DAN BARANG KACA SDN BHD	990228	990830
029090902	MAJU JAYA DAN BERSAUDARA SDN BHD	990331	990830

Using Spreadsheet

023456709	ABC SDN BHD	990630	990830
021234500	SYARIKAT KUALA LUMPUR- KEPONG PERABOT DAN BARANG KACA SDN BHD	990228	990830
029090902	MAJU JAYA DAN BERSAUDARA SDN BHD	990331	990830

Pertingatan:

- 1 Permohonan lanjutan masa bagi kes-kes IV (fail sementara) tidak perlu dimasukkan ke dalam disket.
- 2 Tajuk atau apa-apa nota seperti "pertukaran nama syarikat" tidak perlu dimasukkan.
- 3 Nama pembayar cukai/syarikat mesti sama seperti yang dicetak pada Borang Nyata, (Sebarang

pembetulan Nama Pembayar Cukai/Syarikat perlu dibuat semasa penghantaran Borang Bukan semasa Permohonan lanjutan masa). Walau bagaimanapun Catatan/Nota boleh dibuat pada hardcopy.

4 Jenis fail seperti "OG, C, T dll tidak perlu dimasukkan. Hanya masukan No. Rujukan sahaja.

5 Permohonan lanjutan masa bagi bilangan pembayar cukai 20 atau lebih perlu dikemukakan ke Cawangan Penaksiran berkenaan BERSAMA hardcopy dan disket.

6 Permohonan lanjutan masa bagi kes kurang 20 pembayar cukai, tidak perlu mengemukakan bersama disket. (Hanya hardcopy sahaja).

7 Permohonan melalui disket perlu menggunakan spesifikasi di atas sahaja. Permohonan yang menggunakan format selain daripada itu tidak akan dilayan.

8 Permohonan lanjutan masa menggunakan disket hanya bagi permohonan yang dibuat ke cawangan-cawangan penaksiran di lembah Klang (Cawangan Syarikat, Penaksiran Jalan Duta, Cawangan Tidak Bermaustatin, Cawangan Cheras, Cawangan Wangsa Maju, Cawangan Petaling Jaya, Cawangan Shah Alam, Cawangan Klang dan Cawangan Kg. Attap.

SENARAI PEMOHON LANJUTAN MASA

Hardcopy

NAMA EJEN CUKAI : Rashid Tax Sdn. Bhd.
NO. KELULUSAN : 943/2/98.

A) LANJUTAN MASA SEHINGGA: 30/06/1999 (35%).

i) JENIS FAIL: C (Syarikat)

BIL	NO. RUJUKAN	NAMA SYARIKAT/PEMBAYAR CUKAI	TARIKH PERAKAUNAN	TARIKH LANJUTAN MASA	SEK 107A	SEK 107B	BALIK	KES RUGI	KES SYARIKAT DIKENCUALIKAN
1	222222202	ALI BABA BERSAUDARA SDN BHD	980228	990630	Y	N	N	N	N
2	123456701	CEPAT CEPAT SDN BHD	980331	990630	N	N	N	Y	N
3	007654300	KAYU KAYAN PERABOT SDN BHD	980331	990630	Y	N	N	N	N
:	:	:	:	:	:	:	:	:	:
:	:	:	:	:	:	:	:	:	:
:	:	:	:	:	:	:	:	:	:

ii) JENIS FAIL: T (Badan Amanah/Harta Pesaka)

1	:	:	:	:	:	:	:	:	:
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:	:	:	:	:	:	:	:	:	:

B) LANJUTAN MASA SEHINGGA: 31/07/1999 (35%).

i) JENIS FAIL: C (Syarikat)

1	322222202	ALI BERSAUDARA SDN BHD	980228	990731	Y	N	N	N	N
2	023456701	DERAS SDN BHD	980331	990731	N	N	N	Y	N
3	107654300	KAYU PERABOT SDN BHD	980331	990731	Y	N	N	N	N
:	:	:	:	:	:	:	:	:	:
:	:	:	:	:	:	:	:	:	:
:	:	:	:	:	:	:	:	:	:

ii) JENIS FAIL: T (Badan Amanah/Harta Pesaka)

1	:	:	:	:	:	:	:	:	:
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:	:	:	:	:	:	:	:	:	:

C) LANJUTAN MASA SEHINGGA: 30/08/1999 (30%).

i) JENIS FAIL: C (Syarikat)

1	222222202	BABA BERSAUDARA SDN BHD	980228	990731	Y	N	N	N	N
2	123456701	ABC SDN BHD	980331	990731	N	N	N	Y	N
3	007654300	ABC PERABOT SDN BHD	980331	990731	Y	N	N	N	N
:	:	:	:	:	:	:	:	:	:
:	:	:	:	:	:	:	:	:	:
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ii) JENIS FAIL: T (Badan Amanah/Harta Pesaka)

1	:	:	:	:	:	:	:	:	:
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N: No
Y: Yes

Lembaga Hasil Dalam Negeri

Current Year Assessment
a brief summary

Points of Interest:

- ◆ Differences in preceding and current year basis of assessment.
- ◆ Main features of Current Year Assessment.
- ◆ Waiver of tax for 1999 income.
- ◆ Payment of tax under Current Year Assessment.

Points of changes to basis of tax assessment from year 2000

YEAR 1999 PRECEDING YEAR ASSESSMENT	YEAR 2000 CURRENT YEAR ASSESSMENT
---	---

The main differences between the basis of assessment in 1999 and the proposed assessment can be summarised as follows:

Preceding year assessment

- ◆ Tax is charged on income received in the preceding year. For example, tax for Year of Assessment 1999 refers to income received in the year 1998.
- ◆ Tax is charged and collected in the following year after the income was received.

Current year assessment

- ◆ Tax is charged on income received in the current year. For example, tax charged from Year of Assessment 2000 refers to income received in the year 2000.
- ◆ Tax is charged and collected in the same year that income is received.

Main features of the Current Year Assessment

- ◆ Where income received in a particular year is assessed and charged to tax within the same year, that assessment is known as current year assessment.

- ◆ For business income, tax in a current year assessment is charged on gains or profits arising in a 12 month accounting period ending in that same year.

The advantage of a current year assessment is that collection of tax is based on the taxpayer's ability to pay as well as on his current cash flow.

Income tax waiver on income received in year 1999

To reduce the tax burden as a result of implementing the current year assessment in the year 2000, tax is waived on income received in the year 1999. The following table illustrates how tax based on current year will be accomplished.

Income	Year of assessment	Tax charged
Salary and allowances received in 1998	Year of assessment 1999	Tax is charged in the year 1999
Salary and allowances received in 1999	Year of assessment 2000 (preceding)	Tax is waived on income received
Salary and allowances received in 2000	Year of Assessment 2000 (current)	Tax is charged in the year 2000

This waiver encompasses income received in the year 1999 and for the basis year of 1999.

EXAMPLE:

Z receives commission for 1999 from a direct selling company in September 1999. Income tax on that commission is waived for Year of Assessment 2000.

If income received in 1999 is not for the basis year 1999 but in fact refers to income for basis year 1998, tax is still charged for Year of Assessment 1999.

EXAMPLE:

S receives bonus from his employer for 1998 in February 1999. That income is subject to tax in Assessment Year 1999.

Income tax is not waived on a few sources of income in 1999 as follows:

- ◆ Dividend
- ◆ Income subjected to final tax
- ◆ Income assessed under the Income Tax (Petroleum) Act 1967
- ◆ Salary/wages of non-residents (including citizens) and foreign employees (non-citizens) that commence/cease employment in 1999.

The tax payer is still required to declare in his tax Return Form his income received in 1999 despite the fact that it is given a tax waiver.

Payment of tax under the Current Year Assessment

To implement the current year assessment in the year 2000, the following measures will be taken to facilitate the transition from the present system to the current year system.

- ◆ PCB deductions will be discontinued for a period of 12 months in 1999 for employees who commenced employment after January 1 1995 and for employees in Sabah and Sarawak since their deductions relates to current year income.
- ◆ PCB deductions for employees other than mentioned above will continue because their deductions refer to income 1998.
- ◆ For a company with an accounting year ending December 31, payment in 1999 is for tax charged on income for the year 1998. While payment in the year 2000 will be for tax charged on income for 1999. Thus, the company needs only to make arrangements for payment of tax for Year of Assessment 2000.
- ◆ For a company with an accounting year not ending at December 31, the company is required to pay tax for two years of assessment in the year 2000.

To illustrate, for the accounting year ending January 31 where income for the periods Feb 1 1999 - Jan 31 2000 (Year of Assessment 2000) and February 1 2000 - Jan 31 2001 (Year of Assessment 2001), the company is required to pay its tax in the year 2000. Payment for the period ending Jan 31 2000 would have commenced in 1999 but in that same year the company is still paying installments for its tax for Year of Assessment 1999.

In this instance, the company will only begin payment of tax for Year of Assessment 2000 in January 2000 and from February 2000, the company will begin payment of tax for Year of Assessment 2001.

For this reason, companies will be allowed to settle on an installment basis, all their tax liabilities for Year of Assessment 2000 until December 2001.

Reminders:

- ◆ The tax Return Form must be completed and filed to declare income received in 1999.
- ◆ PCB deductions for 1999 is discontinued for:
 - Employees who commenced work after 1.1.1995; and
 - Employees in Sabah and Sarawak.
- ◆ Companies with an accounting year ending other than December 31 are allowed to settle their tax for year 2000 income until the end of year 2001.

ERRATA

In our article "Minutes of the Dialogue Between the Inland Revenue Board and the Malaysian Institute of Taxation held on 25 June 1998 in Kuala Lumpur" on page 32, of the September 1998 issue, we apologise for an error in the table under the title Rental Income. The correct table is republished accordingly.

	Types	No. of Units (minimum)
i.	Factory	1
ii.	Warehouse	1
iii.	Office Complex	
	- the whole complex	1
	- within the complex	3
iv.	Shopping complex	
	- the whole complex	1
	- within the complex	3

Taksiran Tahun Semasa satu penjelasan ringkas

Apa yang menarik di dalam:

- ◆ Perbezaan asas taksiran tahun sebelum dengan tahun semasa
- ◆ Ciri-ciri utama Taksiran Tahun Semasa
- ◆ Cukai dilepaskan atas pendapatan tahun 1999
- ◆ Pembayaran cukai di bawah Taksiran Tahun Semasa

Perubahan pindaan kepada asas taksiran percukaian mulai tahun 2000

TAHUN 1999 TAKSIRAN TAHUN SEBELUM	TAHUN 2000 TAKSIRAN TAHUN SEMASA
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Perbezaan di antara asas taksiran tahun 1999 dan taksiran yang dicadangkan boleh diringkaskan seperti berikut:

Taksiran tahun sebelum

- ◆ Pengenaan cukai adalah atas pendapatan yang diperolehi dalam tahun sebelum. Misalnya, cukai bagi Tahun Taksiran 1999 adalah atas pendapatan yang diperolehi dalam tahun 1998.
- ◆ Cukai dikenakan dan dipungut atas pendapatan yang diperolehi dalam tahun selepas pendapatan itu diterima oleh pembayar cukai.

Taksiran tahun semasa

- ◆ Pengenaan cukai adalah atas pendapatan yang diperolehi dalam tahun semasa. Misalnya, cukai bagi Tahun Taksiran 2000 adalah atas pendapatan yang diperolehi dalam tahun 2000.
- ◆ Cukai dikenakan dan dipungut atas pendapatan

yang diperolehi dalam tahun yang sama pendapatan itu diterima oleh pembayar cukai.

Ciri-ciri utama percukaian yang berasaskan Taksiran Tahun Semasa

- ◆ Apabila pendapatan yang diperolehi dalam sesuatu tahun ditaksir dan dikenakan cukai pendapatan dalam tahun yang sama, asas taksiran itu dikenali sebagai taksiran tahun semasa.
- ◆ Bagi pendapatan perniagaan, cukai untuk taksiran tahun semasa adalah ditaksir ke atas keuntungan yang diperolehi dalam tempoh perakaunan 12 bulan yang terakhir dalam tahun yang sama.

Kebaikan taksiran berasaskan tahun semasa adalah cukai akan dipungut berdasarkan keupayaan membayar dan aliran tunai semasa pembayar cukai.

Cukai pendapatan dilepaskan bagi pendapatan tahun 1999

Untuk mengurangkan bebanan cukai akibat pelaksanaan taksiran tahun semasa dalam tahun 2000, cukai pendapatan adalah dilepaskan bagi pendapatan dalam tahun 1999. Jadual di bawah menunjukkan bagaimana percukaian berasaskan tahun semasa akan dilaksanakan.

Pendapatan	Tahun Taksiran	Pengenaan Cukai
Gaji dan elauan yang diterima dalam tahun 1998	Tahun Taksiran 1999	Pendapatan dikenakan cukai dalam tahun 1999
Gaji dan elauan yang diterima dalam tahun 1999	Tahun Taksiran 2000 (tahun sebelum)	Cukai atas Pendapatan dilepaskan
Gaji dan elauan yang diterima dalam tahun 2000	Tahun Taksiran 2000 (tahun semasa)	Pendapatan dikenakan cukai dalam tahun 2000

Pelepasan ini merangkumi pendapatan yang diterima dalam tahun 1999 dan pendapatan bagi tahun asas 1999.

CONTOH:

A menerima komisen untuk tahun 1999 daripada syarikat jualan langsung pada September 1999. Cukai pendapatan untuk tahun taksiran 2000 dilepaskan atas komisen tersebut.

Jika pendapatan yang diterima dalam tahun 1999 bukan pendapatan tahun asas 1999 tetapi merupakan pendapatan bagi tahun asas 1998 cukai pendapatan masih dikenakan dalam tahun taksiran 1999.

CONTOH:

S menerima bonus untuk tahun 1998 daripada majikannya dalam bulan Februari 1999. Pendapatan itu dikenakan cukai dalam tahun taksiran 1999.

Cukai pendapatan tidak dilepaskan bagi beberapa jenis pendapatan dalam tahun 1999 seperti berikut:

- ◆ Dividen
- ◆ Pendapatan yang tertakluk kepada cukai pegangan muktamad
- ◆ Pendapatan yang ditaksirkan di bawah Akta Cukai Pendapatan (Petroleum) 1967
- ◆ Pendapatan penggajian bukan pemastautin (termasuk warganegara) dan pekerja asing (bukan warganegara) yang mula/berhenti kerja di Malaysia dalam tahun 1999

Pembayar cukai masih perlu melaporkan pendapatan yang diperolehi dalam tahun 1999 di dalam Borang Nyata Pendapatan walaupun dia tidak dikenakan cukai.

Pembayaran cukai di bawah Taksiran Tahun Semasa

Bagi melaksanakan taksiran tahun semasa dalam tahun 2000, langkah-langkah berikut diambil untuk melicinkan peralihan dari sistem masa kini ke sistem taksiran tahun semasa.

- ◆ Potongan PCB bagi pekerja yang mula bekerja selepas 1 Januari 1995 dan pekerja di Sabah dan Sarawak dihentikan untuk tempoh 12 bulan dalam tahun 1999 kerana potongan itu adalah berkenaan pendapatan tahun semasa.

- ◆ Potongan PCB bagi pekerja di luar dari kumpulan tersebut di atas diteruskan kerana potongan ini adalah untuk pendapatan yang diperolehi dalam tahun 1998.

- ◆ Bagi syarikat yang mempunyai tahun kewangan berakhir 31 Disember, bayaran dalam tahun 1999 adalah untuk cukai pendapatan tahun 1999. Seterusnya, bayaran dalam tahun 2000 adalah untuk cukai pendapatan tahun 1999.

- ◆ Bagi syarikat di mana tahun kewangan berakhir selain daripada 31 Disember, syarikat perlu membayar cukai untuk dua tahun taksiran dalam tahun 2000.

Misalnya, bagi tahun kewangan berakhir 31 Januari, pendapatan bagi tempoh 1 Feb. 1999 - 31 Jan. 2000 (Tahun Taksiran 2000) dan tempoh 1 Feb. 2000 - 31 Jan. 2001 (Tahun Taksiran 2001), syarikat hendaklah membayar cukai dalam tahun 2000. Pembayaran untuk tempoh berakhir 31 Jan. 2000 sepatutnya bermula dalam tahun 1999 tetapi dalam tahun itu syarikat masih membuat ansuran untuk cukai Tahun Taksiran 1999.

Syarikat akan hanya mula membayar cukai Tahun Taksiran 2000 pada bulan Januari 2000 dan mulai bulan Februari 2000, syarikat akan membayar cukai untuk Tahun Taksiran 2001.

Kemudahan akan diberi kepada syarikat sehingga Disember 2001 untuk menjelaskan secara ansuran keseluruhan tanggungan cukai Tahun Taksiran 2000.

Perkara yang perlu diingati:

- ◆ Borang Nyata Pendapatan hendaklah diisi untuk melaporkan pendapatan yang diterima dalam tahun 1999.
- ◆ Potongan PCB tahun 1999 diberhentikan bagi:
 - Pekerja yang mula bekerja selepas 1-1-1995 dan
 - Pekerja di Sabah dan Sarawak.
- ◆ Kemudahan diberikan kepada syarikat yang mempunyai tahun kewangan berakhir selain daripada 31 Disember untuk menjelaskan cukai atas pendapatan tahun 2000 sehingga akhir tahun 2001 secara ansuran.

LEMBAGA HASIL DALAM NEGERI MALAYSIA TAKSIRAN TAHUN SEMASA Kesan Terhadap PCB

Potongan Cukai Berjadual (PCB)

PCB adalah skim pemungutan di mana setiap majikan diwajibkan memotong daripada saraan bulanan pekerja-pekerja mengikut Jadual PCB yang diwartakan bagi bayaran cukai. Ada 3 kategori pekerja yang terlibat dalam perlaksanaan Taksiran Tahun Semasa seperti berikut:

- Pekerja yang mula bekerja sebelum 1-1-1995
- Pekerja yang mula bekerja pada atau selepas 1-1-1995
- Pekerja di Sabah dan Sarawak

Bagi pekerja Kategori A, potongan cukai adalah bagi pendapatan yang diperolehi dalam tahun sebelumnya. Manakala pekerja Kategori B dan C, potongan cukai adalah bagi pendapatan tahun semasa.

KATEGORI A

Asas Taksiran	Tahun Sebelumnya					Tahun Semasa	
Tahun potongan PCB	1995	1996	1997	1998	1999	2000	
Tahun Pendapatan Diperolehi	1994	1995	1996	1997	1998	1999	2000
Tahun Cukai Ditaksir (Tahun Taksiran)	1995	1996	1997	1998	1999	@	2000

@ Cukai dilepaskan

KATEGORI B & C

Asas Taksiran	Tahun Sebelumnya					Tahun Semasa	
Tahun potongan PCB	1995	1996	1997	1998	1999	2000	
							Tiada potongan untuk tahun semasa

Tahun Pendapatan Diperolehi	1995	1996	1997	1998	1999	2000
Tahun Cukai Ditaksir (Tahun Taksiran)	1996	1997	1998	1999	@	2000

Cukai
dilepaskan

Arahan Memberhentikan PCB

LHDN telah mengeluarkan arakan kepada semua majikan membernarkan pemberhentian PCB untuk pekerja tertentu dalam tahun 1999. Pekerja yang terlibat adalah dari Kategori B dan C yang belum pernah dikenakan cukai sebelum 1-1-1995.

Walau bagaimanapun, arahan bersaing dari LHDN kepada majikan (melalui Borang CP 38) akan dikeluarkan jika pekerja-pekerja tersebut mempunyai cukai terhutang atas pendapatan lain seperti sewa yang diterima dalam tahun 1998.

Golongan pekerja yang masih perlu meneruskan potongan PCB mereka terdiri daripada:

- Pekerja yang telah bekerja sebelum 1-1-1995; dan
- Pekerja asing dan pekerja tidak bermastautin yang mula/berhenti bekerja dalam tahun 1999.

Bonus & Zakat Tahun 1999

Bonus 1999

	CONTOH 1	CONTOH 2
Tarikh mula bekerja	1-1-1995	1-1-1994
Hubungkait bonus dengan pengajian	Penggajian tempoh asas 1998	Penggajian tempoh asas 1998
Kedudukan PCB	- PCB diberhentikan - Bonus yang akan dikenakan cukai dipungut berasingan	- PCB diteruskan - Cukai hendaklah dipotong daripada bonus melalui PCB

Bagi kedua-dua contoh di atas bonus diterima adalah pendapatan yang terbit dan berhubungkait dengan pengajian dalam tahun 1998. Oleh itu, bonus tersebut dikenakan cukai bagi Tahun Taksiran 1999.

Zakat

Tuntutan rebat bagi zakat yang dibayar dalam tahun 1998 boleh dibenarkan bagi cukai yang dikenakan dalam Tahun Taksiran 1999.

Zakat untuk tahun 1999 boleh dibenarkan sebagai rebat bagi Tahun Taksiran 2000. Baki cukai yang kena dibayar adalah dilepaskan.

Permohonan untuk memperhentikan PCB kerana bayaran zakat hendaklah dibuat kepada Cawangan Pungutan.

Peringatan kepada majikan

Pihak majikan dikehendaki membuat potongan yang sewajarnya mengikut Jadual PCB dari gaji pekerja dan menghantar jumlah yang telah dipotong untuk sesuatu bulan kalendar

- ◆ Ke Cawangan Pungutan LHDN;
- ◆ Selewat-lewatnya pada hari ke 10 bulan berikutnya
- ◆ Pastikan nombor kad pengenalan (baru dan lama) dan nombor rujukan cukai pendapatan pekerja adalah betul;
- ◆ Memberitahu perubahan maklumat pekerja berhenti kerja, pertukaran tempat kerja dan sebagainya.

Semua cel/draf bank/wang pos/kiriman wang untuk bayaran hendaklah dipalang dan dibayar kepada Ketua Pengarah Hasil Dalam Negeri.

Pindaan kepada Jadual PCB (berkuatkuasa pada 1 Januari 1999)

Bagi pekerja yang bukan pemastautin atau yang tidak diketahui sebagai pemastautin di Malaysia, potongan bulanan adalah pada kadar 30 peratus daripada saraan

DIALOGUE WITH THE TREASURY DEPARTMENT ON THE CHANGEOVER TO CURRENT YEAR BASIS OF ASSESSMENT

We refer to the above and the Institute's Circular No. 12/98 dated 30 November 1998. Since then, the Institute together with the Malaysian Institute of Accountants (MIA), has set up a Sub-Committee to study the issues arising and to monitor the developments on the matter. We have worked closely with the relevant authority to study the impact of the proposed legislation and to ensure that the changeover is a smooth process.

We are in the midst of preparing a memorandum to the Treasury Department of the Ministry of Finance commenting on the issues arising. In this respect, we request for your feedback to make our memorandum more comprehensive and complete. If you wish to raise some *issues or clarify some doubts*, or comment on anticipated problems, kindly write to us as soon as possible so that we could collate the issues and present it to the relevant authority. We also invite your professional views and comments on the policies proposed in the abovementioned circular.

You may write to the Institute, attention to Mr. K.S. Lim or fax to number 03-2731016 or e-mail to kslim@mia.org.my.

DEADLINE FOR SUBMISSION OF FORM E

It was brought to the attention of the Institute that some members encountered difficulties in applying for extension of time to submit Form E. The Institute had brought this matter to the attention of the Operations Department of the Inland Revenue Board (IRB).

The IRB after considering the issues involved decided that the deadline for the submission of Form E is 30 April 1999. This would enable employees to submit their tax returns by 31 May 1999. Please note that no further extension would be granted.

Members who wish to apply for extension to 30 April 1999 must do so before 31 March 1999. Otherwise they have to file by 31 March 1999. Members who have their application for extension of time rejected may reapply to IRB.

IRB also informed that with effect from 1 January 1999, notice of assessment will be issued on the date it was printed. It is anticipated that the taxpayer will receive the notice at a much later date. To allow the taxpayer sufficient time to settle the tax, the IRB will only impose penalty on late payment, six weeks (42 days) after the date of the notice of assessment. Members are reminded that this concession will be gradually reduced once IRB is fully computerised.

Current Year Assessment

PART 1

Current Year Assessment

Questions and Answers

Compiled by
Ministry of Finance Malaysia &
Lembaga Hasil Dalam Negeri Malaysia

Question 1

What is meant by "current year assessment system"?

Answer:

Under the current year assessment system, income derived in the current year will be assessed and be liable to tax in the same year. In the 1999 Budget, it is proposed that the current year assessment system be implemented with effect from the year 2000. With this change, it would mean that income derived in the year 2000 will be assessed to tax in the same year.

Question 2

What is the difference between "current year assessment" and "preceding year assessment"?

Answer:

The difference between "current year assessment" and "preceding year assessment" is as follows:

"Current year assessment" means income derived in a current year will be assessed and liable to tax in the same year.

"Preceding year assessment" means income tax charged for a particular year is based on income that has been derived in the preceding year.

We are presently under the "preceding year assessment" system. As such, income derived in 1998 will be assessable in the year 1999 (Year Assessment 1999).

Question 3

What are the benefits under the "current year assessment system"?

Answer:

The benefit arising from a current year assessment system is that tax will be assessed and collected on income derived

in the same year. As such, the tax will be collected based on the ability to pay and the current cash flow position of the taxpayer. Under the preceding year assessment basis, tax is collected about a year after the income arises and this has resulted in cash flow problems to the taxpayers in the following year when they have to settle their taxes, particularly in times of recession or economic downturn.

Question 4

How does Lembaga Hasil Dalam Negeri (LHDN) collect taxes from taxpayers?

Answer:

The method of payment of income tax is determined according to the category of the taxpayers. Taxpayers are generally categorised as:

- (i) Employees (individuals only);
- (ii) Business (individuals and companies); and
- (iii) Others, including co-operatives, associations, trusts and estates of deceased individuals.

Employees

This category of taxpayers is subject to *Schedular Tax Deduction (STD)*. Under the STD, tax is deducted by the employer from the salary of the employee based on a schedule provided by LHDN.

Business

The business group comprises individuals (sole proprietors and partners) and companies. This category of taxpayers is subject to the instalment payment scheme. Under the present arrangement, taxpayers are allowed five (5) bimonthly instalments (January, March, May, July and September or February, April, June, August and October).

Others

Same as the business group mentioned above.

Question 5

What is meant by the "Schedular Tax Deduction" (STD)?

Answer:

Schedular Tax Deduction (STD) is a collection scheme whereby it is obligatory for each employer to deduct from the

salary of each of his employees according to a schedule determined by LHDN for payment of income tax of the employee.

Presently, there are 3 categories of employees who are subject to STD:

- (i) Employees who commenced employment before 1 January 1995;
- (ii) Employees who commenced employment after 1 January 1995; and
- (iii) Employees in Sabah and Sarawak.

Category (i)

For employees commencing employment prior to 1 January 1995, tax deduction is in respect of income derived from the preceding year.

Category (ii) and (iii)

For employees commencing employment after 1 January 1995 and employees in Sabah and Sarawak, tax deduction is for the income derived in the current year.

Question 6

What are the implications for taxpayers arising from the implementation of the current year assessment system in year 2000?

Answer:

With the implementation of the "current year assessment" system in year 2000, taxpayers will have to pay tax in year 2000 based on the income derived in the year 2000. However, as the assessment in year 1999 is still based on the preceding year basis, income for 1999 will be assessable to tax in year 2000 and payment of tax has to be made in 2000 too.

This means that the taxpayer would have to pay income tax for 2 years in the year 2000.

Question 7

How would the Government relieve the burden on the taxpayers having to pay tax for two years in one year as a result of the change to the current year assessment?

Answer:

To relieve the burden on taxpayers from payment of income tax for 2 years in one year, the Government proposed to waive income tax on the 1999 income. This means that in the year 2000, tax will not be charged on income for the basis period

1999. Tax that needs to be paid in year 2000 is based on income derived in the year 2000 only.

Even though income for basis year 1999 is waived from income tax, taxpayers are required to declare their income for the said year in the Return Form for Year of Assessment 2000.

Question 8

What are the types of income that are chargeable to tax?

Answer:

Income chargeable to tax following the provisions of the Income Tax Act, 1967 are as follows:

- (a) Employment income;
- (b) Business income;
- (c) Dividends, interest and discounts;
- (d) Rents, royalties and premiums;
- (e) Pension, annuities and other periodical payments; and
- (f) Other income not falling under any of the above.

Under Section 3 of the Income Tax Act 1967, remittances received by residents, other than companies, from outside Malaysia are chargeable to tax.

Question 9

What is meant by income for 1999 being waived from income tax?

Answer:

Income for 1999 which is to be waived from income tax is in respect of all income as stated under the answer for the question No. 8 above, derived from basis period 1999, except for dividend income. However, income derived by foreign employees and non-resident individuals who commenced or terminate their employment in Malaysia in the year 1999 will be subject to tax.

Income derived in the basis period 1999 means income arising and does not necessarily mean income received in the basis period 1999. Income received in the basis period 1999 but relating to employment or business transactions in the basis period 1998 or prior years will be subject to tax in the year the income arises and will therefore not be waived from income tax. For example, compensation received in year 1999 for cessation of employment which took place in 1998 will be considered as income for 1998 and not as income for 1999.

Question 10

What are the implications from the waiver of tax on taxpayers?

Answer:

The assessment and payment positions for each category of taxpayers resulting from the tax waiver on income derived from basis year 1999 are as follows:

- (a) Employees
Based on 3 categories of employees who are subject to STD:
 - (i) Employees who commenced employment before 1 January 1995;
 - (ii) Employees who commenced employment after 1 January 1995;
 - (iii) Employees in Sabah and Sarawak.

Category (i)

For employees under this category, deductions under STD will continue in the year 1999 for payment of tax on 1998 income. Employees are required to declare their 1998 income in the Return Form for Year of Assessment 1999 which will be issued in the early part of 1999, to be assessed for the Year of Assessment 1999. They will not be taxed on income arising in the year 1999 in year 2000. Beginning from year 2000, they will pay tax based on current year income (year 2000).

Category (ii) and (iii)

For employees under these categories, they are exempted from deduction of tax under STD in the year 1999 because they have already paid tax on their 1998 income through STD in the year 1998. However, such employees are still required to declare their income for 1998 by submitting Return Form for Year of Assessment 1999 to determine their actual tax liability. STD will recommence in respect of these categories in the year 2000.

- (b) Business
- (c) Others (co-operatives, associations, trusts, estate of deceased individuals)

For categories (b) and (c) above, they will continue to pay income tax through the instalment scheme as arranged for in 1999 on the income for basis period 1998. They are required to declare income for basis period 1998 for the Year of Assessment 1999. These categories will continue to pay tax in year 2000 but on current year income.

These groups of taxpayers will also not be assessed on income for basis period 1999 in the year 2000. However, they will be required to complete Return Form for Year of Assessment 2000 which will be issued in 2000, for declaration of

business profits/losses for basis period 1999, to enable the claim for losses to be carried forward to be determined.

Question 11

How is the tax treatment on non-residents as a result of the implementation of "current year assessment" system?

Answer:

Presently taxpayers who are non-residents are assessed as follows:

(i) Income Tax

Taxpayer	Rate of tax (%)
Individuals	30% of chargeable income
Companies	28% of chargeable income

(ii) Withholding Tax

Types of Income	Withholding Tax Rate(%)
Interest	15% on gross income - Final Tax
Technical Fees	10% on gross income - Final Tax
Royalties	10% on gross income - Final Tax
Income of foreign public entertainers	15% on gross income - Final Tax
Contract Payments	15% on contract payment - Not a Final Tax 5% on contract payment for non-resident employees - Not a Final Tax

Non-resident taxpayers are also presently subject to assessment on a preceding year basis and payment of tax for 2 years in one year will also arise in year 2000. Generally the non-resident taxpayers are also waived from tax on income derived in year 1999. However, non-resident individuals who commence employment in 1999 will be assessed to tax on their 1999 income.

In respect of withholding taxes, the payers in making payments to non-residents are required to withhold and remit to LHDN tax of the non-residents on specific income and at rates specified. The tax waiver on 1999 income will not be applicable to non-residents receiving income which is subject to withholding tax and considered as a final tax.

On the other hand, withholding tax on the service portion of contract payments is provided as a collection mechanism to ensure compliance of the non-residents to submit Return Forms and to settle their tax liability which will only be

determined in the following year. Thus, such withholding tax on the non-resident contractors are not final tax and the non-resident contractors will be given the waiver in respect of income derived in basis period 1999. However, withholding tax will still apply to ensure tax compliance of the non-resident contractors.

Question 12

Will the implementation of the "current year assessment" system affect the Government's cash flow?

Answer:

The implementation of the "current year assessment" system will enable tax on income derived by the taxpayer in a particular year to be collected in the same year too. This means that the Government's cash flow will not be affected by the implementation of current year assessment system but the cash flow will reflect the current economic performance.

Question 13

What are the categories of taxpayers which will not be granted the tax waiver on year 1999 income?

Answer:

The change from the "preceding year assessment" to "current year assessment" system involves the assessment system under the Income Tax Act 1967 and the waiver of tax on basis period 1999 income is given to avoid taxpayers having to pay two (2) years taxes in one year.

The categories of taxpayers not given the waiver are as follows:

- (i) foreign employees and non-resident individuals who commence or terminate their employment in year 1999;
- (ii) taxpayers subject to withholding tax where it is a final tax.

Question 14

Is "current year assessment" system applicable to the Petroleum Income Tax Act 1967?

Answer:

Current year assessment system is not applicable to the Petroleum Income Tax Act 1967. This decision is taken in view of the need for the Government to maximise tax revenue from the upstream petroleum industry which is exploiting the most important natural resource of the country that would be depleted after a period of time. Furthermore, the income tax element has been taken into consideration in the profit sharing contracts of this industry.

Question 15

What is the tax treatment on dividends with the implementation of the "current year assessment" system?

Answer:

With the implementation of the "current year assessment" system, any dividends distributed out of income from basis period 1999 will be exempted in the hands of the recipients (shareholders). For this purpose, companies are required to keep a separate account for income derived in the basis period 1999 on which income tax has been waived.

Question 16

What is the effect of the implementation of the "current year assessment" system on companies enjoying incentives under pioneer status?

Answer:

If the period of exemption under Pioneer Status overlaps the basis period 1999 where the tax is being waived, the Government will not extend the relevant pioneer period.

Question 17

How is the tax treatment of companies whose financial year is not the same as the calendar year?

Answer:

This Ministry takes note that there are companies whose financial year is not the same as the calendar year. For these companies, the implementation of the current year assessment system beginning from the year 2000 will subject them to financial difficulty even though income derived for the basis period 1999 is waived from tax. This is because they are still subject to payment of two years' tax in one year.

For example, a company having a financial year from 1 February to 31 January would have to pay tax on income derived during the period 1 February 1999 to 31 January 2000 as well 1 February 2000 to 31 January 2001 in the year 2000. In line with the objective to avoid the payment of income tax for two years in one year, those companies are required to start making tax payment in the month of January 2000 instead of February 1999 on income derived for the period 1 February 1999 to 31 January 2000. At the same time, those companies will also be allowed to settle their tax on income derived in the basis period 2000 until the end of 2001.

PART 2

Preparing For The Changeover Questions And Answers

Compiled by
Lembaga Hasil Dalam Negeri Malaysia

Question 1

What will happen in the year 2000?

Answer:

In the year 2000, there will be a change in the basis of assessment from the preceding year basis to the current year basis. The Income Tax Act 1967 will be amended to facilitate the change.

The year of assessment 2000 will be in respect of:

the basis period ending in the year 1999 (preceding year basis); or

the basis period ending in the year 2000 (current year basis).

The year of assessment following the year of assessment 2000 on preceding year basis shall be the year of assessment 2000 on current year basis.

Question 2

In the year 2000 will I be liable to tax on my income earned in 1999?

Answer:

You are liable to tax on your income earned in 1999 for the Year of Assessment 2000 on a preceding year basis but as a result of the waiver, you will not have to pay the tax on the 1999 income.

Question 3

Will Return Forms be issued for Year of Assessment 2000 (Preceding Year)?

Answer:

Return Forms for Year of Assessment 2000 will be issued as usual at the beginning of year 2000 (February). Taxpayers will be required to complete and submit Return Forms for the Year of Assessment 2000 declaring the income arising in 1999. Tax that would have been chargeable will be waived.

Question 4

When will the Return Form to declare the income for year 2000 be issued?

Answer:

The Return Form for the Year of Assessment 2000 requiring taxpayer to declare his income for the year 2000 will be issued at the beginning of the year 2001.

Question 5

If my tax for Year of Assessment 2000 on income earned in 1999 is waived, why do I need to file a return for the Year of Assessment 2000?

Answer:

The return is required by LHDN to determine whether you are entitled to the waiver and if you have business income, to compute the capital allowances and Losses (if any) due to you.

Question 6

Will Notices of Assessment be issued?

Answer:

Notices of Assessment will be issued for taxable cases. For companies, tax computations will be issued for purposes of confirming the exempt account.

Question 7

Will tax have to be computed for the Year of Assessment 2000?

Answer:

The Return Form for the Year of Assessment 2000 submitted to LHDN has to be accompanied by accounts and tax computation. Capital allowances will be allowed in arriving at the statutory income of the company, whether or not claimed. Tax liability will be determined and any tax payable will be waived.

Question 8

What income is not included in the waiver?

Answer:

The waiver of tax for Year of Assessment 2000 is not given across the board to all income arising from 1999. The following income and categories of taxpayer are subject to tax:

- Dividend.
- Income which is subject to final withholding tax (interest, royalties, technical fees).
- Non-citizens and non-resident individuals who commence or cease employment in 1999.

Question 9

How would dividend income be taxed?

Answer:

Dividend income will be subject to tax in the Year of Assessment 2000. The tax on dividend can be worked out as follows:

EXAMPLE 1

In 1999, Mr. Tan receives dividend income only. His dividend income will be subject to tax for Year of Assessment 2000. His tax is computed as follows:

Gross Dividend	RM 32,000
(tax deducted at source RM8,960.00)	
Less: Approved Donations	200
	<hr/> 31,800
Less: Personal Relief	15,000
	<hr/> 16,800
Tax on first 10,000	250
Tax on balance @ 6%	408
	<hr/> 658
Less: Tax deducted at source	8,960
Tax Repayable	<hr/> 8,302

EXAMPLE 2

In 1999, Mr. Tan receives rental income of RM120,000 besides dividend income of RM32,000. Tax on rental income will be waived. The computation of tax for Year of Assessment 2000 is computed as follows:

	(A) With Dividend RM	(B) Without Dividend RM
Gross Dividend	32,000	-
(tax deducted at source RM8,960.00)		
Rental	120,000	120,000
	<hr/> 152,000	<hr/> 120,000
Less: Approved Donations	200	200
	<hr/> 151,800	<hr/> 119,800
Less: Personal Relief	15,000	15,000
	<hr/> 136,800	<hr/> 104,800
Chargeable Income		
Tax on first 100,000	16,750	16,750
Tax on balance @ 29%	10,672	1,392
	<hr/> 27,422	<hr/> 18,142
Tax Payable		

Therefore:

Tax on Dividend (A) - (B)	
(27,422 - 18,142)	= 9,280
Less: Tax deducted at source	8,960
	<hr/> 320
Tax Payable	

Question 10

What happens to dividend received as part of business income?

Answer:

Dividend of such nature is still subject to tax for Year of Assessment 2000 and Section 110 credit (tax deducted at source) will be set off accordingly.

EXAMPLE 1

ABC Sdn. Bhd. is an investment dealing company. Dividends are assessed as part of the business income. Tax on business and interest income is waived. The computation of tax on dividend income for Year of Assessment is as follows:

Year of Assessment 2000 (preceding year)

	(A) With Dividend RM	(B) Without Dividend RM
Business (Statutory Income)	100,000	100,000
Dividend	60,000	-
Interest	40,000	40,000
	<hr/> 200,000	<hr/> 140,000
Tax @ 28%	56,000	39,200
	<hr/>	<hr/>
Therefore: Tax On Dividend (A) - (B)		
(56,000-39,200)	=	16,800
Less: Tax deducted at source		16,800
		<hr/> NIL
Payable		

EXAMPLE 2

XYZ Bhd. is an investment dealing company and also receives rent from its properties. Dividend income is taxed as part of business income. For the Year of Assessment 2000, the tax computation on dividend income is as follows:

Year of Assessment 2000 (preceding year)

	(A) With Dividend	(B) Without Dividend
	RM	RM
Business (Statutory Income)	20,000	20,000
Dividend	75,000	-
Less: Interest expense	25,000	50,000
Rent	40,000	40,000
	<hr/> 110,000	<hr/> 60,000
Tax @ 28%	<hr/> 30,800	<hr/> 16,800
Therefore: Tax on Dividend (A) - (B)		
30,800 - 16,800	=	14,000
Less: Tax deducted at source		21,000
Tax Repayable		<hr/> 7,000

Question 11

Where would a non-citizen or non-resident individual be taxed on his employment income?

Answer:

A non-citizen or non-resident individual will be subject to tax for the Year of Assessment 2000 (preceding year) if he commences or ceases his employment in 1999. The tax on such income can be worked out as follows:

EXAMPLE 1

Mr. Olivier Laurent is a Canadian citizen and has been working in Malaysia since 1992. He ceases employment in June 1999 and his salary for the period 1.1.1999 to 30.6.1999 is RM76,000. His tax for the Year of Assessment 2000 is computed as follows:

	RM	RM
Employment income		76,000
Less: Personal Relief		
Individual	5,000	
Wife	3,000	
Child	1,600	
Insurance/EPF	5,000	14,600
	<hr/>	<hr/>
Chargeable Income		61,400
Tax on first 50,000		4,750
Tax on balance @ 21%		2,394
	<hr/>	<hr/>
Tax Payable		7,144

EXAMPLE 2

Mr. Normura arrives in Malaysia on 1 October 1999 and commences employment in Malaysia from 2 October 1999 to 31 December 1999. He receives a salary of RM45,000 from October to December 1999.

Mr. Normura is non-resident for the basis year 1999 and his tax for Year of Assessment 2000 is computed as follows:

Tax payable RM45,000 @ 30% = **RM13,500**

Question 12

How will companies that change their financial year be affected in the waiver year?

Answer:

The basis period for a Year of Assessment 2000 considered for the waiver will follow that of the financial year of the company. Any company making up accounts of more than 12 months will however be given a waiver of tax for period of 12 months only. The balance will be taxed.

EXAMPLE

PQR Bhd. makes up its accounts for the following periods:

- 1.7.1997 - 30.6.1998 (12 months)
- 1.7.1998 - 31.12.1999 (18 months)
- 1.1.2000 - 31.12.2000 (12 months)

The waiver of tax on profits of PQR Bhd. is as follows:

Basis Period	Year of Assessment
1.7.1997-30.6.1998	1999 (taxed)
1.7.1998-30.6.1999	2000 (waived) (Preceding Year Basis)
1.7.1999-31.12.1999 1.1.2000-31.12.2000	2000 (taxed) (Current Year Basis)

Question 13

What happens if a company commences business in 1999 and closes its first accounts in year 2000?

Answer:

For example, if a company commences business on 1.7.1999 and makes up its first accounts of 12 months to 30.6.2000, it will not be entitled to the waiver.

Question 14

What happens to business losses and unabsorbed capital allowances brought forward to Year of Assessment 2000 (preceding year)?

Answer:

Based on the Return Forms and accounts submitted for the Year of Assessment 2000 (preceding year) the company's tax will be computed as usual, where unabsorbed business losses and capital allowances brought forward will be allowed. Any tax payable will then be waived.

However, if there are Losses to be carried forward, such losses and capital allowances will be carried forward to the Year of Assessment 2000 (current year).

Question 15

Will dividends distributed out of income on which tax has been waived be exempt from tax in the hands of the shareholders?

Answer:

An amount equal to the chargeable income upon which tax is waived shall be credited to an exempt account to be kept by the company for distribution of exempt dividends. If the shareholder is a company then any dividend paid out of such exempt dividend income will also be exempt in the hands of the shareholders.

Question 16

Will dividends distributed from an exempt account in respect of income on which tax has been waived, be subject to tax if such dividends are paid in 1999?

Answer:

Any dividends distributed from the exempt account will not be subject to tax for the Year of Assessment 2000 (preceding year).

For example, DEF Bhd's accounting period is 30 June. Tax on income arising in basis period ending 30.6.1999 for Year of Assessment 2000 is waived and the company makes a dividend distribution out of the exempt account on 30.10.1999. Such dividend distribution will also be tax exempt in the hands of the shareholders for the Year of assessment 2000 (preceding year).

NOTE:

The above 'Current Year Assessment' is reproduced from a booklet compiled by the Ministry of Finance Malaysia and the Inland Revenue Board (IRB) Malaysia.

The following is an extract of the minutes of meeting of the Service Tax Division of the Royal Customs and Excise Department and the Malaysian Institute of Accountants and the Malaysian Institute of Taxation which was held on 4 December, 1998.

Kertas Minit Bahagian Cukai Dalamam

IBU PEJABAT KASTAM DAN EKSAIS DIRAJA MALAYSIA

Bahagian II - Kandungan Minit

2 PENJELASAN MIA / MIT

2.1 En. Neoh memberikan penjelasan bahawa MIA ditubuhkan dibawah Akta Akauntan 1967 dengan keahlian masakini melebihi 12,000 yang merangkumi Public Accountants dan Registered Accountants. Antara aktiviti yang dijalankan ialah auditing, accounting, insolvency practice, taxation dan sebagainya.

2.2 Dimaklumkan bahawa konsep cukai jualan dan cukai perkhidmatan (CJ & CP) adalah amat mudah apabila mula diperkenalkan, tetapi sejak akhir-akhir ini berlaku banyak perubahan yang mengakibatkan ianya menjadi bertambah rumit dan kompleks. Pihak MIA/MIT berpendapat bahawa konsep pemegang lesen sebagai pemungut cukai (tax agent) telah bertukar kepada pembayar cukai (tax payer).

2.3 En. Lee pula menerangkan bahawa MIT telah ditubuhkan di bawah naungan MIA dengan menjalankan aktiviti khusus berhubung dengan percukaian dengan keahlian lebih daripada 2,000.

2.4 Seterusnya mereka meminta pihak MIA dan MIT dijemput bersama dalam merangka dan mengkaji sesuatu prosedur dan perundangan yang

berkaitan dengan sesuatu polisi baru yang diperkenalkan untuk mengelakkan kekeliruan dan salahfaham berhubung dengan pelaksanaannya. Dimaklumkan bahawa mereka telah menubuhkan pasukan bagi meneliti perkara / polisi yang telah dibuat oleh Kerajaan dan khususnya berkaitan cadangan belanjawan. Pihaknya sedia memberikan kerjasama dan input yang dapat membantu pelaksanaannya. Pihaknya berpandangan bahawa pemegang lesen tidak perlu dibebankan dengan masalah hutang lapuk yang timbul akibat pelanggan enggan menjelaskan bayaran.

3 SESI DIALOG

3.1 'Annual Sales Turnover'

Pihak MIA/MIT menunjuk kepada Sek.3 Akta bahawa perkhidmatan yang ditetapkan yang diberikan oleh atau di tempat perniagaan / perniagaan profesional yang ditetapkan terlakuk kepada cukai perkhidmatan.

Bagi perkhidmatan pengurusan, ianya menjadi perkhidmatan yang ditetapkan mulai 1.1.1998. Oleh yang demikian, pihaknya membangkitkan bahawa hanya perkhidmatan pengurusan yang diberi mulai 1.1.1998 boleh diambil kira bagi pengiraan 'threshold'. Namun amalan Jabatan adalah menggunakan revolving method dengan mengambil kira jumlah jualan perolehan 12 bulan

kebelakang (iaitu Jan - Dis 1997) bagi pemiagaan sediaada.

Keduanya, tiada defnisi 'annual sales tumover'. Secara ringkas ianya bermaksud 12 bulan kalendar (Jan - Dis) atau 1 tahun kewangan (financial year). Dibangkitkan bahawa kaedah pengiraan 'threshold' menggunakan revolving method tidak tepat kerana 12 bulan tidak semestinya 1 tahun.

Pihaknya berpendapat bahawa faktor masa (time frame) adalah amat penting bagi pelaksanaan cukai oleh kastam. Masalah timbul dari kelewatan permohonan lesen dan pembayaran cukai. Pihaknya berharap dalam tempoh peralihan (transition), sekiranya dapat dipertimbangkan pengecualian daripada pengenaan penalti yang disebabkan oleh kekeliruan atas intepretasi jualan perolehan tahunan bagi menentukan pelesenan. Hasil analisis pihaknya ternyata bahawa pertimbangan berkenaan yang dipohon tidak akan menyebabkan sebarang kehilangan hasil Jabatan.

Pengarah Bahagian Cukai Dalammen menegaskan bahawa Ketua Pengarah (KPK) mempunyai kuasa mengikut Sek.42 Akta untuk menentukan cara pengiraan 'threshold' menggunakan (revolving method) dan menasihatkan supaya syarikat untuk mematuhiya bagi tujuan permohonan lesen. Jabatan tidak mempunyai kuasa untuk pertimbangan atas penalti, namun pihak syarikat boleh mengemukakan rayuan untuk meremiti penalti terlibat kepada Menteri Kewangan.

PKPK CP menambah bahawa kaedah tersebut telah digunakan sebagai 'yardstick' sejak cukai perkhidmatan diperkenalkan kepada golongan profesional. Kaedah ini juga telah digunakan oleh beberapa negara lain dalam sistem percukaian mereka. Berhubung dengan tanggungjawab memohon lesen, Datuk Ketua Pengarah Kastam pernah memberitahu bahawa setiap syarikat adalah bertanggungjawab untuk memonitor secara berterusan amaun jualanannya bagi tujuan pelesenan, bukannya mengikut setiap tahun.

Tuan Pengerusi menegaskan bahawa Datuk Ketua Pengarah Kastam menggunakan kuasanya untuk menentukan keedah pengiraan 'threshold' dan perlu dipatuhi oleh setiap syarikat.

Atas semangat kerjasama, pihak MIA/MIT akan memaklumkan dan menyebarkan maklumat

keputusan menggunakan kaedah (revolving method) yang telah ditetapkan oleh Datuk Ketua Pengarah Kastam bagi tujuan pengiraan jualan perolehan tahunan.

3.2 'Export Taxable Services'

Pihak MIA/MIT berpandangan bahawa export (taxable services) tidak sepatutnya dimasukkan kedalam pengiraan 'threshold' bagi pelesenan. Rasionalnya adalah untuk memberi keadilan kepada syarikat.

Berdasarkan kepada Sek.3 Akta merujuk (kepada prescribed service as taxable service). Manakala Sek.2 Akta pula menjelaskan bahawa taxable service adalah perkhidmatan yang dikenakan cukai dibawah Sek.3. Oleh yang demikian, jelas bahawa perkhidmatan eksport tidak dikenakan cukai dan bukan taxable service dan tidak boleh diambilkira dalam pengiraan 'threshold' untuk pelesenan.

PKPK CP menjelaskan bahawa perkhidmatan eksport juga perlu diambilkira dalam pengiraan 'threshold'. Ini telah diamalkan sejak dulu lagi. Sek. 3 dipinda bertujuan hanya untuk mengecualikan perkhidmatan bercukai yang dieksportkan daripada dikenakan cukai perkhidmatan.

Tuan Pengerusi memaklumkan bahawa Jabatan akan memberi perhatian atas perkara ini dan satu keputusan akan ditetapkan kelak setelah mendapat ulasan dan maklumat lengkap.

3.3 'Place of Business'

Pihak MIA/MIT membangkitkan masalah konsep cukai perkhidmatan atas (prescribed establishments). Pihaknya berpendapat bahawa cukai perkhidmatan perlu dikenakan berdasarkan tempat perniagaan (place of business) sepertimana yang dinyatakan dalam Jaduai Kedua, Peraturan-Peraturan Cukai Perkhidmatan 1975. Namun begitu, Jabatan kini telah menggunakan konsep pelesenan berdasarkan kepada entiti.

PKPK CP menarik perhatian kepada buku nota kastam yang telah dikeluarkan berhubung cukai perkhidmatan yang menjelaskan bahawa sesebuah syarikat itu diwujudkan secara sah (legally constituted) sebagai suatu entiti. Oleh yang demikian, pelesenan perlu menggunakan entiti sebagai asas,

demikian juga dengan pengiraan 'threshold' pelesenan. Sek. 8 Akta jelas menyatakan bahawa pelesenan adalah mengikut entiti bukannya tempat. Sek.3 pula menunjuk pengenaan cukai atas perkhidmatan yang ditetapkan dan tempat-tempat pemiagaan yang ditetapkan. Jika diperhatikan Jadual kedua bukan sahaja menyatakan tempat perniagaan tetapi juga syarikat-syarikat tertentu.

3.4 'Cross Categories To Determine Threshold'

Pihak MIA/MIT membangkitkan isu (cross category) perkhidmatan untuk tujuan penentuan 'threshold'. Terdapat tempat perniagaan yang ditetapkan yang memberi beberapa jenis perkhidmatan yang ditetapkan mempunyai 'threshold' yang berlainan.

PKPK CP menunjuk kepada Jadual Kedua, senarai perkhidmatan yang ditetapkan adalah terbuka, tidak khusus kepada tempat pemiagaan yang ditetapkan kecuali perkhidmatan sukan dan rekreasi oleh Kelab Persendirian. Oleh yang demikian sesuatu tempat perniagaan yang ditetapkan, amaun 'threshold' dikira bagi semua perkhidmatan yang ditetapkan yang disedia atau dibekalkan olehnya.

3.5 'Invoicing'

Pihak MIA/MIT memaklumkan amalan pemiagaan masakini mengeluarkan invoice terdahulu (advanced invoicing) sebelum perkhidmatan disediakan atau dibekalkan. Dalam perkara ini pihaknya berpendapat bahawa cukai perkhidmatan tidak dikenakan sebelum perkhidmatan disediakan atau dibekalkan.

Memandangkan perkara ini telah menjadi amalan masakini, dalam keadaan kegawatan ekonomi, dirasakan pihak Jabatan tidak wajar mengambil tindakan untuk menghadkan prosedur pengeluaran invoice secara terdahulu. Sekiranya boleh, pindaan undang-undang perlu dibuat bagi perkara ini.

PKPK CP merujuk kepada Sek.14 Akta yang menyatakan cukai perlu dijelaskan setelah pembayaran diterima daripada pelanggan atas perkhidmatan yang disediakan/dibekalkan. Dalam perkara ini, invoice digunakan untuk memonitor tempoh 12 bulan yang dibenarkan.

Oleh yang demikian, sekiranya tiada pembayaran diterima daripada pelanggan dalam tempoh 12 bulan dari tarikh invoice, pemegang lesen bertanggungjawab menjelaskan cukai tersebut, tidak menyentuh sama ada perkhidmatan telah disediakan atau tidak.

Dalam perkara ini, pemegang lesen telah diberikan kelonggaran untuk bayar cukai setelah bayaran diterima daripada pelanggan dan dihadkan bagi tempoh 12 bulan. Sek. 10 Akta menyatakan invoice hendaklah dikeluarkan bagi perkhidmatan yang disediakan atau dibekalkan dan cukai perkhidmatan hendaklah ditunjukkan secara berasingan. Ini bermaksud invoice hanya dikeluarkan apabila perkhidmatan telah disediakan atau dibekalkan. Oleh yang demikian, terpuanglah kepada pemegang lesen untuk menentukan kaedah pengeluaran invoice masing-masing.

3.6 'Disbursements'

Pihak MIA/MIT meminta penjelasan berhubung (disbursement). Bagi menyebarkan keseragaman maklumat berkaitan, pihaknya mencadangkan supaya diadakan (road show) dengan MIA/MIT dan pihak Jabatan.

Pengarah Bahagian Cukai Dalamam memaklumkan bahawa tidak perubahan berhubung isu (disbursements) sepertimana yang dinyatakan dalam buku maklumat kastam terdahulu.

PKPK CP menerangkan bahawa konsep cukai perkhidmatan tidak sama dengan konsep cukai pendapatan. Cukai perkhidmatan dikenakan atas / menggunakan caj / harga sebenar, bukannya atas keuntungan sepertimana cukai pendapatan. Oleh yang demikian, atas isu (disbursement) ini, Jabatan akan mengambil tindakan yang sewajarnya untuk menjelaskan dan menetapkan (disbursements) tertentu sahaja yang dibenarkan.

3.7 'Secretarial Services'

Pihak MIA/MIT ingin mendapatkan pengesahan atas syarikat yang memberi perkhidmatan (secretarial services) yang terlibat dalam perkhidmatan membeli dan menjual (shelf company).

PKPK CP mengesahkan perkhidmatan untuk pembelian dan penjualan shelf company tidak

tertakluk kepada cukai perkhidmatan.

3.8 'Non Compliance To Service Tax'

Masalah teknikal seperti intepretasi annual sales turnover dan kaedah pengiraan 'threshold' bagi tujuan pelesenan menyebabkan kelewatan permohonan lesen dan tuntutan cukai dan penalti. Dalam kes ini, Jabatan akan membuat laporan dan ulasan sewajarnya kepada Perbendaharaan atas rayuan meremit penalti terlibat untuk kelulusan Menteri.

Pengarah Bahagian Cukai Dalamam memaklumkan bahawa Datuk Ketua Pengarah Kastam telah menyuarakan perkara ini dalam taklimat beliau semasa lawatan Y.B. Menteri Kewangan II ke Jabatan baru-baru ini.

Walaubagaimanapun, pihak MIA/MIT hendaklah memaklumkan kepada ahli-ahlinya supaya mendapatkan pengesahan dan maklumat lanjut daripada Jabatan jika menghadapi masalah dan kekeliruan.

Pihak MIA/MIT mencadangkan kerjasama dibuat untuk mencetak dan mengeluarkan buku panduan yang komprehensif secara usahasama.

4 RUMUSAN

4.1 Tuan Pengerusi memaklumkan bahawa Jabatan akan memberikan perhatian sewajarnya kepada beberapa perkara yang dibangkitkan. Jabatan akan mengkaji perundangan terlibat untuk memastikan tiada masaalah pelaksanaannya. Cadangan dan kerjasama yang diberikan untuk mengeluarkan buku panduan cukai perkhidmatan akan diberikan pertimbangan sewajarnya.

4.2 Pengarah Bahagian Cukai Dalamam menasihatkan supaya pemohon lesen menghadiri majlis penyerahan lesen yang di buat oleh pihak Jabatan dalam usaha untuk memberikan maklumat dan penerangan berhubung cukai perkhidmatan.

4.3 PKPK CP mengingatkan bahawa tiada peruntukan untuk hutang lapuk dalam Akta Cukai Perkhidmatan. Walaupun difahamkan beberapa rayuan telah dikemukakan kepada Menteri berhubung dengannya, namun tiada keputusan dikeluarkan. Pihak yang terlibat boleh mengemukakan rayuan meremit / pulangan cukai/penalti terlibat, tetapi dimaklumkan bahawa pihak Perbendaharaan amat tegas dan belum ada kelulusan meremit cukai/penalti atas hutang lapuk dalam tahun ini

5 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. Mesyuarat ditangguhkan pada jam 12 00 tengahari.

Disediakan oleh:

(BADARUDDIN AHMAD)

Penguasa Kastam

Bahagian Cukai Dalamam

Cawangan Cukai Perkhidmatan Cawangan
Ibu Pejabat

Disemak oleh:

(LYDIA WONG)

Pen. Kanan Pengarah Kastam

Bahagian Cukai Dalamam

Cukai Perkhidmatan

Ibu Pejabat.

Disahkan Oleh:

(IBRAHIM BIN MAT)

Tim. Ketua Pengarah Kastam

(Pelaksanaan)

Ibu Pejabat

memorandum to

The Royal Customs And Excise

on issues regarding

Service Tax

Since the last meeting with the Department of Royal Custom and Excise, we have received a number of queries from members, particularly on issues relating to service tax, which require clarification from the Department. We have appended below some of the pertinent issues which need to be resolved the soonest possible.

1 Interpretation of Annual Sales Turnover

There is no statutory definition for the term [Annual Sales Turnover (AST)]. The change of interpretation by the Customs Department on the term from "successive 12-month period" to "revolving 12-month period" has caused great concern among taxpayers. It must be pointed out that the ordinary meaning of "Annual" is yearly, or every successive 12-month period (i.e. either calendar year or financial year of the taxpayer). Thus annual account does not mean a revolving 12-month account but rather a successive 12-month account. We believe that words in the Act should be given their ordinary meaning unless they are specifically defined by the Act or subsidiary legislation. Therefore the interpretation of the Customs Department is not in accordance with the law.

Some of our clients have been caught unawares of the change in interpretation and therefore have not monitored their sales on the monthly basis the past year or so. A substantial number find it burdensome to monitor their sales on a monthly basis to determine if they require a service tax licence.

It is envisaged that this interpretation will thus increase the workload for the Customs Department which is already short-staffed. This is because they are unable to make use of the independent checks conducted by the auditor on the sales figures (via the annual financial statements).

One problem arising from the new interpretation is the revocation of service tax licence. Will the Customs Department adopt the same interpretation when revoking the service tax licence? If so, in instances where short-term contract sales formed substantial part of the companies' gross turnover, it is submitted that the AST of some taxpayers may fall below the required threshold during certain months of the financial year and thereby make them ineligible to hold a service tax licence and thus unable to charge service tax. When that happens, application for revocation of licence and re-issue of licence may occur frequently, thus creating a lot of administration work for the Customs Department.

2 Determination of Threshold of Annual Sales Turnover

In our view, the problems relating to determination of threshold can be categorised into two (2) aspects, namely,

- i The scope of AST
- ii The basis of computation of threshold

The Scope of AST

There is no statutory definition of AST. Under Schedule 2 of the Service Tax Act 1975 (the Act), prescribed establishments or prescribed professional establishments are establishments "having AST of of prescribed services". It follows that threshold is calculated based on the value of prescribed services. Section 3 of the Act refers to prescribed service as taxable service. Section 2 of the Act further clarifies taxable service as "service provided in respect of which service tax is chargeable under Section 3".

a Since export taxable service is not chargeable under Section 3 of the Act, it follows that export taxable service should not be taken into account in the determination of AST for the purposes of computing the threshold. We believe that it is not the intention of Parliament to penalise export oriented establishments to provide incidental services to the locals. It is also not in line with government policy to promote the export of services and improve balance of payments position.

b As the threshold is calculated based on the value of "AST of prescribed services", services rendered prior to the date, such services become prescribed services, ought not to be taken into account in determining threshold of prescribed services.

Currently, the Customs Department has taken services rendered prior to the services become prescribed services in determining the threshold. This has caused an anomaly as shown in the following example:

A local management company has been carrying on services locally for the past three years and has an AST of RM500,000. On 1 January 1998 provision of management services became a prescribed service. Based on past 12-month AST (when the services were not considered prescribed services), the Customs Department has considered it to be a prescribed establishment on 1 January 1998. It would be required to be licensed for collecting service tax from 1 January 1998. Whereas its competitor from overseas, who has been incorporated in Malaysia on say, 1 December 1997, having an estimated AST of 2 million, will not be a prescribed establishment on 1 January 1998 until it reaches AST of RM300,000 in say 1 March 1998. This has put the existing companies on an unequal footing.

The Basis of Computation

The Second Schedule to the Service Tax Regulations 1975 provides that prescribed establishment or

prescribed professional establishment is an establishment having an AST of of prescribed goods and/or prescribed services. There is no provision in the Act on the manner by which the threshold shall be determined.

Section 7 of the Act stipulates that "service tax shall be charged on and paid by any person (in this Act referred to as taxable person) who carries on business of providing taxable service or selling or providing taxable goods either in any prescribed professional establishment or prescribed establishment."

Section 3 of the Act provides that service tax shall be charged "in respect of any prescribed service provided by or in any prescribed establishment or prescribed professional establishment except for exported taxable service ; and any prescribed goods sold or provided either by or in any prescribed professional establishment or prescribed establishment."

a There is no legal definition as to what constitutes an establishment. Based on Section 7 of the Act, it appears that establishment is the place of business and is not an entity or taxable person. This interpretation is supported by the National Language texts of the Act and the Regulations, which states that "establishment" is "tempat-tempat perniagaan".

However, Parts A & B of the Second Schedule of the Service Tax Regulations 1975 indicates that establishment can either mean place of business (as in para. 7, Part A of Second Schedule) or business entity (as in para 9, Part A of Second Schedule). In para 5.5 of the Customs Guidebook Series No. 2S(1) on Service Tax Procedure (Third Printing 1993), it is stated "The AST of prescribed services threshold is considered separately for each legally constituted establishment. A person on his own or in partnership with other individuals may provide prescribed services in more than one establishment, for example branches. The threshold will then be based on the AST of the whole entity and not the AST of each individual branch."

It is submitted that where (establishment) means place of (business), it is not lawful for the Customs Department to take the "AST of the whole entity" as the basis for determining the threshold of a taxable person. Instead, the AST should be calculated based on each establishment/branch. We understand that the Customs Department has accorded this treatment previously. In our opinion it is more consistent with the laws.

b Currently the Customs Department is adopting a cross-category approach in determining the threshold of a taxable person. Briefly, it is the concept where an establishment provides more than one type of prescribed service, the AST of all the prescribed services will be aggregated in determining the threshold. If the establishment falls within the ambit of two prescribed establishments having different AST threshold, then the taxable person should be chargeable once the lower of the two thresholds is reached.

This interpretation if stretched may give rise to anomalous result as follows:

A restaurant operator having AST of RM450,000 is not eligible for service tax licence because he has not reached the threshold of RM500,000. His competitor rented a shoplot near his premises and provide car park facilities for the customers at nominal charge. The business is bad and the estimated AST is RM200,000 and the car park has an AST of say, RM50,000. The latter however will be subject to service tax since the combined AST is greater than the lower threshold, i.e. RM150,000.

We believe this approach is not in line with the spirit of the Act. By having different thresholds for different prescribed establishments or prescribed professional establishments, it is obvious that the legislature has considered each business separately and determined the level or criteria for levying tax on each industry separately.

c Currently the Customs Department is adopting the invoice value of the transactions. It is submitted that for large or new projects, advance billings are sometimes issued as a form of security. In our view, the threshold should be calculated based on the value of services rendered or invoice value, whichever is the later.

3 When is the service tax collectable?

This issue is a practical problem faced by many taxpayers. Section 3 of the Act stipulates that service tax is levied in respect of any prescribed service provided by or in any prescribed professional establishment or any prescribed establishment. Section 14 further provides that service tax is due at the time when payment is received by the taxable person for the taxable service provided to the customer/purchaser.

It is our view that service tax should be calculated based on payment received in respect of services rendered. Thus when a firm issues an invoice to its customer in advance, service tax is not applicable until the service has been actually rendered. Please confirm that our understanding on this matter is correct.

In relation to the above issue, we would also like to seek the Department's clarification on the following:

For example, a restaurant has achieved accumulated sales of RM450,000 in the middle of the 12th month. It then made a sale of RM90,000 (in one invoice) at the end of 12th month.

a Based on the projections, the taxpayer is not expected to reach the threshold during the 12th month. In fact the taxpayer is not eligible to apply for a service tax licence until the sale is made because the annual sales turnover is below the threshold. Will the taxpayer be penalised for being unable to collect service tax on the sales which is in excess of the threshold [i.e. $(RM450,000 + RM90,000) - RM500,000 = RM40,000$] ?

b If the taxpayer had applied for a service tax licence earlier, can the taxpayer collect service tax on the full invoice value, i.e. RM90,000? Or should service tax be collected on the amount in excess of the threshold value, i.e. RM40,000? Note that only one invoice was issued.

4 Assessability Of Disbursements

We have been informed that disbursements are subject to Service Tax except for reimbursements. It appears that this interpretation is to be implemented retrospectively. We would like to submit our views on the matters as follow:

a What is the Customs Department's interpretation on (Disbursements) and (Reimbursements)? Both MIA and MIT submit that disbursements represent the incidental costs incurred by the seller. Where it is not cost effective to identify and itemise the out-of-pocket expenses, a close estimate of the actual costs are charged. The amount is generally minimal as compared with the fee. Under no circumstances is the disbursements intended to make a profit. In our view, there is no basis to imply that disbursements constitute part of the fee on prescribed services rendered. By extending the tax net to cover disbursements, the

Customs Department has actually extended the scope of service tax to the non-service portion of the transactions. (Please refer below)

Service tax on fee only

Fee	RM2,500	Service tax	125
Add:	Disbursements :-		
	Travelling	250	
	Miscellaneous	150	
	Stationery	100	500
			<hr/>
			3,125

Service tax on fee and disbursements

Fee	RM2,500
Add: Disbursements	500
	<hr/>
	3,000
Service Tax	150
	<hr/>
	3,150

b We believe that there is a presumption that the legislature does not intend for retrospective operation of a statute. In situations and circumstances where the Customs Department has changed their interpretation of the laws, it is hoped that the Customs Department will implement the new interpretation progressively and not retrospectively. Although the issue is only a question of interpretation, it is certainly an unsettled area subject to differing arguments. The taxpayers should be given the benefit of the doubt.

New interpretations essentially result in non-compliance in respect to transactions already past. It is our view that the law will not be applied fairly if it is implemented retrospectively.

5 Provision Of Secretarial Services

Provision of secretarial services is one of the professional services normally provided by a public accountant. As such, it constitutes a prescribed service liable to service tax. However, where a public accountant purchases and sells shelf companies, in the course of their normal business, the sale should not be liable to service tax as it is essentially an activity not falling within the scope of company secretarial services.

6 Non-Compliance Due To Technical Issues

The scope of service tax has been broadened recently with many technical issues not resolved yet. It is only fair that the taxpayers be given the opportunity to understand the laws and to comply with the provision without being penalised. It is proposed that where there are genuine technical issues which result in different interpretations of the law and valid arguments have been put forward, the Customs Department should take into account the circumstances and recommend to the Treasury for a remission of penalty imposed for non-compliance due to the differing interpretations and allow the taxpayer to settle the amount due by way of instalments.

Minit Mesyuarat Panel Perundingan KASTAM/SWASTA 2/1998

Perkara-Perkara Berbangkit

1 Sales Tax Exemption on raw materials, components and packaging materials for non taxable finished goods.

Intisari Usul

At present local manufacturers of non-taxable goods are not eligible to purchase or import raw materials, components or packaging materials free from sales tax under Section 9 & 10 of The Sales Tax Act 1972. According to Schedule C of the Sales Tax (Exemption) Order 1980, exemption will be given to taxable raw materials and components, (including packing materials) for use in the manufacture of exempted goods for export. Unfortunately, in the case of sales to domestic market, no exemption will be given. However, importation of the same finished product are exempted from the import duty and sales tax. As such, local manufacturers are facing intense price competition from local importers of the same products. Such circumstances can be considered as creating an unfair competition for those manufacturing the products locally as the production costs will increase significantly and these additional cost will eventually be passed on to the consumers in the form of a higher selling price. Hence, this has resulted in locally manufactured goods losing the competitive edge over the same imported goods, which would definitely be cheaper.

Since there is no facility provided under the Sales Tax Act 1972 which allows the purchase of raw materials, components and packaging materials free from sales tax for the manufacture of non taxable goods, the local manufacturers are placed in a very disadvantageous situation, making their finished

goods less competitive. It is felt that the implication of this matter will discourage local manufacturing of these products and is also not in line with the Government's policy to support local manufacturing and promote Malaysian manufactured goods.

In view of the above, FMM had requested the Treasury to relook into the policy decision to adopt the single stage tax concept during the FMM - Customs Advisory Committee Meeting held on July 29, 1997 which was also attended by Customs Officials. A letter has been written to the Treasury to follow up on this matter as FMM felt that the single stage concept should only apply to taxable goods as when the tax was first introduced. To date, FMM did not receive any reply from Treasury on the matter. In this regard, FMM would like to request the Customs to review the present sales tax exemption for the local manufactured non-taxable goods in order to encourage and boost Malaysian manufacturing industry.

Keputusan

Keputusan telah diterima daripada Perbendaharaan, iaitu, tidak mengubah pengenaan cukai jualan masa kini, di mana hanya pekilang terpilih dalam Jadual C, Perintah Cukai Jualan (Pengecualian 1980, sahaja yang dapat menikmati bahan mentah/ komponen/ bungkusuan dikecualikan daripada Cukai Jualan.

Untuk makluman

2 Memohon pihak Jabatan menimbangkan penyertaan bumiputera daripada 51% di semua kategori kepada 30% sejajar dengan peruntukan Bumiputera sebanyak 30% bagi Ejen Perkapalan.

Intisari Perbincangan

Buat masa ini, semua ejen penghantaran yang diluluskan di bawah Seksyen 90 Akta Kastam 1967 diwajibkan mempunyai 51% penyertaan bumiputera di semua aspek seperti ekuiti, peringkat pengarah, pengurusan, eksekutif, penyelia serta kakitangan.

Bagaimanapun pada masa ini, industri fret menghadapi masalah memperolehi kakitangan bumiputera di peringkat pengurusan eksekutif serta peringkat penyelia. Sebagai memenuhi syarat, kebanyakan daripada ejen-ejen yang terlibat akan melantik pekerja bumiputera yang tidak mempunyai pengalaman yang luas dan mengakibatkan beberapa kelemahan yang amat ketara. Perkara tersebut jika berlanjutan, akan mempamerkan kemerosotan kualiti dan merugikan kedua-dua pihak iaitu ejen dan juga jabatan. Jika dipersetujui, pihak FMM bersedia membincangkan secara mendalam mekanisma yang akan digunakan bagi mengelakkan sebarang salahguna.

Keputusan

Permohonan kelonggaran penyertaan bumiputera bagi semua kategori daripada 51% kepada 30%, kini diminta hanya khusus untuk kategori kakitangan pengurusan sahaja. Jabatan telah mengemukakan laporan kepada Perbendaharaan dan sehingga kini masih menunggu jawapan daripada pihak Perbendaharaan.

Tindakan: Bahagian Kastam

3 Item 91 allows for traders to acquire taxable goods from licensed manufacturers free of tax subject to the conditions imposed. One of the conditions is that these goods must be exported within 6 months (or further period as may be allowed by the Director General) from the date of payment of sales tax. The Sales Tax Act 1972 was amended during the 1997 Budget to deem Licensed Manufacturing Warehouse (LMW) as being outside the country, and consequently all LMW'S manufacturing taxable goods were delicensed by the Sales Tax Authority. The impact of this deregistration was the loss in the use of the CJ5, CJ5A and CJ5B facilities.

Intisari Usul

Following the amendments, sales made to a LMW would therefore be an export sale. Consequently, traders are eligible to use item 91 for sales to be made to LMW's. The sales tax authority, however, does not allow the use of item 91 for such sales to LMW's. Citing administrative inadequacies (if there is no K2, the export declaration form to prove that export has taken place), it must be emphasized that the Customs Act, 1967 does not treat LMW's as being outside the country, hence the question of export does not arise.

This position by the Sales Tax Authority has placed traders in a dilemma, since they will not be able to acquire goods tax free for supply to a LMW nor will they be able to claim a drawback on sales tax paid goods.

Keputusan

Butiran 91 Perintah Cukai Jualan (Pengecualian) 1980 telah diberi secara sementara dengan menggunakan Borang CJ (P) 2. Hanya barang-barang yang digunakan secara langsung dalam pengilangan Gudang Pengilangan Berlesen sahaja layak menikmati pengecualian.

Syarikat 'trading' telah dikecualikan cukai di bawah Perintah Cukai Jualan (Pengecualian) 1980 Jadual Butiran 28A untuk membeli dan menjual bahan mentah komponen kepada GPB berkuatkuasa 10 Disember 1998. Dengan pengecualian ini syarikat 'trading' dan GPB dapat terus menikmati kemudahan sebagaimana CJ No. 5A seperti sebelum ini.

Tindakan: Bahagian Cukai Dalam

4 Payment of Sales Tax on local Sales by LMW/FIZ Companies

Intisari Usul

FMM welcomes the Ministry Of Finance's decision to review the taxation policy on local sales made by LMW/FIZ companies as announced in Budget 1998 whereby companies in LMW/FIZ are given the option to pay import duty based on CEPT rates or other specific rates according to their qualifications. However, the sales tax to be paid for local sales by LMW/FIZ companies would be based

on the full import duty 'payable' although the actual import duty 'paid' is at a lower rate. Such circumstances have placed LMW/FIZ at a disadvantageous situation as the same product imported from ASEAN countries would enjoy the CEPT rates in terms of payment of import duty and sales tax. As such, the current taxation policy for sales tax would create an unfair competition for LMW/FIZ manufacturers as products imported from ASEAN countries would definitely be cheaper. It is also felt that since companies in LMW/FIZ had been permitted to pay import duty based on CEPT or other specific rates, the sales tax to be paid should be based on these rates.

As LMW/FIZ companies are export-oriented and contribute significantly to the country's economy, it is felt that the sales tax treatment imposed does not encourage the growth of these companies. With the current economic downturn, it is felt that the cost of doing business should not be increased and products manufactured by LMW/FIZ companies should be accorded the similar or better treatment as received by products imported from ASEAN countries.

In view of this, FMM would like to request Customs to re-look and review the current taxation policy on sales tax imposed on LMW/FIZ companies as it would affect the competitiveness of these companies in our own market,

Keputusan

Y.B. Menteri Kewangan telah mengecualikan sebahagian cukai jualan ke atas jualan tempatan GPB dan ZPB berkuatkuasa 19 Mac 1999. Penentuan nilai jualan untuk jualan tempatan berkenaan adalah dengan mengambilkira duti import yang sebenar dibayar (paid) dan bukannya duti import yang kena dibayar (payable). Dengan pengecualian ini, amaun cukai jualan yang dibayar adalah sama dengan sebelum ini.

Tindakan : Bahagian Cukai Dalam

5 Item 91 of the Sales Tax (Exemption) Order 1980

Arising from Budget 1997, LMW is treated as an area located outside Malaysia and as such sales from PCA to LMW should be considered as export sales. However, at present, the Sales Tax Authority does not allow the use of Item 91 of the Sales Tax

(Exemption) Order 1980 for sales made to LMW companies with the reason that no Custom No. 2 (K2) form is produced to prove exportation. This had placed vendors in a disadvantageous position as no tax exemption or drawback claim would be allowed under these circumstances.

During the last Consultative Panel Meeting held in November 1997, the Committee was informed that Customs would accept any other commercial document as proof of sales to LMW. Further to this, an official letter was sent to Customs in December 1997. However, to date, FMM have not received any reply from Customs. In this regard, FMM would like the Customs Department to brief the Committee on the progress of this matter

Keputusan:

Sebagai satu alternatif secara sementara, penggunaan Butiran 91 Perintah Cukai Jualan (Pengecualian) 1980 telah diluluskan melalui Borang CJ (P) 2. Hanya barang-barang yang digunakan secara langsung dalam pengilangan sahaja layak menikmati pengecualian ini.

Syarikat 'trading' telah dikecualikan cukai di bawah Perintah Cukai Jualan (Pengecualian) 1980 Jadual B Butiran 28A untuk membeli dan menjual bahan mentah/komponen kepada GPB berkuatkuasa 10 Disember 1998. Dengan pengecualian ini syarikat 'trading' dan GPB dapat terus menikmati kemudahan sebagaimana CJ No. 5A seperti sebelum ini.

Tindakan: Bahagian Cukai Dalam

6 Sales Tax Issues

Intisari Usul

In the 1997 Budget, a new section 2B was inserted to deem Licensed Warehouse and Licensed Manufacturing Warehouse (LMW) as a place outside Malaysia. Two issues have arisen out of this amendment.

Before this amendment, LMW which manufactures goods subject to sales tax is required to be licensed under the Sales Tax Act, 1972 (STA 1972). In such case, the LMW may apply to the Sales Tax Authorities for CJ5 facility (to acquire tax-free raw material). Correspondingly, a trader who supplies the raw material to this LMW can obtain the CJ5A

facility from the relevant sales tax authorities to import/purchase raw material from a licensed manufacturer free of sales tax for supply to LMW

After the amendment LMW is no longer required to be licensed under the STA, 1972 and therefore is not eligible for CJ5 facility. In this case, the CJ5A facility available to a trader is also no longer applicable.

As LMW is deemed to be outside Malaysia, movement of goods from the Principal Customs Area (PCA) to LMW should accordingly be deemed export. There is no definition for the term 'export' in the STA, 1972 even though that word is mentioned. In this case then, the general meaning, as in the Interpretation Act 1967, should be given cognizance. Following this, the exemption under item 91, Schedule B of Sales Tax (Exemption) Order 1980 is applicable in the case of a trader who purchases taxable raw material from a licensed manufacturer for supply to LMW

(Presently, the sales tax authorities disallow the use of Item 91 for the above arrangement on the ground that there is no Customs No. 2 to substantiate export)

A case of dual treatment is also eminent since a drawback under Section 29 STA, 1972 is allowed for tax-paid goods delivered to LMW

Keputusan

Sebagai satu alternatif secara sementara, penggunaan Butiran 91 Perintah Cukai Jualan (Pengecualian) 1980 telah diluluskan melalui Borang CJ (P) 2. Hanya barang-barang yang digunakan secara langsung dalam pengilangan sahaja layak menikmati pengecualian ini.

Syarikat 'trading' telah dikecualikan cukai di bawah Perintah Cukai Jualan (Pengecualian) 1980 Jadual B Butiran 28A untuk membeli dan menjual bahan mentah/komponen kepada GPB berkuatkuasa 10 Disember 1998. Dengan pengecualian ini syarikat 'trading' dan GPB dapat terus menikmati kemudahan sebagaimana CJ No. 5A seperti sebelum ini.

Tindakan : Bahagian Cukai Dalam

7 Sales Tax Issue

Before the amendment, Item 104 provides for exemption of sales tax on goods partially manufactured in a LMW which is sent to a manufacturer in PCA for further manufacture under a subcontracting arrangement. In this case, the conditions of exemption, amongst others, require that the LMW be licensed under the STA, 1972 whereas the said manufacturer in PCA is not licensed under STA, 1972.

As a LMW is not licensed under STA, 1972 after 25 October 1996, item 104 cannot be utilized.

It is proposed that the Sales Tax (Exemption) Order 1980 be amended by deleting condition (iii) of item 104. This will allow the LMW to have a sub-contract arrangement with a manufacturer in PCA, irrespective of whether this PCA manufacturer is licensed under STA, 1972 or otherwise.

Keputusan:

Pekilang GPB yang telah menikmati bahan mentah telah dikecualikan cukai jualan di bawah Butiran 28 boleh membuat kerja subkontrak di PCA, sama ada memegang lesen atau bukan.

Butiran 104 kepada Perintah Cukai Jualan (Pengecualian) 1980 telah dibatalkan pada Disember 1998. Dengan pembatalan ini kerja-kerja sub-kontrak di antara GPB dengan pekilang di KUK boleh dilaksanakan secara pentadbiran, iaitu oleh Cawangan Perindustrian semasa memproses dan meluluskan pengecualian duti import di bawah Butiran 144 Perintah Duti Kastam (Pengecualian) 1988. Pengecualian cukai jualan tidak perlu di tuntutan sekali lagi kerana pekilang GPB telah dikecualikan atas bahan mentah melalui Butiran 28 Perintah Cukai Jualan (Pengecualian) 1980.

Tindakan: Bahagian Cukai Dalam

II Perkara-Perkara Yang Dibincangkan

ISU-ISU YANG DIUSULKAN DARIPADA MICCI

1 Importation of Non-dutiable Raw Materials/Components by LMW Companies

LMW is deemed to be a place outside Malaysia (PCA) for Sales Tax purposes only. For Customs purposes, LMW is in the PCA.

Current procedure requires that all LMW companies must apply to the Customs for customs duty exemption by using Lampiran X which is a list for raw materials and components used directly in the manufacturing process of approved products from the initial stage of manufacture until the finished product is finally packed and ready for export. Lampiran Y is a list for the machinery/equipment required for direct manufacturing process of approved final products and Lampiran Z is a list of finished goods.

The Customs will never give a free hand to LMW companies to allow automatic and import duty exemption for importation of all components/raw materials used directly in the manufacturing process of finished product for the purpose of documentary control. All Customs import stations require LMW companies to apply for customs tax exemptions for importation for non-dutiable components/raw materials used in manufacturing.

Each Customs station may differ in terms of documents to be submitted for approval of customs duty exemption. Customs stations impose such procedure for LMW companies to apply for non-dutiable components/raw materials used in manufacturing by using Lampiran C for the purpose of checking the input-output ratio between dutiable and non-dutiable goods in the manufacturing of the finished products. These administrative requirements by different Customs stations have caused companies unnecessary storage and other related charges while awaiting for tax exemptions to be approved.

Keputusan

Tujuan Jabatan Kastam meminta syarikat mengemukakan senarai barangan adalah untuk menentukan bahan mentah/komponen dan mesin/alat

kelengkapan yang dibenarkan dibawa masuk ke dalam LMW tanpa bayaran duti. Ini merupakan keperluan yang telah ditetapkan oleh Perbendaharaan sejak awal penubuhan LMW. Ini bermakna bahan mentah/komponen dan mesin/alat kelengkapan yang dibawa masuk ke dalam LMW tidak mendapat pengecualian.

Ibu Pejabat Kastam telah mengeluarkan panduan kepada semua stesen mengenai prosedur yang perlu diamalkan. Oleh itu tidak sepatutnya berlaku perbezaan ketara antara prosedur di stesen-stesen. Walau bagaimanapun sekiranya terdapat prosedur yang diamalkan oleh mana-mana stesen kastam berlainan daripada prosedur yang telah ditetapkan oleh Ibu Pejabat, aduan bolehlah dibuat terus ke Ibu Pejabat Kastam supaya tindakan pembetulan boleh dibuat serta merta.

Untuk Makluman

2 Working Hours For Customs At Bintulu Port

Currently the published working hours for Customs at Bintulu Port is 0800 - 1530 (Monday - Friday) & 0800 - 1215 (Saturday) except Sunday & Public Holidays. Related activities outside these working hours involve application and payment of overtime by port users. Time for submission and payment of taxes/duties are to be made only within such period. It is suggested that the Customs office hours at Bintulu Port could probably be extended to facilitate trade.

Keputusan :

Daripada kajian yang dibuat oleh Ibu Pejabat, maklumat yang diperolehi dari Pejabat Kastam Bintulu, mendapati aktiviti-aktiviti pendaharan barang serta pembayaran duti dilaksanakan di dalam tempoh 8.00 pagi hingga 4.00 petang. Selepas pukul 4.00 petang, tidak ada aktiviti pendaharan dan pembayaran duti dirakamkan.

Pada dasarnya Jabatan Kastam akan hanya memanjangkan waktu bekerja sekiranya ada justifikasi berbuat demikian. Oleh yang demikian sehingga lanjutan waktu bekerja dapat dijustifikasikan, lanjutan waktu bekerja tidak dapat dilaksanakan. Jabatan memerlukan maklumat lanjut mengenai bentuk serta kekerapan perkhidmatan Kastam yang diperlukan selepas pukul 4.00 petang serta tempoh waktu yang baru yang dicadangkan.

Untuk makluman

3 Importation Of Raw Materials By FIZ Companies

3.1 Importation of /machinery/ raw materials for production use Customs insistence on using Lampiran D Customs Pulau Pinang requires that importation of raw materials by companies in FIZ to use Lampiran D, which is valid for only one month. This procedure hinders importation because FIZ companies have to apply to Customs each time FIZ companies want to import the raw material. These administrative requirements imposed by each Customs stations for control purposes have caused delay as goods are sometimes held back at the port of entry pending approval of Lampiran D.

Keputusan:

Sama seperti LMW hanya bahan mentah dan mesin digunakan secara langsung dalam pengilangan dibenarkan dibawa masuk ke dalam sesebuah FIZ tanpa bayaran duti. Tujuan pihak Kastam memerlukan senarai tersebut sebelum pengimportan adalah dari kategori yang digunakan secara langsung dalam pengilangan. Walaubagaimanapun senarai tersebut tidak perlu dikemukakan tiap-tiap bulan, cuma senarai perlu dikemaskini sekiranya terdapat tambahan bahan mentah dan mesin yang baru.

Untuk makluman

3.2 Submission of exemption list of raw materials to Customs for approval monthly, it is suggested that the application for customs duty exemption on raw materials/components be on a yearly basis instead of monthly. This would ease the burden of FIZ having to apply to Customs each time the raw material are to be imported.

Keputusan:

Stesen Kastam Pulau Pinang mengesahkan bahawa tempoh kelulusan yang diberikan adalah untuk satu tahun kecuali bagi kes-kes tertentu sahaja atas permohonan syarikat itu sendiri.

Untuk makluman

4 Limitation On The Number Of Forwarders.

Limitation of 2 - forwarder concept" - Lampiran C will impede companies in doing business. Some companies may require the services of more than 2 forwarders who may have expertise in a specific field. Section 90 of The Customs Act 1967 (Control of Agents) is silent on the number of agents to be appointed by companies. It is therefore suggested that such restriction be reviewed so as to facilitate businesses.

Keputusan:

Tujuan pihak Kastam menghadkan bilangan ejen penghantaran pada sesuatu ketika adalah untuk memudahkan kawalan serta dijangka dalam keadaan biasa sesuatu pengimportan tidak memerlukan khidmat lebih daripada dua ejen penghantaran.

Sesebuah syarikat boleh menggunakan khidmat ejen penghantaran yang baru sekiranya khidmat ejen penghantaran yang telah diluluskan itu dibatalkan. Walaubagaimanapun bagi syarikat-syarikat besar yang memerlukan khidmat lebih daripada 2 ejen penghantaran permohonan bolehlah dikemukakan kepada Jabatan Kastam. Jabatan akan menimbangkan secara positif sekiranya ada permohonan.

Dalam perbincangan seterusnya pihak AFAM menyatakan untuk pengimportan melalui udara Jabatan Kastam perlu menghadkan pengimport menggunakan satu ejen penghantaran sahaja. Oleh kerana ada dua pendapat yang berlainan Pengerusi meminta pihak MICCI mengkaji dan mengemukakan satu cadangan yang baru.

Tindakan: MICCI

Laporan daripada MICCI

The Chamber had conducted a survey on its membership on the number of forwarders required by a company to handle clearance of goods. The survey findings revealed that most companies require at least 2 forwarders for each mode of transport. This allows the flexibility to use different forwarders based on their handling expertise. It is suggested that the Customs should not be too rigid and should allow the company to appoint more than 2 forwarders if the need arises.

Respon daripada Jabatan

Sebagaimana yang dinyatakan dalam mesyuarat yang lalu, tujuan pihak Kastam menghadkan bilangan ejen penghantaran pada sesuatu ketika adalah untuk memudahkan kawalan, serta dijangka dalam keadaan biasa sesuatu pengimportan tidak memerlukan khidmat lebih daripada dua ejen penghantaran. Sesebuah syarikat boleh menggunakan khidmat ejen penghantaran yang baru, sekiranya khidmat ejen penghantaran yang telah diluluskan itu dibatalkan. Walaubagaimanapun jika ada syarikat-syarikat yang memerlukan khidmat lebih daripada dua ejen penghantaran, permohonan bolehlah dikemukakan kepada Jabatan. Cadangan yang dikemukakan pada dasarnya dipersetujui dan Jabatan akan menimbang secara positif sekiranya ada permohonan.

5 Issue of Service Tax

The Chamber once again urges the Government to review its policy on imposing service tax on subsidiary companies within a group of companies. The Customs Investigation Unit must distinguish between companies set to provide management services indicated in the Customs guidelines and from companies which are purely sharing costs for common services. Otherwise the service tax is seen as a tax on efficiency

Alternatively, to avoid cascading of tax (i.e. tax on tax) management services and consultancy services provided by a parent company to a subsidiary who subsequently provide taxable services to third parties, be granted full credit or exempted from service tax as the management services and consultancy services provided are inputs for the subsidiary in providing their complete taxes services and the subsidiary has no feasible means apportioning them so as to show as disbursements when charging the individual third party customers.

Keputusan:

Kajian telah dibuat dan perbincangan telah diadakan di antara pihak Kastam dan Perbendaharaan tentang perkara yang dipersoalkan. Melalui surat Perbendaharaan bertarikh 27 Julai 1998, YB Menteri Kewangan telah memutuskan bahawa cukai perkhidmatan atas penyediaan perkhidmatan pengurusan adalah dikekalkan i.e. dikenakan (seperti

yang dicadangkan dalam Belanjawan 1998) yang juga meliputi penyediaan perkhidmatan pengurusan kepada kumpulan syarikat di bawah pengurusan berpusat.

Untuk makluman

(USUL-USUL DARIPADA FMM)

6 Single LMW Licence For All Companies And Subsidiaries Operating Within Malaysia.

At present LMW licence holders are required to apply for a separate set of licence if they have another plant (branch) located at a different state. FMM would like to propose to Customs to extend a certain degree of flexibility in the current policy to allow the use of a single LMW licence for companies and their branches, irrespective of the states these branches are located. As these branches are operating under the same management and share the resources of the main plant, a single licence would help reduce the administrative burden for the licence holder. In addition, branches may be set-up for certain manufacturing processes such as produce certain parts for the main plant and as such, would not be involved in importing raw material or direct export. With the issuance of a single licence, a more efficient working environment could be created whereby all dealings with Customs would be the responsibility of the main plant.

Keputusan:

Sebagai latarbelakang, untuk lesen Gudang berlesen Awam yang dikeluarkan oleh Perbendaharaan, pihak Perbendaharaan mengamalkan dasar satu lesen untuk satu premis walaupun dalam daerah yang sama. Walaubagaimanapun untuk LMW, Jabatan Kastam telah membenarkan satu lesen untuk satu daerah yang sama. Ini bermakna pihak Kastam berbeza dengan Perbendaharaan dan dengan itu Jabatan bersedia mempertimbang mengeluarkan lesen untuk beberapa premis di dalam negeri yang sama dengan syarat tiap-tiap satu premis tambahan yang baru hendaklah melalui proses yang sama dengan permohonan lesen di mana plan bangunan dan sebagainya perlu dikemukakan sebagai satu permohonan yang standard.

Walaubagaimanapun pada masa ini Jabatan tidak dapat mempertimbang permohonan menggunakan satu lesen untuk premis yang terletak di lain-lain negeri

kerana bayaran lesen merupakan hasil negeri di mana proses untuk membuat rundingan serta mendapatkan kelulusan dari Kerajaan Negeri yang berjumlah 13 buah adalah satu proses yang rumit dan mengambil masa yang panjang. Dengan itu Pengerusi meminta pihak FMM menyediakan satu kertas kerja bagi tujuan tersebut dan menyerahkannya kepada Jabatan sebelum satu keputusan dibuat.

Tindakan: FMM

Kertas cadangan berkenaan perkara di atas telah dihantar oleh FMM kepada Jabatan. Kajian dan keputusan dasar akan dibuat oleh Jabatan berdasarkan cadangan yang telah dikemukakan oleh FMM.

7 Year 2000 Compliance

In view of the serious implications of the Year 2000 compliance problem which would affect the private as well as public sector, FMM would like to seek an update on the action plans to be undertaken by Customs to address the issue.

Keputusan:

Taklimat telahpun diberi dalam agenda perkembangan semasa di bawah tajuk "Jabatan Kastam Dan Isu Y2K".

Untuk makluman

8 FCZ Processing Fee

The Kuala Lumpur International Airport (KLIA) had been declared as a Free Commercial Zone (FCZ) and Malaysia Airports (Sepang) Berhad (MASB) was appointed the Free Zone Authority. In the area of cargo management, MASB, through the issuance of two general notices (MAB-MA(S)-40LSD (2004/3)-165 and EDIM's letter dated July 14, 1998' has imposed a charge of RM22.50 per K1, 2, 3, 8, 9 and ZB1, 2, 3, 4, 5, processed. The cargo forwarders then charged RM32.50 per K1, 2, 3, B, 9 and ZB1, 2, 3, 4, 5 to the importer/exporter. We understand that the charges are for balancing of manifest, which was formerly done by Customs at the Sultan Abdul Aziz Shah Airport, Subang, and no charges were imposed then. We are also confused as to why these charges are now borne by importer/exporter as the

service is not required by them

FMM is concerned on the imposition of these charges based on the following grounds

- the FCZ processing fee legal?
- Why should users/importers/exporters pay such charges?
- Are the charges reasonable?
- MASB have inadvertently provided justification to the air freight forwarders in charging the EDI fees.

FMM contends that based on the present monthly volume of documents submitted MASB will obtain gross revenue of approximately RM43 million per annum while forwarders will collect RM70 million from importers/exporters.

Keputusan:

Isu yang dibangkitkan adalah mengenai pembayaran yang dikenakan oleh Malaysia Airport (Sepang) Berhad sebagai Pihak berkuasa Zon. Pihak berkuasa Zon adalah dilantik oleh Menteri Kewangan dan pihak Kastam tidak mempunyai kuasa dalam hal tersebut. Oleh itu isu yang dibangkitkan adalah di luar bidang kuasa Jabatan Kastam.

Untuk makluman

9 Procedure For Use OF CJ (Pentad) 2 Form.

The CJ (Pentad) 2 form is used by trading companies to obtain sales tax exemption under Item 91 of the Sales Tax (Exemption) Order 1980 and manufacturing companies when applying for exemption under Item 103 and Schedule C of the same order. FMM highlighted the difficulties faced by members in complying with the requirement of the CJ /Pentad) 2 form especially columns 18 and 24. It was felt that with the conditions that were attached to the approval, the requirement for further signature would be a duplication of work as any form of misuse could be detected during the examination of the company's accounts. In addition there were sufficient provisions in the Act to recover all losses/penalties apart from the punitive fines

NOTE:

This issue was highlighted to Customs during the FMM Customs Advisory Committee Meeting on

August 4 1998. Further to the meeting FMM had sent a letter to request Customs to study the possibility of simplifying the existing procedures for use of the CJ (Pentad) 2 form on August 29 1998. To date no reply had been received from Customs.

Keputusan:

Borang CJ (P) 2 merupakan borang "composite" yang diwujudkan secara pentadbiran sebagai satu mekanisme dan kawalan bagi "person exempted" menikmati pengecualian cukai jualan di bawah Jadual B dan Jadual C. Cadangan supaya dipermudahkan butir-butir perlu dalam Borang CJ (P) 2 telah diberi pertimbangan dan keputusan pejabat ini adalah seperti berikut:-

Bersetuju ruang 17 dan 18 pada Borang CJ (P) 2 berkenaan "kualiti dibeli dan tandatangan/cap pembekal" dimansuhkan. Bahagian Cukai Dalamn akan mengedarkan Borang CJ (P) 2 yang baru ke stesen-stesen melalui surat Pekeliling Bil. 1/1998.

Ruang 24 berkenaan "Tandatangan Pegawai Kastam Eksport" masih diperlukan untuk tujuan kawalan dan pemantauan. Butir-butir berkenaan nombor Daftar K2 tarikh eksport dan kuantiti eksport perlu dikemaskini di dalam Sistem Maklumat Kastam (SMK) aplikasi CD dan di masa hadapan ianya akan diintegrasikan dengan SMK aplikasi Kastam. Borang CJ (P) 2 ini perlu disertakan bersama-sama dengan Borang Kastam 2 di stesen eksport dan tandatangan Pegawai Kastam eksport di ruang 24 adalah untuk keperluan Jabatan. Borang CJ (P) 2 bukan sahaja borang permohonan tetapi juga bertindak sebagai "tally sheet" untuk tujuan pemantauan.

Untuk makluman

10 Request For Common/Consistent Interpretation At Customs Stations.

FMM would like to request Customs to take continuous and necessary actions to ensure common/consistent interpretation at all customs stations. This is also to ensure that the interpretation by Customs Headquarters would be applicable at all stations.

Keputusan:

Pengerusi memaklumkan isu tersebut telah, sedang dan akan terus diambil tindakan termasuk memberi peringatan kepada stesen-stesen Kastam seluruh negara

tentang dasar dan prosedur kerja yang telah dikeluarkan oleh Ibu Pejabat.

Untuk makluman

IV Ucapan Penutup Pengerusi

Yang Berbahagia Datuk Pengerusi mengucapkan berbanyak terima kasih kepada semua yang hadir dan telah memberikan sumbangan fikiran dalam mesyuarat kali ini Beliau seterusnya meminta Timbalan Pengerusi memberi sepatah dua kata sebagai penutup.

Timbalan Pengerusi juga mengucapkan terima kasih kepada semua pihak yang bersama-sama dalam mesyuarat ini sehingga akhir bagi menjayakan mesyuarat yang diadakan dua kali setahun ini. Beliau kemudiannya menyerahkan semula kepada Datuk Pengerusi untuk mengakhiri mesyuarat.

Akhir kata Datuk Pengerusi mengucapkan terima kasih dan salaam pulling ke tempt masing-masing dan memaklumkan panel akan berjumpa sekali lagi pada tahun hadapan iaitu dijangkakan dalam bulan Mei 1999.

(AZIS BIN YACUB)

Setiausaha
Panel Perundingan Kastam/Swasta
Ibu Pejabat Kastam dan Eksais Diraja
Malaysia

(DATUK AHMAD PADZLI MOHYIDDIN)

Pengerusi
Panel Perundingan Kastam/Swasta
Ibu Pejabat Kastam dan Eksais Diraja
Malaysia

The following candidates completed the relevant examination papers to the satisfaction of the Examination Committee for the 1998 Examination Session.

FOUNDATION LEVEL

Taxation I

Chen Choo Nam
Choong Lee Peng
Lee Hou Kai
Lim Geok Hoon
Lim Geok Kee
Lim Geok Yen
Lim Mei Fong
Lim Peng Peng
Ling Kuok Hooi
Long Shaw Hwai
Pun Yong Wah
Santhi Bai, R.N. Abbai Naidu
Saw Lay Khoon
Sim Seng Chiang
Ter Leong Guan
Ting Mee Ling
Wong Kuen Cheng
Wong See Yean
Yap Yien Ling

Financial Accounting I

Chen Choo Nam
Hong Swee How
Lee Bee Qua
Lim Ah Liang
Lim Geok Hoon
Lim Geok Kee
Lim Geok Yen
Lim Peng Peng
Lim See Chong
Long Shaw Hwai
Santhi Bai, R.N. Abbai Naidu
Sim Seng Chiang
Ter Leong Guan
Ting Mee Ling
Wong Kuen Cheng
Yap Yien Ling

Economics & Business

Statistics

Chu Ming Thing@ Chow Ming Thing
Lee Bee Qua
Lee Fook Li
Lim Geok Hoon
Lim Geok Huey
Lim Geok Kee
Low Saw Heok
Setra Devi, Kandasamy
Tan Soo Fong
Tang Pay Bin
Ter Leong Guan
Ting Mee Ling
Yeong Yoon Wai

INTERMEDIATE LEVEL

Taxation II

Chin Shih Veii
Chong Hon Yen
Henry Ng Yoong Hin
Lee Hou Kai
Lee Lip Sun
Leong Moh Jyee
Lim Ping Fei
Loi Liang Kin
Meriel Chow Mei Lai
Ng Kok Wee
Peggy Lee Pui Kee
Stephanie Au Lui Fong
Tan Kim Kiat
Tang Hwee Fong
Teh Siew Ngau
Wang Yoke Lian
Wong Li Ming
Yap May Ling

Taxation III

Chia Ling Wah
Chin Siew Yin
Chong Hon Yen
Chong Too Hwa
Chung Ying Ling
Henry Ng Yoong Hin
Khoo Shaw Cbyn
Lee Chin Chu
Lee Li-Ling
Leong Moh Jyee
Lim Boon Teong
Lim Ping Fei
Lim Wei Foon
Loi Liang Kin
Low Poh Ling
Michelle Chan Ai Hoon
Ng De Di
Ng Hock Soon
Ng Sow Yoong
Ser Kian Ching
Stephanie Au Lui Fong
Stephanie Poh Siew Meng
Tan Lee Chin
Tang Hwee Fong
Wong Li Ming
Yap May Ling
Yeap Boey Peng

Company & Business Law

Betty Soh Lee Nie
Chan Pik Dzee
Chan Weng Hoe
Kok Chooi Fung
Lee Li-Ling
Lee Lip Sun
Lim Kean Teong
Loi Liang Kin
Michelle Chan Ai Hoon
Ng Sow Yoong
Prabhutva, Jaya Krishnan
Sim Chee Kiong
Stephanie Au Lui Fong
Tan Chin Yaw
Tang Hwee Fong
Wong Chui Hua
Yeap Boey Peng

FINAL LEVEL

Taxation IV

Chan Kin Kitt
Chin Lily
Eileen Chan Bee Hong
Heng Yih Yih
Jay Julian, Jaya Thalagah
Khoo Shaw Cbyn
Lee Chin Chu
Lee Yon Chong
Mok Huey Fong
Ong Tuan Aik
Wong Chui Hua
Wong Kok Keng
Yong Kim Sang

Taxation V

Cheam Lea Pheng
Chin Lily
Esther Tan Lay Hoon
Lim Huan Siang
Loh Ee Sum
Low Poh Ling
Mok Huey Fong
Ng Hock Soon
Ong Tuan Aik
Peggy Wong Peng Seong
Tan Chuan Wei
Wong Cheng Jam
Wong Chui Hua
Yong Kim Sang

Business & Financial Management

Eileen Chan Bee Hong
James Lee Chee Seong
Lim Ai Wah
Ng Hock Soon
Ong Tuan Aik
Pang Mei Yun
Wong Kok Keng
Wong Wee Kee

Financial Accounting II

Eileen Chan Bee Hong
James Lee Chee Seong
Lim Ai Wah
Loh Ee Sum
Ng Hock Soon
Wong Wee Kee

PRIZE WINNERS



Mr Ter Leong Guan
Best Overall Performance
in Foundation Level
Prize sponsored
by Kassim Chan & Co



Ms Loi Liang Kin
Best Overall Performance
in Intermediate Level
Prize sponsored
by PriceWaterhouseCoopers



Mr Loh Ee Sum
Best Overall Performance
in Final Level
Prize sponsored
by KPMG Peat Marwick

GRADUATES

Ms Chin Lily
Mr Lee Yon Chong
Mr Lim Huan Siang
Mr Loh Ee Sum
Ms Mok Huey Fong
Mr Ong Tuan Aik
Ms Peggy Wong Peng Seong
Mr Wong Cheng Jam
Mr Yong Kim Sang



Mr Pun Yong Wah
Taxation I
Prize sponsored
by Atarek Kamil Ibrahim & Co.



Ms Loi Liang Kin
Taxation II
Prize sponsored
by PriceWaterhouseCoopers



Ms Lee Chin Chu
Taxation III
Prize sponsored
by Arthur Andersen



Ms Chin Lily
Taxation IV
Prize sponsored
by Mr Michael Loh



Ms Chin Lily
Taxation V
Prize sponsored
by En Ahmad Mustapha Ghazali

ANNOUNCEMENT OF REVISION OF EXAMINATION FEES

We wish to inform that the Council of the Institute had revised the MIT examination fees effective from the December 1999 examination as follows:

	Examination Fees	
	Current	Effective December 1999 sitting
Foundation Level	RM40	RM50
Intermediate Level	RM50	RM60
Final Level	RM60	RM70

MIT Professional Examination

C A L E N D A R F O R 1 9 9 9

<i>January 1</i>	Annual Subscription for 1999 payable.
<i>February 14</i>	Release of the 1998 Examination results. Students will be notified by post. No telephone enquiries will be entertained.
<i>March 31</i>	Last date for payment of annual subscription fee for 1999 without penalty (RM50)
<i>April 30</i>	Last date for payment of annual subscription fee for 1999 with penalty (RM100). Students who fail to pay will be transferred to the inactive file.
<i>May 31</i>	Question & Answer Booklet available for distribution.
<i>September 1</i>	Closing date of registration of new students who wish to sit for the December 1999 examination sitting.
<i>September 15</i>	Examination Entry Forms will be posted to all registered students.
<i>October 15</i>	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 1999.
<i>November 30</i>	Despatch of Examination Notification Letter.
<i>December (dates to be confirmed)</i>	MIT Examinations

PILOT PAPERS , DECEMBER 1995, 1996 , 1997 & 1998 EXAMINATIONS

QUESTIONS AND ANSWERS BOOKLET ORDER FORM

To:

Education Officer
Education Department (MIT)
Dewan Akauntan
No. 2 Jalan Tun Sambanthan 3
Brickfields
50470 Kuala Lumpur

Full Name Mr/Mrs/Miss/Ms: _____

Address: _____

Student Reg. No: _____

MIT REGISTERED STUDENTS & MIT MEMBERS

YEAR	COST PER LEVEL		
	Level I/Foundation	Level II/Intermediate	Level III/Final
1998 EXAMINATIONS BOOKLETS	RM5.00	RM6.00	RM 11.00
1997 EXAMINATIONS BOOKLETS	RM5.00	RM6.00	RM11.00
1996 EXAMINATIONS BOOKLETS	RM5.00	RM6.00	RM11.00
1995 EXAMINATIONS BOOKLETS	RM5.00	RM6.00	RM 5.50
PILOT PAPERS BOOKLETS	RM5.00	RM6.00	RM11.00

NON-MIT REGISTERED STUDENTS & NON-MIT MEMBERS

YEAR	COST PER LEVEL		
	Level I/Foundation	Level II/Intermediate	Level III/Final
1998 EXAMINATIONS BOOKLETS	RM7.00	RM8.00	RM13.00
1997 EXAMINATIONS BOOKLETS	RM7.00	RM8.00	RM13.00
1996 EXAMINATIONS BOOKLETS	RM7.00	RM8.00	RM13.00
1995 EXAMINATIONS BOOKLETS	RM7.00	RM8.00	RM 7.50
PILOT PAPERS BOOKLETS	RM7.00	RM8.00	RM13.00

Please tick box(es) to indicate your order.

I enclose Cheque/PO/MO for RM _____ (including RM1.00 for postage) payable to Malaysian Institute of Taxation.

Student's Signature: _____ Date: _____

CHANGE OF PARTICULARS

Name _____

Membership No: _____

Postal Address: _____

I.C No: _____

H/p No: () _____

PRACTISING AS/PLACE OF EMPLOYMENT

Name of Firm _____

Position _____

Address: _____

Tel. () _____

Fax () _____

E-mail Address: _____

1. Latest Tax Agent No.* _____

2. Latest Audit Licence No.* _____

3. Advance Course Examination and Date Certificate Issued: _____

RESIDENTIAL ADDRESS

Address: _____

Tel: () _____

** This information will determine whether you will be under the category of practising or non-practising.*

NOTE

You are requested to return the completed form to the Secretariat by fax or post to:

MALAYSIAN INSTITUTE OF TAXATION (225750 T)

Level 4, Dewan Akauntan

No. 2, Jalan Tun Sambanthan 3

50470 Kuala Lumpur

Tel No. (03) 2274 5055

Fax No. (03) 2274 1783

The following persons have been admitted as associate members of the Institute as at 2 February 1999.

Name	Membership No.
YEE THAM SONG	1536
TING WEE HUONG	1537
LIM KOK AUN	1538
THEONG HOCK @ KOK CHOO FOOK	1539
NG KIM KIAT	1540
CHEN YAU VOON	1541
MANI PETER XAVIER	1542
AZIYAH BINTI ABDUL AZIZ	1543
TAN FONG NEE	1544
MOHD RIDZWAN BIN ABDUL RAZAK	1545
LIM LAY FANG	1546
YAP YIN ONN	1547
KUAN CHENG TUCK	1548
CHAI KOH WAH	1549
MOHAMED AZLAN SHAH BIN AZIZ	1550
WONG YET YOU	1551
WONG KEE HOOK	1552
PAUL JONG JUN HIAN	1553
HO WAI MING	1554
LIM SENG KONG	1556
TANG YETH FONG	1558
TEOH SIEW HOON	1557

The following persons have been admitted as fellow members of the Institute as at 2 February 1999.

Name	Membership No.
LIM SWEE CHONG	561
VALENTINE JOSEPH FERNANDEZ	567
LEOW CHIN	569
YEO OOI LENG	572
HAN JIK KUANG	573
TEE SIEW KAI	574
KOH FOO GHE	575
CHUA TECK HWEE	577
LIEW NYUK KONG	584
PO YIH MING	585
YEOH OON LEONG	586
ONG CHEE YOW	587
ABDUL HAMID BIN MOHD HASSAN	590
S GUNASEHARAN S/O P SUBRAMANIAM	594
TAN LAY BENG	597
CHUNG WEE KONG	598
LAI VAI MING @ LAI KHENG MING	605
CHAN NGOW	609
OOI GHEE TEONG	610
GEOFFREY JAMBU	611
GOW KOW	614
LEE HOR YIN	615

MEMBERSHIP STATUS OF MIT AS AT 2 FEBRUARY 1999

Honorary Fellows	7
Fellows Members*	375
Associate Members*	1160
	<hr/> 1535

* Fellow and Associate Members

Public Accountants of MIA	908
Registered Accountants of MIA	180
Licensed Accountants of MIA	15
Advanced Course Exam of IRD	120
Advocates & Solicitors	7
Approved Tax Agents	124
MIT Graduates	4
Others	177
	<hr/> 1535

AMENDMENT TO THE RULES AND REGULATIONS OF THE INSTITUTE

Please be informed that Rule 11-7 (i) of the Institute's Rules and Regulations has been amended.

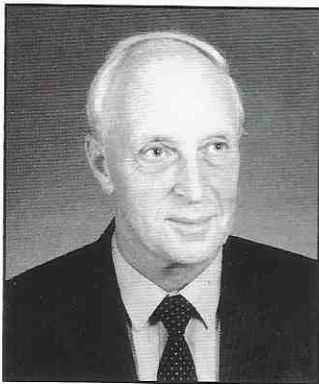
Currently:

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

New

"Upon the changes of appointment, all relevant documents belonging to the client should be returned and upon written approval from the client, to be given to the new tax agent."

The above changes are effective from 2 February 1999.



the taxation of benefits in kind

Prepared by:
Richard Thornton

This article continues the examination of benefits-in-kind and other types of employment income, which I started in the June 1998 issue of *Tax Nasional*.

Use Or Enjoyment

The Act specifies that the use or enjoyment by the employee of any benefit or amenity (not being a benefit or amenity convertible into money) provided for the employee by or on behalf of the employer, is a benefit-in-kind to be included in his employment income. This is subject to some exceptions, which were referred to in the previous article, where I also dealt with some of the more common benefits-in-kind such as cars and houses.

A benefit or amenity does not have to be used **and** enjoyed, neither does it have to involve the employee himself. It is deemed to be used **or** enjoyed if it is used or enjoyed by his spouse, family, servants, dependents or guests.

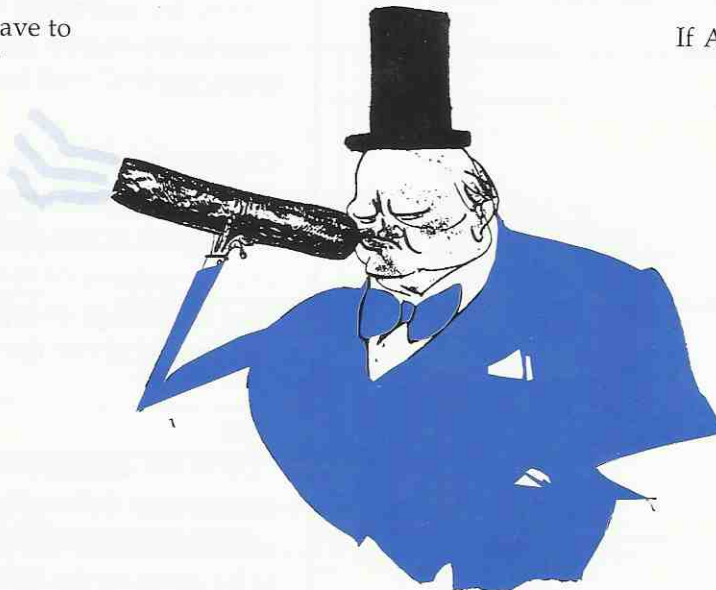
Example 1

Generous Berhad provides its executive with a furnished house containing a washing machine, a hi-fi set and some beautiful water colours. The house is used and enjoyed by the executive, but not the washing machine, which is used only by his servant. The executive is tone-deaf and never uses the hi-fi, but his son listens to it all the time. However, the executive appreciates art and enjoys looking at the water colours. All of these items are treated as benefits-in-kind for the executive.

Furthermore, a benefit or amenity does not have to be provided directly by the employer; it may be provided for the employee on behalf of his employer.

Example 2

En Ahmad is employed by DEF (M) Sdn Bhd, a subsidiary of ABC Bhd. As part of his employment package, En. Ahmad is given the use of a house on the housing compound owned by ABC Bhd. No charge is made by ABC Bhd to DEF (M) Bhd for the use of the house. The rateable value of the house is RM1,500. The defined value is the rateable value of the house and this, subject to any percentage limitation, is treated as a benefit-in-kind of En Ahmad, derived from his employment with ABC (M) Sdn Bhd.



Undoubtedly I was provided with everything in
keeping with my station in life

If ABC Bhd were to change its policy and charge a rent to DEF (M) Sdn Bhd, the result would be different. The house would then be provided directly by DEF (M) Sdn Bhd, and the defined value would be the rent paid and not the rateable value.

Valuation

The rules for valuation of a benefit-in-kind consisting of living accommodation were covered in the first part of this article, as were certain other benefits dealt with under the Inland Revenue Guidelines, such as cars, and benefits relating to houses and cars. For such benefits, the question of valuation is relatively easy, because you can follow the scale laid down by the Inland Revenue Guidelines.

For benefits and amenities other than housing, the basis of valuation stipulated by the Act is the value of the use or enjoyment of it by the employee. This is to be ascertained by whatever method is just and reasonable. As you can see, this does not take us very far. Generally, the Inland Revenue method of valuation favours the use of cost to the employer, although it is tempered occasionally by the use of something less onerous for the employee. This can be seen particularly in the scale benefit for the use of cars, which is set at 50% less for cars more than five years old. "Just and reasonable" in other specific cases might permit the use of market value but a good case would have to be made for it.

A principle of valuation has been laid down in the Inland Revenue Guidelines for certain types of asset, and it is expressed in the formula:

$$\frac{\text{Cost of the asset providing benefit/amenity}}{\text{Prescribed average life span of the asset}} = \frac{\text{annual value of benefit}}{\text{benefit}}$$

The assets for which life spans have been prescribed are:

Asset	Prescribed Average Life Span
1. Motor Car	8 years
2. Furniture and Fittings	
Curtains, carpets etc	5 years
Furniture, sewing machine	15 years
Air-conditioner	8 years
Refrigerator	10 years
3. Kitchen Equipment (i.e. crockery, rice-cooker, electric kettle, toaster, coffee-maker, gas cooker, cooker hood, oven dish-washer, washing machine, dryer, food Processor, etc.)	6 years
4. Entertainment and Recreation	
Piano	20 years
Organ	10 years
Swimming pool (detachable), Sauna	7 years
Sauna	15 years
5. Miscellaneous	
Mobile telephone	10 years

As mentioned in the previous article, the Guidelines are only a practical method of handling the administrative aspects of BIK. Where a taxpayer is dissatisfied with the way that they apply to him, he may appeal, and apply for a different basis to be used, provided that it is in accordance with the law. However, most problems should be capable of resolu-

tion within the framework of the Guidelines. It is not necessary for a taxpayer to accept the use of a scale benefit if he is not happy with it.

If an employee disputes the scale value for a car as being excessive, he may ask for the value to be determined on the basis of the general formula given above, using the prescribed life span of eight years, and factoring in a residual value of 20%. The formula is applied on a straight-line basis.

Example 3

Wong has been provided with a new company car costing RM120,000, with the company paying for all petrol. The scale value for use of the car is RM4,800 and Wong is not happy with that. He travels a lot on company business and claims that his annual mileage is 90,000 km. Of that, he estimates his private mileage at 3,000 km. His house is only 5 km from his office and, having a car of his own, he never uses the company car except for travel from home to office.

Wong could submit a computation along the following lines:

	RM
Cost of car	120,000
Less 20%	24,000

	96,000
	=====
Annual value $96,000 \div 8$	12,000
Annual private km	3,000
Annual total km	90,000
Benefit-in-kind	
$\frac{3,000}{90,000} \times 12,000$	400

A benefit-in-kind of RM400 is much better for Wong than RM4,800 if he gets it agreed. However, it will not help with his fuel benefit, which will still be RM1,500 under the scale. If he is not happy with that, he will need to put forward a proposal for it to be recalculated on a "just and reasonable basis.

The formula method of valuation may also be used for items such as household furnishings, apparatus and appliances which are within the scale of benefits for such items. This might apply, for example, where a house is partly furnished but to a lesser extent than that specified in the guidelines (furniture in the lounge, dining room or bedrooms.) The formula method should also be applied to 'luxury' items such as those specified in the table of prescribed life spans. For other things not covered by the table, like wall pictures, antiques and boats, the formula should also be applied, but it may be necessary to negotiate about the life span to be used.

For the items mentioned in Example 1 above, the washing machine is treated as having a life span of six years, the hi-fi can probably be equated with a stereo set and given a life span of seven years. In the case of the water colours, no life span is prescribed and this will be a matter of negotiation.

Other Benefits

Some other benefits, which are covered by the Inland Revenue Guidelines effective from year of assessment 1998, as modified by a later clarification, are dealt with below.

Mobile telephone

A fixed benefit of RM600 has been specified to cover rental and charges. This may be reduced appropriately if the mobile telephone is provided by the employer for official use and the employee pays for the cost of all private calls. Where the telephone is owned by the employee, but the employer pays for the rental and all official calls, the full scale benefit of RM600 will be imputed.

Gardeners, drivers and domestic help

The amount set out in the table of scale benefits is for each person so employed. It is clarified that if such people are hired and paid by the employee, who is then reimbursed by the employer, the amount reimbursed is to be assessed under section 13(1)(a) (gross income from employment) and not as a benefit-in-kind.

This could be important when the defined value of the benefit of housing is limited to 30% or 3% of the gross income from employment under section 13(1)(a).

Where domestic help is provided by the employer for business purposes, the employee may claim for a reduction in the scale benefit, according to the facts of the case.

No benefit-in-kind will be assessed where a driver is provided from a pool and not solely for the use of a particular employee.

Loans to the employee

An interest-free loan is not regarded as conferring any benefit on the employee, if it is made by the employer from the excess funds of the business, and without borrowing from other parties. If the employer obtains a loan from a third party for the purpose of giving interest-free loans to employees, the benefit-in-kind to be assessed is the cost paid by the employer to the third party (usually the interest cost.)

A similar principle applies where the employee is required to pay interest on his loan from the employer. If the employer obtains a loan from a third party for the purpose of giving the loans to employees, and the interest cost to the

employer exceeds what he charges to the employee, the excess will be treated as a benefit-in-kind.

The Guideline fails to make it clear what is to happen where the employer did not borrow specifically to make the loans to employees, but relied on general borrowings, which might also have been used for other purposes.

Insurance premiums

Sometimes the employer takes out insurance on the employee's life, or to cover against certain risks. Where, under such an insurance, the employee, a member of his family, or an appointed nominee is named as the beneficiary, the premium will be assessed on the employee as a benefit-in-kind. This will not apply to premiums paid for Aviation Travel Insurance or to employer contributions to the Healthcare Management Organisation (HMO.)

School/tuition fees

School/tuition fees paid by the employer in respect of the employee's children are to be assessed as benefits-in-kind. This will not apply to amounts expended under the Education Refund Plan (ERP.)

Club subscriptions

Both entrance fees and monthly subscriptions paid on behalf of an employee as an individual member will be assessed as a benefit-in-kind. For corporate memberships, entrance or membership fees are not regarded as taxable. Furthermore, no tax will be charged where a corporate membership is paid for by the employer and used by senior staff to fulfil the objectives of the company. However, if there is membership of more than one club, only the one with the highest cost will be exempted from tax.

Administration And Collection

Benefits-in-kind must be reported by the employer on the EA Form which is required every year, one copy to be given to the employee and one forwarded the Director General of Inland Revenue. They must also be reported by the employee on his personal return of income.

Where benefits-in-kind are substantial, it may sometimes cause difficulties with tax collection because the tax will be assessed and collected later. Benefits-in-kind are not part of the base for monthly tax deductions under the PCB scheme. Consequently, liability to tax will only arise when the annual returns are submitted and an assessment has been raised. The employee might then get a shock.

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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.
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3. Supply of technical articles, current tax notes and news from the Institute.
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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.
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	Fellow	Associate
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