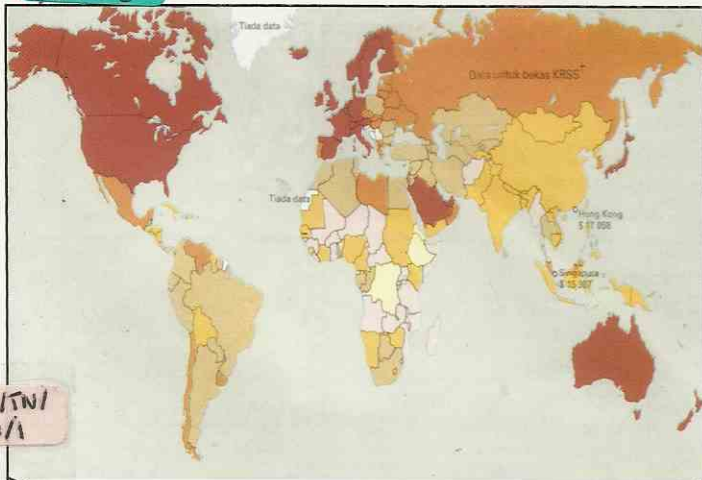
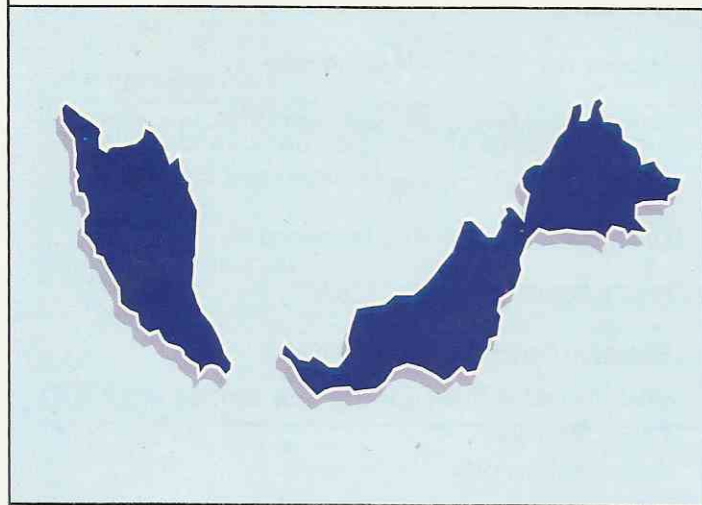


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022/1



• Price RM30.00

• US\$17.00

TAX NASIONAL

OFFICIAL JOURNAL OF THE
MALAYSIAN INSTITUTE OF TAXATION

ISSN 0128-7580 KDN PP 7829/12/2000

<http://www.mia.org.my>

QUARTERLY MARCH 2000

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Institute's News



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The objective 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.
4. To provide examination for persons interested in or concerned with the taxation profession.

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Dawning Of Transfer Pricing Policy In Malaysia

By
ALBERT CHONG

*Senior Manager
Ernst & Young Tax Consultants Sdn. Bhd.*

Introduction

I was reading a report in the newspaper the other day and it disturbs me. A father is competing with his ex-wife over the custodial right of a young boy, their only child. Both are seeking to protect and claim their so-called parental rights. In their search to proclaim their interest, I am doubtful whether the interest of the boy has been considered or has been given priority. On reflection, this kind of competition seems to be emerging in the "tax family" also.

It has become more apparent that the tax authorities throughout the world are competing between them to possess the biggest, best, and hardest – hitting pricing rules and regulations. Each tax authority is protecting from foreign invasion on its judicial right to tax and at the same time seeking to increase its coffers. And, Malaysia is fast catching up with this race. This is all done in the name of national interest.

New Tax Paradigm

In Malaysia, it now appears that there is an increasing focus on transfer pricing because of the potential for increasing tax

revenues. To many, this new development, starting with the revised 1999 Corporate Tax Return Form C is worrisome.

The Inland Revenue Board (IRB) is gathering data to enable it to enter a "new tax paradigm" of self-assessment system and transfer pricing audit. I suppose the IRB must be commended for taking a bold move to lay foundation for this new tax era. It is the death of the old tax system and the birth of the new tax regime.

**Any person who
assists in, or advises
with respect to, the
preparation of any
tax return can be
fined**

Generally, I have a feeling that Malaysian taxpayers and possibly the IRB itself are not ready for it. But again, with the attitude of "Malaysia Boleh" isn't the change appropriate as our country moves forward into a new millennium?

New Regulations

In the new Corporate Tax Return, companies are now required to provide the IRB with certain statistical and financial data such as:

- History of the company's turnover, gross and net profit;
- Overseas company transactions with non related companies;
- Related companies transactions information;
- Borrowings from related and non related companies;
- Trade and non trade creditors information;
- Trade and non trade debtors information;
- Fixed assets and investment information;
- Closing stock and work-in-progress; and
- Paid-up capital and reserves account information.

These sources of data collected by the IRB would assist them to determine the "arm's length range of prices" for the purpose of transfer pricing audit in Malaysia.

Malaysian tax legislation prescribes that transactions between related parties should be conducted at

arm's length prices. This general principle of arm's length has also been reaffirmed by the United Nation Ad Hoc Expert Group on Tax Treaties between Developed and Developing Countries. I am certain that this rule does not provide any comfort to the taxpayers in view of the subjective nature of what constitutes an arm's length price. This discomfort will be particularly felt by the corporate taxpayers in the self-assessment regime that will come into force during the year of assessment 2001.

Under self-assessment, taxpayers have the responsibility to calculate their chargeable income and the amount of tax payable on that chargeable income. This means that taxpayers also have the burden of proof to justify that their transfer prices with related parties are at arm's length. Where there are transfer pricing audit adjustments made by the IRB and these adjustments result in higher chargeable income, a penalty of 10 percent will be payable in addition to the unpaid tax. The 10 percent penalty will be imposed on the additional tax where the additional tax is more than 30 percent of the actual tax payable.

In addition, any person who assists in, or advises with respect to, the preparation of any tax return can be fined if the return results in an understatement of the liability of tax of another person. The penalty is between RM 2,000 and RM 20,000 or imprisonment for a term not exceeding three years, or both, unless he satisfies the court that the

assistance or advice was given with reasonable care.

General Rules For Setting Arm's Length Price

According to the widely approved "arm's length standard," the charge for goods and services to each other should be at the prevailing market prices. A taxpayer making a sale or other transfer of property or services to a related party (a "controlled sale") should set its transfer price equal to the price that an unrelated party would have paid for the comparable property or services (an "uncontrolled sale") under the same or comparable conditions.

Unfortunately, in most circumstances tax payers do not know the exact prevailing market price at which a sale will take place prior to the consummation of the sale. At best, the prevailing market price is likely to fall within some range of possible prices. That range might be narrow, typically would be the case for goods sold through an organised commodity exchange, or it might be wide, as typically would be the case for highly specialised goods through extensive negotiations.

I believe if the transfer price set by the taxpayer, in reporting its taxable income, is within the arm's length range, it will not be subject to adjustment by the IRB. Thus, the taxpayers are now placed under substantial pressure to source and develop quality pricing data that they may use to select proper pricing method.

Basically, the pricing methodology is divided into two broad categories. They are commonly known as "traditional" methods and new pricing methods. It will be nearly impossible to adopt the best-method pricing method that is applicable for all circumstances. Which transfer pricing method would be acceptable to the IRB would depend on a wide variety of facts and circumstances of each particular case.

Pricing Methods

The "traditional" pricing methods are:

- Comparable uncontrolled price (CUP) method
- Resale price method; and
- Cost plus method.

New methods appear to be emerging, although not without some resistance. The OECD guidelines provide that new pricing methods may be used "to approximate arm's length conditions when traditional transactions methods cannot be reliably applied alone or exceptionally cannot be applied at all." The new pricing methods include:

- Comparable profit method;
- Comparable profit split method; and
- Residual profit split method.

Generally, any one of the above pricing methods adopted by the taxpayers should be deemed to be the acceptable arm's length price if the application of that method is proper to the circumstances. However, the

important question of "proper to the circumstances" is an issue of continuing controversy.

Notwithstanding this controversy, the two primary factors normally taken into account in deciding among alternative methods are:

- Degree of comparability between the controlled factors and any uncontrolled comparables, and
- Quality of the data and assumptions used in the analysis.

Comparable Uncontrolled Price (CUP) method

The CUP method is the pricing method that best exemplifies the ideal of the arm's length approach. Typically, it would be the method of choice if reliable uncontrolled comparables are available. Under CUP method, the arm's length price refers to the price at which comparable products were sold in comparable transactions between independent and unrelated parties.

The most important consideration in determining comparability under CUP is the similarity of the products sold in the controlled and uncontrolled transactions. If adjustments for the material differences in the products cannot be made, the comparable uncontrolled price method should not be used. For example, adjustments might be made for differences in transportation costs, the geographical market in which they are sold and the timing of the sales.

The weakness in CUP is the difficulty in finding uncontrolled comparables. Also, adjustments

typically could not be made for intangible property associated with sale such as valuable trade names and designer labels. Even if the adjustments for the material differences can be made, the results reached under CUP would have reduced reliability.

Resale Price Method

The application of this method would be the sale by a manufacturer to a related party acting as a distributor, followed by a resale by the distributor to unrelated buyers. The distributor in this case would not add substantial value to the goods by physically altering them. The resale price method is not suitable if the controlled distributor has used its own intangible property to add value to the goods sold.

**The penalty is
between RM 2,000
and RM 20,000 or
imprisonment for a
term not exceeding
three years**

According to this method, the arm's length selling price of the manufacturer is computed by reducing the applicable resale price by distributor by an appropriate gross profit typically earned by uncontrolled distributors.

Adjustments are then made to the gross profit margin if there are material factors in the controlled

and uncontrolled sales that would affect that margin. The factors include:

- Differences in inventory levels and turnover rates;
- Contractual terms, such as warranties, sales volume and credit terms;
- Marketing and advertising programmes;
- Level of market – wholesale or retail; and
- Currency risks.

Cost Plus Method

Under this method, an appropriate profit mark-up is added to the seller's cost to arrive at an arm's length price. The mark-up should be derived from uncontrolled sales by the controlled manufacturer to uncontrolled buyers, where possible. When such comparables are not available, sales by the uncontrolled manufacturers to uncontrolled buyers may be used.

Adjustments should be made in the profit mark-up where there are differences in the complexity of the manufacturing, differences relating to selling and administration, and differences in contract terms.

Where appropriate, taxpayers can use a combination of the above three methods, or possibly other methods to arrive at the transfer price.

Comparable Profits Method (CPM)

A taxpayer can determine its profit from the related transactions by assuming that the ratio of its profits

to some measure of its costs or assets associated with those transactions is equal to comparable ratio for other independent enterprise that is engaged in comparable activities. The ratios referred here are also known as "profit level indicators."

One of the commonly used profit level indicators is the ratio of operating profits to assets. This ratio shows the rate of return earned by the independent enterprise on the capital employed in its business.

Typically, a profit level indicator is derived from data covering a number of years for at least three years. Obviously, a profit level indicator based solely on internal data may not be used.

In most cases, a taxpayer will apply CPM to two or more uncontrolled taxpayers to determine an arm's length range of profits. If the profits fall outside the range, then the tax authorities may readjust transfer prices so that the profits fall within the range. Although the authorities may set the arm's length price at any point within the arm's length range, the usual rule is to set the price at the midpoint.

Comparable Profit Split Method

Basically, this method is to split the total operating profit derived by two or more controlled taxpayers from a common enterprise by reference to the percentage profit split that results when independent enterprises engage in similar activities under similar circumstances. The profits are

divided based upon the relative value of the functions performed by each of the associated enterprises participating in the controlled transactions.

This profit split method may not be employed if the combined operating profits, as a percentage of the combined assets, of the uncontrolled comparable "varies significantly" from the profits derived by the controlled taxpayers.

Residual Profit Split Method

The objective of residual profit method is to split the profit derived from the exploitation of intangible property from the profits from routine activities. The splitting is done in two stages.

In the first stage, sufficient amount of profits is allocated for the routines undertaken by the controlled taxpayers. The allocation is made by reference to the profits generally derived by independent enterprises from such activities.

In the second stage, the residual profits are allocated. These profits are regarded as derived from the valuable intangible property of the controlled taxpayers. If two or more controlled taxpayers have contributed intangible property to the common enterprise, then the residual profits will be allocated in accordance with the fair market value of those contributions.

Strategies

It is inevitable that a taxpayer who is unfortunate enough to be the

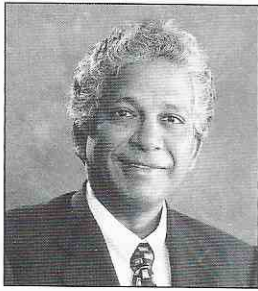
subject of transfer pricing audit will probably embark on a long and costly dispute with the tax authorities. The real and most pressing issue in the coming years is how to create a defensive tax strategy in view of absence of clear guidelines.

Appropriate documentation will be critical to ensure that taxpayers and tax preparers show that prices are at arm's length. Thus, transactions with related companies should be properly documented with sufficient description of the transactions. Significant or unusual transactions should be explained in detail particularly the rationale for adopting a particular pricing method.

Also, a consistent pricing policy is encouraged. If variations cannot be avoided, there should be adequate and defensible commercial reasons for doing so. More importantly, these reasons should be clearly documented as the tax authorities are empowered to open assessments for the past six years. Retroactive changes in prices should be avoided.

Conclusion

It is still too early to know for certain how many companies in Malaysia have or are in the process of designing and documenting their transfer pricing policies. Taxpayers must no longer rely on pure historical practice. The new pricing policies should be based on acceptable and endorsed methods as described above. It is the death of the old tax system and the birth of the new tax regime.



Counsel's Opinion

By Arjunan Subramaniam

The millennium is upon us. Or is it? By whose calendar? Should not the millennium begin with 1. 1.2001? Truth has many faces. One of the facets of truth is that there is no such thing as a millennium for the simple reason that no one knows just when the Earth first began to circle the sun! So my view is that each day of health and wealth is a new millennium. Time is eternal.

Each day opens with new advances in tax law, new methods of taxation and efficient methods of collection of taxes. Nothing stays permanent. Everything changes. And so my story begins with a taxpayer with a bold heart. J. No.: R3 - 14 - 16 - 1996 was taxed twice in different years of assessment on the same income. All because the accounting date was changed. The matter went to Court. And the Chairman of the Special Commissioners asked - under what provisions of the Income Tax Act, 1967 can this, that is, taxing twice on the same income on the same person in two different years of assessments be done? The Revenue answered: "Section 21 (2), your honour". The taxpayer's counsel confessed his book was wrong on the matter. But then he added he has since changed his mind.

The Chairman observed that Section 21 (2) Income Tax Act, 1967 deals with basis periods and not an

authority for taxing the same income twice.

The taxpayer having won his case at the Special Commissioners faced an appeal by the Revenue at the High Court. The matter at the High Court was resolved in favour of the taxpayer; the learned judge ruled that unless the Revenue could show specific sections which clearly impose tax on the same income twice the appeal must be dismissed. The Revenue lodged an appeal to the Court of Appeal. What began in the 20th Century will now be decided in the 21st Century.

The next saga in tax law focussed on the issue of whether Co - operative Societies registered under any Co-operative Societies Ordinance or Enactment for the time being in force exempt under Section 13 (1) (f) (ii) Income Tax Ordinance, 1947 continue to enjoy the exemption under the Income Tax Act, 1967.

The matter was first raised in PKR256 where the Special Commissioners of Income Tax discharged assessments raised on a Cooperative Society holding that paragraph 33, Sch. 9, Income Tax Act, 1967, read with Section 156 of the same Act meant that those Cooperative Societies falling under the exemption provision of Section 13(1) (ii), Income Tax Ordinance,

1947 continued to enjoy the exemption under the Income Tax Act, 1967.

The Revenue did not appeal, holding the decision as good law.

The Revenue amended paragraph 33, Sch. 9, Income Tax Act, 1967 to read

'Any exemption from any previous tax or from any provision of a repealed law shall, if it was made under a repealed law and was effective on 31st December, 1967, be deemed to have been made by an order under Section 127 in relation to tax imposed by this Act or in relation to the corresponding provision of this Act, as the case may be:

Provided that this paragraph shall not apply in relation to

(a) any such exemption for which provision is made, with or without modification, in this Act; or

(b) section 44(3) of the Sarawak Ordinance"

The effect of the above amendment was considered in National Land Finance Cooperative Society Ltd. v Director General of Inland Revenue [1994] 1 MLJ 99.

The then Supreme Court held that

(1) The Amendment Act 471 did not exclude the Interpretation Acts 1948 and 1967, and, therefore, "there is a doubt whether the legislature had intended to impair the existing right of the taxpayer and inflict a detriment to it as it takes away a vested right under the existing law to exemption from tax".

(2) As there is doubt the ambiguity must be construed in favour of the taxpayer as the said exemption from tax has not been removed by sufficiently clear words to achieve that purpose".

The taxpayer and the counsel thought that that was the end of the matter. But Revenue struck back with assessments on the taxpayer. As the taxpayer was managing his

assessments, another taxpayer (Ketua Pengarah v MCIS-W01-145 - 96) took up the same point to the Court of Appeal which decided:

(i) National Land Finance case was a landmark case, and

(ii) the reasoning and decision in that case applies in this case as the facts are on all fours with MCIS case.

What a relief to the taxpayers!

And in L. Sdn Bhd W-0 1 -8-98 the taxpayer applied for the case stated to be remitted to the Special Commissioners of Income Tax with an order to:

(i) compel the Special Commissioners to follow the

principle in E. v Director General of Inland Revenue (1970) 2 MLJ 117 to forward the case stated to the successful party first and then to the other party for their comments,

(ii) to record the evidence of the accountancy practice adduces before the Special Commissioners, and

(iii) to rectify the contentions of the Appellant in the case stated.

The High Court having dismissed the application, the case came before the Court of Appeal which ruled in favour of the Applicant and held that the procedure set out in the case of E (Supra) should be followed.

The world is for those who are bold.

Selamat Hari Raya Aidil Fitri

from

The Council of The Malaysian Institute of Taxation

A Happy Chinese New Year

from

The Council of The Malaysian Institute of Taxation

Australia's Goods And Services Tax And Pay As You Go System

By Ken Devos

1. Introduction

For over sixty years, Australia has been the only OECD country that has continued to operate under a single stage tax, such as, the wholesale sales tax system¹. However, after much debate, and failing to get voted in during Australia's 1993 Federal Election, on July 8, 1999 a Goods and Services Tax (GST) finally became law in Australia. Consequently, GST has proven to be one of the most far reaching and controversial taxation measures ever introduced in Australia. The first part of this paper will outline some of the major characteristics and features of the GST system and indicate what is required in managing such a system. The second part of the paper will also highlight the main features of the proposed, Pay As You Go (PAYG) System which has not yet become law at the time of writing. Finally, some comments on the new tax systems, and how dramatic the changes will be for businesses, in Australia are made in the conclusion.

2 The Goods and Services Tax

2.1 Basic Concepts of a GST

The GST is a broad-based consumption tax which is borne by

the final consumer. The GST is a tax which is charged on the supply of goods and services in Australia and on goods imported into Australia. Essentially the GST is a value added tax (VAT). Tax will be paid at each stage along the chain of transactions involving the goods and services until the end user is reached². GST is charged on outputs, such as sales and credit is claimed on inputs, being purchases. Enterprises will pay the GST but will be entitled to a credit (refund) of the GST paid if the purchases relate to a "creditable purpose"³. This concept will be discussed in more detail later, but generally speaking it is when the purchase is used by the enterprise to further their business. That is, a creditable purpose does not include

² Murray Jones, "Australian GST Legislation with overview and Explanatory Memorandum", CCH Australia Ltd, July 1999 at 5.

³ s 11-15 of A New Tax System (The Goods and Services Act) 1999 Meaning of creditable purpose:

(1) You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise.

(2) However, you do acquire a thing for a creditable purpose to the extent that:

(a) the acquisition relates to supplies that would be input taxed; or

(b) the acquisition is of a private or domestic nature.

(3) To the extent that the acquisition relates to making financial supplies through an enterprise, or a part of an enterprise, that you carry on outside Australia, the acquisition is not for the purposes of 2(a), treated, as one that relates to making supplies that would be input taxed.

something which is "Input Taxed"⁴ or used for private or domestic purposes. In actual fact, the enterprise does not bear the GST, but rather collects and remits the GST to the Australian Taxation Office. (ATO)

A New Tax System (Goods and Services Tax) Act 1999 (ANTS) contains the main provisions which cover all taxable situations. This Act is supported by the transitional provisions and three separate GST Imposition Acts which are beyond the scope of this paper.⁵ Nevertheless despite the GST start date of 1 July, 2000, at a rate of 10%, there are GST implications that take effect from the 2 December 1998, of which taxpayers will need to be aware. For instance, supplies that are delivered after the 1 July 2000 but ordered now, may be taxable. Examples

⁴ Division 40 s 40-1 If a supply is input taxed, then no GST is payable on the supply and there is no entitlement to an input tax credit for anything acquired or imported to make the supply (see s 11- 15 and s 15- 10)

⁵ A New Tax System (Goods and Services Transitions) Act 1999, contains the means by which the old law (in particular sales tax) ceases and the new law GST commences.

- The three separate GST imposition Acts which formally impose the GST: A New Tax System(Goods and Services Tax Imposition- Customs) Act 1999, A New Tax System Goods and Services Tax Imposition- Excise) Act 1999 and A New Tax System (Goods and Services Tax - Imposition- General) Act 1999.

¹ Owens. J "The Move to VAT", Tax Planning International Review Journal, July 1998 at 15.

include things like memberships, subscriptions and contracts entered into now which span past 1 July 2000. An office lease or prepayment of goods and services are common issues which will attract GST on the component after 1 July 2000. Consequently organisations need to be GST aware now.

2.2 Features of the GST System

2.2.1 GST Taxable Supplies

The liability to charge output tax arises on the making of taxable supplies. The notion of "Taxable Supply" is derived from 5 concepts - supply, consideration, enterprise, connection with Australia and registration⁶. Section 9-5 of the *ANTS (GST) Act 1999*, provides that,

You make a taxable supply if

- (a) you make the supply for consideration and
- (b) the supply is made in the course or furtherance of an enterprise you carry on and
- (c) the supply is connected with Australia and
- (d) you are registered or required to be registered

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed. Each of the above elements needs to be examined individually.

Supply

The term supply is very widely

defined, and will not only cover the sale of goods and services but also extends to many other transactions which result in the taxpayer receiving money or property. The notion of supply is extended in s 9-10(2) without limiting subsection (1) to include,

a supply of goods and services, the provision of advice or information, the grant, assignment or surrender of real property or an interest in real property, the creation, grant, transfer, assignment or surrender of any right, the supply of a financial service, and the entry into, or release from an obligation to do anything or to refrain from an act or to tolerate an act or situation.

While the provisions deal with some of the more usual forms of supply obviously there are other possibilities which could also come under the definition of supply. Alternatively not all charges involve a supply. For example, parking fines do not involve something being supplied. The provision also provides that supply does not include the supply of money unless the money is provided as consideration. It is also important to bear in mind, that some supplies will be mixed supplies, where part of the supply is GST free and the other parts attract GST. For example, composite goods such as takeaway food and basic food. The takeaway food is subject to GST while the basic food is GST free.

In the Course of or Furtherance of an Enterprise

The second element which must be satisfied in the definition of taxable supplies, is that the supply be made by a person or the firm engaged in commercial activities. The concept of

"an enterprise"⁷ is central to the concept of a GST. Enterprise is exhaustively defined in the legislation.⁸ Most importantly an enterprise is not the business but the activity itself which is being carried on. It can involve a series of activities or a one off, isolated transaction. This is supported by the wording "in the form of an adventure or concern in the nature of trade". However, this appears contradictory to the wording "on a regular or continuous basis, also stated in the provision.

The concept of an adventure or concern in the nature of trade has never been used in Australian income tax legislation. It is in fact, a concept that is found in the

⁷ s 9-5 (b) *A taxable supply includes a supply made in the course or furtherance of an enterprise that you carry on.*

⁸ s 9-20 (1) *Defines Enterprise as an activity or series of activities done*
 (a) *in the form of a business or*
 (b) *in the form of an adventure or a concern in the nature of trade or*
 (c) *on a regular continuous basis, in the form of a lease, license or other grant of an interest in property or*
 (d) *by the trustee of a fund that is covered by, or by an authority or institution that is covered by Subdivision 30-B of the Income Tax Assessment Act 1997 and to which deductible gift can be made or*
 (e) *by a charitable institution or by trustee of a charitable fund or*
 (f) *by a religious institution or*
 (g) *by the Commonwealth, a State or Territory, or by a body corporate, or corporation sole established for public purpose by or under a law of the Commonwealth, a State or a Territory*
 (3) *However an enterprise does not include an activity or series of activities, done*
 (a) *as an employee or other PAYE earner or*
 (b) *as a private recreational pursuit or hobby or*
 (c) *by an individual or partnership without a reasonable expectation of profit or gain*
 (d) *as a member of a local government body established by or under a State law or Territory law.*

⁶ *There are provisions in the Act such as Division 105, which ignore these requirements and simply deem the elements needed to create taxable supplies.*

United Kingdom tax legislation. It includes, income from trades, professions, and vocations charged under Schedule D of the *Income and Corporation Taxes Act 1988*. Trade for this purpose, is defined to include, "every trade, manufacture, adventure or concern in the nature of trade". Typically, the kind of case that falls within the description of an adventure or concern in the nature of trade, is a transaction including a one-off transaction, which does not form part of the carrying on of a continuing "business" but has sufficient business features or "badges" of trade to render my profit or gain income⁹. Given that the term "in the course or furtherance of" is not defined in the legislation it is expected to be very broadly interpreted, as has been the case in other GST/VAT jurisdictions. Consequently, the issue of whether the activities you carry on relate to a business or just a hobby may cause problems. The ATO will need to pass very strict guidelines on this aspect as soon as possible to assist taxpayers in determining whether they have a legitimate business and are thereby able to register for the GST.

The definition of Enterprise also includes the activities of charities, religious institutions, non - profit organisations and clubs, all of which may lack a profit motive. However, at a later stage some activities of these organisations may be excluded from the definition where they are of a

⁹TIA's Tax Technical Department, "Beware the GST is not as discrete as it appears to be" Vol 34/2, August 1999.

particular character or are provided for inadequate consideration.¹⁰ Ultimately it is the type of activities that these organisations may perform which will result in the transaction being caught in the GST net.

The statement of the enterprise being 'carried on' includes the commencement and termination of an enterprise. This has implications for revenue and expense items, which would be treated differently for income tax law purposes, which must be noted when, examined in the GST environment. For example, in the case of pre - incorporation contracts, there are provisions that will attribute pre incorporation input tax credits to the company once established, a rule which is needed because of the likelihood that the promoter will not be registered but the company will be.¹¹

Specific exclusions from the definition of Enterprise are employees or pay as you earn (PAYE) earners, those who indulge in private recreational pursuits and hobbies, and others who have no reasonable expectation of profit. As such, services provided by an employee in return for wages will not be taxable supplies

¹⁰ Section 9-5 (a) requires that a supply be made "for consideration". Also Division 38-F treats as GST free, supplies made by charitable institutions for "less than 75% of the GST inclusive market value of the supply". Division 38E makes GST free the supply of services by a religious institution where the service is "integral to the practice of that religion."

¹¹ Division 60 Pre -Establishment Costs, a 60-1 This Division enables input tax credits to arise in some circumstances in which acquisitions and importations are made before a company is in existence. This is opposite to Income Tax law where a deduction is generally denied for pre establishment expenses.

under the GST. Consequently, employers receive no input credit for this input to their business profits. On the other hand, independent contractors will be regarded, as having an enterprise and their services will constitute taxable supplies and as such input credits will be available. This will continue to make it difficult in distinguishing between the employee and independent contractor, but more important when determining costings of particular jobs. For example, a task may be cheaper if done in-house by an employee rather than outsourced to an independent contractor.

Connection with Australia

This third element is fairly self-explanatory and states that GST only deals with local and imported goods. Exports are thereby excluded from the GST. Exports can lose their GST free status however, if not exported within 60 days of the invoice being received.¹² An export is also not GST free if the supplier reimports the goods back into Australia. Services will be regarded as exported where the services relate directly to work done on land and goods abroad, where the services are provided to a non-resident who is outside Australia at the time of supply, or where the services are provided to a person who is outside Australia and the service is used and enjoyed outside Australia. An example could be, where an architect supplies plans prepared in Australia for a building in Vietnam.

Registration

If an Enterprise meets certain conditions it must register for the

¹² s 38-185, Export of Goods Table, Item 1.

GST system. Initially, this entails where the entity carries on an enterprise and their annual turnover is greater than \$50,000. Non-profit organisations are required to register where turnover exceeds \$100,000. Below these thresholds an entity may choose to register if they are not carrying on an enterprise but intend to do so in the future.¹³ Obviously for a non-profit organisation who wish to register below the \$100,000 threshold there must be a likelihood of a profit. The ATO can also force entities to register if it feels the conditions are met and they are required to be registered. This must be done within 21 days of becoming required to be registered. Alternatively cancellation of registration must be made within 21 days of ceasing to carry on an enterprise.

The option of registering is mainly available to small businesses and as such, a cost/benefit analysis is recommended to determine whether it is beneficial to register or not. For instance a charitable organisation who may be due for regular refunds may find it advantageous to register to receive the input credits as soon as possible. Once registered, the entity must submit a GST return whether or not it has paid or charged GST in the period, until it ceases to be registered. However, if it is not registered, it cannot claim a refund of the GST paid on its acquisitions. Likewise private individuals not operating an enterprise cannot register, thus paying GST on their inputs and not charging GST on their supplies. A simple example

would be a garage sale of second-hand furniture by a private individual.

Consideration

The final element of a taxable supply is consideration. This may take the form of money or equivalent. s 9-15(1) states that it includes amongst other things, *any payment, act or forbearance, in connection with a supply of anything, or for the inducement of the supply of anything*. Specifically, section 9-15(2) provides that, *it does not matter whether the payment, act or forbearance was voluntary*. Yet section 9-15(3) provides that *a payment made as a gift to a non-profit body is not consideration*. The section therefore appears contradictory, in that a gift is voluntary, will suffice as consideration but not when a non-profit body is concerned.

As consideration is so widely defined it will include all forms of payments and acts. This will include goods exchanged for goods (barter system). It is also not necessary that the consideration is provided by the recipient of the supply, as it may be provided by third parties. Other features of consideration include that there is no legal obligation to provide it, and that it covers the situation where something is done or something is not done. For example, if John supplies goods to Paul. No payment is made but as a result of the supply Steven decides not to sue John. This is sufficient to be treated as consideration for the supply of the goods.

Consideration also includes government taxes and charges such as park entry charges or visa fees (section 81-5). However

appropriations from one Australian Government agency to another are not a provision for consideration, as such no GST will apply. Other special rules apply to deposits made as security for the performance of an obligation (Division 99). These are called security deposits. Normally as these deposits are returned once the obligation is performed, a supply has not been made and consequently no GST will be payable. On the other hand, if the deposit is forfeited, then it will be treated as if it was part of the consideration for the supply. For example, assume Lucy hires a piece of equipment and pays \$110 for the hire and \$55 for the security deposit and fails to return the equipment and forfeits the deposit. The consideration for the supply of the equipment is $\$110 + \$55 = \$165$. The GST component will be $\$15$ or $1/11$.

2.2.2 GST Creditable Acquisitions

Creditable acquisitions or purchases must satisfy the elements of section 11-5 of the ANTS Act. This specifically includes the acquisition of goods and services for any business purpose. Basically, Section 11-15 defines a creditable or business purpose as one where goods or services are acquired to the extent of carrying on their business. Section 11-15 excludes things of a private or domestic nature or which are input taxed. The other requirements of a creditable acquisition include satisfying those elements previously discussed, taxable supply consideration and registration. Section 11-10(1) provides that, *an acquisition is in any form*, yet subsection 2 specifically includes amongst other things, *the acquisition of goods and services, and the receipt of*

¹³ s 23-10(2) You may be registered under this Act if you intend to carry on an enterprise from a particular date.

advice or information, acceptance of a grant, transfer, assignment or surrender of any right and the acquisition of a financial supply. Further discussion of input tax supplies are beyond the scope of this paper.

However, it is worth noting that where there is a change in the creditable purpose there will be a corresponding change or reduction in the input tax credit entitlement. Section 11-30(1) provides that acquisitions that are partly creditable are those which are made for only a partly creditable purpose or only for part of the consideration of the acquisition. Acquisitions, which are not partly creditable, are those made in relation to financial supplies¹⁴ or where your annual turnover of your financial supplies does not exceed, 50,000, or 5% of your annual turnover.¹⁵ There is a formula, which is available for working out the partial input tax credit entitlement.¹⁶

Input Tax Credits

The main mechanism used to prevent the cascading of output tax is the credit for input tax or refund of tax paid on creditable acquisitions and importations. The input tax credit therefore reduces the amount of output tax that has to be remitted and is refundable where the amount of input credit exceeds the amount of output tax. Some organisations will commonly have refunds where they are building up inventory, buying expensive capital goods or engaged in making exports or other

GST free- supplies.

Enterprises will therefore be allowed to claim input tax credits provided the input tax credit conditions are met. Generally speaking this includes, the elements of a business purpose, taxable supply to you, consideration and registration. As such it is imperative that the supplier has met all the requirements of a taxable supply if the firm wishes to claim the input tax credit. There is also provision for companies to claim input tax credits for pre-establishment costs under Division 60 provided certain conditions are met. These include, making the acquisition before the company existed, the acquisition was used for the purpose of bringing the company into existence, the company comes into existence and is registered within six months after the acquisition, and the person who makes the acquisition becomes an officer or employee of the company and is reimbursed for the consideration.

Tax Invoices

The other key feature of the GST system is the tax invoice. This is a physical document, which must contain certain features and satisfy certain conditions. These include, that the supplier issue the tax invoice, unless it is a recipient created tax invoice.¹⁷ Also that the ABN (Australian Business Number) of the entity that issues it be clearly displayed on the invoice. The price for the supply must be set out; it

must be in the approved form along with any other information as required by the Tax Office regulations. It is also important that the tax invoice be issued within 28 days after it is requested by the recipient of the supply. The tax invoice is required if the GST exclusive value of the item is greater than \$50. If this is not the case, a receipt will usually suffice. The Commissioner may also determine in writing the circumstances in which a tax invoice does not apply.

GST Rate

To calculate the GST component of a taxable supply there are two major methods, which can be adopted. That is, GST can be based on 1/11 of the total inclusive price or taken as 10% of the value of the supply excluding GST. *A New Tax System (Commonwealth - State Financial Arrangements) Act 1999*, provides that no alteration to the GST rate can be made unless each State and Territory agrees to the change, as well as both Houses of Commonwealth Parliament. It also ensures that no change can be made to the GST base without the involvement of the States and Territories. This has been deliberately established so that a change in the rate would be difficult to achieve. Yet this remains to be seen given the experience in New Zealand where the rate changed within the first five years of its introduction. Meanwhile, the Government, has reserved the right in the first year to make changes which are of an "administrative nature" necessary to facilitate minor adjustments to the GST having regard to protection of the State's revenue. Unfortunately, there is no guidance in the Act or Explanatory Memorandum as to

¹⁴ s 40-5(1) *Financial supplies are input taxed.* s 40-5(2) Refer Table Items 1-13.

¹⁵ s11-30 (2)(b)(i)(ii).

¹⁶ s11-30 (3).

¹⁷ s 29-70 (3) *A recipient created tax invoice is a tax invoice belonging to a class of tax invoices that the Commissioner has determined in writing may be issued by the recipient of a taxable supply.*

what constitutes the 'administrative nature' of the GST base.

GST Returns

The concept of the GST Return is something most taxpayers will be familiar with given that its operation is very similar to that of the tax return. Ultimately, this will be the mechanism used to both apply for a refund of GST paid on inputs and to remit GST collected from outputs. The net amount of GST owing to the ATO or refundable, will be reflected in this legal document. Specifically, returns will be required on a quarterly basis if the annual turnover is less than \$20 million and on a monthly basis where the turnover exceeds this figure. A predominantly GST free provider, such as a school, may wish to submit a return on a monthly basis despite having a turnover less than \$20 million in order to get refunds regularly. However those with the higher turnovers must lodge electronic returns monthly. Some of the features of the returns are that they must be in the form approved by the Commissioner's Regulations¹⁸, state the net amount for the tax period and be signed electronically or manually.

In general the return must be given to the Commissioner by the 21st day of the month following the end of the tax period, or within such further period as the Commissioner allows. A late return fine will be imposed by the ATO if this is breached. Likewise an entity must provide a tax return for a tax period even if the net amount is zero. There can be no contravention

of the lodgement of returns by changing tax periods. Section 33-5(2) states that, *if the tax period ends during the first 7 days of a month you must still pay the net amount by the 21st day of that month*. The anti avoidance provisions are very strict in this area.¹⁹

How The GST Works

The best way to describe the mechanical workings of the GST system is through the illustration of a simple example.²⁰

Entity	Price Paid	GST	Total	Price Charged	GST	Total	Paid to ATO
Timber Merchant				200	20	220	20
Furniture Manufacturer	200	20	220	400	40	440	20
Retailer	400	40	440	500	50	550	10
Consumer	500	50	550				

From the above the first entity in the supply chain is the timber merchant who charges the furniture manufacturer \$200 plus 10% being \$20 GST. He collects and remits the \$20 to the ATO. GST is not borne by the merchant. From here, the manufacturer charges \$400 plus 10% GST being \$40. He collects the \$40 GST and is allowed a \$20 input tax credit on his purchase. The net amount of \$20 (\$40-20) is paid to the ATO. The retailer now charges \$500 plus 10% GST being \$50. He collects the \$50 GST and is allowed an input tax credit of \$40 on his purchase. The net amount of \$10 (\$50-40) is forwarded to the ATO. The consumer pays the \$50 GST in the \$550 inclusive price and cannot claim an input tax credit because the

consumer is not an enterprise and is not registered or required to be registered for the GST. Ultimately, the GST is not a tax on business but rather is only borne by the private end consumer.

2.3 Managing the GST System

After understanding what the GST is about the next concern is how to manage it. Generally an organisation must manage the GST to ensure that

the correct refunds are obtained and that the correct GST is paid to the ATO. As mentioned

previously, you only submit a GST net amount when you lodge a GST return. The ATO does not require a record of each GST transaction, but for the purposes of an audit, records will nevertheless be retained. Only the final amount owed to the ATO or the refund due to the enterprise will be of significance within the GST return.

Tax Periods

The actual remittance of the GST can be made in two distinct periods. That is on a quarterly basis for the periods ending, 30 September, 31 December, 31 March and 30 June. Alternatively GST can be paid on a monthly basis, 21 st day of the

²¹ s 27-5 General rule is 3 month tax periods, ending 31 March, 30 June, 30 September or 31 December in my year except to the extent that
(a) an election is in force under s 27-10
(b) the Commissioner determines otherwise under this Division.

¹⁸ The Commissioner's Regulations were not available at the time of writing.

¹⁹ General Anti avoidance Provisions, s 165-80 Penalty. How the GST works.

²⁰ Extracted from the Explanatory Memorandum to the ANTS.

month following the end of the month to which it relates.²¹ As mentioned previously, the criteria for monthly or quarterly tax periods is if the enterprise's turnover is greater than \$20 million. There is the capacity to change tax periods from quarterly to monthly and back to quarterly, provided that the entity has been using monthly for at least 12 months²², and turnover is less than \$20 million. If an entity has changed tax periods, the Commissioner can nominate a particular period as a tax period to ensure a continuous transition.²³

The Commissioner is allowed to force an enterprise to have a monthly tax period. This will arise where the enterprise carries on business for a short term (ie less than 3 months), the enterprise has a history of not complying with their tax obligations, or has a substituted accounting period for income tax purposes. It is also possible to align tax periods with normal balancing dates. Provided the changed period ends no more than, seven days before or after the original period. The Commissioner's consent will also not be required in this situation.²⁴ A final tax period will

end on the day before the individual dies or the entity becomes bankrupt or stops carrying on business²⁵. The same applies for any entity that goes into liquidation or receivership or ceases to exist. Likewise, if the entity's registration is cancelled, the current tax period will cease at the end of the day on which the cancellation takes affect.

The decision on whether quarterly taxpayers should lodge monthly or not will be determined by the net amount. That is, if the net amount will generally be a refund the entity should opt to lodge monthly to ensure that it receives any GST paid in a tax period as quickly as possible. This would generally be the case for exporters, schools, hospitals and other entities making GST free supplies. Conversely, if the net amount is generally an amount owing then the entity should lodge quarterly, thereby deferring the cash outflow for as long as possible. Another factor to consider when managing cash flows within a GST regime is the purchase of large capital items. For example, a quarterly retainer should make the prospective purchase late in the tax period so as to get the GST refunded quickly. If an item of plant was purchased late in the first quarter, say March 23, rather than early, say January 10, the entity will not have as long to wait for the refund May 4, after the return is lodged on April 21.

Accounting for the GST

The way an entity can account for a GST will depend on annual turnover. An entity has an option to use a cash basis or accruals basis if

turnover is below \$1,000,000. If the turnover exceeds this figure GST must be accounted for on an accrual basis. Basically, if you use a cash accounting system, the entity is liable for GST when a payment is made or received on goods and services. Using an accrual basis, the entity is liable for GST when the invoice is issued or received. As such, cash flow problems can arise where the entity does not physically have the cash but GST needs to be accounted for in the period in which the invoice is issued or received. A timing advantage can be gained which will effectively defer the GST where an invoice is issued after the end of the month or quarter. Nevertheless, it becomes a very difficult act to juggle at times for businesses.

There are three situations where a cash basis will apply to an enterprise. First, if turnover is less than \$1,000,000²⁶ there is an option to take up this method. This will take affect from the first day of the tax period that the enterprise chooses. Secondly, a charity may choose to use the cash basis regardless of turnover. Thirdly, where the tax office is satisfied that it is appropriate to use this method, having regard to the nature and size of the enterprise, the accounting system and **what method is used for income tax purposes**. Entitlement to an input tax credit is only allowed when the **entity has paid for the purchase** unlike the accrual basis where an entitlement arises when the invoice is received. As such businesses will need to do a cost benefit analysis to determine which method is more advantageous,

²² s 27-20 (2) *The withdrawal takes effect from the day specified in the Notice: However the day specified (a) must be 1 January, 1 April, 1 July, 1 October, or my other day occurring before the election takes affect and*

(b) must not be a day occurring earlier than 12 months after the election took effect.

²³ s 27-30 (2) *For the purpose of ensuring the effective operation of this Division where the tax periods have changed, the Commissioner may, by written notice given to you, determine that a period specified in the notice is a tax period that applies to you.*

²⁴ s 27-35 *changing the days on which your tax period ends.*

²⁵ s 27-40 *An Entity's concluding tax period.*

²⁶ s 29-40 *Choosing to account on a cash basis.*

taking other cash flow considerations into account, as well as convenience.

If an enterprise changes its accounting basis some transitional rules are triggered which prevent some transactions being taxed twice or falling through the net altogether. If changing from cash to accruals the GST was not attributable to a tax period before the change, but would have been had the change been made earlier than it was, the GST is attributed to the first tax period in which the change applies.²⁷ If the GST was partly attributable to a tax period before the change, but would have been fully attributable if the change had been made earlier than it was, the balance of the GST is attributable to the first tax period to which the change applies. If the change is from accruals to cash basis and the GST was attributable to a tax period before the change, it remains attributable to that period and no other.²⁸

Adjustment Notes

Occasionally, it is necessary to make adjustments to the amount of GST paid or the input tax credit claimed. This arises when certain events or situations occur. An adjustment event²⁹ could include, where part or all of a supply or acquisition is returned or cancelled, or where the

consideration for the supply or acquisition is altered by a volume discount, or where the supply becomes or stops being taxable, or the acquisition becomes or stops being creditable³⁰. Where entities account on an accrual basis, and the supply is accounted for before consideration is received, bad or overdue debt³¹ will also result in adjustments being made.

Generally if an event occurs which increases tax liability, the entity will make an increasing adjustment in the next GST return. Where an event occurs where too much GST is paid, a decreasing adjustment will be made on the next GST return. For example, if goods were sold for \$110, including \$10 GST attracted a settlement discount of 2.5% after GST was already paid in a GST return, a decreasing adjustment of \$0.25 (2.5% of \$10) should be made in the next GST return. If however, these adjustment events occur during the same tax period no problem arises.

Adjustment notes are the supporting documentation required for whenever GST is reduced or increased.³² The adjustment note itself contains, information similar to the tax invoice and must be issued

within 28 days after the recipients requests. Even if a request is not made, the supplier must issue an adjustment note within 28 days of becoming aware of the adjustment. As with tax invoices, there is no obligation to issue an adjustment note if the value of the goods and services is less than \$50.

3. The Pay As You Go (PAYG) System

3.1 Main Features

As part of the tax reform measures in Australia to complement the introduction of the GST is the proposed Pay As You Go system. (PAYG) This was introduced into Parliament on 30 June 1999 through, *A New Tax System (Taxation Laws Amendment) Bill (No 1) 1999* but has now been changed to, *A New Tax System (Pay as You Go) Bill 1999* and is awaiting royal assent. The new System will abolish or replace eleven existing payment and reporting systems. These include; the pay as you earn (PAYE), prescribed payments system (PPS), reportable payments system (RPS), and other withholding systems as well as the provisional tax and company instalment systems. The GST will also form part of the PAYG. It is hoped that the new system will consolidate and simplify the reporting requirements Australia currently has for these various taxes.

There are basically two systems which operate under the PAYG. The PAYG withholding tax system which specifically replaces the PPS, RPS and PAYE systems. Secondly, the PAYG instalment system which

²⁷ s 159-5 Ceasing to account on a cash basis - amounts not previously attributed.

²⁸ s 159-20 Starting to account on a cash basis.

²⁹ a 19-10 (1) An Adjustment event is my event which has the effect of

(a) cancelling a supply or acquisition; or
(b) changing the consideration for a supply or acquisition; or
(c) causing supply or acquisition to become, or stop being a taxable supply or creditable acquisition.

³⁰ Div 129 s 129-1 The extent to which an acquisition or importation is for a creditable purpose affects the amount of the resulting input tax credit. When the extent of creditable purpose is changed by later events, adjustments may need to be made.

³¹ Div 21 a 21-1 If debts are written off as bad or are outstanding after 12 months, adjustments (for the purpose of working out net amounts) are made. They arise both for amounts written off or outstanding and for recovery of amounts previously written off or outstanding.

³² a 29-20 (3) Attributing your adjustments

specifically replaces the current provisional tax and company instalment systems. The PAYG withholding tax system will apply to payments made on or after 1 July 2000 while the PAYG instalment system will apply to the 2000/2001 and later income years. It is proposed to now examine these two systems independently.

3.2.1 PAYG Withholding and Remitting of Taxes

New Withholding Obligations

Under the PAYG Withholding System, the obligation to pay an amount to the Commissioner is imposed on the entity making the withholding payment. The system generally applies to all entities including, partnerships and unincorporated entities, except those which are excluded.³³ Specifically, three new withholding events have been introduced. Firstly, payment for work or services under a labour hire arrangement,³⁴ or specified by regulations.³⁵ A PAYG withholding obligation could apply where for example, a solicitor or accountant engages a Queen Council on behalf of a client or a service trust engages

an individual to perform services for a professional partnership. Generally these new arrangements were put in place to cover those payments which escaped the PAYE regime, such as independent contractors.

Secondly, payment for work or services where an entity and individual agree that withholding will occur.³⁶ A voluntary agreement provides some flexibility for entities and individuals that are not otherwise covered by withholding to participate. The agreement must be in an approved form and the recipient of the payment must have an ABN. It is also a requirement under the legislation that a copy of the agreement is kept on record for five years after the last payment was made after the contract³⁷.

Thirdly, a payment for a supply as defined for GST purposes, where the payee does not quote an ABN on the invoice or where the payer has reasonable grounds to believe that the payee is using a false ABN³⁸. This event is a compliance measure to prevent entities, which are not required to be registered for GST purposes from avoiding their tax obligations by requesting cash payments. Failure to quote an ABN will mean that the payee will be subject to withholding tax at the top marginal rate plus medicare levy.³⁹ In the situation where more than one withholding event applies only

one amount should be withheld from the payment. The provision, which is most specific to the circumstances of the payment, should be used having regard to specific priority rules contained in the draft legislation.

Effect of PAYG Withholding on the Timing of Payments

The timing of payments made to the Commissioner depends on whether the payer is classified as a large, medium or small withholder. For the financial year beginning 1 July 2000, an entity is considered a "large withholder" for a particular month, if it was a large remitter under PPS, PAYE and RPS rules, or where the total PAYE deductions or amount withheld for labour hire contracts made for the year ended 30 June 2000 exceeded \$1 million or where the Commissioner determines the entity is a large withholder for the month. Large withholders are required to pay the withheld amount to the Commissioner within seven or eight days of making the payment and the amount must be paid electronically. For example, if a large withholder withholds on a Monday or Tuesday, it must pay on or before the first Monday after that day. If it withholds on a Wednesday, it must pay on or before the second Thursday after that day. If it withholds on a Thursday or Friday, it must pay on or before the first Thursday after that day. If it withholds on a Saturday or Sunday, it must pay on or before the second Monday after that day.

For the financial year starting 1 July 2000, an entity is a "medium withholder" for a particular month if

³³ Items 17, 19 and 22 of a 10-5 Summary of Withholding Payments Table

³⁴ A labour hire arrangement is defined to exist where an end user of labour engages an individual to perform work or services through an agency.

³⁵ s 12-60 An entity that enters into an enterprise must withhold an amount from a payment that it makes to an individual in the course or furtherance of the enterprise if:

(a) the payment is made under an agreement the performance of which, in whole or part, involves the performance of work or services by the individual for a client of the entity; or
(b) the payment is, in whole or part, for work or services and is of a kind prescribed by the regulations

³⁶ s 12-55 A voluntary agreement to withhold must be made which includes the individual's ABN.

³⁷ Sebo, G Poulous *Taxation in Australia* Sept 1999 p 138.

³⁸ s 12-190 of the Tax Administration Act.

³⁹ Exploratory Memorandum paragraph 1.61.

it is not a large withholder and it was a medium remitter under the RPS, PAYE and PPS remittance rules in relation to June 2000, and would still have been a medium remitter in relation to June 2000 if the only deductions taken into account were PAYE deductions. Also where the total PAYE deductions the entity made for the financial year ending June 2000 exceeded \$25,000 but is obviously less than \$1 million or the Commissioner determines so, the entity is classed as medium. Medium withholders are required to pay the withheld amount for each month to the Commissioner by the 21st day of the next month and the amount may be paid electronically or by other means,⁴⁰ approved by the Commissioner.

An entity is a "small withholder" for a particular month if there is at least one amount withheld and the entity is neither a large or medium withholder for that month. Small withholders are required to pay the withheld amount for each quarter by the 21st day of the month after the end of that quarter and the amount may be paid electronically or by other means approved by the Commissioner. During the transitional period, an entity that becomes a large remitter in July or August 2000 may remit amounts withheld during that month by the 21st day after the end of that month, until 1 September 2000. In addition, during the 2000/2001 financial year a large entity may continue to remit on a monthly basis, tax withheld in respect of, payments where the recipient has not quoted a TFN, dividend interest or royalty payments

to overseas persons or interest payments derived by a lender in carrying on a business through an overseas branch.⁴¹

3.2.2 PAYG Instalment System

Effect of PAYG instalments on the Timing of Payments

By default, an entity whose assessable income does not consist wholly of withholding payments will be required to pay quarterly instalments. Businesses registered for the GST will have to pay their income tax in four quarterly instalments at the same time as their GST. The Instalment system will cover companies and all other entities that came under the old instalment system, such as, public trading trusts. The first instalment is payable for the instalment quarter in which the Commissioner first issues the entity an instalment rate.⁴² Subsequent quarterly instalments are payable within 21 days after the end of each quarter.⁴³ Instalments are calculated in accordance with a prescribed formula. The method for calculating the instalment due is the GST turnover method. This is based on a quarterly GST sales amount for the period multiplied by the ratio of the tax payable to total sales for the prior year.

Alternatively, individuals may elect⁴⁴ to pay their quarterly instalments on the

basis of their "GDP adjusted notional tax if certain conditions are satisfied. That is, that they are not registered for GST nor required to be registered, they are not a partner in a partnership that is registered or required to be registered and their most recent notional tax notified by the Commissioner is \$8,000 or more. The Commissioner must be notified of this choice by the due date for the first instalment and the individual will become a GDP - adjusted notional taxpayer just before the end of the quarter.

A third option is available whereby a single annual instalment may be paid, also where certain conditions are satisfied. That is, the entity is not registered for GST nor required to be registered, they are not a partner in a partnership that is registered or required to be registered and their most recent notional tax notified by the Commissioner is less than \$8,000. Companies must also not participate in a GST joint venture, nor be part of an instalment group. If all these conditions are met and an election is made on or before the instalment due date, the entity will become an annual instalment payer at the end of that instalment quarter.

For the income year 2000-2001 annual instalments are due on the same dates as the current company tax instalment and provisional tax systems.⁴⁵ For the 2002-2003 and later income years, annual instalments are due on the 21st day of the fourth month after the end of the income year.⁴⁶ For example, for

⁴¹ B Farrington "PAYG Withholding System and its implications", *Sunrise Blue Seminar* 7th October 1999.

⁴² s 45-50(1) *Liability to pay first instalment*

⁴³ 45-60(1) ie September 30 due October 21, December 31 due January 21, March 31 due April 21 and June 30 due July 31.

⁴⁴ 45-125 (1) *Choose to pay quarterly instalments on basis of GDP-adjusted notional tax subject to meeting certain conditions.*

⁴⁵ s 40-170 *Due Date for annual instalment for 2000-01 or 2001-02 income year.*

⁴⁶ s 45-70 *This section applies when you are liable to pay an annual instalment for the 2002-03 income year or a later income year.*

⁴⁰ Approved means could be by post or in person or direct payment.

a balancing date of 30 June the annual instalment will be due on or before 21 October.

Other features of the Instalment System

Taxpayers have the right to vary their instalment if the calculation results in an overestimation of the liability. For non-GST businesses the quarterly instalment will generally be based on the income actually derived during the quarter of the prior year's income without any uplift factor being applied. General interest charges will apply though, where there is a shortfall in quarterly instalments or in annual instalments. As such, for companies and individuals subject to GST, the impact of the new regime will be an acceleration of their tax payments subject to some transitional rules.

A compensatory measure for medium and small companies is that they will not be liable for their December 2000 instalment until December 2001⁴⁷, an advantage of 18 months. This is only fair, given the system will have only been operating since 1 July 2000. However, these measures are only available to taxpayers that are liable to pay quarterly PAYG instalments for the 2000 - 2001 income year⁴⁸. Entities classified as small for the 1999-2000 income year who are

also liable for the first instalment quarter of the 2000-2001 income year under PAYG will not be liable to pay its 15th December instalment. This rule does not apply to small taxpayers whose assessed tax for the 1999-2000 income year is more than \$300,000.

The other main compensatory measure during the transitional period is to enable instalment taxpayers to defer payment of all or some of their final instalment for the 1999-2000 income year⁴⁹. This section is only available to taxpayers that are liable to pay a quarterly instalment in the first quarter of the 2000-2001 income year.⁵⁰ Generally speaking, if tax assessed for the 1999-2000 year is less than \$8,000 all of the tax may be deferred for a period of five and quarter years or twenty-one equal quarterly instalments. If the tax assessed is between \$8,000 and \$300,000 forty-two percent of the tax may be deferred for five and quarter years or twenty-one equal quarterly instalments. If tax assessed is more than \$300,000 only twenty percent of the tax can be deferred for a period of two and a half years or ten quarterly instalments. These concessions will be very important for taxpayers to take into consideration in both their financial planning and cash budgeting.

Other Cash flow Implications

Also pursuant to subsection 221YB(1) and (2) of the *ANTS (PAYG) Bill 1999*, the Commissioner cannot require an entity to pay provisional tax for the 2000-2001 or later income years. According to a Regulation Impact Statement released with the Bill, from the 2002-2003 income year, 460,000 taxpayers currently paying annual provisional tax will derive a significant cash flow benefit when they commence making their payments five to six months later. Taxpayers currently paying quarterly provisional tax will pay seven weeks later from the commencement of the PAYG system.⁵¹

The Regulation Impact Statement states that the biggest payment timing difference under the PAYG instalment system will apply to small taxpayers, particularly small companies that register for GST. The Government expects about 80,000 small companies to register. These companies will change from making a single payment due five and a half months after the end of the income year to quarterly payments due 21 days after the end of the quarter. The Government estimates that 72,000 individuals currently paying annual provisional tax will also be in this category.⁵²

Administrative Features

The third element of the proposed PAYG system are the changes to the administration of the system. Specifically, Running Account

⁴⁷ a 221 AZKB For 1999-2000, some medium and small taxpayers need not pay instalment due in month 18.

⁴⁸ a 22 1AZKB (3) However subsection (1) mid (2) applies only if the taxpayer is liable to pay an instalment for the first instalment quarter of 2000-01 year of income under Division 45 in Schedule 1 in the Taxation Administration Act 1953 (even if the amount of that instalment is nil).

⁴⁹ a 22 1 A= Deferring payment of the final instalment for 1999-2000.

⁵⁰ s 221 AKZC(2) However subsection (1) applies only if the taxpayer is liable to pay a quarterly instalment for the first instalment quarter of the 2000-01 year of the income under Division 45 in Schedule 1 to the Taxation Administration Act 1953 (even if the amount of that instalment is nil).

⁵¹ C J Wookey "PAYG Instalment System and its Implications", Sunrise Blue Seminar, 7th October 1999 at 30.

⁵² Ibid at 3 1.

Balance arrangements will be made for all pay as you go and primary tax obligations of taxpayers. Where there are debits in the account for provisional tax and company instalments for instance, these may be offset against credits for PPS, PAYE, RPS and GST. Ultimately the payment required to be made to the Tax Office will be either one net payment or refund. Business Activity Statements (BAS) are the other new feature, which will be used by taxpayers to notify the ATO of all, the PAYG and primary tax obligations. This statement will include information about all taxes and the GST return will form part of this statement. This will become operational as of 1 July 2000.

4. Conclusion

As can be derived from, the forgoing discussion, the GST and PAYG systems will have a dramatic effect on businesses in Australia in the initial years of their operation. Particularly small business will find it difficult to adjust given the limited resources they have to spend on accounting and tax advice. Up front costs associated with modification of accounting systems and administration processes to support such systems will be substantial.

Nonetheless, with the elimination of the different withholding systems currently in place, and the introduction of one system, along

with the abolition of the grossly outdated wholesale sales tax, administration should become simpler and compliance costs should decrease in time. The Australian tax system, by moving in line with the majority of other OECD countries which have moved to a multi stage tax, should find the new systems far more cost efficient, which may ultimately result in improving Australia's international competitiveness.

Short News

INCOME TAX (EXEMPTION) (NO. 6) ORDER 2000 AND INCOME TAX (EXEMPTION NO. 7) ORDER 2000

The above orders [P.U.(A) 67 AND 68] gazetted on 24 February 2000 exempts a tour operator licensed under the Tourism Industry Act 1992 from the payment of tax in respect of the statutory income derived from:-

1. Domestic tours undertaken by 1,200 or more local tourists within Malaysia in a year.
2. Group inclusive tours undertaken by 500 or more foreign tourists within Malaysia in a year.

These exemptions are valid for the Years of Assessment 2000 (CYB) and 2001 only. The statutory income which is exempted is available as a two-tier payment of exempt dividends.

INCOME TAX (DEDUCTION FOR FREIGHT CHARGES FROM SABAH OR SARAWAK TO PENINSULAR MALAYSIA) RULES 2000.

The above order [P.U.(A) 50] was gazetted on 26 January 2000 to be effective from the YA 2000(CYB). It allows for a double deduction on ship freight charges incurred by manufacturers for the shipment of their manufactured goods from Sabah or Sarawak to any port in Peninsular Malaysia.

Please note that this is a double deduction incentive.

INCOME TAX (DEDUCTION FOR INFORMATION TECHNOLOGY-RELATED EXPENDITURE) RULES 2000

The above order [P.U.(A) 51] gazetted on 26 January 2000 allows for a single deduction of any operating expenditure on the use of information technology for the improvement of management or production processes. This deduction shall not apply to:-

1. Any expenditure allowable under section 33(1) (a), 33(1)(b) or 33(1)(c) of the Act.
2. Qualifying plant expenditure which has been granted the initial and annual allowances under the Income Tax (Qualifying Plant Allowance) (Computers and Information Technology Equipment) Rules 1998 [P.U.(A) 187/98].
3. Qualifying plant expenditure which has been granted the initial and annual allowances under the Income Tax (Qualifying Plant Allowances) (Cost of Provision of computer Software) Rules 1999 [P.U.(A) 272/99].

This deduction shall take effect for the Year of Assessment 2000 (CYB) and subsequent years of assessment.

Short News Section

2000 Tax Payable By OG/T/ F&J Cases

● Non Company Cases Including Co-operatives

The Inland Revenue Department has allowed the OG/T/ F and J Cases to pay their Year of Assessment 2000 tax on a current year basis commencing from March to November 2000 in five monthly instalments instead of commencing from January or February as was the practice before. This concession appears to be only for this year. Estimates can be revised by 15th April 2000 (or 30 June 2000) if the Finance Bill which is expected to be retabled in February 2000, is passed by Parliament. The 30% rule for under estimation still applies. Any under estimation will result in a 10% penalty as before.

● Companies

Companies commence payment on a different basis as highlighted in earlier Tax Alerts.

● Employment Cases

Employment cases are expected to comply with the Schedule of Monthly Tax Deductions Table which is already available from January 2000. Employees with a monthly salary of RM1751 or more where the wife is working are expected to suffer a RM21 deduction. The rest of the cases are expected to follow the table.

● Penalties

Failure to comply with the payment plan results in late payment penalties.

New Test For Legal Professional Privilege

Legal professional privilege is a defence used by taxpayers so that they do not have to hand over certain documents to the Revenue.

The Australian High Court has held that the common law test for determining whether documents are subject to legal professional privilege is the "Dominant Purpose Test" and not the long-standing "Sole Purpose Test." This effectively changes the law in Australia. The Court considered that the Dominant Purpose Test best strikes an appropriate balance between the public policy of protecting confidential written communication between lawyer and client and the public policy that, in the administration of justice and investigative procedures, there should be unfettered access to relevant information. The decision brings Australia into line with the rules relating to access to documents in comparable overseas jurisdiction such as England and New Zealand.

These decisions have persuasive effect on Malaysian law. Although the Malaysian IRB insists that they have access to all documents, this is not so. Legal professional privilege also exists in Malaysia.

Electronic Commerce & Income Characterisation Issues - Sales vs Royalties

Generally under tax treaties, passive investment income (such as portfolio interest and portfolio dividends) and some types of business income (for instance, royalties and rents) are not subject to source-country taxation. For these types of income, the source country is generally only entitled to impose a withholding tax on the gross amount of any payment made.

A foreign tax authority may insist that an e-commerce transfer results in royalty income and triggers the foreign withholding obligation.

Example

The sale of a physical version of a book would likely give rise to active business income that would be subject to taxation by the source country only if a permanent establishment existed. But the sale of a digitised book can generate royalty income subject to the source country withholding tax because copies of the book can be easily made and sold, and thus the initial payment represents compensation for the use of a copyright.

The U.S. model treaty specifies a withholding tax rate of zero for royalty income, but most countries have bilaterally negotiated rates between 5 and 15 percent. Other countries such as Canada have agreed to reduce withholding taxes for computer software royalties to zero. Under recent changes to U.S. tax law that emphasises substance over form regarding software transfers, the IRS

could characterise many transfers of digitised products and services as generating sales proceeds with no foreign income tax consequences.

Foreign tax authorities, however, may disagree and impose a withholding tax that puts a corresponding obligation on the foreign payer to withhold and remit the specified percentage of the payment to the foreign tax authority. The withholding tax on the gross amount of the payment could possibly exceed the income tax liability (imposed on a net basis) that would otherwise be payable to the foreign country if the sale had generated sales proceeds that were taxable within the foreign country. India regards such payments as royalties. Australia has a royalty definition which embraces transmission via satellite etc. and Malaysia special classes of income and royalties definitions would need to be considered.

Protocol Amending Australian DTA Gazetted

A protocol amending the agreement between the government of Malaysia and the government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has just been gazetted. This amends the 1980 treaty.

Australia has recognised the Malaysian right to the Exclusive Economic Zone of 200 miles of the shoreline instead of the earlier continental shelf which was very much a smaller area. Certain withholding taxes back to 1994.

More details are available in our Tax Alert, Volume 2, No. 32 /99.

New DTA's - Bahrain & Namibia

Two new arrangements have been gazetted by the Government of Malaysia with a view of affording relief from double taxation in relation to taxes on income. These are with the governments of Bahrain and Namibia.

● Malaysia & Bahrain

Income from debt claim suffers a withholding tax of 5% instead of the normal rate of 15% on interest. This will make Bahrain a good centre to source / channel borrowings after Labuan.

Royalty suffers a withholding tax of 8% instead of 10%.

Malaysia also has the right to tax technical services at a rate of 10%.

● Malaysia & Namibia

Interest income suffers a withholding tax of 10% instead of 15%.

Royalties suffers a withholding tax of 5% instead of 10%.

Malaysia also has the right to tax technical services but at a reduced rate of 5%.

This will encourage treaty shopping in respect of royalty and technical services.

Promotion of Investment (Promoted Activities & Promoted Products) (Amendment) (No. 2) Order 1999 Gazetted

The list of promoted activities or promoted products for industrial linkage programmes has been gazetted.

Tax Exemption For Non Resident Assignee & Transferee of Banks Loans

Tax exemption has been given on interest paid to assignees and transferee in a Facility Agreement dated 18th November 1999.

Stamp Duty Exemption

The following stamp duty exemptions have been gazetted:

● Low Cost House

1. Where a contract of sale and purchase of a low cost house by a housing developer is executed on or after 10 June 1998 but not later than 31 December 2000.
2. All instruments of securities for the finance of the purchase of a low cost house.
3. The remission of stamp duty for a low cost house has also been gazetted.

● Home Ownership Campaign

Instruments for the purchase of property from a developer who is registered with the Housing Developers Association for sales under the 'Home Ownership Campaign' held during the period between 29th October 1999 to 7th December 1999 has been gazetted for exemption.

Tanjung Kupang Now A Free Zone

Tanjung Kupang in Johore has been gazetted as a Free Zone with effect from 1 October 1999.

Customs Targets IT Companies For Service Tax Audits

● Several Information Technology businesses have been the focus of the Customs Field Audit (CFA) team in Kuala Lumpur. They have been the subject of scrutiny to determine whether they comply with the Service Tax Act in relation to the provision of consultancy and management services.

● CFA officers have visited several of our clients and seized business records and accounts for inspection. Our Customs advisors are assisting the affected clients to manage the investigation initiated by CFA.

● Should CFA officers call on you to inspect for records, it is your right to request for the officers' authority cards to ascertain their

status. Then politely request from them a letter from the Department to enable you to search and gather the records that they require. Normally, CFA officers are receptive to your request of 14 days to produce the required records. The request could be refused if CFA believes there is wilful evasion. In this case, they are legally empowered to seize the records.

Companies Self Assessment Time Table - Submission Of Tax Estimates For YA2001

The following are the tax datelines for an on going business to submit their tax estimates.

● Accounting Date - Submission of Tax Estimates

- 31st January -
1st January 2000
- 28th February -
1st February 2000
- 31st March -
1st March 2000
- 30th April -
1st April 2000
- 31st May -
1st May 2000
- 30th June -
1st June 2000
- 30th July -
1st July 2000
- 31st August -

1st August 2000

- 30th September -
1st September 2000
- 30th October -
1st October 2000
- 30th November -
1st November 2000
- 30th December -
1st December 2000

The amount has to be the same amount as the YA2000 Current Year Tax payable. A penalty will be imposed for failure to comply with the above.

Hong Kong Sales Tax

Hong Kong is considering introducing a new sales tax, that it might help compensate for Hong Kong's 'shallow' tax base.

Not many Hong Kongers pay tax and Hong Kong runs the risk of getting in a situation where its fiscal vitality is not acceptable. Many favour the overall idea of a sales tax, which would help bring in significant revenue following the drying up of traditional sources during the Asian economic crisis. A number of observers caution that the details and timing of such a move would have to be carefully considered so as not to impose too great of a burden on a still-fragile economy.

Hong Kong has some of the lowest tax rates in the developed world. It has a maximum income tax rate of 15 percent and a corporate tax of 16

percent on Hong Kong - derived profits.

Malaysian corporate tax rate is 28%, and the personal tax rate is at a maximum of 29% for Year of Assessment 2000 current year basis. Malaysia has a single tier sales tax at the import and manufacturers level. The rest of the region has either a Goods & Service Tax / VAT excluding Brunei.

EU - No Tobin Tax

EU Tax Commissioner said that he did not see a reason to impose a tax on speculative currency deals, adding that the European Commission was against any attempt to hamper capital transactions in the European Union.

The statement in reply to a question in the European Parliament, and he also said such a tax would only work if there were a slew of industrial countries committed to participating.

The tax, nicknamed the Tobin Tax after Nobel Prize - winning economist James Tobin, was not the way to halt currency speculation, he said.

Tobin Tax supporters claim imposing such a levy on foreign exchanges, which boast a turnover of about US\$1.5 trillion per day, would ameliorate potentially destabilising exchange rate fluctuations. Others say the tax would produce revenues that could be used to lessen poverty.

Malaysia impose currently controls after the destabilising impact of

foreign hedge funds on the ringgit.

IRB New Tax Team For Self Assessment

The IRB has agreed to form a small special team of both private and public sector members to look into amendments to the Income Tax Act, in order to iron out some of the problems created by the Self Assessment legislation.

If you have any issues that need to be brought up, please email or call the editor.

Estimate For YA 2001

Although the law requires the tax estimate for YA 2001 to be based on YA 1999 tax, the IRB is prepared on a case basis to accept a lower figure.

Public Rulings

The first six sets of public rulings covering basis periods and record keeping will be issued by the IRB shortly. We will update you, when these become available.

OECD Revises Tax Guidelines For MNE

● Operations

The taxation section of the new draft guidelines contains changes to make it as clear as possible that Multinational Enterprises (MNE) have the duty both to pay taxes in countries in

which they have operations and to give tax authorities all relevant information to help with tax collection.

● Information

The draft guidelines taxation commentary, emphasised that tax authorities' requests for information from MNEs must be related to the enforcement of tax laws. Therefore, a host country should request tax information from an MNE only if that information will directly aid in complying with relevant tax law. This standard will guarantee that MNEs do not face an excessive reporting burden.

● Transfer Pricing

The draft taxation commentary also describes the importance of transfer pricing in determining the tax obligations of MNEs in all their different locations. The commentary suggests that MNEs rely on the OECD transfer pricing guidelines to ascertain the arm's-length transaction calculations.

● Bribery

Another new tax development in the draft guidelines is the appearance of a section on combating bribery that calls on MNEs to use straightforward tax bookkeeping with no hidden accounting.

The OECD secretariat hopes to receive comments on the draft guidelines from interested parties by February 15, 2000.

Indian Tax Breaks For IT Industry

● Objective

The Indian Government's plan to provide incentives that will enable media to develop as a significant industry and that will create a broadcasting sector that would expand employment opportunities and build synergy with computers and cyberspace. The ministry hopes to transform India into a broadcasting hub, along the lines of East Asian hubs like Hong Kong and Singapore.

● Incentive

Import duties are to be relaxed so that capital-intensive hardware can be imported more easily and so that viewer subscription costs may be lowered and to exempt from income tax earnings derived from exports of entertainment software.

● Malaysia

Malaysia has also revised its tax incentive to "a basket of incentives" to ensure that we have the best tax incentive in the world for the Multimedia Super Corridors.

RPGT Date Of Disposal And Acquisition Of Real Property

For RPGT purposes, a return must be made to the IRB in the event an asset is disposed of. Section 13 of the Real Property Gains Tax 1976 ("the Act") states that every person who disposes of a chargeable asset and

every person who acquires the asset so disposed of shall within 30 days make a return. This 30 days period can only be extended by the Director General on a written request made to him.

The 30 days clock commence from the date of the disposal. Paragraph 15, Schedule 2 of the the Act states that the disposal of the asset shall be deemed to take place on the date of the written agreement making the disposal. Therefore a return must be made within 30 days of this date.

In the absence of a written agreement, the date of completion of the disposal of the asset is to be used. For this purpose the date of completion is either the earlier of:

- i) the date when the ownership of the asset is transferred by the disposer; or
- ii) the date where the whole amount or value of the consideration (in cash or otherwise) of the transfer has been received by the disposer.

Original Forms CKHT 1 & 2

The Revenue is now only accepting RPGT returns using the original Form CKHT 1 & 2. They previously accepted photocopies of these Forms when these Forms were in short supply.

Argentine Tax Agents Stage Raid

Six thousand Argentine tax collectors swept across the nation in an unprecedented sting operation on Thursday, 3rd February 2000, ordered by a new government determined to root out tax evasion.

Tax service officials raided construction sites, supermarkets and corner stores for workers who are off the books and do not pay income tax.

Tax dodging, once described as Argentina's "second favourite sport" after soccer, is estimated at US\$20 billion (RM76 billion) a year.

OECD On Tax Havens

Offshore centres are under pressure from the OECD and other international regulatory bodies to increase their financial systems' transparency and support efforts to cut out tax evasion. The OECD said it will publish a list of offshore centres that refuse to comply with its demands. Member OECD countries would likely take sanctions against centers that appear on the blacklist.

The Cayman Islands is making new strides to cooperate with these international efforts to root out tax evasions on its shores. The British government is holding discussions on how it could extend that mutual legal assistance treaty with the US. The mutual legal assistance treaty, to which UK is also party, does not cover tax crimes. This treaty would permit the Cayman Islands courts to

work with the UK and US in legal actions against individuals and companies suspected of tax evasion.

On the same note, the Bahamas is introducing legislation that would make the functions of businesses based on the island more transparent. The Bahamas would likely outlaw the issuance of unregistered bearer shares by international business companies incorporated in the island and would ask them to voluntarily reveal the names of their directors.

Australian Case Law - 'Nil' Assessment

In the recent Australian case of Ryan v Australian Taxation Office, the High Court (Australia's final court of appeal) ruled that a nil assessment does not constitute an assessment for limitation purposes.

The issue was whether a nil assessment showing zero tax payable constituted an assessment. If it did, the nil assessment would trigger the commencement of the limitation period for reassessment (currently four years).

The High Court agreed with the ATO that a notice indicating zero taxable income and zero tax payable does not give rise to an amount "due and payable". Thus, the High Court held that a nil assessment does not constitute an assessment that is required to start the clock running on the limitation period.

This decision is not binding in the courts of Malaysia but can be persuasive. Currently the limitation

period in Malaysia for reassessment is six years.

Deductibility of Interest-In-Suspense On Non-Performing Loans (NPLs) for Banking and Financial Institutions

For Years of Assessment 1986 to 1992, the concessionary treatment of interest-in-suspense on NPLs was that specific bad debts provisions made during the year are allowed as a deduction whilst the amount written back during the year is subject to tax.

In a recent letter from the IRB dated 9 November 1999, it was stated that for the Year of Assessment 1993 onwards all banking and financial institutions are required to submit relevant information to the IRB to substantiate their claim for a deduction for the specific bad debts claim on interest-in-suspense.

It was also stated that in the process of field audit, should there be a discrepancy between the amount verified (qualifying for deduction) and the amount claimed, additional assessment will be issued even though the six years' time bar has lapsed.

The IRB has informed that the deadline to submit the requisite information pertaining to the claim for Years of Assessment 1994 to 1997 is 31 March 2000.

The guidelines on documents required to substantiate the claim are as follows:-

1. Categories of claim based on action taken;
2. Bank's policy towards debts collections for all years;
3. An extract of the auditor's verification in respect of the financial report submitted to Bank Negara Malaysia which details the breakdown of provision for specific bad debts and doubtful debts on interest-in-suspense (this part is commonly referred to as Annex 2); and
4. A detailed movement of interest-in-suspense accounts for each financial year.

In addition, the institutions are also required to provide the following information for all bad debts written off (loan &/or interest-in-suspense) for the above years of assessment:

- a list of names;
- borrowers' addresses;
- amount borrowed; and
- reasons for write off.

The Income Tax (Amendment) (No. 2) Act 1999 had received the royal assent on 29 December 1999 and gazetted on 31 December 1999. The Act came into operation on 1 January 2000. The Act was passed without any changes being made to the Bill.

Sales Tax (Amendment) (No. 2) Act 1999

The Sales Tax (Amendment) (No. 2) Act 1999 has been passed and came into operation on 1 January 2000. The Act received the royal assent on 29 December 1999 and was gazetted on 31 December 1999.

New Form B for Year of Assessment 2000

The Form B (for individual taxpayers) for the Year of Assessment 2000 has received a new look for the millenium. The New Form B combines features of both the old Forms B (employment income and other income) and BE (employment income only).

The Form is accompanied with a Explanatory Notes booklet which serves to illustrate further on the items set out in the Form B. The forms and the booklet come in both Bahasa Malaysia and English.

An interesting feature in the new Form B is the M section. It is designed in a manner to educate the taxpayer on Self-Assessment. Taxpayers will be able to calculate their own taxes and thus know how much tax is due and payable.

This will enable the IRB to assess whether individual taxpayers are ready for Self-Assessment. This exercise will also provide sufficient practice for taxpayers before Self-Assessment comes into operation for individuals in Year of Assessment 2004.

Budget 2000 to be retabled

The Budget 2000 will be retabled in Parliament on February 25, 2000. Minister of Finance, Tun Daim Zainuddin said that there would no changes to the Budget as tabled in October last year.

Form 'E' - Return Of Remuneration By An Employer

IRB has posted the Form E - Return of Remuneration by an Employer for remuneration paid in 1999 to all employees. Employers are required to submit a return on all employees who for at any time in 1999 derived income (including leave pay) from exercising and employment in Malaysia or from the performance outside Malaysia of duties incidental to either the exercise of an employment in Malaysia or the exercise of an employment in the Malaysian public service or in a statutory authority.

Employers are reminded to submit the Form E duly completed to the IRB office addressed on the Form. The Form E needs to be submitted one month from the date of the Form. Employers may apply for an extension of time up to 30 April 2000 to submit the Form E. The approval can be obtained immediately when the letter of application is produced at the IRB office.

Failure to submit the Form E can result in prosecution of the employer and if convicted, liable to a fine not exceeding RM2000/- or

imprisonment for a term not exceeding 6 months or both. Those employers who have not received the Form E to date are requested to get in touch with the nearest IRB office.

Form CP 200 for Business, Co-operatives And Trust Body Category

The instalment payment scheme for OG, T, F and CS will be in 6 bi-monthly instalment payments commencing from March 2000 until January 2001. The Notice of Instalment Payments (CP 200) will be issued in batches starting February 2000.

RPGT (Exemption) (No. 7) (Order) 1999

The above order [P.U.(A) 502 which was gazetted on 16 December 1999 exempts an insurance company from the payment of real property gains tax in respect of chargeable gains accruing on the disposal of chargeable assets to another insurance company. This is pursuant to the merger of insurance companies approved by the Bank Negara and completed between 1 April 1999 and 30 September 2000.

Stamp Duty (Exemption) (No. 35) Order 1999

The above order [P.U. (A) 500] which was gazetted on 16 December 1999 exempts stamp duty on all instruments executed on or between 1 April 1999 until 30 September

2000 pursuant to a scheme of merger of insurance companies which is approved by Bank Negara

Use of Double Tax Treaties

It is generally understood that double tax treaties are instruments for the avoidance of double taxation. However most if not all have articles for the prevention of fiscal evasion. The article entitled "Exchange of Information" requires that the signatories to the agreement exchange information -inter alia - for the prevention of fiscal evasion and the leakage of taxation revenue from one or the other's territory.

In a recent case reported in the newspapers, it is possible that this Article may have been the mechanism used by the Japanese Taxation Authority to notify the Malaysian Government of their concerns with a certain transaction entered between a Japanese payer and the Malaysian recipient.

No VAT On Export Goods In Batam

The Indonesian government has decided not to impose VAT on goods made for export on the island of Batam. The government however will impose VAT on goods produced in Batam for domestic consumption.

Imposing the new tax on Batam was viewed as a strong deterrent to new foreign investment on the island.

As such, the government is considering turning four of its islands,

including Batam, into free-trade zones to bring in more foreign investment.

Malaysian Budget 2000

The Honourable Minister of Finance re-tabled the 2000 Budget Proposals in Parliament last Friday. The Budget strategy was maintained along with all the tax measures. There are some minor changes which have been included in this budget proposal:

● Intellectual Property

Public listed companies will be given exemption from the 25% threshold level to acquire Malaysian owned intellectual property and Malaysian owned companies registered in foreign jurisdictions. The exemption is intended to enable the homecoming of intellectual properties and companies. This measure will also support the development of the IT industry, and is in addition to the existing measures, including the granting of pioneer status and investment tax allowance. The purchase of computer equipment is granted accelerated capital allowances, while import duties and sales tax have been abolished to help the growth of the industry.

● Universal Brokers

A new category of stockbrokers referred to as Universal Brokers will be identified to undertake the broadening of capital market activities, including corporate financial activities. They will also be allowed to establish branches.

● K-economy

A task force will be established to identify high quality projects, including K-economy projects that qualify for special tax and non-tax incentives.

● Tax Appeal Process

The Director General have to review within 12 months from the date of receipt of a notice of appeal (Form Q) and if he is unable to do so he will now have to apply to the Minister of Finance for an extension of up to six months.

This is to improve the tax appeal process which in the past have taken a very much longer process. After which the DGIR has to forward the case to the Special Commissioners of Income Tax.

● Federal Court

In a recent tax case, the issue was whether a tax appeal could go beyond the Court of Appeal.

This law has now been amended to allow tax appeal to go beyond the Court of Appeal to the Federal Court.

● Musical Composition

Income of twenty thousand ringgit for the basis year derived by an individual resident in Malaysia being payment in respect of any musical composition.

In the last budget proposal the law was given a wider exemption which has now been narrowed down.

Singapore Budget

● Corporate Tax Rate

The corporate tax rate for Year of Assessment 2001 is reduced from 26% to 25.5%.

● Employees Stock Options

Employees stock option for High Tech Companies is to be given a more favourable tax treatment.

● Personal Tax Changes

5% rebate for Year of Assessment 2000, various reliefs for dependants and a new supplementary retirement scheme.

● Income Tax Concession for Royalty Payments

Extension of the 90% exemption to gross royalties received by authors and composers from recording, film or drama companies in Singapore.

Extension of the incentive to foreign inventors and innovators and to inventions and innovations in non-manufacturing sectors.

The incentive will be administered by the Economic Development Board and will be granted for a period of 5 years from Year of Assessment 2001.

● Stamp Duty Exemption - All intercompany transfers

Stamp Duty exemption will now apply to asset transfers between

associated companies including transfer of shares or assets for cash, and transfers of less than 90% of the shares of the company.

The restructuring and merger of listed companies and companies which intend to list or further list their shares after the exercise. An associated company is one owning 75% or more of another company, or a third company owning at least 75% of both companies.

● Offshore Financial Derivatives

The 10% tax rate enjoyed by the Asian Currency Unit (ACU) of a Singapore bank will be extended to income from all offshore derivative transactions in non-Singapore dollars and will apply for a period of 5 years with effect from Year of Assessment 2001.

● Developing The Swap Market

The 10% concessionary tax rate will also apply to income derived by financial institutions from trading in interest rate and currency swaps. This concession will take effect from Year of Assessment 2001 and apply until 27th February 2003. With immediate effect, the withholding tax exemption on interest rate and currency swap payments currently available to Asian Currency Units (ACUs) will be extended to cover all bona fide interest rate and currency swaps payments made by financial institutions other than ACUs to non residents.

● Withholding Tax on Financial Guaranty Insurance Contracts

Claims payment made under financial guaranty insurance policies by approved financial guaranty insurers to non-residents will be exempt from withholding tax with immediate effect.

● Stamp Duty on Contract Notes

Stamp duty of 0.05% on Contract Notes on share transactions previously suspended until 29 June 2000 will be abolished with effect from 30 June 2000.

● Liberalisation of Fixed Brokerage Commissions System

Commissions on all share transactions will be liberalised and freely negotiable with effect from 1st January 2000.

● GST on Trustee Services

Trustee services supplied to a trust where at least 80% of the settlors and beneficiaries are non-Singapore resident and at least 80% of the assets of the trust were originally contributed by settlors who are non-resident, will qualify for Zero-rate GST.

UK Development

● Citibank

The Special Commissioners have held that Citibank was entitled to use capital losses to offset gains

from the exercise of two options contracts, because the exercise of the option contracts gave rise to capital gains and not ordinary income.

● **Mobile Crane**

The High Court has defined the essential feature of a mobile crane that it is a machine that lifts objects and moves them to a radius.

● **Sub-underwriting Activities of Pension Scheme Not Business Income**

The Court of Appeal has held that income derived from the sub-underwriting activities of the trustees of a pension scheme was investment income under Case VI, Schedule D and was not trading income.

Filing Programme For YA 2000 PYB

The IRB is expected to issue the above filing programme soon. Our Editor attended the meeting and the following are some of the salient points:

The filing programme for YA 2000 preceding year basis is essentially the same as the 1999 programme except that more flexibility is granted for extension of time in respect of company cases with accounting years ending after September.

Automatic extension of time up to 31st May 2000 is allowed for - all partnership (D), salary (SG) and company (C) cases where the accounting year ends on or before September 30th 1999. (This will also include OG, F, CS, T and J cases)

Automatic extension of time to 31st July 2000 - Company (C) cases where the accounting year ends after September 30, 1999. Further extension of time to August 30th will be allowed subject to an application, for not more than 30% of the returns. Other cases (OG, F, GS, T and J) where the accounting year ends after September 30th 1999, provided that returns are submitted according to the following ratios of 50% of the returns by June 30 and the balance by 31st July.

No extension of time will be allowed except for Company (C) cases, where certain companies are required by law to have their accounts approved by the respective authorities. In all other cases, where the filing date can not be met due to genuine extenuating circumstances.

E Returns

Automatic extension of time to file E returns have been given to 30th April 2000.

No Fixed Base, No Tax Liability

Canada's Federal Court of Appeal has confirmed the Tax Court's decision and held that a U.S. - resident contractor was not subject to tax in Canada on income earned in Canada under a personal-services contract because he had no 'fixed base' in Canada.

The Court agreed, that the factors deemed relevant to determining whether an individual has a fixed base

readily available to him include:

- the actual use made of the premises;
- whether and by what legal right the person exercised or could exercise control over the premises; and
- the degree to which the premises were objectively identified with the person's business.

This list is not exhaustive.

Editorial Note: - This case is relevant as the same principle applies in Malaysian tax treaties.

Electronic Commerce:

No Advertisement For Offshore Betting

The English Court of Appeal has ruled that advertising for offshore betting in England is illegal.

This overturns an earlier High Court decision which allowed X Ltd, and other bookmakers, to advertise their offshore betting services on electronic media such as teletext.

Betting with overseas bookmakers is not illegal, but to protect betting duty revenue and the bookmaking industry the promotion or advertising of overseas bookmakers is prohibited under Section 9 of the 1981 Betting and Gaming Duties Act.

X Ltd last year moved its operations to Gibraltar and attempted to target

former UK customers by offering 'tax free' telephone betting with 3% deductions as opposed to the 9% (duty at 6.75% and racing levy) charged by UK bookmakers.

Teletext and Skytext withdrew advertisements placed by X Ltd, so the company took Customs to court to determine if the prohibition on advertising included electronic media advertising.

The case was heard in the High Court last year, and the court ruled in favour of X Ltd. Since then Teletext and Skytext have accepted advertisements from offshore bookmakers

Director General's Public Rulings

Six Public Rulings issued by the IRB have been released for review.

The preamble of these Rulings stipulates "A Ruling is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied. A ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it." These Rulings are:

No. : 1/2000
Name of Ruling : Basis period for a Non-business source
Issued/Updated : 01.03.2000

No. : 2/2000
Name of Ruling : Basis period for a Business source (companies & Co-operatives)
Issued/Updated : 01.03.2000

No. : 3/2000
Name of Ruling : Basis period for a Business source (Individuals & persons other than companies & Co-operatives)
Issued/Updated : 01.03.2000

No. : 4/2000
Name of Ruling : Keeping sufficient records (Companies & Co-operatives)
Issued/Updated : 01.03.2000

No. : 5/2000
Name of Ruling : Keeping sufficient records (Individuals & partnerships)
Issued/Updated : 01.03.2000

No. : 6/2000
Name of Ruling : Keeping sufficient records (Persons other than companies & Co-operatives)
Issued/Updated : 01.03.2000

Stamp Duty (Exemption) Order 2000

The above Order gazetted on 17 January 2000 exempts are followed instruments from stamp duty.

1. All instruments which are executed by an offshore company in connection with an offshore business activity.
2. All Memorandum and Articles of Association of an offshore company.
3. All instruments of transfer of shares in an offshore company.

In this Order, "offshore business activity" and "offshore company" shall have the meaning assigned to it in the Labuan Offshore Business Activity Tax Act 1990.

Stamp Duty (Exemption) (No. 2) Order 2000

This Order gazetted on 13 January 2000, exempts all instrument relating to the issue and transfer of company bonds from stamp duty.

Company bonds means any private debt securities issued by a company with the approval of Bank Negara Malaysia or the Securities Commission which includes bonds, loan stocks, loan notes and any private debt securities issued under Syariah law entitling the bearer or registered holder to payment of the amount expressed upon the face of the instrument as at a specified date or grants to the registered holder a right to convert the value of the instrument

for stock or registered shares of the company.

This Order is deemed to have come into operation on 30 October 1999.

Stamp Duty (Exemption) (No. 3) Order 2000

This Order gazetted on 13 January 2000, exempts all instruments executed in connection with a scheme of merger of financial institutions from stamp duty provided that -

- (1) the scheme of merger has been approved by Bank Negara Malaysia; and
- (2) the Vesting Order made under section 50 of the Banking and Financial Institutions Act 1989 to facilitate the transfer by any financial institution of its business undertaking to another financial institution pursuant to a merger agreement, have been and will be executed between 24 October 1998 until 30 June 2000.

In this Order, "financial institution" means a bank or a finance company licensed under the Banking and Financial Institutions Act 1989.

This Order shall be deemed to have come into operation on 24 October 1998.

China - VAT On Software Products

China has reduced VAT on software and related high-tech products to 6%

from 17%. New policies are also being drafted to encourage growth in the software industry.

IRD Ruling 4/2000 - Keeping Sufficient Records

The latest IRD ruling No. 4/2000 provides guidelines to companies and co-operatives on the sufficient records that are to be retained for the purposes of income tax and the consequences of failing to keep such sufficient records.

A company or a co-operative is required to:

- Keep records and books of accounts including a cash book, a sales ledger, a purchase ledger and a general ledger which should be written up at regular intervals. Entries should be made not later than 60 days after the transaction.
- Retain supporting documents such as invoices, bank statements, pay-in slips, cheque butts, receipts for payments, payroll records and copies of receipts issued.
- Ensure that receipts issued is serially numbered where gross takings for a year exceeds RM150,000 from the sale of goods or RM100,000 from the performance of services.
- Make a valuation of the stock in trade at the end of the accounting period and maintain appropriate records.

The books and records kept, either in manual or electronic form, must

be sufficient to explain the transactions and to enable a true and fair profit and loss account and a balance sheet to be prepared.

If computers are used to record the transactions, original source documents such as invoices and receipts should be retained. Where the original documents are in an electronic form, the documents can be retained in such a form.

The records and books of accounts should be kept at the registered office or the business premises of the company or the co-operative in Malaysia. If the records and books of accounts for operations outside Malaysia are kept outside Malaysia, the records and books of accounts must be produced when requested by the Director General. As the limitation period for IRB to reassess the tax computation is six years, all records and books of accounts are to be retained for at least six years from the end of the calendar year in which the accounts are closed. However where there is an appeal against an assessment, the relevant records and books of accounts are to be retained until the appeal is finally determined.

The above records and books of accounts are to be written in Bahasa Malaysia or in English. Otherwise upon the request of the Director-General a translation must be provided at the expense of the company.

Consequences if sufficient records are not kept

The Director-General will determine according to his best judgement, the chargeable income of a company or a

co-operative and an assessment will be raised accordingly. In addition the company, the co-operative or the persons responsible may be prosecuted and, on conviction, may be liable to a fine of not less than RM200 and not more than RM2,000 or to imprisonment for a term not exceeding six months, or to both. It is defined that "persons responsible" include the manager or other principal officer in Malaysia, the directors, the secretary and any person (however styled) exercising functions of any of the persons mentioned earlier.

Income Tax (Qualifying Plant Annual Allowances) Rules 2000

The above order [P.U.(A) 52] gazetted on 26 January 2000 is in respect of the new rates for annual allowances for the following assets:

Assets	Rates (%)
Motor vehicles,	
heavy machinery	20
Plant and machinery	14
Others	10

Where an asset has been allowed an annual allowance at a higher rate in other rules (such as computers), then the annual allowances for that asset will be calculated at the higher rate. Expenditure on assets or parts of assets with a life span not exceeding two years shall be allowed on replacement basis. These rules shall have effect for the year of assessment 2000 (current year basis) and subsequent years of assessment.

Real Property Gains Tax (Exemption) (No. 2) Order 2000

The above order [P.U. (A) 59] gazetted on 26 January 2000 exempts a member company from the payment of real property gains tax in respect of chargeable gain accruing on the disposal of a chargeable asset to another member company pursuant to a merger arrangement completed between 30 October 1999 until 31 December 2000. This order is deemed to come into operation on 30 October 1999.

Other Gazette Orders

Other Orders gazetted which will be covered in the next issues:-

1. Real Property Gains Tax (Exemption) Order 2000:

RPGT exemption for securitisation purposes.

2. Stamp Duty (Remission) Order 2000:

100% duty remission for houses less than RM75,000 and 50% remission for houses between RM75,000 or more but not exceeding RM150,000.

3. Stamp Duty (Exemption) (No. 5) Order 2000:

Stamp duty exemption for mergers of stockbroking companies.

4. Stamp Duty (Exemption) (No. 6) Order 2000:

Stamp duty exemption for

securitisation purposes.

5. Stamp Duty (Exemption) (No. 7) Order 2000

Stamp duty exemption pursuant to a corporate debt restructuring scheme.

6. Stamp Duty (Exemption) (No. 8) Order 2000:

Exemption of stamp duty for Al-Ijarah Head Lease Agreement.

7. Stamp Duty (Exemption) (No. 9) Order 2000:

Exemption of stamp duty for Asset Sale/Purchase Agreements under Syariah Law

8. Income Tax (Exemption) (No. 3) Order 2000:

Exemption of unit trusts.

9. Income Tax (Exemption) (No. 5) Order 2000:

Exemption of adjusted income of a banking institution from loan interest and financing profits in excess of 8% annual growth.

10. Income Tax (Exemption) (No. 6) Order 2000:

Exemption of income for tour operators from domestic tours.

11. Income Tax (Exemption) (No. 7) Order 2000:

Exemption of income for tour operators from foreign tours.

12. Income Tax (Deduction for Corporate Debt Restructuring Expenditure) Rules 2000:

Deduction against adjusted income.

13. Income Tax (Deduction for Freight Charges from Sabah and Sarawak to Peninsular Malaysia) Rules 2000:

14. Income Tax (Deduction for Information Technology-related Expenditure) Rules 2000.

Concessions by the IRB for the Self Assessment Basis

In anticipation of the difficulties faced by companies and tax agents in the transition to a current year basis of taxation, a statement by the Pengerusi of the IRB was released on 11 March 2000. The following concessions were granted:-

- the IRB will not penalise any companies which are unable to provide the estimate of tax payable not later than 30 days before the beginning of the basis period for the YA 2000 (CYB). The IRB, however, will proceed with issuing of the Notice of Instalment Payments;
- the IRB will consider, on an individual merit basis, companies which submit a tax liability estimate lower than the estimate/revised estimate of the immediately preceding year. An example of this would be companies which had posted a profit in previous years but are suffering current year losses in their business;
- the IRB will allow companies, supported with good reasons, to revise their tax estimates up to a maximum of three times (the law provides for a

one-time revision only in the 6th month);

- the IRB will not impose a penalty on companies which underestimate their tax liability by more than 30% compared to the actual tax liability should the reason for the variance is due to factors beyond the company's control;
- the deadline for the submission of the YA2001 income tax return will be 8 months from the date following the close of the company's accounts.

Note: Whilst we welcome these concessions, the self-assessment system is conceptually based on the certainty of law. Concessions given can be withdrawn and this results in uncertainty.

Replacement basis - expenditure on assets with a life span not exceeding two years

We reported last week on the Income Tax (Qualifying Plant Annual Allowances) Rules 2000 [P.U.(A) 52] on Capital Allowances which stipulated in paragraph 2(3) that "Expenditure on assets or part of assets with a life span not exceeding two years shall be allowed on replacement basis."

The adverse tax implication of the replacement basis is that initial expenditure is not allowed as a revenue deduction nor be eligible for capital allowances. Expenditure which are accepted for the replacement basis would typically be

items which are of small value, for example, cutlery is a hotel business or tools in a motor repair shop. Whilst the initial expenditure suffers a non-deductibility, the replacement cost of such items would be deductible. New additions however (not replacements) would still not obtain a deduction.

Paragraph 2(3) imposes an inherent *disadvantage as qualifying expenditure* which previously were eligible for capital allowance claim even though their lifespan was two years or less, would now not be given capital allowances.

The criteria of what is the life of an asset is also arbitrary. Who decides its economic lifespan - the Revenue or the claimant? Companies may find themselves unwilling to volunteer for the replacement basis for assets which have a lifespan of less than two years. Again an asset eg. a tractor which is given a 20% annual allowance under this Order ie. a 4 year lifespan, may have less than two years if it is employed in the jungle for an isolated one-off project and with no plans for replacement.

Clarification will need to be sought from the relevant authorities as to the far-reaching implications of paragraph 2(3).

Pengeluaran Am Borang Nyata Tahun Taksiran 2000

1. Borang Nyata Cukai Pendapatan

LHDN sedang menghantar Borang Nyata Cukai Pendapatan bagi Tahun Taksiran 2000 kepada semua pembayar cukai secara berperingkat. Borang Nyata tersebut bertarikh 26 Februari 2000. Pembayar cukai diminta melaporkan semua punca pendapatan yang mereka terima dalam tahun 1999 di dalam Borang Nyata tersebut.

2. 6 jenis Borang Nyata dikeluarkan kepada pelbagai kategori pembayar cukai seperti berikut:

- i) Borang B kepada semua individu (samada bergaji atau berniaga)
- ii) Borang M kepada orang perseorangan yang bukan pemastautin
- iii) Borang C kepada Syarikat
- iv) Borang C1 kepada syarikat kerjasama
- v) Borang T kepada amanah/pusaka/kumpulan orang-peseorangan
- vi) Borang P kepada perkongsian

3. Walaupun cukai atas pendapatan tahun 1999 dilepaskan (kecuali pendapatan dividen) semua pembayar cukai masih dikehendaki melaporkan pendapatan tahun 1999 dan mengisi Borang Nyata cukai pendapatan bagi Tahun Taksiran 2000 dengan lengkapnya. Borang tersebut hendaklah dikembalikan ke LHDN selewat-lewatnya pada 31 Mei 2000.

4. Sekiranya pembayar cukai masih belum menerima Borang Nyata pada 1 Mac 2000 mereka dikehendaki menghubungi Pejabat LHDN yang mengendalikan fail cukai pendapatan mereka ataupun Pejabat LHDN yang terdekat sekali untuk mendapat maklumat lanjut. Bagi pembayar cukai baru yang masih belum berdaftar dengan LHDN, sila hubungi pejabat LHDN yang terdekat untuk mendaftar sebagai pembayar cukai.

5. Pembayar cukai diingatkan bahawa walaupun mereka membayar cukai secara ansuran tiap-tiap bulan melalui Potongan Cukai Berjadual (PCB) ataupun melalui skim ansuran, mereka perlu mendaftar sebagai pembayar cukai dan memenuhi Borang Nyata serta mengembalikan Borang tersebut kepada LHDN.

Adalah menjadi tanggungjawab semua pembayar cukai samada mereka bekerja atau berniaga untuk melaporkan pendapatan masing-masing kepada LHDN walaupun cukai atas pendapatan dalam tahun 1999 dilepaskan. Kegagalan berbuat demikian adalah satu kesalahan dan pembayar cukai boleh di kenakan denda tidak melebihi RM2000/= atau 6 bulan penjara atau kedua-duanya sekali sekiranya bersabit kesalahan.

Current Taxation Issues

To all Accounting Associations / Accountants / Tax Agents.

IRB wishes to clarify the following:

a) Borang 'C' for Year of Assessment 2000 (waiver year) for companies.

i. Business Code

Business code here refers to the business code as per the record of the Registrar of Company (ROC). If the code provided by ROC based on the type of business is not known, then this column should be left blank. The Registration Number of the company must be filled in the column for Registration Number of Company to update data in IRB's database.

ii. Amendments to Part O on page 8

- R6 "Amount due to Directors" to be replaced by "Amount owing by Directors".
- R6A "Amount due to Related Company" to be replaced by "Amount owing by Related Company"
- R11 "Amount owing from Directors" to be replaced by "Amount due to Directors"
- R11A "Amount owing from Related Company" to be replaced by "Amount due to Related Company"
- R16 No necessity to fill this column

b) Borang CP204

i) Companies are required to return the completed form to:
Pusat Pemprosesan,
Tingkat 2, Blok 8A,
Kompleks Bangunan Kerajaan,
Jalan Duta,
50600 Kuala Lumpur.

ii) This form is available in all IRB's branches

c) CP 200 for business, co-operative and trust body category

Instalment payment scheme for OG, T, F, and CS will be 6 instalment payments on a bi-monthly basis starting in the month of March 2000 until January 2001. Notice of instalment payments (CP 200) will be issued in batches starting in February 2000.

If there is any query regarding the above, please contact our nearest branch or our Public Relations Unit (Tel No. 03-6531380) in Jalan Duta, Kuala Lumpur for further clarifications.

CP 204 Anggaran Cukai yang kena dibayar di bawah STS

Di bawah Sistem Taksiran Sendiri Syarikat perlu mengemukakan anggaran cukai sendiri dan seterusnya membuat bayaran ansuran bulanan kepada LHDN. Borang ini adalah digunapakai untuk tujuan membuat anggaran tersebut. Ianya perlu dikembalikan ke LHDN tidak lewat daripada 30 hari sebelum bermulanya tempoh asas sesuatu tahun taksiran.

Borang ini juga hendaklah digunakan apabila syarikat ingin meminda ansuran untuk tujuan tersebut. Borang-borang ini boleh di perolehi di mana-mana cawangan LHDN terdekat. Sila tandakan diruangan ANGGARAN PINDAAN. Pindaan ini hanya boleh dibuat dalam bulan

ke 6 dalam tempoh asas bagi sesuatu tahun taksiran.

Borang CP 204 - boleh dicetak dan di gunapakai.

Kenyataan Oleh

*Y. Bhg. Dato' Othman Mohd. Rijal,
Pengerusi
Lembaga Hasil Dalam Negeri
Pada 11 Mac 2000*

Sukacita saya mengumumkan di sini bahawa di peringkat awal pelaksanaan STS ini kerajaan memberi kelonggaran kepada pembayar cukai dan ejen cukai di mana terbukti mereka mempunyai alasan-alasan yang munasabah di luar kawalan mereka yang menyebabkan peruntukan-peruntukan tertentu tidak dapat di patuhi. Di antara kelonggaran yang diberikan adalah seperti berikut:-

Mengikut subseksyen 107C(2) Akta Cukai Pendapatan 1967 (ACP) Syarikat perlu mengemukakan anggaran cukai tidak lewat daripada tiga puluh hari sebelum bermula tahun kewangannya. Untuk tahun 2000 sahaja. LHDN tidak akan mendakwa syarikat yang terlewat mengemukakan anggaran cukai tersebut. Walau bagaimanapun LHDN akan mengeluarkan arahan bayaran ansuran;

Subseksyen 107C(3) ACP pula menghendaki anggaran cukai yang dikemukakan oleh syarikat tidak boleh kurang daripada anggaran cukai yang kena dibayar bagi Tahun Taksiran sebelumnya. LHDN akan mempertimbangkan permohonan pembayar cukai untuk membayar

ansuran kurang dari amaun minimum yang ditetapkan itu mengikut merit sesuatu kes. Pertimbangan ini juga meliputi kes di mana syarikat-syarikat yang mengalami kerugian dalam tahun semasa sedangkan dalam tahun sebelumnya syarikat-syarikat itu mempunyai keuntungan.

Subseksyen 107C(7) ACP membenarkan syarikat menyemak semula anggaran cukai yang dikemukakan dalam bulan keenam tahun kewangannya. LHDN akan membenarkan anggaran cukai disemak melebihi sekali terhad kepada maksimum tiga kali bagi kes yang jelas asasnya.

Subseksyen 107C(10) menetapkan yang penalti akan dikenakan sekiranya perbezaan antara anggaran cukai dengan cukai sebenar melebihi 30% cukai sebenar. LHDN maklum masalah yang dihadapi oleh syarikat-syarikat dalam industri tertentu untuk membuat anggaran yang munasabah misalnya kerana perubahan ketara dalam kadar pertukaran wang asing atau kejatuhan ketara dalam permintaan. Di mana syarikat dapat membuktikan bahawa perbezaan antara cukai yang dianggarkan dengan cukai sebenar adalah kerana faktor yang di luar kawalannya, seperti contoh yang disebutkan itu. Penalti tidak akan dikenakan walaupun terdapat perbezaan melebihi 30% antara anggaran cukai dengan cukai sebenar; dan

Subseksyen 77(1A) menghendaki syarikat mengemukakan Borang Nyata Pendapatan serta akaunnya dalam tempoh enam bulan dari tarikh

syarikat menutup akaunnya. Memandangkan banyak syarikat perlu mengemukakan Borang Nyata Pendapatan bagi 2 Tahun dalam Tahun 2000 yang mengakibatkan beban kerja yang banyak terutamanya kepada ejen cukai. Kerajaan bersetuju, untuk Tahun 2001 sahaja syarikat-syarikat dibenar mengemukakan Borang Nyata Pendapatan dalam tempoh 8 bulan selepas akaun ditutup. Dengan lanjutan tempoh ini 'DUE DATE' untuk bayaran ansuran terakhir mengikut subseksyen 103(2) juga dianjak sewajarnya.

Director General's Public Rulings

A Ruling is issued for the purpose of providing guidance for the public and officers of the Inland Revenue Board. It sets out the interpretation of the Director General of Inland Revenue in respect of the particular tax law, and the policy and procedure that are to be applied.

A Ruling may be withdrawn, either wholly or in part, by notice of withdrawal or by publication of a new ruling which is inconsistent with it.

Ruling No.	Name of Ruling	Issued / Updated
1/2000	Basis Period for a Non-business Source	01.03.2000
2/2000	Basis Period for a Business Source (Companies & Co-operatives)	01.03.2000
3/2000	Basis Period for a Business Source (Individuals & Persons other than Companies & Co-operatives)	01.03.2000
4/2000	Keeping Sufficient Records (Companies & Co-operatives)	01.03.2000
5/2000	Keeping Sufficient Records (Individuals & Partnerships)	01.03.2000
6/2000	Keeping Sufficient Records (Persons other than Companies & Co-operatives)	01.03.2000

Q U O T E S

Opportunities multiply as they are seized;
They die when neglected"

- John Wicker -

Think like a wise man but communicate in the language of the people

- William Butler Yeats -

Payment Scheme for Companies For The Years Of Assessment 2000 And 2001

Following the enquiries from the Institute, the Malaysian Institute Of Accountants and other professional bodies, the Inland Revenue Board (IRB) has issued a circular clarifying the payment scheme for the years of assessment 2000 and 2001.

Attached is the IRB circular which is self-explanatory. Please note that due to the urgency of the matter and time constraint we are unable to include all the various returns forms stated in the IRB circular and have only included for your information, Form C.P 204, the prescribed form.

The Institute welcomes any comments or inputs you may have on the proposed scheme. You may write to the Institute for the attention of Mr. K. S. Lim. You may also fax your comments to 03-22731016 or e-mail to klim@mia.org.my

Kepada:

**Semua Pertubuhan Perdagangan / Akauntan / Agen Cukai
(Senarai dilampirkan)**

Tuan,

Peraturan Bayaran Untuk Syarikat Bagi Tahun Taksiran 2000 dan 2001

Dengan hormatnya saya merujuk kepada perkara tersebut di atas.

2. Surat ini bertujuan memberi penerangan lanjut berhubung peraturan bayaran bagi syarikat dalam tahun 2000 susulan beberapa pertanyaan yang diterima berhubung dengan makluman yang dihantar dalam bentuk kad kepada semua syarikat pada 27 November 1999. Terlebih dahulu Lembaga Hasil Dalam Negeri (LHDN) memohon maaf di atas kesilapan pada kad pemakluman berhubung dengan tarikh permulaan bayaran ansuran dan tempoh pertindihan bayaran yang akan dilanjutkan ke tahun 2001. Dalam contoh yang diberikan syarikat perlu memulakan bayaran ansuran bagi Tahun Taksiran (TT) 2001 dalam bulan Ogos 2000 dan bukannya bulan Julai 2000. Pertindihan bayaran pula sepatutnya dibaca Ogos ke Disember dan bukannya Julai ke Disember.

3. Seperti dimaklumkan, berikutan pelaksanaan sistem taksiran berasaskan tahun semasa (STTS) dalam tahun 2000 dan sistem taksir sendiri (STS) dalam tahun 2001, jadual bayaran ansuran bagi syarikat dalam tahun 2000 adalah seperti berikut:-

- i) Bayaran cukai TT 2000 (STTS) mengikut seksyen 107B Akta Cukai Pendapatan (ACP 1967)
 - Syarikat akan membuat bayaran ansuran secara bulanan. Ini berbeza dengan tahun-tahun lepas di mana bayaran ansuran dibuat secara dwi bulanan. Bagi syarikat yang mengakhiri tempoh perakaunan pada tarikh selain 31 Disember 2000, ansuran akan bermula pada bulan Januari 2000. Bagi syarikat yang tempoh perakaunannya tamat pada 31 Disember 2000, ansuran akan bermula pada bulan Februari 2000. Bayaran hendaklah dibuat dalam tempoh 30 hari dari tarikh ditetapkan (iaitu pada 1 haribulan setiap bulan). Anggaran jumlah cukai yang kena dibayar berdasarkan kepada cukai bagi TT 1999, dan sekiranya tiada, cukai TT 1998.
 - Arahan bayaran akan dikeluarkan oleh LHDN kepada semua syarikat melalui Notis Bayaran Ansuran (CP 200) (menggantikan CP 38SA) bersama Slip Pengiriman Bayaran Ansuran (CP 203) dalam sedikit masa lagi.
- ii) Bayaran cukai TT 2001 (STS) mengikut seksyen 107C Rang Undang-Undang Cukai Pendapatan (Pindaan) (No. 2) 1999
 - Syarikat akan mula membayar ansuran dalam bulan kedua tempoh asas syarikat dan seterusnya

tiap-tiap bulan mengikut bilangan bulan dalam tempoh asas. Bayaran dikehendaki dibuat sebelum atau pada 10 haribulan setiap bulan.

- Borang yang ditetapkan (Prescribed Form) (CP 204) bagi syarikat membuat anggaran cukai yang kena dibayar akan dikeluarkan sebaik sahaja Rang Undang-Undang diluluskan oleh Parlimen. Susulan pembubaran Parlimen pada 11 November 1999, Rang Undang-Undang tersebut akan dibentangkan semula dalam sesi Parlimen khas pada akhir bulan Disember 1999. Pengwartaan Rang Undang-Undang dijadualkan pada 31 Disember 1999.

- Bagi syarikat-syarikat yang tempoh perakaunannya akan bermula pada 1 Februari 2000 dan bayaran ansuran perlu diterima oleh LHDN sebelum atau pada 10 Mac 2000. LHDN akan memberi kelonggaran untuk membenarkan syarikat mengemukakan Borang yang ditetapkan (CP 204) dalam bulan Januari atau awal bulan Februari 2000. Jadual bayaran ansuran akan dikeluarkan melalui Notis Bayaran Ansuran (CP 205) sebelum bulan Mac 2000.

4. Seperti dimaklumkan di mana syarikat menghadapi pertindihan bayaran ansuran TT 2000 (STTS) dan TT 2001 (STS), bayaran ansuran untuk cukai TT 2000 akan dilanjutkan ke tahun 2001. Kaedah lanjutan tempoh bayaran ansuran bagi TT 2000 adalah seperti di lampiran A. Dalam hubungan ini, LHDN akan meminda jadual bayaran ansuran TT 2000 dan mengeluarkan notis pindaan (CP 201) semasa mengeluarkan jadual bayaran ansuran STS (CP 205) dan Slip Pengiriman Bayaran Ansuran (CP 207).

5. Syarikat masih dibenarkan membuat permohonan untuk mengkaji semula anggaran cukai yang kena dibayar di bawah seksyen 107B(2) sekiranya syarikat belum berbuat demikian pada masa pindaan jadual bayaran ansuran cukai TT 2000 (CP 201) dikeluarkan. Adalah digalakkan syarikat-syarikat yang tempoh perakaunannya berakhir sebelum 30 Jun 2000 mengemukakan pindaan anggaran seksyen 107B semasa mengemukakan anggaran cukai di bawah seksyen 107C bagi mengelakkan pindaan dibuat dua kali.

6. Bersama-sama ini saya sertakan contoh Borang-Brang CP 200, 201, 202, 203, 204, 205, 206 dan 207 yang akan digunakan bagi bayaran ansuran untuk syarikat bagi TT 2000 dan TT 2001 dalam tahun 2000 untuk makluman tuan.

7. Saya berharap penjelasan di atas dapat dimaklumkan kepada semua pelanggan / ahli persatuan tuan dan juga membantu tuan dalam pengendalian sebarang pertanyaan dalam perkara ini.

8. Sekiranya tuan memerlukan penjelasan lanjut, tuan bolehlah merujuk pertanyaan kepada pegawai perhubungan awam di mana-mana cawangan LHDN.

Sekian, terima kasih.

“Berkhidmat Untuk Negara”

“Bersama menyumbang untuk Pembangunan Negara”

Saya yang menurut perintah,

[Hasmah bt. Abdullah]

Penolong Ketua Pengarah, Bahagian Operasi,

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

s.k.: Y. Bhg. Dato' Ketua Eksekutif / Ketua Pengarah hasil Dalam Negeri,
Timbalan-Timbalan Ketua Pengarah.

Bayaran Cukai STS Dan STS (Tahun 2000 - 2002)

LAMPIRAN A

TEMPOH ASAS		TAHUN 2000												TAHUN 2001												TAHUN 2002											
	JAN	FEB	MAC	APR	MEI	JUN	JUL	OGO	SEP	OKT	NOV	DIS	JAN	FEB	MAC	APR	MEI	JUN	JUL	OGO	SEP	OKT	NOV	DIS	JAN	FEB	MAC	APR	MEI	JUN	JUL	OGO	SEP	OKT	NOV	DIS	
31 JAN			01	01	01	01	01	01	01	01	01	01	01	01	02	02	02	02	02	02	02	02	02	02	02												
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28 FEB				01	01	01	01	01	01	01	01	01	01	01	02	02	02	02	02	02	02	02	02	02	02	02											
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31 MAC					01	01	01	01	01	01	01	01	01	01	01	01	01	02	02	02	02	02	02	02	02	02											
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30 JUN								01	01	01	01	01	01	01	01	01	01	01	01	01	02	02	02	02	02	02											
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31 JUL									01	01	01	01	01	01	01	01	01	01	01	01	02	02	02	02	02	02											
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31 OGOS										01	01	01	01	01	01	01	01	01	01	01	02	02	02	02	02	02											
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31 DIS														01	01	01	01	01	01	01	01	01	02	02	02	02											
	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00												

00 Bayaran T/T 2000 (STTS)

01 Bayaran T/T 2001 (STS)

00 Bayaran T/T 2002 (STS)

Nota: Kaedah lanjutan tempoh bayaran ansuran ke tahun 2001 adalah seperti berikut:

(i) Tempoh ansuran yang bertindih dilanjutkan sekali ganda

Contoh: Tempoh Asas Berakhir 30 April

Tempoh bertindih: Jun hingga Disember 2000 (7 bulan)

Tempoh lanjutan: Jun 2000 hingga Julai 2001 (14 bulan)

(ii) Berasaskan Q & A (No. 17) tambahan 2 bulan diberi kepada tempoh gandaan selaras dengan lanjutan yang diberi kepada tempoh pertindihan maksimum

(Tempoh Asas Berakhir 31 Januari)

Contoh: Mengikut contoh (i) di sebelah.

Tempoh lanjutan sebenar ialah Jun 2000 hingga September 2001 (16 tahun)

(iii) Oleh itu, dalam contoh (i) baki bayaran ansuran bagi T/T 2000 akan dibahagikan samarata sepanjang 16 bulan.

Cukai Pendapatan Malaysia

Kembalikan kepada
Lembaga Hasil Dalam Negeri Malaysia

Kepada

No Fail

Tahun Taksiran

No. Pendaftaran Syarikat

TUAN DENGAN INI DIKEHENDAKI MEMBUAT ANGGARAN CUKAI YANG KENA DIBAYAR MENGIKUT PERUNTUKAN SUBSEKSYEN 107C(1) AKTA CUKAI PENDAPATAN 1967. (SILA BACA NOTA KETERANGAN DI MUKASURAT SEBELAH).

Terima kasih atas kerjasama anda
Bersama menyumbang untuk pembangunan negara

Tarikh

Dato' Najirah Binti Mohd. Tassaduk Khan
Ketua Pengarah hasil Dalam Negeri

Anggaran Cukai Yang Kena Dibayar

ANGGARAN CUKAI YANG KENA DIBAYAR

Sila tandakan (✓) jenis anggaran cukai pendapatan

ANGGARAN ASAL

ANGGARAN PINDAAN

TAHUN TAKSIRAN

JUMLAH

RM

 SEN

TEMPOH PERAKAUNAN

HINGGA

HH BB TT

HH BB TT

BAGI SYARIKAT YANG BARU
NYATAKAN TARIKH SYARIKAT
MULA BEROPERASI

HH BB TT

* BAGI TAHUN TAKSIRAN 2001 ANGGARAN CUKAI YANG DI KEMUKAKAN MESTILAH TIDAK KURANG DARIPADA AMAUN CUKAI YANG DIBAYAR BAGI TAHUN TAKSIRAN 1999.

Akuan

Saya _____ (Nama Penuh) No. Kad Pengenalan _____

dengan ini mengaku bahawa butir-butir yang diberikan di atas adalah benar

Tarikh

Tandatangan Orang yang diberi kuasa

Jawatan: _____

No. Telefon: _____

*Pengarah / Setiausaha / Jawatan Yang Setaraf

**Nota Keterangan Bagi Membuat Anggaran Cukai Yang Kena Dibayar.
Di Dalam Borang Yang Di Tetapkan (CP 204)**

1. Sila gunakan borang ini apabila tuan membuat anggaran cukai yang kena di bayar (asal) atau anggaran cukai yang disemak (pindaan). Isikan ruangan yang disediakan dengan HURUF BESAR dan gunakan pen berdakwat HITAM.
 2. Anggaran cukai yang kena dibayar hendaklah dikemukakan tidak lewat dari 30 hari sebelum bermulanya tempoh asas bagi sesuatu tahun taksiran. Bagi syarikat yang baru memulakan operasinya di dalam sesuatu tahun taksiran, anggaran cukai yang kena dibayar hendaklah dikemukakan dalam masa 3 bulan dari tarikh permulaan operasinya.
 3. Amaun minimum anggaran cukai bagi sesuatu tahun taksiran hendaklah bersamaan dengan anggaran cukai atau anggaran cukai yang disemak jika ada, bagi tahun taksiran sebelumnya.
 4. Sekiranya anggaran tuan kurang daripada jumlah cukai yang kena dibayar bagi tahun taksiran 1999, Ketua Pengarah diberi kuasa untuk mengeluarkan arahan berkenaan dengan bayaran ansuran yang perlu dibayar oleh syarikat bagi cukai yang kena dibayar.
 5. Satu Notis Bayaran Ansuran (CP 205) dan Slip Pengiriman Bayaran (CP 207) akan dihantar kepada tuan bagi memudahkan tuan membuat bayaran ansuran seperti ditetapkan. Setiap bayaran ansuran hendaklah menggunakan slip pengiriman bayaran tersebut.
 6. Bayaran ansuran hendaklah dibuat secara bulanan mulai dari bulan kedua selepas bermulanya tempoh asas bagi sesuatu tahun taksiran. Bilangan ansuran yang kena dibayar oleh syarikat akan di tentukan mengikut bilangan bulan dalam tempoh asas bagi syarikat tersebut. Bagi syarikat yang baru memulakan operasi di dalam suatu tahun taksiran tertentu, bayaran ansuran hanya perlu dibuat dari bulan keenam selepas bermulanya tempoh asas.
 7. Setiap bayaran hendaklah diterima di Cawangan Pungutan Lembaga Hasil Dalam Negeri atau di mana-mana cawangan Bumiputra Commerce Bank Berhad (BCB dahulunya BBMB), selewat-lewatnya pada hari kesepuluh bulan tersebut.
- Contoh: Bagi tempoh asas yang bermula pada 1 Mac, bayaran pertama hendaklah diterima pada atau sebelum 10 April.
8. Cukai akan dinaikkan sebanyak 10% bagi setiap ansuran yang tidak diterima dalam tempoh yang ditetapkan.
 9. Syarikat dibenarkan untuk meminda anggaran dalam bulan ke 6 selepas bermulanya tempoh asas bagi sesuatu tahun taksiran. Sekiranya tuan membuat pindaan, sehingga satu Notis Pindaan Bayaran Ansuran (CP 206) dikeluarkan, tuan hendaklah terus membuat bayaran (jika berkenaan) mengikut cadangan pindaan tuan tanpa menunggu Notis Pindaan tersebut.
 10. Di mana terdapat perbezaan di antara cukai yang kena dibayar untuk tahun taksiran 2001 dengan anggaran yang disemak bagi tahun taksiran yang sama (jika ada) atau anggaran untuk tahun itu dan perbezaan tersebut melebihi 30% daripada cukai yang kena dibayar, amaun yang melebihi 30% itu akan dinaikkan sebanyak 10% tanpa sebarang notis.

Formula Pengiraan adalah seperti berikut:

Amaun Cukai yang di naikkan - $[(CS-AC) - (30\% \times CS)] \times 10\%$

Di mana: CS: Cukai yang kena di bayar sebenar.

AC: Anggaran Cukai atau Anggaran Cukai disemak (jika ada).

14 January 2000 - Circular No. 1/2000

TO ALL MEMBERS

1. Annual Dialogue with IRB

This is to inform that there will be a dialogue with the IRB some time in February 2000. The Institute invites you to submit your problems with IRB practices so that they can be considered and brought to the attention of the authorities. As you are aware, Income Tax (Amendment) (No. 2) Bill which laid down the framework of the Self-assessment System has been passed in Parliament and is in the process of being gazetted. The Budget for Year 2000 will also be tabled in February 2000. In this respect, the Institute would like to have your comments on the changes in the tax law. We would appreciate it if you could provide some specific examples to illustrate your points. Please let us have your inputs on or before 15 February 2000.

2. Payment Scheme for Businesses and Associations for the Year of Assessment 2000.

Following the enquiries from MIT and MIA, the IRB has issued a circular specifying the payment scheme for the year of assessment 2000 for sole proprietors and associations. Attached is the circular which is self-explanatory. (Appendix 1)

3. Framework of Compliance Procedures for the Years of Assessment 2000 (Preceding Year Basis), 2000 (Current Year Basis) and 2001.

The Secretariat has compiled information regarding the above into a table for your easy reference (Appendix 2). The table also contains some of the Institute's proposals to the IRB. If you have any further queries, please write to the Secretariat before 15 February 2000 so that we may raise it during the dialogue.

4. Various Forms for Tax Payments and Variations of Instalments

As you are aware, due to time constraint, the Institute could not forward to you the various draft forms issued as samples by IRB. Due to numerous requests, we enclose all the draft forms for your reference. Please note that these are only draft forms for your information and cannot be used. (Appendix 3)

You may submit your comments or inputs by writing to the Institute for the attention of Mr. K.S. Lim or fax to 03-22731016. Alternatively, you may also e-mail to kslim@mia.org.my

CHUAH SOON GUAN

Honorary Secretary

Kepada:

**Semua Pertubuhan Perdagangan/Akauntan/Agen Cukai
(Senarai dilampirkan)**

Tuan

Peraturan Bayaran Ansuran Cukai Pendapatan bagi Peniaga dan Badan-Badan Perseorangan Bagi Tahun Taksiran 2000

Dengan hormatnya saya merujuk kepada perkara tersebut di atas.

2. Surat ini bertujuan memberi penerangan berhubung peraturan bayaran ansuran cukai pendapatan bagi peniaga, badan-badan perseorangan (fail cukai pendapatan OG, T, F, J) dan koperasi bagi tahun taksiran 2000.
3. Selaras dengan pelaksanaan sistem taksiran berasaskan tahun semasa (STTS) dalam tahun 2000, peraturan bayaran ansuran bagi peniaga dan badan-badan perseorangan dan koperasi dalam tahun 2000 adalah seperti berikut:-

3.1 Semua kategori pembayar cukai di atas akan terus membuat lima bayaran ansuran secara dwi bulanan bermula pada bulan Mac sehingga November 2000. Ini adalah berbeza dengan tahun-tahun lepas di mana bayaran ansuran bermula sama ada dalam bulan Januari atau Februari. Bayaran ansuran di tetapkan pada setiap awal bulan dan pembayar cukai diberi tempoh 30 hari untuk menjelaskannya atau penalti sebanyak 10% akan dikenakan.

3.2 Amaun bayaran ansuran akan ditentukan oleh Cawangan Pungutan dan arahan akan dikeluarkan melalui Borang CP 200 (menggantikan Borang CP 38 SA) di bawah Seksyen 107B Akta Cukai Pendapatan 1967.

3.3 Borang CP 200 akan dikeluarkan dalam bulan Januari/Februari 2000 kepada semua peniaga, badan-badan perseorangan dan koperasi. Mengikut Seksyen 107 B(2) sedia ada, pembayar cukai boleh memohon untuk meminda jadual tersebut sebelum 15 April 2000. (Sekiranya cadangan pindaan dalam Belanjawan 2000 diluluskan, peniaga, badan-badan perseorangan dan koperasi boleh memohon untuk meminda jadual sebelum 30 Jun 2000).

3.4 Jika terdapat perbezaan di antara cukai yang kena dibayar mengikut Notis Taksiran dengan jumlah ansuran yang dipohon melebihi daripada 30%, lebihan di atas perbezaan tersebut akan dikenakan penalti sebanyak 10%.

Contoh

	RM
(a) Cukai yang kena dibayar mengikut notis taksiran	87,700
(b) Jumlah bayaran ansuran yang dibenarkan	12,500
(c) Jumlah cukai yang kena dibayar melebihi ansuran (a - b)	75,200
(d) 30% di atas cukai kena dibayar (30% X a)	26,310
(e) Perbezaan (c - d)	48,890
(f) Kenaikan (10% X e)	4,889

3.5 Pembayar cukai dikehendaki menggunakan Slip Pengiriman Bayaran Ansuran, iaitu CP 203 semasa bayaran dibuat sama ada di kaunter Bayaran LHDN atau di Bank Bumiputra Commerce Bhd. Borang CP 203 akan dihantar bersama dengan CP200 yang mengandungi maklumat pembayar cukai yang penting seperti nombor

kod bayaran, nombor rujukan dan tahun taksiran yang sedia tercetak. Penyediaan maklumat ini adalah bertujuan mengelakkan berlakunya kesilapan semasa mencatat butiran bayaran di kaunter pungutan atau di bank.

4. Bersama-sama ini saya sertakan Borang-Borang CP 200 dan 203 yang akan digunakan bagi bayaran ansuran untuk peniaga, badan-badan perseorangan dan koperasi bagi TT 2000 untuk makluman tuan.
5. Saya berharap penjelasan di atas dapat dimaklumkan kepada semua pelanggan/ahli persatuan tuan dan juga membantu tuan dalam pengendalian sebarang pertanyaan dalam perkara ini.
6. Sekiranya tuan memerlukan penjelasan lanjut, tuan bolehlah merujuk pertanyaan kepada pegawai perhubungan awam di mana-mana cawangan LHDN.

Sekian, terima kasih

"Berkhidmat Untuk Negara"

"Bersama Menyumbang Untuk Pembangunan Negara"

Saya yang menurut perintah,

(Hasmah Bt. Abdullah)

Penolong Ketua Pengarah,

Bahagian Operasi,

b.p Ketua Eksekutif/Ketua Pengarah Hasil Dalam Negeri

Lembaga Hasi Dalam Negeri

Malaysia

s.k. Y. Bhg. Dato' Ketua Eksekutif/Ketua Pengarah Hasil Dalam Negeri
Timbalan-Timbalan Ketua Pengarah

YEAR OF ASSESSMENT 2000 (PRECEDING YEAR BASIS - YEAR 1999 INCOME - TAX WAIVER YEAR)	COMPANIES	INDIVIDUAL, ASSOCIATION PARTNERSHIP, TRUSTS, CO-OPERATIVE, ETC.,	MIA/MIT COMMENTS & PROPOSALS
Filing Programme	Same as previous year	Same as previous year	
- Availability of Tax Return Forms	Form C & Form E will be issued by IRB in early 2000. Final notice will be issued for non-submission.	Tax Return Forms & Form E will be issued by IRB in early 2000. Final notice will be issued for non-submission.	
- Filing Deadline	<ol style="list-style-type: none"> 1. 30 days from the date of service of notice to file Form C. 2. By concession, IRB will extend filing deadline to 31 May 2000. 3. Form E must be filed on 30 April 2000. 	<ol style="list-style-type: none"> 1. 30 days from the date of service of notice to file the return form. 2. By concession, IRB will extend filing deadline to 31 May 2000. 3. Form E must be filed on 30 April 2000. 	
- Extension to time to file	<ol style="list-style-type: none"> 1. By concession IRB will extend the filing deadline to 30 June, 31 July and 30 August 2000 on application following the old rules. 2. Application for extension of time must be made on or before 15 April 2000. 	<ol style="list-style-type: none"> 1. By concession IRB will extend the filing deadline to 30 June and 31 July 2000 on application following the old rules. 2. Application must be made on or before 15 April 2000. 	MIA/MIT proposed that extension of time be granted automatically to 30 August 2000 for companies and 31 July 2000 for others. This will not have significant impact on revenue collections since only few assessments will be raised. But it will save a lot of administrative time for IRB and for tax agents. The year 2000 is particularly busy for both tax agents and IRB.
Assessment	<ol style="list-style-type: none"> 1. Where tax is completely waived, IRB will not issue notice of assessment. Instead a Notification confirming the exempt account or the losses and capital allowances to be carried forward will be sent. 	<ol style="list-style-type: none"> 1. Where tax is completely waived, IRB will not issue notice of assessment. Instead a Notification confirming the exempt account or the losses and capital allowances to be carried forward will be sent. 	
- Notice of assessment			

YEAR OF ASSESSMENT 2000
(PRECEDING YEAR BASIS -
YEAR 1999 INCOME -
TAX WAIVER YEAR)

COMPANIES

**INDIVIDUAL, ASSOCIATION
PARTNERSHIP, TRUSTS,
CO-OPERATIVE,
ETC.,**

**MIA/MIT COMMENTS
& PROPOSALS**

2. Where tax is partially waived, IRB will issue computation of income on which tax is waived together with a notice of assessment/computation of repayment indicating the balance of tax payable/refundable.

3. In the case where tax is waived completely but penalty was imposed on late filing or non-filing, IRB will issue a notice of assessment to collect the penalty.

2. Where tax is partially waived, IRB will issue a computation of income on which tax is waived together with a notice of assessment/computation of repayment indicating the balance of tax payable/refundable.

3. In the case where tax is waived completely but penalty was imposed on late filing or non-filing, IRB will issue a notice of assessment to collect the penalty.

- Appeal

1. Appeal must be made within 30 days from the date of service of the notice of assessment.

1. Appeal must be made within 30 days from the date of service of the notice of assessment.

Collection

1. IRB will not issue Notice of Instalment Payments (CP 38SA) under Section 107B of the Income tax Act 1967 (ITA 67).

2. Company needs to settle tax liability within 30 days from the date of Service of the Notice of Assessment.

1. IRB will not issue Notice of Instalment Payments (CP 38SA) under Section 107B of the Income tax Act 1967 (ITA 67).

2. Taxpayers needs to settle tax liability within 30 days from the date of Service of the Notice of Assessment.

Filing Programme

New Procedure

As in previous year.

- Availability of Tax Return

1. IRB will issue Form C quarterly on 1 April 2000, 1 July 2000, 1 October 2000 and 1 January 2001.

1. IRB will issue tax return forms in early 2001.

YEAR OF ASSESSMENT 2000
(PRECEDING YEAR BASIS -
YEAR 1999 INCOME -
TAX WAIVER YEAR)

COMPANIES

**INDIVIDUAL, ASSOCIATION
PARTNERSHIP, TRUSTS,
CO-OPERATIVE,
ETC.,**

**MIA/MIT COMMENTS
& PROPOSALS**

- Filing Deadline

1. Company must file its tax return within 6 months after the closing of its accounts. For instance, company with year end 31 May 2000 must file its return Form C by 30 November 2000.

1. Tax return must be filed within 30 days from the date of service of notice of file the return.

2. By concession, IRB will extend filing deadline to 31 May 2001.

1. Investment holding company having early financial year end will not be able to file a proper return since it cannot determine its income which is assessed based on calendar year.

- Extension of Time to file

1. Extension of time will be granted only on case by case basis.

1. By concession, IRB has extended the filing deadline to 30 June and 31 July 2001 on application following old rules.

2. Application must be made on or before 15 April 2001.

2. Companies which participate in partnership may not be able to submit a proper tax return if its financial year end is earlier than that of the partnership because it would not be able to determine its chargeable income. This is particularly so during the transitional period where partnerships may submit their tax return in the following May after the close of accounts.

3. MIA/MIT proposed that the extension of time be granted automatically for cases other than company to 31 July 2001 on application.

Assessment

- Notice of Chargeability

1. Company chargeable to tax must notify IRB before 15 April 2001 unless it has been required to make a return by IRB.

1. Taxpayers chargeable to tax must notify IRB before 15 April 2001 unless they have been required to file returns by IRB.

- Notice of Assessment

1. IRB will issue notice of assessment.

1. IRB will issue notice of assessment.

YEAR OF ASSESSMENT 2001
(YEAR 1999 INCOME -
SELF ASSESSMENT REGIME)

COMPANIES

**INDIVIDUAL, ASSOCIATION
PARTNERSHIP, TRUSTS,
CO-OPERATIVE,
ETC.,**

**MIA/MIT COMMENTS
& PROPOSALS**

- Appeal

1. Appeal must be made within 30 days from the date of service of notice of assessment.

1. Appeal must be made within 30 days from the date of service of notice of assessment.

Collection

- Notice of Instalment
Payments (CP200)

1. IRB will issue of Notice of Monthly Instalment Payment (CP200) to companies with year end on 31 December 2000 on January 2000. Instalments commence on February 2000 until January 2001. Other companies will receive CP200 on December 1999 and monthly payments commence on January 2000 till December 2000.

2. Payment of instalment must be made within 30 days of the due date specified in the notice.

3. Company may apply for CP200 on or before 15 April 2000 (or 30 June 2000 as proposed in Finance Bill 1999). Company will not be penalised for underestimating its tax liability. The balance of tax payable, if any, must be settled within 30 days after the last instalment or after the date of service of notice of assessment, whichever is the later.

1. IRB will issue of Notice of Bimonthly Instalment Payment to the taxpayers in January or February 2000 using the new form CP200 and CP203.

2. All instalments will commence on March 2000 and end on November 2000. Payment must be settled within 30 days from the due date, which is the first day of the relevant month. Late payment will result in 10% penalty.

3. Taxpayers may apply for CP200 on or before 15 April 2000 (or 30 June 2000 as proposed in Finance Bill 1999). Taxpayers will not be penalised for underestimating its tax liability. The balance of tax payable, if any, must be settled within 30 days after the last instalment or after the date of service of notice of assessment, whichever is the later.

YEAR OF ASSESSMENT 2001
(YEAR 1999 INCOME -
SELF ASSESSMENT REGIME)

COMPANIES

**INDIVIDUAL, ASSOCIATION
PARTNERSHIP, TRUSTS,
CO-OPERATIVE,
ETC.,**

**MIA/MIT COMMENTS
& PROPOSALS**

- Revised Estimate

1. Revised estimate must be made by companies before 15 April 2000 (or 30 June 2000 as proposed in Finance Bill 1999)
2. IRB will also revise CP200 upon receiving the prescribed form for estimated tax payable under self-assessment and issue the extended notice of instalment payment (CP203) to company.

1. Revised estimate must be made by taxpayers before 15 April 2000 (or 30 June 2000 as proposed in Finance Bill 1999)
2. Where the actual tax liability exceeds the revised estimate by 30%, then the excess shall be subjected to 10% penalty.

- Settlement

1. All payment must be made through Form CP203 and payable to IRB payment counter or Bank Bumiputra Commerce Bhd.
2. Tax must be paid within 30 days after the date of service of notice of assessment or after the last instalment payment, whichever is the later.
3. Where the notice of assessment is issued before the instalment scheme is complete, company may apply for a revision of the instalment scheme. Otherwise, the IRB will automatically revise the Instalment payment scheme.

1. All payment must be made through Form CP203 and payable to IRB payment counter or Bank Bumiputra Commerce Bhd.
2. Tax must be paid within 30 days after date of the service of notice of assessment.

Taxpayers having business source, such as OG cases, may also face the problem of having to pay two years' tax in one year. Currently IRB has not granted any extended instalment plan for these group of taxpayers. It is suggested they should also have the benefit of extended tax instalment payment.

YEAR OF ASSESSMENT 2001 (YEAR 1999 INCOME - SELF ASSESSMENT REGIME)	COMPANIES	INDIVIDUAL, ASSOCIATION PARTNERSHIP, TRUSTS, CO-OPERATIVE, ETC.,	MIA/MIT COMMENTS & PROPOSALS
	4. To alleviate company from paying 2 years' instalments each month, the IRB has granted extended instalment period so that payments may be staggered over a longer period as illustrated by Lampiran A in MIA circular No. 26/99 and MIT circular No. 9/99.		
Filing Programme	New Regime	As in previous year	
- Availability of Tax Return	1. IRB will issue Form C Quarterly on 1 April 2001, 1 July 2001, 1 October 2001 and 1 January 2002.	1. IRB will issue tax return forms in early 2002.	
- Filing Deadline	<p>1. Company whose year end falls within a quarter must file its tax return within 6 months after closing of accounts. For instance, company with year end 31 May 2001 must file its return Form C by 30 November 2001.</p> <p>2. Where there is a change of accounting year end such that the accounts are not closed at any date in a particular year, the company is required to furnish a return for that year and the following year within 6 months, from the date the company closes its account.</p>	<p>1. Tax return must be filed within 30 days from the date of service of notice to file the return.</p> <p>2. By concession, IRB will extend the filing deadline to 31 May 2002.</p>	

YEAR OF ASSESSMENT 2001 (YEAR 1999 INCOME - SELF ASSESSMENT REGIME)	COMPANIES	INDIVIDUAL, ASSOCIATION PARTNERSHIP, TRUSTS, CO-OPERATIVE, ETC.,	MIA/MIT COMMENTS & PROPOSALS
- Extension of Time	1. There is no extension of time.	1. By concession, IRB will extend the filing deadline to 30 June and 31 July 2002 on application following old rules.	MIA/MIT proposed that the extension of time be granted automatically to 31 July 2002 for cases other than the companies.
Assessment - Notice of Chargeability	1. Company chargeable to tax must notify IRB before 15 April 2002 unless it has been required to make a return by IRB.	1. Taxpayers chargeable to tax must notify IRB before 15 April 2002 unless it has been required to file returns by IRB.	
- Notice of Assessment	1. IRB will not issue Notice of Assessment. Tax return and computation filed by the company is deemed to be the Notice of Assessment and the date of filing is deemed to be the date on which the Notice of Assessment is served to the company	1. Notice of Assessment will be issued by the IRB.	
- Appeal	1. Appeal must be made within 30 days from the date of service of Notice of Assessment.	1. Appeal must be made within 30 days after the service of Notice of Assessment.	1. Members are advised to submit a protect appeal when filing tax return to keep the door of appeal open.
Collection - Prescribed Form - Availability of Form	1. Company must furnish to IRB its estimated tax payable in a prescribed form. Initially, IRB will issue the prescribed form to all companies in the month of January/February 2000. Finally the form will be issued quarterly on January, April, July and October.		

YEAR OF ASSESSMENT 2001 (YEAR 1999 INCOME - SELF ASSESSMENT REGIME)	COMPANIES	INDIVIDUAL, ASSOCIATION PARTNERSHIP, TRUSTS, CO-OPERATIVE, ETC.,	MIA/MIT COMMENTS & PROPOSALS
<ul style="list-style-type: none"> - Filing of Form 	<ol style="list-style-type: none"> 1. Company receiving the form must file to IRB 30 days before the commencement of the basis period. Company may also obtain the prescribed form from counter of IRB branches. 2. The estimated tax payable shall not be less than the assessment for year of assessment 1999. 3. In the case of new company which commence operations in the basis period, filing must be made within 3 months after the commencement of operations. 		
<ul style="list-style-type: none"> - Prescribed Form - Extension of Time 	<ol style="list-style-type: none"> 1. There is no extension of time. However, for company with year end 31 January 2001, IRB will allow the company to file the prescribed form by 31 January 2000. IRB has indicated that they will be lenient provided that the company pays its due on time, i.e. it has to settle its tax payment by March 2000. 		
<ul style="list-style-type: none"> - Notice of Instalment Payments 	<ol style="list-style-type: none"> 1. IRB will issue the notice on the month immediately after the close of last financial year end of the company. 	<ol style="list-style-type: none"> 1. IRB will issue the notice of instalment payment in early 2001. Each instalment must be settled within 30 days from the beginning of the month. 	

YEAR OF ASSESSMENT 2001 (YEAR 1999 INCOME - SELF ASSESSMENT REGIME)	COMPANIES	INDIVIDUAL, ASSOCIATION PARTNERSHIP, TRUSTS, CO-OPERATIVE, ETC.,	MIA/MIT COMMENTS & PROPOSALS
	<p>2. Instalment must be paid on or before the 10th day of each month commencing from the second month of the financial year.</p> <p>3. New company commencing operations in the basis period for year of assessment 2001 shall pay its tax in equal monthly instalments beginning from the 6th month of the basis period.</p>	<p>2. As proposed in the Finance Bill 1999, taxpayers may apply for a revision of estimated tax payable by 30 June 2001.</p> <p>3. Taxpayers may settle the difference between actual tax liability and the total instalment payments within 30 days after the date of service of Notice of Assessment.</p>	
- Revised of Estimated Tax	<p>1. Company may apply for revision of estimated tax payable on the sixth month of the basis period using Form CP202.</p>		
- Full Settlement	<p>1. Company must settle the difference between actual tax liability and the total instalment payments on or before the last day of 6th month following the close of accounts.</p> <p>2. Where an assessment, additional assessment, advance assessment, composite assessment, or increased assessment is raised by IRB, the due date of settlement is 30 days after the date of service of such Notices or after the last instalment payment under the extended payment scheme.</p>		

Gathering Cum Luncheon

On 23 November 1999, the Institute organised a Gathering Cum Luncheon with Government officials at the Mandarin Oriental Hotel, Kuala Lumpur. This Gathering was aimed to strengthen ties between the Institute and the Government bodies which is hoped to continue into the new millennium. The Luncheon was also to express the Institute's gratitude to the Government agencies for all their support and co-operation given to the Institute in all their activities.

Among the Government officials who attended the Gathering were Y Bhg Dato' Ahmad Padzli bin Mohyiddin, Director-General of the Royal Customs & Excise Department, Tn Hj Ithnin Haji Hassan, Secretary to the Tax Analysis Division of Treasury, Pn Noor Azian bt Shaari, Chairperson of the Special Commissioners of Income Tax, Mr Lim Heng How, Deputy Director-General of Inland Revenue and Dr Syed Sheikh Almashoor, the Senior Manager Accreditation I from the National Accreditation Board. Honorary Fellows of the Institute, Y Bhg Tan Sri Lim Leong



MIT President, En Ahmad Mustapha Ghazali delivering his welcome speech.

Seng who was the former adviser to the Institute and YM Raja Dato' Seri Abdul Aziz Raja Salim were also present for the Gathering.

The President, En Ahmad Mustapha Ghazali started the Gathering with a Welcoming Speech, in which, he expressed his gratitude to the Government officials for their support to the Institute in all their activities. He added that the support and co-operation given by the Government agencies via officers to sit in

some of the Committees of the MIT and participation in programs organised by the Institute, had given the Institute the motivation to work harder towards achieving its objectives. He also took the opportunity to thank all the Council Members of the Institute for their unwavering support in ensuring the success of the Institute's activities since its establishment more than 8 years ago.

The speech was followed by a short presentation on MIT which highlighted amongst others, the history of the Institute, its mission, achievements, publications, international relationship, relationship with the Government agencies and its future plans. Those present were also briefed on the membership of the Institute as well as its professional examinations.

Thereafter, lunch was served during which, Council Members and Government officials took the opportunity to share views pertaining to the taxation profession. The Gathering ended at 2.30 p.m. with the Secretariat once again thanking, on behalf of the Council of the Institute, all who were present for the Gathering.



MIT President, En Ahmad Mustapha Ghazali (left) exchanging notes with Pn Noor Azian, Chairperson of the Special Commissioners (right) while Tn Hj Ithnin Haji Hassan, the Secretary to the Tax Analysis Division of the MOF (centre) looks on.



Luncheon with some of the government officials.

Income Tax (Exemption) Orders

In the month of March 2000, there are some new Income Tax (Exemption) Orders which have been published. Income Tax (Exemption) (No. 3) Order 2000 exempts the unit trusts set out in the Schedule from the payment of income tax in respect of all income for the year of assessment 2000. Income Tax (Exemption) (No. 4) Order 2000 exempts Khazanah Nasional Berhad from the payment of income tax in respect of all income for the years of assessment 1998 and 1999, both years inclusive. The Minister exempts a banking institution from the payment of income tax on the adjusted income under Income Tax (Exemption) (No. 5) Order 2000. Income Tax (Exemption) (No. 6) Order 2000 touches on exemption of tax in respect of the statutory income derived from domestic tours. There are also Income Tax gazettes on Deduction for Corporate Debt Restructuring Expenditure, Deduction for Freight Charges from Sabah or Sarawak to Peninsular Malaysia, Deduction for Information Technology - Related Expenditure and Qualifying Plant Annual Allowances.

There are also two new tax cases, Daya Leasing and SGS which will be published in the June 2000 issue of Tax Nasional. Details of the Income Tax (Exemption) Orders will also be published in the June 2000 issue.

REPORT ON ASIA - OCEANIA TAX CONSULTANTS ASSOCIATION MEETINGS (AOTCA)

Taipei, Taiwan 4 - 5 November 1999

The Honorary Secretary of the Malaysian Institute of Taxation (MIT), Mr Chuah Soon Guan and two Council members, Mr Chow Kee Kan and Dr Jeyapalan Kasipillai represented MIT at the AOTCA annual Council meeting in Taiwan. The 1999 AOTCA annual Council meeting was held at the Taipei Convention Centre on 4 - 5 November 1999. Speakers from member countries presented papers on tax developments in their respective countries. Malaysia was represented by Dr Jeyapalan Kasipillai who presented a paper entitled "Malaysia's Tax System in the Year 2000 and Beyond". Member countries of AOTCA include Australia, Hong Kong, Japan, Malaysia, Pakistan, Philippines, Singapore, South Korea and Taiwan.

During the Extraordinary General Meeting, AOTCA resolved the following:

- i) The appointment of a Deputy President for AOTCA. A South Korean delegate, Dr Koo Joog - Tea, was unanimously elected for the post of Deputy - President.
- ii) Initiatives will be made to invite India, Indonesia and Thailand to become AOTCA members. Several delegates were specifically requested by the President to persuade these countries to join AOTCA.
- iii) There would be a working relationship between AOTCA and the International Bureau of Fiscal Documentation (IBFD) located in Amsterdam, the Netherlands. The Asia - Pacific Tax Bulletin, a publication of IBFD, will publish research articles on behalf of AOTCA. AOTCA will however, retain its official journal - Asia - Oceania Tax Consultants Association Technical Reports.

The current AOTCA President is Mr David Russel, a Queen's Council member from Australia. He is the second President of AOTCA and his term ends in 2001.

MIT Professional Examination

CALENDER FOR YEAR 2000

<i>January 1</i>	Annual Subscription for 2000 payable.
<i>February 18</i>	Release of the 1999 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 Year 2000 <i>without penalty</i> (RM50).
<i>April 30</i>	Last date for payment of annual subscription for Year 2000 <i>with penalty</i> (RM100).
<i>April 30</i>	Question & Answer Booklets available for Sale.
<i>September 1</i>	Closing date of registration of new students who wish to sit for the December 2000 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 Examination Department.
<i>November 30</i>	Despatch of Examination Notification Letter.
<i>3rd Week Of December</i>	MIT Examination.

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

Keeping Sufficient Records For A Company Under Self Assessment

Records / Books of Account

A company must keep the following records and books of accounts, cash book, sales ledger, purchase ledger, general ledger. The type of books that a company should keep will depend on the nature and the size of the business. The books and other records in manual or electronic form should be sufficient to explain the transactions and to enable a true and fair profit and loss account and a balance sheet to be prepared.

Sixty Day Rule

These books of accounts should be written up at regular intervals. Appropriate entries for each transaction should be recorded within 60 days of the transaction.

Supporting Documents

Supporting documents such as invoices, tills rolls, bank statements, pay - in slips, cheque butts, receipts for payments, payroll records and copies of receipts issued in serial numbers should be retained.

Serially Numbered Receipts

The requirements for the issuance of serially numbered receipts is applicable where the gross taking for a year exceeds:

- RM 150,000 - Sale of Goods
- RM 100,000 - Performance of Services

Stock Valuation

A valuation of the stock in trade should be made and the appropriate records maintained.

Electronic Record Keeping

If computers are used to record the transactions, original source documents such as invoices and receipts should be retained. Where the original documents are in electronic form, the documents can be retained in such form. The system of documentation including the company's accounting manual, chart and code of accounts, kept by the company should be maintained.

Documents Kept in Malaysia

Records and books of accounts should be kept at the business premises of the company in Malaysia. If the records and books of accounts are kept outside Malaysia for operations of the company outside Malaysia, the records and books of accounts should be produced at the business premises of the company in Malaysia, when requested by the Director General.

Six Year Rule

Records and books of accounts are to be retained for at least six years from the end of the calendar year in which the accounts are closed or six years from the end of the calendar year in which the Return Form and the final accounts are submitted to the Director General, whichever is later. Where there is an appeal against an assessment, the relevant records and books of accounts are to be retained until the appeal is finally determined.

Bahasa Malaysia / English

Records and books of accounts are to be written in the national language or the English language. If the records and books of accounts are written in another language, a written translation should be provided at the expense of the company, when requested by the Director General.

Director General Powers

The Director General may waive any of the requirements with regard to the keeping of records or issuance of receipts for any business for any good cause shown.

Consequences If Insufficient Records Are Kept

The chargeable income of the company will be determined according to the best judgement of the Director General and an assessment will be raised accordingly. The company or persons responsible may be prosecuted and, on conviction, may be liable to a fine of not less than RM 200 and not more than RM 2,000 or to imprisonment for a term not exceeding six months or to both. The person responsible includes the manager or other principal officer in Malaysia, the directors, the secretary and any person (however styled) exercising the functions of any of the persons mentioned earlier.

Source: Ernst & Young

The following persons have been admitted as associate members of the Institute as at 25 January 2000.

Name	Membership No.
KHOO YUET MENG	1642
ROBERT YOON SOOH CHEUW	1643
DUAR TUAN KIAT	1644
CHEN MEE HUONG	1645
CHU KHONG CHAU	1646
CHAI MIN HUI	1647
NG KENG KONG	1648
EDWIN YAP KEN VUI	1649
YAP YEE CHANG	1650
SOO THO HIM YIP	1651
LOO HOOI BENG	1652
TAN SIAK CHEW	1653
ABD HALIM BIN HUSIN	1654
PETER NANSIAN ANAK NGUSE	1655
TAN MONG SING, DATO'	1656
LAI CHEE KEONG	1657
KUAN CHENG TOON	1658
WONG YUET CHEW	1659
SOH SIMONE	1660
HII MING TIING	1661
SO FEE FANG	1662
NG CHEE HWA	1663
LAU NGI HUK	1664
LAI WOOL MENG	1665
WONG KWAI WAH	1666
LO LIE MENG	1667
KONG SEONG HEE	1668
CHEW MOH CHYE	1669
ELSON HA KEE CHAI	1670
WONG CHEE LEONG	1671
PETER CHIAM TAU MIEN	1672
BALASINGHAM S/O RATNAM	1673
MAUREEN SIAW HONG WAN	1674
LIM SZE YEAN	1675
CHEN HOON KEONG	1676
CHONG JIOOT NGOR	1677
LING CHEE MIN	1678
WAN BAK CHOI	1679
TAN CHENG HOCK	1680

The following persons have been admitted as fellow members of the Institute as at 25 January 2000.

Name	Membership No.
TAN KIM HAN	694
CHRISTOPHER HENG KEE CHAI	793

MEMBERSHIP STATUS OF MIT AS AT 25 MAY 1999

Honorary Fellows	7
Fellows Members*	395
Associate Members*	1654
	<hr/>
	2049
	<hr/>
* Fellow and Associate Members	
Public Accountants of MIA	984
Registered Accountants of MIA	207
Licensed Accountants of MIA	15
Advanced Course Exam of IRD	127
Advocates & Solicitors	7
Approved Tax Agents	130
MIT Graduates	7
Others	177
	<hr/>
	1654
	<hr/>

TAX NASIONAL SUBSCRIPTION FORM 2000

Post this form to
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Dewan Akauntan
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Brickfields, 50470 Kuala Lumpur
Malaysia
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Facsimile : 03-22741783

2000 SUBSCRIPTION RATES

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

The above prices are inclusive of postage.

Please Use Capital Letters

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I enclose a cheque/money order/bankdraft No. _____ payable to the Malaysian Institute of Taxation for RM/
US\$ _____ for _____ copy/copies or _____ year/years' subscription of Tax Nasional.

Note: For overseas subscription, payment is accepted by bank draft only.

*MIA members/Students must state their membership/student number in order to enjoy the MIA member/Student rate. Students should also enclose a photocopy of their student card.

CONTRIBUTION OF ARTICLES

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

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

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

IMPORTANT DISCLAIMER

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

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2. the publisher is not engaged in rendering legal accounting, professional or other advice or services. The publisher, and the authors, advisors and editors, expressly disclaim all and any liability and responsibility to any person, whether a purchaser or reader of this publication or not, in respect of anything and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication. Without limiting the generality of the above no author, advisor or editor shall have any responsibility for any act or omission of any other author, advisor or editor.



How to become a member of the Malaysian Institute of Taxation

Benefits and Privileges of Membership

The Principal benefits to be derived from membership are:

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

Qualification Required For Membership

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

Associate Membership

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

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

Fellow Membership

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

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

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

Application of Membership

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

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

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

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

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

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

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

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