● Price RM20.00
US$11.50

TAX NASIONAL

OFFICIAL JOURNAL OF THE
MALAYSIAN INSTITUTE OF TAXATION
ISSN 0128-7850 KDN PP 7829/12/93
QUARTERLY JUNE 1994

Malaysian Institute Of Taxation

C O N T E N T S

TAX NASIONAL

Contents

OFFICE & ADDRESS

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

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

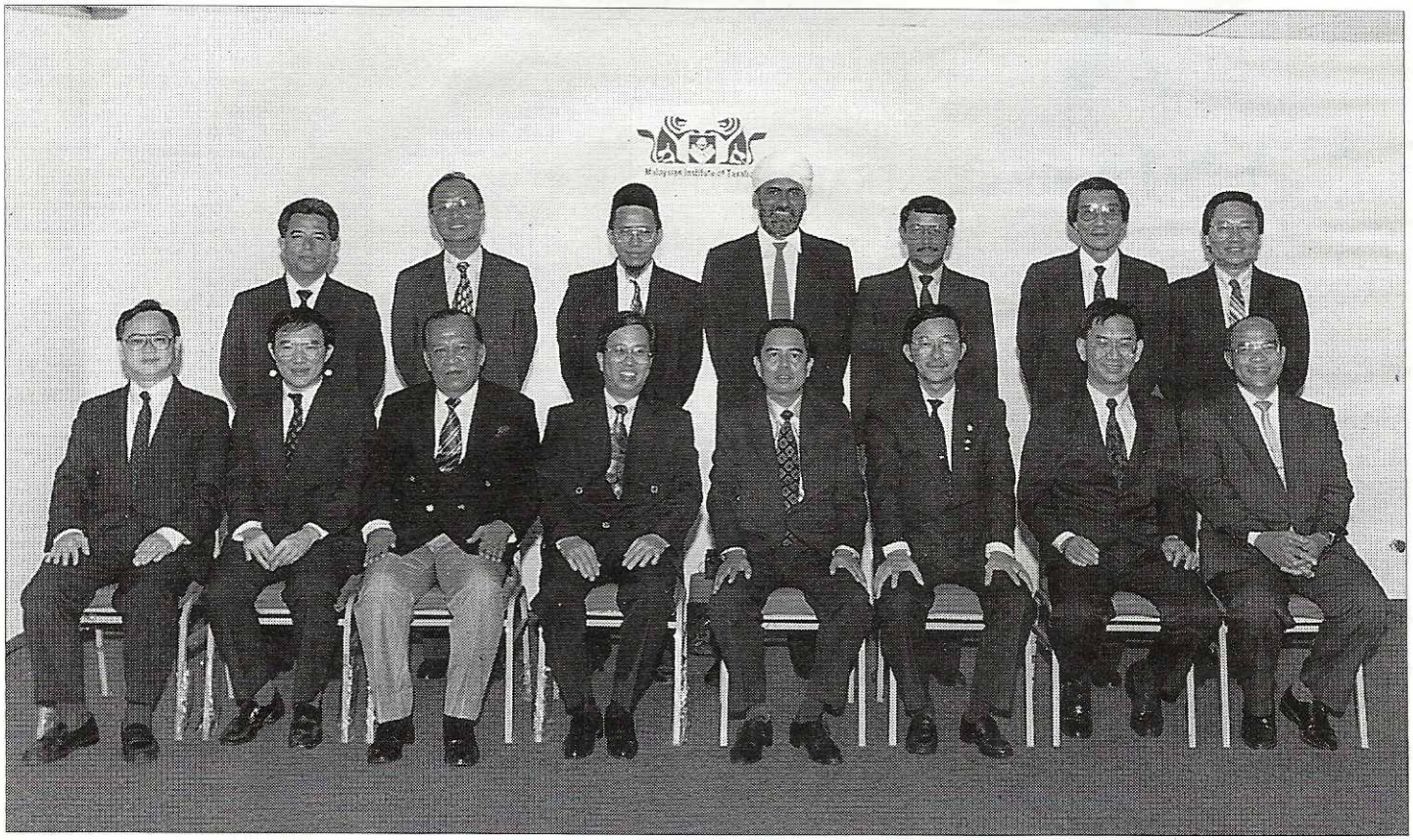
The Malaysian Institute of Taxation (MIT) is a company limited by guarantee incorporated on October 1, 1991 under Section 16(4) of the Companies Act, 1965.

The objectives of the Institute are, inter alia:

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

Malaysian Institute Of Taxation

THIRD COUNCIL 1994



Sitting from left:
Seah Cheoh Wah, Quah Poh Keat, Hamzah HM Saman (Vice-President), Michael Loh (Deputy President), Ahmad Mustapha Ghazali (President), Chow Kee Kan (Vice-President), Chuah Soon Guan (Honorary Secretary), Tn Hj Abdul Hamid Mohd Hassan.

Standing from left:
Syed Amin Al-Jeffri, Kang Beng Hoe, Atarek Kamil Ibrahim, Harpal Singh Dhillon, Ranjit Singh, Chooi Tat Chew, Lee Lee Kim.

Not in the picture:
Lee Yat Kong, Tan Sri Lim Leong Seng (Advisor to the Council)

NEW COUNCIL MEMBERS

MR KANG BENG HOE is advisor to Price Waterhouse and Executive Director of Price Waterhouse Tax Services. With more than 30 years experience in taxation, he retired as head of the tax practice of Price Waterhouse in Malaysia.His extensive experience in tax consultancy covers both domestic and multinational companies. His expertise extends from tax planning and consultancy assignments to corporate restructuring, implementation of business strategies, tax treaty planning on cross-reference transactions.He was a founder member of the Malaysia Branch of the International Fiscal Association of which he is currently the secretary. He is Convenor of taxation committee of the Malaysian International Chamber of Commerce and Industry. He is a frequent speaker at seminars and conferences on the subject of taxation.

MR CHOOI TAT CHEW is presently the Executive Director of Price Waterhouse Tax Services Sdn Bhd. He began his career in tax with the Inland Revenue Department having spent more than eight years in the Department. Prior to him joining Price Waterhouse in 1985, he was with another professional firm.

TUAN HAJI ABDUL HAMID MOHD HASSAN is the General Manager of Paramount Malaysia (1963) Sdn Bhd. Prior to his present appointment, he was attached to the Inland Revenue Department. He retired in 1993 after serving for more than thirty years with the Department. He is also a Fellow of the British Institute of Management.

Speech By

The President Of The Malaysian Institute Of Taxation,

Encik Ahmad Mustapha Ghazali,

At The **2nd ANNUAL GENERAL MEETING** On

March 26, 1994

Good morning ladies and gentlemen

The year 1993 has been a challenging year especially to a new Institute like ours. The Council is very enthusiastic and committed in its mission of building a strong, dynamic and above all a respected taxation profession. We are confident that these goals will be achieved in not too distant a future taking into account the support that we have received from various sectors, including the government.

I am pleased to report at this morning's gathering that the membership of the Institute has increased by 26% over the previous year making the total number of members of the Institute close to 600. We hope by the next AGM, we have many more qualified people like you who have the expertise and skills to be members of the Institute. What is more heartening to note is that our calibre of members is of the highest standard and most qualified with the average number of years of experience exceeding 10 years. We now have the respected number of members in our Institute and the quality to go along with it. We are in the process of compiling the Members Directory and hopefully it should be ready for distribution in May.

Ladies and gentlemen,

The Council of the Institute is very concerned with matters affecting the profession and those of public interest. As a professional body for the taxation profession, we owe a duty of care to both our members and the public at large. In this regard, the Institute's Rules and Regulations Committee which was formed since the Institute was established 2 years ago, was actively involved in developing the By-laws on Professional Conduct and Ethics for members of the Institute. We

Membership of the Institute has increased by 26% over the previous year

believe that for the Institute to effectively regulate the practice of taxation profession in this country, members of the Institute themselves need to be governed by a set of rules and regulations which spells out their moral duties and obligations towards their clients, employers, members of the public and their professional relationship with other members of the Institute. This, I believe is extremely important if we are to gain recognition as the THE professional tax body in this country.I am pleased to mention here that the Committee has successfully developed the By-laws and an exposure draft will be circulated to members for their comments very soon.

Ladies and gentlemen,

The Council of the Institute is very concerned with the shortage of qualified tax professionals in the country. The shortage needs to be overcomed if we are to contribute to the needs of the 21st century. We need to produce more tax professionals, both at the senior level and at the technician level.Realising this, the Institute's Education and Examination Committee has been very busy in formulating an examination syllabus with the intention of having the Institute's examination soon - hopefully by 1995. It is heartening to note that within a short period of 2 years, the Committee has successfully finalised the Examination Syllabus and entry requirements for students to register with the Institute. The Committee is now in the final stages of

Three New Faces In The MIT Council

The Second Annual General Meeting which was held on 26 March 1994 saw the re-election of five retiring Council Members as well as the election of three new members to the Council in the elected representative category. The five Council members who were re-elected were En Hamzah H M Saman, Mr Michael Loh Pooh Kee, Mr Ranjit Singh, En Atarek Kamil Ibrahim and Mr Lee Lee Kim. He then welcomed the three newly elected members namely, Tn Hj Abdul Hamid bin Mohd Hassan, Mr Kang Beng Hoe and Mr Chooi Tat Chew to the Council.

The Malaysian Institute of Accountants (MIA) which sponsors the MIT have reappointed En Ahmad Mustapha Ghazali, Mr Chow Kee Kan, Mr Quah Poh Keat, Mr Seah Cheoh Wah, Mr Harpal Singh Dhillon, Mr Lee Yat Kong, Tn Syed Amin Al Jeffri and Mr Chuah Soon Guan as MIA appointees to the Council.

Besides the Institute's audited accounts for the year ended 31 December 1993 being tabled, the half day long AGM saw no major resolutions or motions discussed or adopted by the Institute.

Malaysian Institute Of Taxation

COMMITTEES 1994

GENERAL PURPOSE AND FINANCE
Ahmad Mustapha Ghazali *(Chairman)*
Michael Loh Pooh Kee
Hamzah HM Saman
Chow Kee Kan
Chuah Soon Guan

MEMBERSHIP
Tony Seah Cheoh Wah *(Chairman)*
Hamzah HM Saman
Chooi Tat Chew

EXAMINATION
Michael Loh Pooh Kee *(Chairman)*
Abdul Hamid bin Hassan
Barjoyai Bardai
Chow Kee Kan
Ho Juan Keng
Jeyapalan s/o Kasipillai
Khoo Chuan Keat
Ranjit Singh
Richard Thornton
Robert Lee
Shareena Othman
Veerinderjeet Singh
Yong Poh Chye

RULES AND REGULATIONS
Ranjit Singh *(Chairman)*
Abdul Hamid bin Hassan
Baldev Singh
Chuah Soon Guan
Kok Yoon Wah
Stephen Khoo Siong Kee
Tan Ah Choo

EDUCATION AND TRAINING
Lee Lee Kim *(Chairman)*
Atarek Kamil Ibrahim
Choong Kwai Fatt
Lee Yat Kong
Leng Wa Nam
Lim Kah Fan
Ranjit Singh
Violet Lim

TECHNICAL
Quah Poh Keat *(Chairman)*
Baldev Singh
Chuah Soon Guan
Dr Arjunan Subramaniam
Kenneth Lim
Lee Yat Kong
Lim Kah Fan
Looi Seng Fook
Nancy Yeoh
Phoon Sow Cheng
Quah Cheng Choon
Mat Kamal Mat Said
T.V. Sekhar
Veerinderjeet Singh
Violet Lim

CONFERENCE ORGANISING
Kang Beng Hoe *(Chairman)*
Atarek Kamil Ibrahim
Syed Amin Aljeffri
Quah Poh Keat

GOVERNMENT AND PUBLIC AFFAIRS
Syed Amin Aljeffri *(Chairman)*
Ahmad Mustapha Ghazali
Abdul Hamid bin Hassan
Tony Seah Cheoh Wah

DISCIPLINARY
Hamzah HM Saman *(Chairman)*
Kang Beng Hoe
Tony Seah Cheoh Wah

INVESTIGATION
Chow Kee Kan *(Chairman)*

EDITORIAL BOARD
(Please see Contents page)

completing the Pilot Questions and answers for each subject. As soon as it meets Council's approval, we shall start the registration of students for the Examination. Taxation is a specialised area of the accountancy profession which is a dynamic and progressive profession. With ever rising public expectations on members and the taxation profession, it is important that we carry out our professional duties to the highest level of competency and professional standards. To achieve this, members must commit themselves to regular continuing professional development programmes arranged by the Institute. We want members to be well-informed on new developments effecting them and the profession and for them to improve and upgrade the quality of their services offered to the community. Due to its importance, the Council has made an arrangement with the MIA to organise joint seminars for members of the Institute. Like the MIA, we are also studying into the possibility of making CPD mandatory to our members. The National Tax Conference organised for the first time last year has been made an annual Conference for the Institute. The Conference was a great success with more than 200 participants attending the Conference. This year the Second National Tax Conference is scheduled to be held on April 7 and will be officiated by the Deputy Minister of International Trade and Industry, YB Encik Chua Jui Meng. I hope you will take the opportunity to attend this interesting Conference and make it a success. Ladies and gentlemen, we in the Council believe that playing a greater role in the international affairs will put the profession, the Institute and the nation in the limelight of international recognition. Being a newly established taxation organisation in this country, it is an honour when the Institute has begin to pave its own way for international recognition. In 1992, the Institute was admitted as a member of Asia Oceania Tax Consultants' Association (AOTCA) at the Association's meeting in Tokyo. Last year we also received a visit from three Deputy Commissioners of Income Tax from Zimbabwe Tax Authority. They were here to learn from us on how we established and operate the Institute as they have the intention of setting up a similar Institute in their home country. Next month, the Hokuriku CPTAs' Association from Japan will be visiting the Institute to share and exchange views on issues relating to taxation of both countries. In conclusion, I would like to convey my thanks and appreciation to my fellow Council members and co-opted members of the Institute's Committees for their support and contribution in making what the Institute is today. Many thanks also goes to the Secretariat staff of MIA.

Globalisation of Malaysian Companies

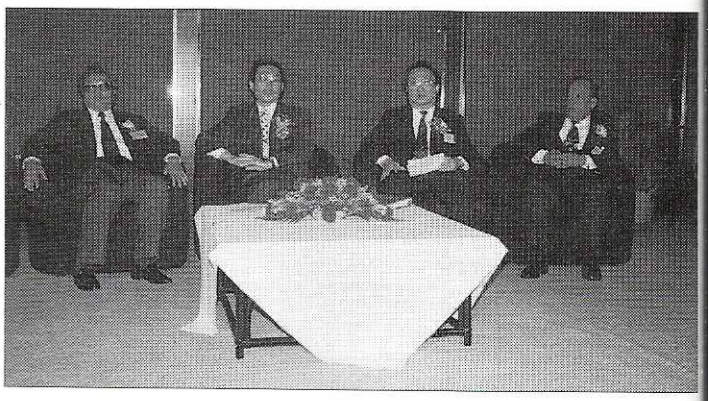
The Malaysian Institute of Taxation held its Second National Tax Conference on 7 April 1994 at Putra World Trade Centre. This annual conference was jointly organised with the Malaysian Institute of Accountants.

The theme of the Conference was aptly chosen that is "Globalisation of Malaysian Companies" as it described the climate of the Malaysian economy. This year, we were honoured to have the Deputy Minister of International Trade and Industry, YB En Chua Jui Ming officiating the event.

In his address, the Deputy Minister spoke on the need of Malaysian owned companies to develop a global approach by expanding overseas and to compete strongly in its search for a global market share.

Four plenary sessions were held during the one-day conference. One of the papers presented "The China Syndrome" was delivered by the Economics Commercial Councillor from the Chinese Embassy, Mr Zhu Xiaochuan and Mr Eu Hong Chew of Kanzen Berhad.

MIT President, Encik Ahmad Mustapha Ghazali presenting a souvenir to YB Encik Chua Jui Meng, while MIA Vice President, Mr Soon Kuai Choy looks on

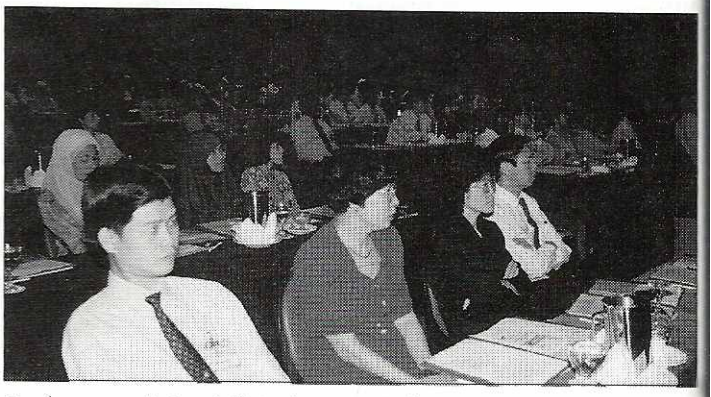


YB Encik Chua Jui Meng at the opening ceremony of the Conference together with Accountant General, YM Raja Datuk Seri Abdul Aziz Raja Salim, MIA Vice President, Mr Soon Kwai Choy and Conferencee Organising Chairman, Encik Hamzah HM Saman.

Mr Soon Kwai Choy delivering his speech at the Conference

Encik Ahmad Mustapha Ghazali, welcoming participants to the Second National Tax Conference

MIT, MIA, MAAT Council Members and Representatives from professional Accountancy bodies at the conference



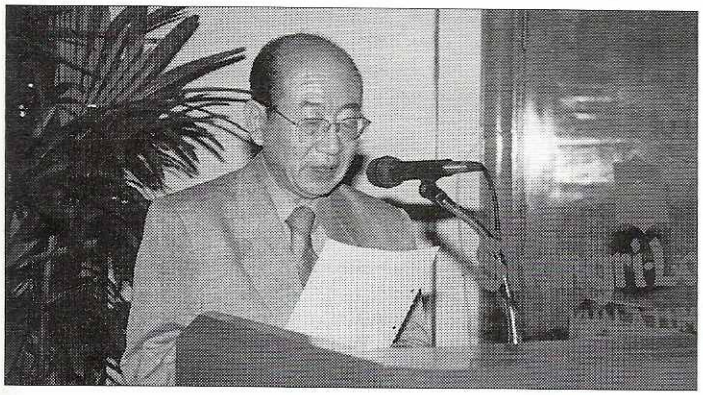
Conference participants listening attentively to the speaker

Malaysian Institute Of Taxation

Visit by members of the HOKURIKU CPTAS' ASSOCIATION OF JAPAN

On 11 April 1994, the President of the Institute, En Ahmad Mustapha Ghazali and members of the Council met with thirty six tax accountants and their spouses from the Hokuriku CPTAs' Association of Japan, who were on a study tour of this region.

They were briefed on the activities of the Institute and taxation policies of Malaysia. The CPTA Association, one of the larger associations in Japan were impressed with the developments of the Institute although it has only been established less than three years ago.



Mr Ken-ichi Nakamura, Director of the Toyoma Branch, Hokuriku CPTA Association addressing the MIT Council Members at the luncheon

MIT President Encik Ahmad Mustapha Ghazali (centre) and Mr Ken-ichi Nakamura (right) having a chat

MIT Council Members and Members of the Hokuriku CPTA Association at the luncheon hosted by MIT

Council Member Mr Kang Beng Hoe (in dark suit) at the table with members of the Hokuriku CPTA Association

Council Member Mr Chuah Soon Guan (far right) discussing with Ms Teh Suat Hoon (2nd from right) prior to her delivering her talk on Malaysian taxation policies at the luncheon, while our Japanese friends look on

Encik Ahmad Mustapha Ghazali receiving a souvenir on behalf of MIT from Mr. Ken-ichi Nakamura

Speech Of
Y.B. Encik Chua Jui Meng,
Deputy Minister of International Trade And Industry

At The MIA/MIT Conference On

'GLOBALISATION OF MALAYSIAN COMPANIES'

On 7th April, 1994

Tuan Pengerusi Majlis,

Y.Bhg. Dato' Hanifah Noordin,
President Institut Akauntan Malaysia,

Encik Ahmad Mustapha Ghazali
Presiden Malaysian Institute of Taxation,

Tuan-tuan dan puan-puan sekelian,

Malaysia has been a strong supporter of a global free trade. Malaysia's position as the 22nd biggest exporter and importer on a world scale reflects her increasing success in globalisation.

This shows the degree of Internationalisation of the Malaysian economy. Globalisation has contributed to the rapid industrialisation and high economic growth but at the same time Malaysia has to balance her economic relations to avoid overexposure and overdependence on any particular market.

Despite the proliferation of what has been seen as a tendency towards regionalism in the form of the European Union (EU), NAFTA, APEC, EAEC and ASEAN, in actuality all are meant to be effective force in world competitiveness and not to be meant as inward looking economic entities. In this era of globalisation and of a borderless world, no country can achieve economic well being by closing its borders and restricting the flow of goods, capital, technology and people.

The recent shift of the world's economic growth pole from the Western industrialised countries to Asia will provide Malaysia with immense opportunities to realise our vision and to partake in the economic development of this region. At the same time, Malaysia needs to position herself by providing the leadership to sustain the economic growth of this region over a long term period. It is within this scenario that Malaysian owned companies should develop a global approach, to expand overseas and to compete strongly in the quest for a global market share. It would not be prudent to wait another decade or so before the Malaysian home grown companies and MNCs are ready for global competition. Relative smallness does not prevent a corporation from competing effectively in the world market. Strength can be developed through lower operational cost, mobility, targeting market niches, market diversity and segmentation, speciality and quality products and marketing our own brand names and establishing alliances.

Looking at Asia, there are numerous growth areas where Malaysian companies can seize opportunities - China's economic liberalisation has offered a

wide range of trade and investment related activities from exports to manufacturing base, services and tourism. China's double digit growth rate should compensate the slow demand from the traditional markets. India offers yet another growth area with her recent economic liberalisation. While Malaysian companies are used to the US and EU market, they must take cognizance of the growing economic prosperity and standards of living which can result in demand for Malaysian products in both China and India. With historical linkages and cultural similarities, Malaysian companies should be in the forefront as market leaders and should be ahead of Western companies. Aspect of similarities, should be used as a cutting edge against any competitor. In this sense, Malaysian companies should benefit by competing in these markets as insiders.

Indo-China, on the other hand, has been attracting FDI, particularly in the labour intensive industries that could provide opportunities for the orderly transfer of Malaysian labour intensive industries which are unable to switch into capital and technology intensive industries. Besides, it provides opportunities in the services industry such as consultancy, plantation management and infrastructure construction. Asia alone, should keep Malaysian companies busy, in addition to the new and potential markets of South Africa, the Middle East, the Islamic Republics of the CIS, the Pacific Islands as well as in Latin America and East European countries

The Government has strongly encouraged Malaysian companies to go abroad by spearheading missions to the traditional, new and potential markets, providing various incentives and financial packages such as ECR and BPA (export credit refinancing and bilateral payment arrangement) and signing various trade agreements and investment guarantee agreements (IGA) to ensure trade and investment could prosper. The establishment of MATRADE is meant to assist Malaysian companies to penetrate the global market more effectively. Competing globally may not bring immediate profit. This means Malaysian companies should also be ready to suffer losses initially to build up its stake. Unless Malaysian companies are willing to take long term risks and participate in the internationalization of commerce and industry instead of taking the easier route through the stock exchange and property market, we will not be able to create a strong generation of entrepreneurs in international trade and industry in the future.

To be a global competitor no longer hinges purely on cheaper and lower price. In fact competition has driven manufacturing companies and services to become internationalised by selling worldwide, sourcing components worldwide and locating activities in low cost centres and forming alliances to create strength. Globalisation will decouple Malaysian companies from the factor endowment of a single nation and they can choose any country in which to assemble products, fabricate components and research.

> Malaysia's position as the 22nd biggest exporter and importer on a world scale reflects her increasing success in globalisation

Malaysian companies should also look at product differentiation in which they have the ability to provide unique and superior value to buyers in terms of product quality, special features and after sales service. For example German machine tool manufacturers compete with differentiation strategies involving high product performance, reliability and responsive service which command a premium price.

A recent phenomenon of globalisation is alliances between competitors to pool resources and reduce unnecessary wastage in areas which need huge financial outlay. Japanese companies have formed strategic alliances with their US and EU competitors in conducting research on certain products. This is possible where both companies have almost the same level of technological competence. Malaysian companies will need to be committed to R & D as an integral part of their manufacturing activities. This will contribute to the continuous improvement of their products and processes and sustain their long term competitiveness. With such strengths Malaysian companies can then form alliances for global marketing on a more equal footing.

In order to go global and survive global competitiveness, Malaysian companies must not be overdependent on imported foreign labour for low skilled jobs. Instead they must find ways to upgrade their productivity and competitiveness through the application of better machineries and better management systems. The introduction of automation, robotics and good processes such as JIT (Just-In-Time) and a system based on TQM (Total Quality Management) as well as zero defects, supported by in-house skills development programme will contribute to their international competitiveness. In the end, globalisation means the ability to compete in the global market place.

Globalisation of Malaysian companies does not only mean exporting in the global market place but also their invlovement in foreign direct investment (FDI). FDI and trade form an integral part of the global strategies and to succeed internationally, Malaysian companies should engage in both activities in order to derive the maximum benefit from globalization. While Malaysia has been very succesful in attracting FDI inflows with total proposed capital investment of RM81.7 billion for the period 1980 - 1993, Malaysia is yet to become a major source of FDI as compared to South Korea, Taiwan and Hong Kong amongst the NIEs. Ability to invest overseas is a strong reflection of the level of a country's progress. For instance when Germany offered more than 7,000 East German companies for sale under their privatisation programme, no Malaysian company took the opportunity to buy over and build up a manufacturing capacity inside the EU market. Malaysians must be proactive and alert to privatisation opportunities abroad.

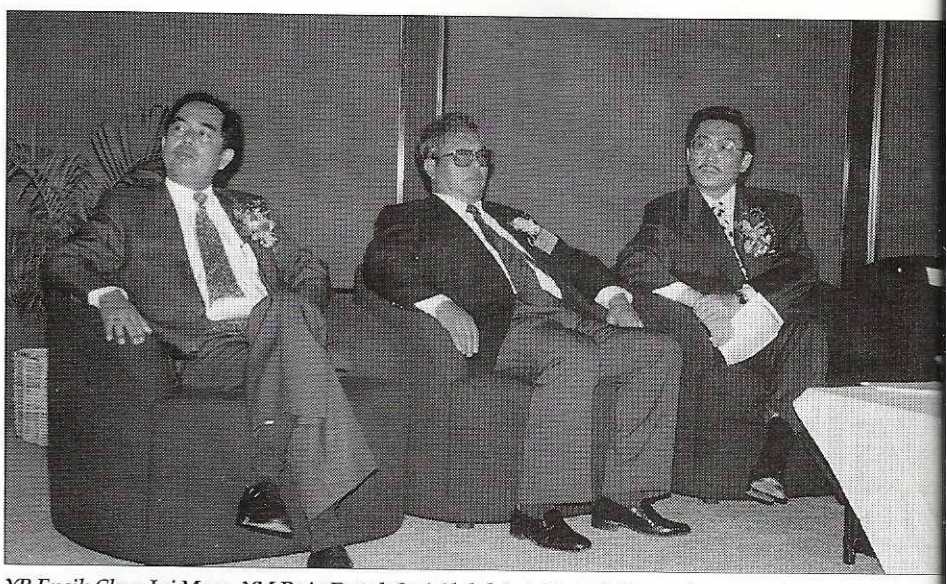
Experts estimate that in the next few years alone privatisation projects with a total value of approximately RM560 billion will be offered to investors in countries such as Europe, Australia, East Asia and other emerging markets. This translates into a whole host of economic activities and opportunities

for Malaysian businessmen. We should not just be satisfied with the privatisation opportunities available in Malaysia. The economic cake has been substantially enlarged.

Malaysian services industry such as finance and banking, engineering and accounting consultancy, plantation management, privatisation expertise, and infrastructure construction have attained certain capabilities that enable them to venture into the export market. This accumulated knowledge and expertise should be used to penetrate the South markets which in the past have been dependent on Western sources. In this sense, they should position themselves to be global marketeers following wherever our investors go.

While Malaysia's manufacturing sector is performing well and its merchandise trade expanding, Malaysia continued to have a deficit in the services account of the Balance of Payments. In 1991, the deficit stood at a negative RM12.3 billion, increasing by 26.8% compared to the deficit of RM9.7 billion in 1990. In 1992 the services deficit account declined by 2.4% to RM12.95 billion but once again in 1993 by 11% to RM14.4 billion. While the focus has been on the major deficits components of freight and insurance, attention is now being given to another component "other services" which has also registered deficits. It is in this component that the element of contract and professional services is contained. The net outflow for "contract and professional charges" has remained high at RM1.35 billion in 1991 and rising to RM1.9 billion in 1992. In 1993 it fell to RM1.7 billion because of stronger growth in receipts especially for contract and professional charges rose by 4.8%.

It is expected that Malaysia will continue to pay for imported contract and professional services in the years to come corresponding with the accelerated rate of development, particularly in manufacturing and infrastructure projects requiring foreign expertise. It is therefore necessary to implement measures that could contribute towards reducing the deficits in the long run. There is definitely a need to assess the possibilities of:-



YB Encik Chua Jui Meng, YM Raja Datuk Seri Abdul Aziz Raja Salim and Encik Ahmad Mustapha Ghazali (from right to left)

(a) substituting the importation of foreign professional and contract services in the domestic market by local firms;

(b) promoting Malaysian firms providing contracts and professional contract services to export their services overseas.

Fortunately, accounting services so far do not appear to have led to large scale demands for imported expertise except on certain occasions. Local accounting firms have been able to cater to the domestic needs while at the same time foreign professionals are restricted from practising in Malaysia under specific laws governing the practices of the foreign professionals. This however should not encourage our firms to be domestic-oriented as there is vast potential for accounting/consulting services abroad. At the moment, our professional services sector do face certain constraints in venturing abroad. This is mainly due to the fact that most of the local professional firms are small and are not likely to be able to stand on their own to compete in the foreign market. The larger ones tend to be too assured of the captive domestic market to find the need to diversify into the more difficult foreign terrain especially when the domestic economy has been expanding rapidly. Financial constraints may be one of the more inhibiting factors to the Malaysian firms trying to export their services. This is especially so in the case of bidding for large projects overseas which may require the firm to send its personnel abroad for long periods of time thus incurring costs of maintaining personnel and office in the target market.

The Government thus views "marriages" between local firms and foreign firms as an alternative for our local firms to overcome the constraints and gain a foothold overseas. In the Uruguay Round of Multilateral Trade Negotiations, there are moves to liberalize trade in services. As is also the opening up of China, India and the Indo-Chinese economies. Hence while the opportunities abroad for accounting, consulting and business services will abound nevertheless our services sectors must brace themselves for growth through competition. This could be overcome by "image-building". In any service that is provided, every aspect of it must reflect the quality. Only then can we, over the long term, build an image or a brand name that becomes a symbol of credibility, quality, reliability and integrity. There must be values we uphold in every aspect of the process of delivery. There are no short-cuts to imaging building.

CONTRIBUTION

Tax Nasional invites readers to contribute articles for publication. By contributing to the Tax Nasional, you will gain valuable recognition and our readers will benefit from sharing your experience. An honorarium will be paid for articles which are published.

Malaysian Institute Of Taxation

THE CHINA SYNDROME: THE ON-GOING TAX REFORM IN CHINA

BY

ZHU XIAOCHUAN
THE ECONOMICS AND COMMERCIAL COUNCILLOR
EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN MALAYSIA

Ladies and Gentlemen, Dear Friends,

I am very pleased to be invited by the Malaysian Institute of Taxation to attend the 2nd National Tax Conference in Malaysia. And I should thank the organizer of the conference to provide me with this opportunity to be here today. Now I would like to give you a brief account on the on-going reform of the taxation system in China.

I. BACKGROUND

As you know, in early 1992, China established the target for the economic reform program of setting up of a Socialist Market Economy. By Socialist Market Economy, it means a business environment of fair and orderly competition under sound legal basis. As part of the economic reform, the reform on the taxation system currently undergoing is aimed at establishing a modern taxation system in line with the requirement of the Socialist Market Economy and conforming with both the international practices and the specific situation in China. The guiding principles of the tax reform are: unification of tax laws, equalization of tax burden, simplification of the system, rational power sharing between central and local government, standardization of tax revenue distribution and guarantee of physical revenue.

Since the implementation of the policy of reform and opening to the outside world in 1979, China has achieved tremendous progress in utilizing domestic and foreign resources, exploring home and international market, and developing national economy and expanding economic and trade relations with foreign countries. With respect to the attraction of foreign capital, by the end of 1993, China had an accumulated number of 180,000 foreign invested projects, with a total contractual investment value from foreign investors of US$220.00 billion. The field of application of the foreign capitals has been enlarging from mere productive sectors at beginning, to retail business and service industries.

In the course of the reform and opening-up drive in the last 15 years, the investment environment in China has continuously been improved. The System of Foreign Taxation was initiated along with start of the reform and open policy in 1979. The foreign taxes have since then, included mainly the Enterprise Income Tax and Individual Income Tax, Industrial and Commercial Consolidated Tax imposed on turnover, the City Real Estate Tax and Vehicle and Vessel Licence Plate Tax levied on property. It is a separate tax system exclusively for foreign invested companies and foreign companies. In other words, since 1979, two parallel tax systems have been applied respectively to domestic and foreign-related sectors. Take the turnover tax as an example, the turnover tax applicable to foreign companies was called Industrial and Commercial Consolidated Tax (ICCT), while the Chinese domestic companies were supposed to pay Product Tax, Value-Added Tax (VAT) and Business Tax on turnover. It should be mentioned that this turnover tax system set up in the early 80s has basically met the economic development. However, with the establishment of the concept of socialist market economy, this turnover tax system featuring the coexistence of two regimes is seen to be insufficient to cope with the new environment. Efforts are called upon to set up a unified tax law with unified tax rates so that enterprises of different nature can compete equally.

II. CONTENT OF THE TAX REFORM

1. Reform of Turnover Tax

Turnover tax is the main part of China's taxation structure. It has a wide application range and takes a big proportion in tax revenue. Thus the reform on turnover tax forms the core of the current tax reform. Before reform, there were four main turnover taxes: Product

Tax, VAT and Business Tax for domestic enterprises and ICCT for enterprises with foreign investment and foreign enterprises. The new unified turnover tax system effective as of Jan. 1, this year, is applicable to both the domestic and foreign-related enterprises. It stipulates a general application of VAT at stages of production and circulation of goods. On top of VAT, a small number of consumer goods are selected for Consumption Tax. Business Tax will continue to be levied on the provision of services, transfer of intangible property and sales of immovable property. The ICCT was abolished accordingly.

The key point of turnover tax is the implementation of a standardized VAT. The main content of the new VAT is summarized as follows:

1) VAT is levied on the production, wholesale, retail sales, importation of goods and processing and maintenance.

2) VAT is added to the prices of the products. That is the tax exclusive prices are the basis for VAT. When goods are sold at stages prior to retail sales, a special VAT invoice is used, on which the amount of VAT and the VAT-exclusive price have to be clearly indicated.

3) There are two VAT rates, one principle rate of 17% and one lower rate of 13%. For taxpayers selling or importing goods other than those specified in the VAT Regulation for lower rate, or providing taxable processing and maintenance service, the VAT rate is 17%. The exported goods will be subject to zero rate, which means they will get complete refund after they are claimed at Customs for exportation.

4) Tax credits are allowed in accordance with the amount of tax indicated on invoices.

5) The small scale taxpayers whose annual sales are less than specified amount or who have unclear accounting system, will be subject to 6% tax rate on the gross sales for calculating tax payable.

Consumption tax is a new turnover tax after the industrial and commercial tax reform. After general application of VAT, a few products are selected to be liable to a Consumption tax. It is levied on the production, subcontracting for processing and the importation of these taxable consumer goods. According to the Regulation, there are 11 consumption taxable items for Consumption Tax. They are tobacco, alcoholic drinks and alcohol, cosmetics, skincare and hair-care products, precious jewellery and precious jade and stones, firecrackers and fireworks, gasoline, diesel oil, motor vehicle tyres, motorcycles, motor cars. The tax rates range from 3% to 45%.

The reformed Business tax is levied on the provision of services as prescribed in the Business Tax Regulation, the transfer of intangible assets or the sale of immovable properties in China. It includes 9 taxable items with 3 tax rates. For communication and transportation, construction, posts and telecommunication, culture and sports, the tax rate is 3%. For finance and insurance, servicing including agency, hotel catering, tourism, warehousing, leasing, advertising etc., transfer of intangible assets, which includes transfer of land-use rights, patent rights, trade marks, copyright and goodwill, and sales of immovable properties, the tax rate is 5%. The entertainment business such as karaoke lounges, billiards, golf, bowling, etc. is subject to a Business Tax ranging from 5% to 20%.

2. **Reform on Enterprise Income Tax**
This reform will be carried out in two steps. The first step is to unify the domestic enterprise income tax law. The second step is designed to be taken at a proper time later to unify the domestic and foreign-related enterprise income tax laws. Therefore, the reform taking place this time is only concerned with domestic enterprises. There will be no change in the income tax concerning enterprises with foreign investment and foreign enterprises.

The previous domestic income taxes were set up based on different ownership of the enterprises and imposed different tax rates on them. The new income tax regulation however, regulates a unified 33% income tax rate for all domestic enterprises.

3. **Reform on Personal Income Tax**
The principle followed in the modification of the personal income law is to avoid increase and introduce a reduction in the overall tax burden of the tax payers. The modified Personal Income Tax is applicable to Chinese citizens having tax liability under the law and foreign residents who derive income from within China.

The Personal Income Tax is a schedular system with different income subject to different rates. Salaries and wages will be taxed at progressive rates of 9 brackets, ranging from 5% to 45%. Remunerations derived by household entrepreneurs and contractors will be taxed at progressive rates with 5 brackets ranging from 5% to 35%. Income from personal services and other taxable categories will be taxed at a flat rate of 20%.

According to the international way of not levying any tax on

basic living expenses, a unified deduction of Rmb 800 yuan is introduced. The new Personal Income Tax Provides an additional deduction for foreigners.

4. Reform on Other Taxes

Other taxes covered by this reform include Resource Tax and Land Value-Added Tax.

The reformed Resource Tax will subject to tax all mineral resources including coal, crude oil, natural gas, non-metal ores, ferrous metal, non-ferrous metal and salt.

The Land Value-Added Tax is newly adopted to regulate the high profit derived from transfer of real estate. The tax is levied on the appreciated value instead of total income at the stage of real estate transaction. The appreciated value equals to the balance of income derived from transfer of real estate after deduction for the following elements: prices paid for obtaining the right to use the land, cost and expenses incurred in developing the land, cost and expenses for constructing the building and auxiliary facilities and sales tax. Four progressive rates are applied in this tax. 30% for the appreciated value not exceeding 50% of the deducted amount; 40% for the appreciated value between 50% and 100% of the deducted amount; 50% for the appreciated value one to two times of the deducted amount, and 60% for that above 2 times of the deducted amount.

Other taxes like City Construction and Maintenance Tax, Land Usage Tax and some other minor taxes will either be adjusted, integrated or abolished. Whether all these taxes are applicable to enterprises with foreign investment and foreign enterprises after reform, it will be subject to decisions to be made soon by the State Council.

To sum up the taxes being applied to the foreign-related enterprises in China at this moment, there are all together 10 taxes. They are Income Tax for Enterprises with Foreign Investment and Foreign Enterprises, the new VAT, new Consumption Tax, new Business Tax, the Resource Tax, the Land Value-Added Tax, Stamp Duty, Vessel and Vehicle Licence Plate Tax, City Real Estate Tax and Slaughter Tax.

III. PREFERENTIAL TREATMENT ON TURNOVER TAX

With respect to enterprises with foreign investment and foreign enterprises, the Chinese government has formulated special preferential treatment to those who might incur a tax burden increment after the installation of VAT, Consumption Tax and Business Tax in place of ICCT. That is, for enterprises with foreign investment and foreign enterprises approved to be set up before 31 December 1993, the increased tax payment, if any as a result of the new VAT, Consumption Tax and Business Tax, shall be refunded to the enterprise concerned upon approval by the tax authorities within the approved operation period, with a maximum limit of not exceeding five years. Enterprises with foreign investment and foreign enterprises set up after January 1, 1994 shall be subject to the new taxes.

The new tax reform has been designed with the basic principle of unification of tax system and no reduction of tax preference. The Enterprise Income Tax Law Concerning Enterprises with Foreign Investment and Foreign Enterprises, remain unchanged, and so it is with the preferential treatment contained therein. As for those preference provided by the former ICCT, they are basically unchanged, but this still needs a legal approval by the State Council. The preferential policies under the original ICCT cover five aspects. Firstly, the imported capital goods, including machinery, spare parts and accessories for production purpose with the funds included in the total amount of investment, imported raw materials for production of export products, are exempt from tax; Secondly, some specially approved imported goods enjoy tax reduction or exemption. The goods imported by foreign invested enterprises located in special economic zones or produced for sale within the zone, are exempt from turnover tax except for crude oil, cigarette and alcohol which attract 50% reduction. Thirdly, the preferential policy for bonded area; Fourthly, export goods produced by foreign invested enterprises are exempted from turnover tax except for crude oil, oil products and others subject to other regulations. Fifthly, Sino-foreign joint venture banks of foreign bank branches approved to be set up in Special Economic Zones or Pudong New area are exempt from turnover tax within five years starting from the date of operation.

Generally speaking, the current tax reform will not increase the tax burden nor reduce the tax preferential treatment for enterprises with foreign investment and foreign enterprises in China. Instead, the policy of opening to the outside world will surely be better implemented with the deepening of the reform program.

Ladies and gentlemen, dear friends, the current tax reform is an important milestone in the development of China's taxation system. It is not only a requirement for setting up and developing the socialist market economy in China, but also conforms with the requirement of the majority of the foreign friends who have business in and with China. I am confident that with the understanding and support of friends from various countries, the tax reform will be a big success. What I am equally sure about is that as China continues to improve its investment environment, all people with insight and who look far ahead will actively participate in investment in China. China, having partners from all over the world will have a brighter future.

SUMMARY OF MEMORANDUM SUBMITTED TO THE HONORABLE MINISTER OF FINANCE

OVERVIEW

Since the recovery in the economy after the downturn in the mid-eighties the performance of the Malaysian economy has impressed the world. The consistently high annual growth rates averaging 8.7% in the last five years with low inflation rates are unmatchable by any other countries.

The theme of 1995 Budget of "Sustaining economic growth without inflation to raise national economic resilience" is timely as the pressures of more affluence and purchasing power from the galloping growth is threatening to push up inflation. The MIA/MIT share the view that all increased wealth will be neutralised if inflation is to spiral upwards. A check in the midst of economic growth adjusts the foundation, ensures sustained and continuous performance, thereby assuring there is resilience in the economy.

PROPOSALS

Service Sectors

The service account of Malaysia's balance of payment had persistently been in deficit. By 1992 the deficit had reached RM13 billion, an alarming 16 fold increase over the 1970 figure.

One of the major component of the service account deficit identified by the Cabinet Committee on Services is freight. While the outflows from freight cannot be contained in the short-term future due to the very small Malaysian shipping capacity, at least the freight charges paid to non-resident shipping or airline companies are taxed. The MIA/MIT propose that withholding tax provision similar to Section 109 on freight charges paid to non-resident companies deriving Malaysian income to be introduced.

The Cabinet Committee on Services in addressing the service account deficit in the balance of payment has identified education as an area to devote its attention. Various policies have been announced. One of them is allowing foreign universities to locate their campuses here. In recent years the private sector has also invested significantly in education by setting up colleges and building campuses.

To accelerate further growth in the construction of more educational buildings the Government should treat such buildings as industrial buildings and offers an industrial building allowance of 10% initial and an annual of 6% as well as import duty and sales tax exemption on all equipment used in an educational establishment. Growing affluence and an increasing expatriate population have nurtured the growth of approved independent schools. The schools complement government schools and help reduce government spending. We propose that double deduction for a child's study in such schools be given.

Just as manufacturing concerns are important to boost exports earnings the support to manufacturing activities in financial management, audit and other accounting related functions are just as important to sustain economic growth. The MIA/MIT appeal to the Government for their inclusion in the list of approved training institutions for companies to claim double deduction for training.

Maximum Rate Of 5% For Sales And Service Tax And A Case For Reduction Of Individual Tax Rates

In our 1993 memorandum to the Minister of Finance we announced our support to the proposed Sales and Service Tax (SST) and put up a case for a reduction of corporate and individual rates to a maximum of 25% based on the estimated net increase in revenue from the new tax of 6%.

This year, after assessing new developments such as the Singapore's Goods and Service Tax of only 3% and reexamining Malaysia's consumption expenditures we suggest a maximum rate of not more than 5% for SST.

We also recommend that the increased in revenue from SST be used to reduce individual tax rates to a maximum of 30% and a higher level of exemption. This reduction, inter alia, reduces the high demand for tax officials as many individuals will be outside the tax net, freeing necessary resources of the Inland Revenue Department to do other work.

Working Women

With the rapid economic growth over the past five years and as the economy approaches full employment, the labour market has tightened labour shortages, in particular, of skilled workers, continues to be experienced by all sectors. It is observed that the Government has introduced some measures in the last Budget to encourage more housewives to join the labour force. Another effort in this direction could be tax deduction on wages for domestic help, a proposal which the Human Resources Minister Dato' Lim Ah Lek was reported to have recently suggested. The MIA/MIT strongly support the proposal.

Real Property Gains Tax-Deduction For Unabsorbed Interest

Under the Income Tax Act, 1967 a taxpayer who is not in the business of property letting will have his interest costs of financing his purchase of the property allowed only if the investment has sufficient rental income. The MIA/MIT propose an amendment to the Real Property Gains Tax Act 1976 to allow such unabsorbed interest deductible for Real Property Gains Tax purposes.

Tax Appeals

Members of MIA/MIT are also involved in filing notices of appeal to the Special Commissioners of Income Tax. Our members have experienced difficulties with the Inland Revenue Department with regard to the preparation of the Agreed Bundle of Documents and Statements of Agreed Facts either through long delays or refusals to agree to certain documents in the Bundle.

Cont. on page 36

Malaysian Institute Of Taxation

Minutes of the dialogue between

The Inland Revenue Department and Malaysian Institue of Accountants, Malaysian Institute of Taxation and The Malaysian Association of Certified Public Accountants and Malaysian Association of Tax Agents

held on February 16, 1994 in Kuala Lumpur

The Deputy Director-General of Inland Revenue chaired the dialogue between IRD and MIA, MIT, the MACPA and MATA. Below are the taxation matters discussed:-

1. COMPLIANCE RATE OF SUBMISSION OF RETURN FORMS

The Deputy DGIR provided some statistics on the percentage of Return Forms submitted and pointed out that the overall rate of return was still very low for 1993. He mentioned that the overall percentage for non compliance of submission of Return forms was 25% which might have been substantially caused by taxpayers who are not represented by tax accountants. In this regard the Deputy DGIR requested member firms to assist in improving the rate of return of the forms.

2. GUIDELINES ON TAX COMPUTATION

The Deputy DG pointed out that most tax computations did not comply with the checklist developed by IRD for the presentation/format of tax computations. He stressed that it is the responsibility of the tax agent to ensure that the tax computation of his client is prepared accurately, all relevant adjustment have been made and all relevant schedules and documents enclosed are properly numbered and cross-referenced so as to minimise queries and correspondence.

3. CHANGE OF ACCOUNTING DATE

Member of MIA/MIT pointed out that most companies adopt 31st. December year end to avoid overlapping provisions therefore causing tax submissions to be concentrated at a certain period of the year.

Members of MIA/MIT suggested that if the above practice can be relaxed whereby the basis period when directed by the DG will not result in an overlap of basis periods resulting in income being charged to tax twice, companies may decide to adopt year ends other than 31st. December. Then tax submissions can be evenly distributed over the year.

The IRD informed that they will look into the matter.

4. BACK DUTY INVESTIGATION

Member of MIA/MIT requested for greater cooperation between the department and tax agents when investigations are being carried out on the tax agent's clients especially when the tax agent requires certain information from the department.

The IRD acceded to the request.

5. FINALISED ASSESSMENTS

It is noted that where an assessment has been agreed between the taxpayer and an officer of IRD but another officer re-opens the case at a later date and the case is dealt with based on new interpretation of principles resulting in additional assessment. IRD agreed the case should not be re-opened. In addition the new interpretation will not be dealt with retrospectively. However, this practice will not apply to provisional assessments.

6. COMPUTATION OF CAPITAL ALLOWANCES

A schedule showing the detailed computation of capital allowances is normally submitted together with tax returns to the IRD. It has been noted that in some cases the assessment officers would carry out re-computation of the capital allowances, particularly in the OG cases. However, the detailed schedule of the computation is not provided to the tax agent unless the tax agent specifically request for it from IRD. This has posed inconveniences to the tax agent in trying to reconcile the difference between the schedules.

IRD advised that all branches have been informed to provide the schedule of the computation. However, in certain cases, the assessments were prepared and sent out first followed by the schedule of computation sent out later.

7. BASIS OF ALLOCATION OF EXPENSES BETWEEN LEASING BUSINESS AND NON-LEASING BUSINESS

The following basis of allocating expenses are being practised by the IRD assessment officers:

(a) ratio of lease rental receivable to gross income from other source (the lease rental receivable basis)

(b) ratio of lease debtors/assets to loan/advances (portfolio basis).

It has been noted that there is disparity in the treatment. When the lease rental receivable basis is used, a bigger portion of the interest cost is allocated to the leasing source. The reason for such an uneven allocation is that lease rental receivable includes principal repayment plus interest element as compared to hire purchase income which only refers to the interest element.

Where the lease rental receivable method is used, as compared to the portfolio basis, the company would end up with a disproportionate tax for his non-leasing business and a permanent difference which cannot be utilised for his leasing business.

The lease portfolio basis appears to be the most equitable for allocating interest cost as it based on the portfolio balance of each category of asset. The principle here is that leasing is basically a "fund based" operation. The same amount of funds or borrowings will be required to acquire an asset for lease or hire purchase. In this respect the allocation of interest cost will be equitably distributed in accordance to the portfolio of assets maintained by the company.

Last year, the IRD has made a decision that all expenses of a leasing company should be allocated based on leasing turnover or gross profits. Certain IRD officials seemed to have taken the view since the gross income for leasing for tax purposes is the rental receivable and non leasing is usually interest, fees and commission income, therefore it would be appropriate to apportion the interest expenses and other common overheads according to their respective gross income for tax purposes.

The basis of allocation of interest and common expenses by the IRD on lease rental receivable is not an equitable basis as it is comparing lease rentals (which includes elements of repayment of principal) with interest income of hire purchase or other non- leasing interest income. Income and expenditure are therefore not matched. Expenses which have been incurred for the production of hire purchase income have been arbitrarily set off against leasing income and therefore resulting potentially in a loss for a leasing business. Lease rentals consist of an element of principal repayment plus interest while hire purchase reports only the interest income. Thus the IRD in comparing the "gross instalments" for leasing to"interest element" for non-leasing to arrive at the basis for allocation would result in excessive expenses being allocated to leasing sources. This basis of allocating interest and common expenses by the IRD to the leasing and non leasing business of leasing companies is causing a lot of concern to the leasing industry as it would result in leasing companies paying income tax at a much higher effective rate due to inequitable distribution of expenses by the IRD.

While appreciating the IRD's reason to favour the rental receivable basis it is recommended that the following basis for apportioning common expenses be allowed :-

Interest expenses and all overhead expense to be allocated based on the ratio of lease debtor/assets to loan/advances (portfolio).

This is a more equitable basis in matching income to expenditure since the activities of a finance company are largely fund based business, the interest expenses which form the bulk of the common expenses are directly proportionate to the portfolios of the leasing companies. This is in line with the Income Tax Act's treatment of allocating interest expense to non business sources.

Generally, a leasing company having more than a source of income should be allowed to elect a basis other than the basis confirmed by the IRD provided the company concerned is able to justify that their basis is just and equitable.

The recent IRD basis for the allocation of expenses would result in high effective rates of taxes and consequently results in a much lower after tax return and possibly losses in some cases. This would deter shareholders of those leasing companies to continue expanding their business and in future deprive the Small and Medium Scaled Enterprise of a popular and necessary source of financing for future capital expenditure.

IRD advised that they had met with Equipment Leasing Association of Malaysia (ELAM) several times on this issue. IRD pointed out that in some cases, the leasing was actually hire purchase business but termed "leasing" so as to obtain capital allowances benefit. In view of the complexity of the technical discussion, IRD suggested that a separate meeting be held between itself and ELAM and the bodies representing tax professionals to decide on the matter.

8. LATE RECEIPT/NON RECEIPT OF NOTICE OF ASSESSMENT

Notice of Assessment and Additional Assessment (Borang J and JA) are sent by ordinary mail to taxpayers and it appears to be the Inland Revenue Department's policy that a notice is deemed received by the taxpayer as long as it was correctly addressed and it has not been returned by the post office. This is in accordance with the provisions of Section 145 of The Income Tax Act 1967. There are cases where such notices (for unknown reason) do not reach the

taxpayer or his agent. One possible explanation is that certain persons do not bother to return to the post office any mail which has been wrongly delivered. There are many documented cases of such wrong delivery of mail as experienced by a member in Kluang. The unfortunate taxpayer affected became aware of the situation only when they receive the late payment penalty of RM99,092 for not receiving the Notice of Assessment which was said to have been mailed to him.

It is felt that the Inland Revenue should accept representations made by the tax payers who have actually not received the notices of assessment, and where the representation are substantiated, the tax payer should not be penalised for a matter not of his own making.

It is suggested that the Department assists taxpayers to avoid any inequitable penalties by:

(a) issuing a position statement to all taxpayers every three/six months after the notice of assessment has been issued; or

(b) the issue by the Collection branch of a standard letter to the taxpayer notifying him that a Notice of Assessment has been issued and payment is due by a specified date; or

(c) despatching notices of assessment by registered mail if the amounts involved are high, eg RM500,000 and above due to the materiality of the amount which causes a high financial burden on the tax payer.

The department expressed that they will be unable to issue large numbers of position statements due to constraints in resources in terms of manpower and finance. However, they indicated that the statement of cash paid currently issued will also include assessed amounts in future.

9. SEPARATE ASSESSMENT FORM FOR WIFE

Practical difficulties have been encountered by married individuals in completing the assessment form as information on the wife may not be available, particularly in cases where the couple have separated temporarily or where the wife does not wish to disclose information on details of her earnings to her husband.

It is suggested that to avoid unnecessary delay in filling the return forms, a separate assessment form should be issued to the wife upon specific request or a method whereby the wife should be able to submit the details of her income separately to the IRD.

The Department, expressed reservation on the practicability of this suggestion but agreed that separate assessment forms will be issued for cases of married couple separated when requested by the parties concerned.

10. DELAY IN REPAYMENTS

It is noted that there have been delays by the IRD in making refunds in repayment cases involving material amounts. MIA/MIT sought the IRD's cooperation in expediting such refunds to the taxpayers.

The Department pointed out that refund cases are being separated from all other cases by indicating "R" on the envelope so as to expedite repayments. It was also indicated that refunds involving significant amounts are given priority, therefore there may be a slight delay in refunds involving smaller amounts.

11. EXPATRIATES ON PROFESSIONAL PASSES

There are now a number of expatriates who hold professional passes and therefore subject to Malaysian income tax. The IRD's practice is to appoint the sponsor as the agent of the non-resident professional. Whilst MIA/MIT appreciate that tax has to be collected from the individual, it is suggested that the IRD limit the period of appointment of this agent to only the period of sponsorship rather than throughout the year as the sponsor cannot control the movements of the individual who could be involved with other sponsors during the year.

The IRD pointed out that the period of appointment of the sponsor is stated in the letter appointing the sponsor as the agent of the non-resident professional.

12. BASIS OF RECOGNISING TAXABLE INCOME OF HOUSING DEVELOPERS

Currently, housing developers are taxed on their income computed using the percentage of completion method for each project or each phase of a project (where the project is large or has several phases). Hence, where the accounts are prepared using the completion basis, housing developers are taxed on profits computed using the formula:-

Estimated profit = Payments received & receivable X Estimated gross profit of project / Total estimated sales value of project

However , where the accounts are prepared using the percentage of completion method (usually based on cost incurred to date over total estimated cost of project phase) the basis is acceptable and will not be interfered by the Inland Revenue Department. In addition, where the duration of a project is short and does not exceed 2 years the accounts prepared on the completion basis is also acceptable.

In practice, it is uncommon that taxable profits recognised using the percentage method in the early years to be over-estimated due to healthy economic climate at that point of time. As a result of economic downturn in subsequent years, the total estimated profit from the project determined at the outset may be grossly over-estimated such that ultimately the ac-

7. BASIS OF ALLOCATION OF EXPENSES BETWEEN LEASING BUSINESS AND NON-LEASING BUSINESS

The following basis of allocating expenses are being practised by the IRD assessment officers:

(a) ratio of lease rental receivable to gross income from other source (the lease rental receivable basis)

(b) ratio of lease debtors/assets to loan/advances (portfolio basis).

It has been noted that there is disparity in the treatment. When the lease rental receivable basis is used, a bigger portion of the interest cost is allocated to the leasing source. The reason for such an uneven allocation is that lease rental receivable includes principal repayment plus interest element as compared to hire purchase income which only refers to the interest element.

Where the lease rental receivable method is used, as compared to the portfolio basis, the company would end up with a disproportionate tax for his non-leasing business and a permanent difference which cannot be utilised for his leasing business.

The lease portfolio basis appears to be the most equitable for allocating interest cost as it based on the portfolio balance of each category of asset. The principle here is that leasing is basically a "fund based" operation. The same amount of funds or borrowings will be required to acquire an asset for lease or hire purchase. In this respect the allocation of interest cost will be equitably distributed in accordance to the portfolio of assets maintained by the company.

Last year, the IRD has made a decision that all expenses of a leasing company should be allocated based on leasing turnover or gross profits. Certain IRD officials seemed to have taken the view since the gross income for leasing for tax purposes is the rental receivable and non leasing is usually interest, fees and commission income, therefore it would be appropriate to apportion the interest expenses and other common overheads according to their respective gross income for tax purposes.

The basis of allocation of interest and common expenses by the IRD on lease rental receivable is not an equitable basis as it is comparing lease rentals (which includes elements of repayment of principal) with interest income of hire purchase or other non- leasing interest income. Income and expenditure are therefore not matched. Expenses which have been incurred for the production of hire purchase income have been arbitrarily set off against leasing income and therefore resulting potentially in a loss for a leasing business. Lease rentals consist of an element of principal repayment plus interest while hire purchase reports only the interest income. Thus the IRD in comparing the "gross instalments" for leasing to"interest element" for non-leasing to arrive at the basis for allocation would result in excessive expenses being allocated to leasing sources. This basis of allocating interest and common expenses by the IRD to the leasing and non leasing business of leasing companies is causing a lot of concern to the leasing industry as it would result in leasing companies paying income tax at a much higher effective rate due to inequitable distribution of expenses by the IRD.

While appreciating the IRD's reason to favour the rental receivable basis it is recommended that the following basis for apportioning common expenses be allowed :-

Interest expenses and all overhead expense to be allocated based on the ratio of lease debtor/assets to loan/advances (portfolio).

This is a more equitable basis in matching income to expenditure since the activities of a finance company are largely fund based business, the interest expenses which form the bulk of the common expenses are directly proportionate to the portfolios of the leasing companies. This is in line with the Income Tax Act's treatment of allocating interest expense to non business sources.

Generally, a leasing company having more than a source of income should be allowed to elect a basis other than the basis confirmed by the IRD provided the company concerned is able to justify that their basis is just and equitable.

The recent IRD basis for the allocation of expenses would result in high effective rates of taxes and consequently results in a much lower after tax return and possibly losses in some cases. This would deter shareholders of those leasing companies to continue expanding their business and in future deprive the Small and Medium Scaled Enterprise of a popular and necessary source of financing for future capital expenditure.

IRD advised that they had met with Equipment Leasing Association of Malaysia (ELAM) several times on this issue. IRD pointed out that in some cases, the leasing was actually hire purchase business but termed "leasing" so as to obtain capital allowances benefit. In view of the complexity of the technical discussion, IRD suggested that a separate meeting be held between itself and ELAM and the bodies representing tax professionals to decide on the matter.

8. LATE RECEIPT/NON RECEIPT OF NOTICE OF ASSESSMENT

Notice of Assessment and Additional Assessment (Borang J and JA) are sent by ordinary mail to taxpayers and it appears to be the Inland Revenue Department's policy that a notice is deemed received by the taxpayer as long as it was correctly addressed and it has not been returned by the post office. This is in accordance with the provisions of Section 145 of The Income Tax Act 1967. There are cases where such notices (for unknown reason) do not reach the

taxpayer or his agent. One possible explanation is that certain persons do not bother to return to the post office any mail which has been wrongly delivered. There are many documented cases of such wrong delivery of mail as experienced by a member in Kluang. The unfortunate taxpayer affected became aware of the situation only when they receive the late payment penalty of RM99,092 for not receiving the Notice of Assessment which was said to have been mailed to him.

It is felt that the Inland Revenue should accept representations made by the tax payers who have actually not received the notices of assessment, and where the representation are substantiated, the tax payer should not be penalised for a matter not of his own making.

It is suggested that the Department assists taxpayers to avoid any inequitable penalties by:

(a) issuing a position statement to all taxpayers every three/six months after the notice of assessment has been issued; or

(b) the issue by the Collection branch of a standard letter to the taxpayer notifying him that a Notice of Assessment has been issued and payment is due by a specified date; or

(c) despatching notices of assessment by registered mail if the amounts involved are high, eg RM500,000 and above due to the materiality of the amount which causes a high financial burden on the tax payer.

The department expressed that they will be unable to issue large numbers of position statements due to constraints in resources in terms of manpower and finance. However, they indicated that the statement of cash paid currently issued will also include assessed amounts in future.

9. SEPARATE ASSESSMENT FORM FOR WIFE

Practical difficulties have been encountered by married individuals in completing the assessment form as information on the wife may not be available, particularly in cases where the couple have separated temporarily or where the wife does not wish to disclose information on details of her earnings to her husband.

It is suggested that to avoid unnecessary delay in filling the return forms, a separate assessment form should be issued to the wife upon specific request or a method whereby the wife should be able to submit the details of her income separately to the IRD.

The Department, expressed reservation on the practicability of this suggestion but agreed that separate assessment forms will be issued for cases of married couple separated when requested by the parties concerned.

10. DELAY IN REPAYMENTS

It is noted that there have been delays by the IRD in making refunds in repayment cases involving material amounts. MIA/MIT sought the IRD's cooperation in expediting such refunds to the taxpayers.

The Department pointed out that refund cases are being separated from all other cases by indicating "R" on the envelope so as to expedite repayments. It was also indicated that refunds involving significant amounts are given priority, therefore there may be a slight delay in refunds involving smaller amounts.

11. EXPATRIATES ON PROFESSIONAL PASSES

There are now a number of expatriates who hold professional passes and therefore subject to Malaysian income tax. The IRD's practice is to appoint the sponsor as the agent of the non-resident professional. Whilst MIA/MIT appreciate that tax has to be collected from the individual, it is suggested that the IRD limit the period of appointment of this agent to only the period of sponsorship rather than throughout the year as the sponsor cannot control the movements of the individual who could be involved with other sponsors during the year.

The IRD pointed out that the period of appointment of the sponsor is stated in the letter appointing the sponsor as the agent of the non-resident professional.

12. BASIS OF RECOGNISING TAXABLE INCOME OF HOUSING DEVELOPERS

Currently, housing developers are taxed on their income computed using the percentage of completion method for each project or each phase of a project (where the project is large or has several phases). Hence, where the accounts are prepared using the completion basis, housing developers are taxed on profits computed using the formula:-

Estimated profit = Payments received & receivable / Total estimated sales value of project X Estimated gross profit of project

However , where the accounts are prepared using the percentage of completion method (usually based on cost incurred to date over total estimated cost of project phase) the basis is acceptable and will not be interfered by the Inland Revenue Department. In addition, where the duration of a project is short and does not exceed 2 years the accounts prepared on the completion basis is also acceptable.

In practice, it is uncommon that taxable profits recognised using the percentage method in the early years to be over-estimated due to healthy economic climate at that point of time. As a result of economic downturn in subsequent years, the total estimated profit from the project determined at the outset may be grossly over-estimated such that ultimately the ac-

tual profits are substantially less or a loss position arises. Upon the completion of the project and it is ascertained that a loss results, the prior years' assessments based on estimated taxable profits should be revised to discharge the assessments. The current practice of the IRD in reviewing only the past year of assessment would be inequitable if the prior years' assessments are not reviewed to take into account the actual loss.

In view of the difficulties encountered in using the percentage of completion method, it is proposed that the completion method be adopted, i.e. 24 months for terrace houses/landed properties and 36 months for flatted strata titled properties. This is in line with the Housing Developers' Act 1966 which stipulates that all developers of housing units must use the standard sale and purchase agreement under Schedule G for terrace housing and Schedule H for flatted strata titled units. This standard sale and purchase agreement provides for mandatory completion period of 24 months and 36 months for terrace house/landed properties and flatted strata titled properties respectively.

The completion method of recognition of taxable income in accordance with the standard sale and purchase agreement is proposed notwithstanding that for accounting purposes either the percentage of completion method or completion method may be used. This is because accounting profits and taxable profits need not necessarily be computed using the same method as they each serve a different purpose.

It is proposed that for tax purposes, the completion method be adopted for terrace houses/landed properties and flatted strata titled properties which mandatorily required to be completed within 24 months and 36 months respectively. For all other housing projects, the percentage of method may continue to be adopted for tax purposes but all prior years' assessments should be revised to take into account the actual loss position on completion of the project.

The IRD confirmed that they are willing to accept the completion basis for short term contracts that is completed within 24 months. They also confirmed that where upon the completion of a project, it is ascertained that a loss results, prior years' assessments based on estimated taxable profits will be revised. However, where the project's actual profits is below the estimate but it is still a profitable project, IRD will not review prior years' assessments.

13. HEAD OFFICE EXPENSES

It is noted that the portion of Head Office expenditure which is identified as shareholders' cost i.e. cost related to management and supervisory activities for the management and protection of investment are not allowable as a deduction for the Malaysian Branch. MIA/MIT will appreciate some guidelines as to what constitutes shareholders' costs which will enable the taxpayer to identify such costs from others that were incurred for the day to day operations.

Head office expenditure are normally recoupment of part of the expenses incurred by Head office which provides specialised and central administration functions. The Tax Authorities appear to have taken the stance that the services rendered by the Head Office must fulfill the specific needs of the Malaysian Branch. Expenses incurred for the indirect and remote benefit of the Malaysian Branch are not allowable if such services are also rendered at the Branch level. This requirement has given rise to confusion as to what extent such Head Office costs are allowable.

Withholding Tax

In a previous dialogue, the Tax Authorities have confirmed that in regard to Head Office costs allocated back to the Malaysian Branch or management fees paid by a Malaysian subsidiary to its parent company, where such cost are incurred for ordinary day to day administration or management services are of a routine nature, withholding tax does not apply because such payments does not fall within the ambit of Section 4A. However, where Head Office expenses include any specialised services, withholding tax situation may arise.

There have been disputes between the taxpayers and the Tax Authorities as to what constitute "day to day administration" or "management services of a routine nature". The Tax Authorities have in fact cast the Section 4A net to cover all forms of general payments to non-resident persons for assistance or services rendered.

The abovementioned issues arose because there are no guidelines on Head Office expenses resulting in difference in treatment of such items by various officers in the Inland Revenue Department. As this is a major expense item and the amounts involved are normally substantial, the Tax Authorities should consider issuing guidelines on this subject matter.

The IRD pointed out that the allocation of Head Office expenses to a Malaysian branch for ordinary day to day or routine administration expenses will be excluded from the scope of Section 4A. A claim for such exclusion will of course be reviewed by the IRD to ensure that the payments to the head office are in no way related to the performance of any specialised services by the head office for the Malaysian branch.

IRD agreed to consider issuing guidelines on the subject matter of Head Office expenses.

14. CAPITAL MARKET: PRIVATE DEBT SECURITIES

The growth of PDS market has been tremendous due to lower funding cost and the net funds raised through issuance of PDS in 1992 is estimated at RM3.1 billion

which is approximately one third of funds raised through the issue of shares, (including right issues, special issues and private placement) to the public.

The PDS market in Malaysia consist mainly of loan stocks and bonds. Foreign investors are attracted to invest in the public listed loan stock and bonds due to the country's strong economic performance, stable ringgit and favourable returns.
Foreigners investing in the Malaysian PDS market could do so either through direct investment or through their financial advisers such as stockbrokers, banks, insurance companies etc who also provide custodian services by registering the PDS in nominee companies set up for this purpose.

Under the Malaysian tax legislation, issuers of PDS have to deduct withholding tax at a rate of 20% from interest payable to non residents. The withholding tax rate of 20 percent is however reduced to 10/15 percent under the provisions of some Double Tax Agreements (DTA). In practise, the issuers of PDS do not withhold tax at the preferential withholding tax rates stipulated under the DTA's and the foreign recipients are required to seek a refund of excess withholding tax deducted at source from the tax authorities.

The present practice on tax refunds on excess withholding tax deducted at source requires the foreign beneficiaries to register a tax file and complete annual tax returns before tax refund is given. This process takes a long time and there is undue delay on tax refunds.

In order to encourage more foreign investment in the PDS market and to simplify tax refunds of excess withholding tax deducted at source, it is proposed that a special unit be set up in the Non Resident Branch to process and expedite tax refunds arising from foreign investment in the capital market.

The department pointed out that they already have a system for dealing with the tax refunds. The refunds are made by the collection branch based on the remittances. The Deputy DG indicated that this is a collection refund and not a branch refund. They have also agreed to look at the refund process especially for investors from UK who form the greatest number of such foreign investors.

15. SCHEDULAR TAX DEDUCTION FOR EMPLOYEES

The DG indicated that the schedular income tax system similiar to that in Sabah and Sarawak which was announced in the last Budget will be introduced next year and road shows and other forms of publicity will be undertaken by the Department to educate employers on it.

16. TREATMENT OF RENTAL INCOME

It was also raised whether guidelines could be formulated by the Inland Revenue to assist in the determination of whether rental income received is Section 4(a) income or Section 4(d) income.
The ascertainment of the nature of the income is important because if the income is considered to be business income, the company owning the income producing property would not be an "investment holding company" as defined by Section 60F of the Income Tax Act 1967. Instead, it would be treated as any other company which is in receipt of business income. In such, a situation, the restriction over the deductibility of expenses under Section 60F would not apply; and the expenses incurred in producing the business income would be allowed deduction in accordance with the rule set out in Section 33(1) i.e. deduction would be allowed for expenses incurred wholly and exclusively in the production of income.

In the determination of whether rental income is Section 4(a) income or Section 4(d) income, the Inland Revenue has traditionally followed its own internal guidelines. The key principle used is whether the taxpayer has actively managed the property; and this could be evidenced by the organised and integrated provision of services and amenities.

The IRD agreed to look into the aforesaid matter.

17. OPEN YEARS

The MIA/MIT suggested that with the future implementation of self-assessment, IRD should limit their review of past years to only six years instead of the twelve years currently in law. This will bring it more in line with the Companies Act where accounts to be kept for only seven years.

The IRD agreed to look into the aforesaid matter.

INTERNATIONAL NEWS

HONG KONG

Reduction in profits tax from 17.5% to 16.5% w.e.f. 1/4/1994

SINGAPORE

- Employers' contributions to the Central Provident Fund are increased from 18.5% to 20%, while employees' contributions are reduced from 21.5% to 20%.

- Corporate tax rate for Year of Assessment 1994 - 27%.

USA

Tranfer Pricing
The local court ruled that the IRS could not apply transfer pricing rules where prices charged within the group complied with local official selling prices

Unitary Tax
Barclays Bank loses its tax appeal against Unitary tax in California

COMMON EFFECTIVE PREFERENTIAL TARIFF SCHEME

BY: BHUPINDER SINGH
ARTHUR ANDERSEN & CO.

INTRODUCTION

Over recent years there has been a significant change in the structure of the global economy. The European Economic Community ("EEC") has grown and become stronger with the formation of the European Union ("EU"), the North American Free Trade Agreement ("NAFTA") comprising the United States, Canada and Mexico has been signed, and the Uruguay Round of the General Agreement on Tariffs and Trade ("GATT") has been successfully concluded. These developments in world economies and politics is likely to result in increased competitiveness for non-trade bloc nations and, in particular, developing countries in the Asia-Pacific region. As such the regionalism of the ASEAN nations and the development of the Asean Free Trade Area ("AFTA") has become increasingly important to manufacturers and businesses in Malaysia.

The concept of AFTA is not new amongst the ASEAN nations (Indonesia, Malaysia, Philippines, Singapore, Brunei and Thailand). AFTA was initially proposed during an ASEAN summit meeting in January 1992 and has weathered various degrees of support and criticism since that time. As ASEAN countries are at various levels of industrialisation and rely on natural resources as export earnings to various degrees, it is understandable that the concept of AFTA would be more appealing to some members than others. However , with the introduction and implementation of NAFTA, the further development of AFTA would appear to be of increasing importance to the expansion of ASEAN economies.

WHAT IS CEPT

During the 4th ASEAN summit meeting in January 1992, the ASEAN economic ministers signed the agreement on the Common Effective Preferential Tariff scheme ("CEPT"). As the name indicates the ASEAN members agreed to develop a free trade area through the implementation of a common internal tariff. The proposed tariff is in the range of 0 - 5% and was to be implemented over a 15 year time-frame beginning in 1993. However, in light of existing problem areas and in order to allow for member countries to agree on their respective tariff reduction schedules, it appears that CEPT will not be fully operational until 1995, although for some products it effectively commenced on 1 January, 1994.

Under CEPT, ASEAN member countries are to gradually reduce their tariffs to the proposed range within the fixed time-frame, and are to also eliminate non-tariff barriers. Tariffs for non-ASEAN members are to continue in respect to imports into ASEAN countries.

EXISTING SCHEMES

The ASEAN Preferential Trading Arrangement ("PTA") has already existed and operated for a number of years. Under PTA, ASEAN member countries are allowed preferential reductions in the rate of tariffs otherwise imposed. While the PTA also encourages trade between ASEAN member countries, it is generally considered that this scheme has been underutilised. Reasons for the underutilisation have been suggested to include the time-consuming procedures needed to be followed, the high domestic content requirements, and the lack of private sector knowledge of the scheme. In addition to this, the PTA concession is a unilateral concession. That is, one country may offer the concession while another trading country may not. This is distinguished from the CEPT programme which is a bilateral concession. In order for goods to qualify under CEPT, they must be included in the list for both trading countries.

Many of the products which enjoy the PTA reductions will fall within the CEPT scheme. For those goods which are not transferred to CEPT, they will continue to enjoy the preferential reductions under the PTA.

KEY FEATURES OF CEPT

- **Goods Covered**
  There are approximately 3,400 goods that are covered by CEPT from 1 January, 1994. It is expected that another 5,000 odd goods will be included from 1 January, 1995. The goods covered and the tariff reduction programmes are out-

lined in a publication by the Ministry of International Trade and Industry. This publication consists of 6 volumes and 96 chapters.

Fifteen product groups have been identified for inclusion in CEPT under the fast track programme (refer below). These being:

- ceramic and glass product;
- cement;
- chemicals;
- copper cathodes;
- electronics;
- fertilisers;
- gems and jewellery;
- leather products;
- pharmaceuticals;
- plastics;
- pulp;
- rubber products;
- textiles;
- vegetable oils; and
- wooden rattan furniture.

Some specific products have currently been excluded from CEPT or there has been a temporary suspension of their tariff reductions. The exclusion or suspension is currently proposed to be for the first seven years of the operation of CEPT. This exclusion or suspension occurs, for example, where it is considered that an industry or sector within the importing country may be seriously damaged by the reductions.

- **Fast Track/Normal Track**
  The tariff reductions will be implemented through two parallel programmes. The two programmes, fast track and normal track, as the names suggest provide for tariffs on certain products to be reduced over a shorter

Under the fast track programme, goods with tariffs below 20% will have their tariffs reduced to between 0% and 5% within 7 years

period than other products. Both programmes further distinguish between current tariff levels of above 20% and levels below 20%.

Under the fast track programme, goods with tariffs above 20% will have their tariffs reduced to between 0% and 5% within 10 years. For normal track products with tariffs above 20%, their tariffs will initially be reduced to 20% within 8 years and then to 5% within the following seven years.

Under the fast track programme, goods with tariffs below 20% will have their tariffs reduced to between 0% and 5% within 7 years. The normal track goods in the same category will see the same reduction but over 10 years.

- **Product Origin**
  The rule of product origin under CEPT is that the tariff preferences are to benefit ASEAN countries. In order to achieve this, the reduced tariffs will only be applicable to products originating from ASEAN countries. A product will be considered to originate from an ASEAN country if it is wholly produced or obtained from that country or is deemed to originate from that country. In this regard the CEPT rule of origin adopts similar classifications used under the PTA system, being - "Goods Wholly Produced or Obtained" or "Goods Not Wholly Produced or Obtained".

  The former category, Goods Wholly Produced or Obtained, includes products such as minerals extracted from the ASEAN country, agricultural products of that country, marine products taken from the seas of that country etc. The latter category provides for goods to be deemed to originate from an ASEAN country if at least 40% of their contents originate from an ASEAN member country. Accordingly, the product will be deemed to originate from an ASEAN country where:

  - the non-ASEAN raw materials/parts and the raw materials/parts of an undetermined origin of a product do not exceed 60% of the free-on-board ("fob") value of the product; and

  - the final process is undertaken in the ASEAN member country.

The formula for computing this local content is as follows:

$$\frac{\text{Value Non-ASEAN materials etc} + \text{Value undetermined origin materials etc.}}{\text{fob value}}$$

It is important to note that the price paid for materials and parts imported from an ASEAN country to be used in manufacture within another ASEAN country will be added to the total value of ASEAN content. This is provided the materials and parts satisfy the 40% rule. Accordingly, it may be possible for the final goods to satisfy the CEPT 40% rule with an overall ASEAN content of less than 40%. For example:

Assume raw materials are purchased from Thailand for the manufacture of goods in Malaysia. The content of the raw materials is 50% US based and 50% Thai based, thereby satisfying the CEPT origin rule.

The raw materials are used in the manufacture in Malaysia of goods that comprise 50% ASEAN components (including the Thai materials) and 50% Japanese components.

The final product satisfies the CEPT rules but effectively includes only 25% ASEAN materials.

Further, as the rule currently stands, the 40% of fob value may be easily achieved through imposition of a 40% profit margin by an ASEAN member country. This could allow importation of a non-ASEAN product, some processing taking place and export of the same product being deemed to originate from an ASEAN country.

ENJOYMENT OF CONCESSIONS

In order for an exporter to benefit from the preferential rates under CEPT, he must satisfy the following conditions:

- the exporting country must include the product in its CEPT scheme;
- the tariff rate offered by the exporting country must be 20% or below; and
- the local content requirement must be met.

Accordingly, where Malaysian manufacturers wish to take advantage of the CEPT concessional tariffs, it will be in their best interest to support the quick reduction of tariffs that are currently above 20%. Unless the Malaysian tariffs are at 20% or below Malaysian exporters will not be entitled to take advantage of concessional tariffs offered by other ASEAN countries.

CONCLUSION

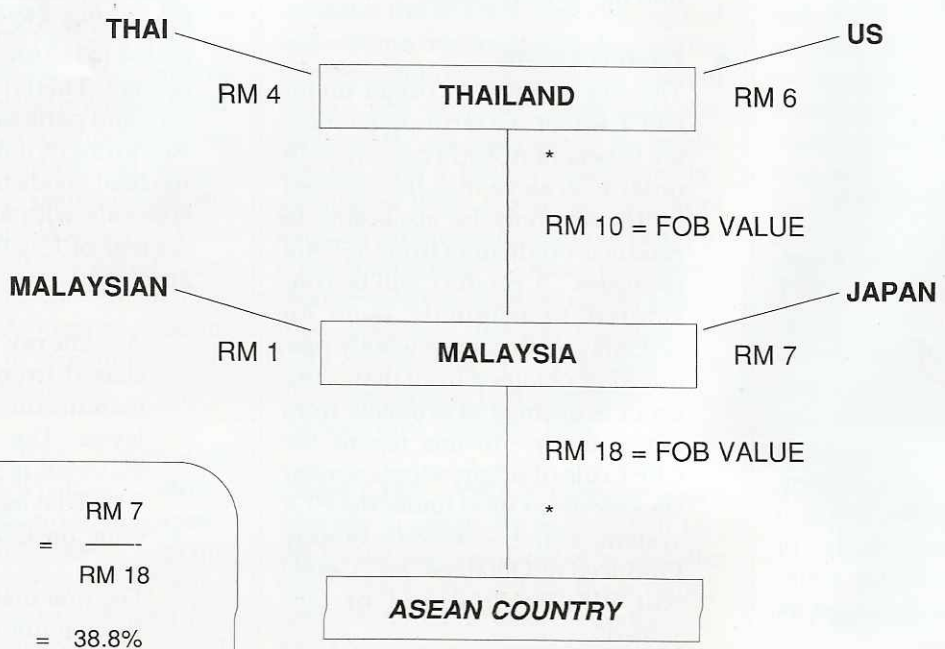
While there appears to be some problems or inequities with the current CEPT scheme such as those outlined above, Malaysian businesses must evaluate their current positions and seek to position themselves within the new developing markets.

Should the product origin rules remain unchanged (or substantially unchanged), manufacturers may consider sourcing raw materials from other ASEAN countries in order to utilise the preferential tariffs. Of course issues in respect to economies of scale would also influence such decisions.

Multinational corporations operating in ASEAN countries may need to restructure and rationalise their operations in order to maintain their existing competitiveness.

The recent announcement of the pending introduction of the Countervailing and Anti-Dumping Act in Malaysia (which is reportedly to take effect from the end of April 1994) may also impact upon the pricing of goods imported into Malaysia. With the reduction of tariffs under CEPT, the Malaysian Government is eager to prevent unfair competition and damage to local industries through the dumping of goods in Malaysia.

CEPT - PRODUCT ORIGIN EXAMPLE



NON-ASEAN CONTENT = RM 7 / RM 18 = 38.8%

ASEAN CONTENT = 4 + 1 / 18 = 27.7%

* GOODS SATISFY PRODUCT ORIGIN

Malaysian Institute Of Taxation

ADVANCED NOTIFICATION TO ALL EMPLOYERS: THE SCHEDULAR TAX DEDUCTION SYSTEM (STD)

1. BACKGROUND

1.1. Currently, income tax of an employee is normally collected by means of deductions from his/her remuneration (salaries, wages, etc.).

1.2. In Sabah and Sarawak, the amount of the tax deductions to be made by an employer is determined in accordance with a Schedule. In Peninsular Malaysia, the tax deduction is made in accordance with specific instructions issued by the Inland Revenue Department (hereinafter referred to as IRD).

1.3. With the objective of simplifying the tax deduction system and in order to facilitate employers in carrying out their responsibilities in this respect, the Standard Tax Deduction System presently applicable in Sabah and Sarawak will be modified and extended to cover Peninsular Malaysia with effect from January 1st, 1995.

1.4. Broad details are provided in advance hereunder to enable employers to plan the necessary new work procedures as well as to suitably modify the existing system of records maintenance with a view to facilitating compliance with the requirements of the Schedular Tax Deduction System (hereinafter referred to as the STD).

2. INTRODUCTION

The STD is a system whereby payment of income tax is effected through a scheme of deductions from the monthly remuneration of each person receiving employment income. It is made in accordance with a Schedule which stipulates the relevant amounts of tax to be deducted and remitted to the IRD each month.

3. PROCESS

Briefly, the process of implementation is as follows:

3.1. The Employer

Each month the employer is required to:

3.1.1 Make the relevant deductions for each employee in accordance with the Schedule;

3.1.2 Complete the Statement of Tax Deductions by an Employer (Form CP.39);

3.1.3 Remit the aggregate amount so deducted to the IRD not later than the 10th day of the subsequent month together with the duly completed Form CP.39.

3.2. The IRD

3.2.1 Will issue a receipt to the employer for the total amount of the remittance; and

3.2.2 Credit the relevant amount of tax deduction into the account of each employee concerned.

4. THE RESPONSIBILITIES OF AN EMPLOYER

Under the Income Tax (Deductions from Remuneration) Rules 1994, an employer is required, inter alia, to:

4.1 Make the relevant tax deductions in the manner and in accordance with the rates stipulated in the Schedule;

4.2 Comply with all relevant instructions issued by the IRD;

4.3 Remit to the IRD the amount of the tax deductions within the stipulated period;

4.4 Forward all the required information in respect of each employee;

4.5 Give to each employee a statement in respect of the total deductions made during the relevant year;

4.6 Inform the IRD regarding the cessation of payments of remuneration to any employee.

5. INFORMATION IN RESPECT OF EMPLOYEES

5.1. In order to comply fully and correctly with all the requirements of the STD, an employer will require constantly updated information regarding each employee, namely:

5.1.1 Income tax file reference number (if any);

5.1.2 Identity card number (both old and new);

5.1.3 For a non-citizen, the passport number and date of birth;

5.1.4 Marital status;

5.1.5 For a married male employee, whether his wife is working or not;

5.1.6 The number of children (natural, adopted or step-children) under the age of 18 years and the number of the children over 18 years of age who are receiving fulltime instruction at a school, university, college or other educational institution; and

5.1.7 The amount of contributions to the Employees' Provident Fund (EPF).

5.2. Employers are advised to ensure that the above basic information is properly maintained and constantly updated.

6. CUSTOMER EDUCATION AND SERVICE

6.1. The IRD will be conducting a series of lectures/briefing/forums for all employers and in addition will be issuing explanatory notes which will provide details and guidance to enable employers to comply with the requirements of the STD. Detailed information regarding the education program and the publications will be announced soon.

6.2. In addition, the Customer Service Unit in branch offices of the IRD throughout the nation will provide the necessary assistance and advice to employers in respect of the implementation of the STD.

6.3 Audit and enforcement teams will also visit employers from time to time.

7. CONCLUSION

It is hoped that all employers will give their fullest cooperation to the branch offices of the IRD who will be conducting the lectures/briefings/forums in the coming months. To obtain maximum benefit from the program, active participation of all employers is essential; that is, the staff who are directly involved in and responsible for the payroll and human resource management should be required to attend.

Tan Sri Dato' Abu Bakar bin Mohd Noor
Director General of Inland Revenue,
Malaysia.

Placement and Transfers of Senior Officers of the Royal Customs and Excise Malaysia

The Royal Customs and Excise Malaysia has informed the Institute on the new placement and tranfers of their Senior Officers. The following is the list of the new placement and transfers which was effective on May 15, 1994:-

1. Dato' Abd. Rashid bin Haji Bolong
   Pengarah Kastam Negeri
   Selangor

2. Osman bin Hanapi
   Timbalan Ketua Unit Khas
   Cukai Jualan / Perkhidmatan
   Ibu Pejabat

3. Shariff Ghazali bin Mahmood
   Timbalan Pengarah
   Cawangan Petroleum
   Ibu Pejabat

4. Rabaayah binti Md. Naim
   Penolong Pengarah Kastam
   Pulau Pinang

5. Selasiah binti Haji Ahamd
   Penguasa Kastam
   Pulau Pinang

6. Nor Ashikin binti Haji Ahmad
   Penguasa Kastam
   Kota Bharu, Kelantan

7. Junaidah binti Abdullah
   Penguasa Kastam
   Kuala Lumpur

8. Hayatee binti Hashim
   Penguasa Kastam
   Kuala Lumpur

9. Mariani binti Mohd Said
   Penguasa Kastam Seremban
   Negeri Sembilan

10. Ribuan bin Abdullah
    Penguasa Kastam
    Cawangan Pemeriksaan Akaun
    Kuala Lumpur

11. Ravendran a/l J.C. Ramalu
    Penguasa kastam
    Cawangan Pemeriksaan Akaun
    Kuala Lumpur

12. Tay Beng Chuan
    Penguasa Kastam
    Cawangan Pemeriksaan Akaun
    Kuala Lumpur

13. Jauhari bin Abdullah Shakur
    Penguasa Kastam
    Cawangan Pemerikasaan Akaun
    Pelabuhan Kelang, Selangor.

14. Noridah binti Che Long
    Penguasa Kastam
    Melaka

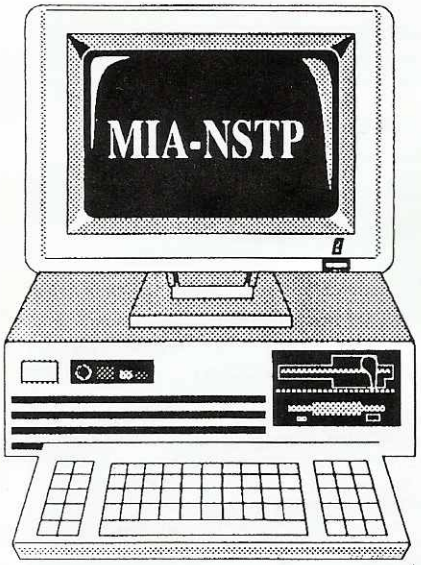
15. Che Sharifah binti Saidin
    Penguasa Kastam Seremban,
    Negeri Sembilan

16. Maruthamuthu a/l Krishnan
    Penguasa Kastam
    Pelabuhan Klang, Selangor

17 Amarjit Kaur a/p Maktiar Singah
    Penguasa Kastam
    AKMAL, Melaka

18. Juliana binti Hashim
    Penolong Penguasa Kastam
    Port Dickson, Negeri Sembilan

MIA - NSTP Online Connection



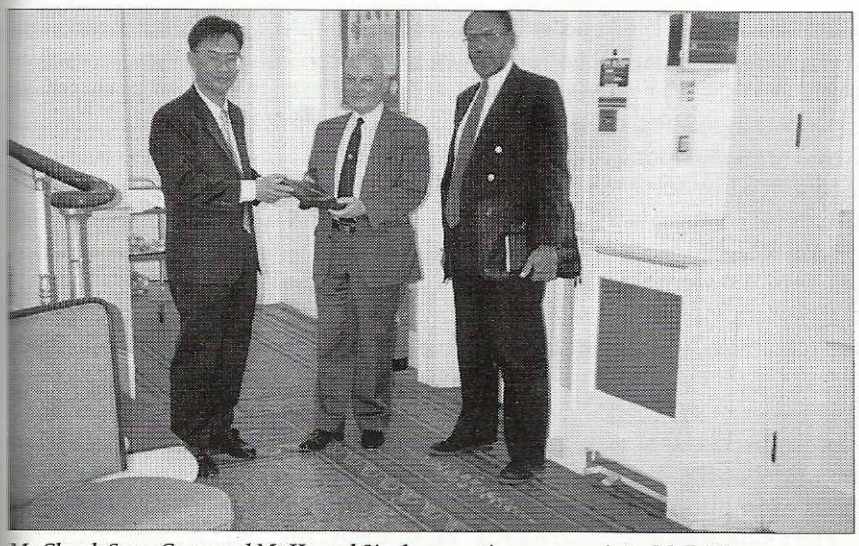
MIA recently subscribes to the New Straits Times Press Library - On-Line Services (NSTP LOL) - the first and only electronic newspaper library service in Malaysia. It is now available for public access to obtain information from the NSTP Group's newspapers, magazines and databases. It carries newspaper articles from the NST, BT, BH, Malay Mail, Harian Metro, New Sunday Times, Berita Minggu, Sunday Mail and Malaysian Business magazines. Articles of any subject matters that were carried in the said print media can be retrieved.

The LOL system also houses Special Databases on Companies, Personalities, Countries and Malaysian States. These contain information on Malaysia's public listed companies, leading local personalities from both the public and corporate sectors, countries of the world and a comprehensive profile of each Malaysia state.

Each day news files from the Group's newspapers and magazines are indexed and stored as soon as it is published. One can easily access files by using key words on the PC terminal. Type in the key word or words that directly or even vaguely describe the subject you want. Seconds later all documents related to it are displayed. You can scroll through the documents or narrow down to a specific document. The information provided by NSTP LOL is updated daily within 8 hours of it being printed and is available worldwide 24 hours daily *all year round.*

We will provide further information of this service to members in the next issue. This service is presently being organised.

Visit To The Institute Of Taxation, U.K.



Mr Chuah Soon Guan and Mr Harpal Singh presenting a souvenir to Mr R J Ison

Mr Chuah Soon Guan, the Institute's Honorary Secretary who was on official MIA's duties in London and Council member Mr Harpal Singh who is presently in London for higher studies in law visited the Institute of Taxation, United Kingdom on 21 April 1994 to maintain ties. They were met with by the President and Secretary of the Institute of Taxation namely Mr Malcolm Gammie and Mr Ronald J. Ison. They were briefed on current developments of the Institute, the most significant of which in the script of the Royal Charter. The Institute will be renamed Chartered Institute of Taxation. Mr Harpal Singh who is also MIT's editor took the opportunity to find out about's the Institute's editorial policies and publication work. The Institute of taxation will also allow Mr Harpal Singh to be attached to certain departments later in the year to learn how they are run.

NO RETROSPECTIVE REMOVAL OF EXEMPTION

IN THE SUPREME COURT OF MALAYSIA
HELD AT KUALA LUMPUR
(APPELLATE JURISDICTION)

SUPREME COURT CIVIL APPEAL NO. 506 OF 1987

Between

NLFCS Ltd. ... Appellant

And

DGIR ... Respondent

JUDGEMENT OF THE COURT

FACTS

The NLFCS Ltd, a society registered under the Co-operative Societies Ordinance, 1948, was exempted from the payment of income tax under the Income Tax Ordinance, 1947 (the Ordinance). The Income Tax Act, 1967 (the Act), which has effect for the year of assessment 1968 and subsequent years of assessment, repealed the Ordinance. However, under transitional and saving provisions, the exemption conferred by the Ordinance was continued by paragraph 33 of Schedule 9 to the Act.The DGIR had previously raised tax on the taxpayer for the years of assessment 1968 to 1975. In a case No. PKR 256, the Special Commissioners of Income Tax had discharged those assessments in 1978 and held that the taxpayer continued to enjoy the exemption by virtue of the said paragraph 33 read with section 156 of the Act. They held that those provisions prevailed over paragraph 12 of Schedule 6 to the Act which limited exemption from tax for co-operative societies.Act 471 of 1980 amended the proviso to the said paragraph 33 and acting under the amendment which was made retrospective to the year of assessment 1968, the Revenue raised assessments afresh on the taxpayer for the years of assessment 1977 to 1981.In 1987, the Special Commissioners discharged the said assessments and held that the amendment did not have the effect of removing the exemption from tax. On appeal by the Revenue, the High Court reversed the decision of the Special Commissioners.

ARGUMENTS

For the taxpayer, it was contended that strict interpretation rules should be followed in construing the amendment and that in the absence of clear words to that effect, tax cannot be imposed. It was also contended that the section of the Amendment Act which made the amendment retrospective was bad in law as it deprived the taxpayer of an existing and acquired right which is protected by section 30(1)(b) of the Interpretation Act, 1967. It was further contended that the retrospection to 1968 was constitutionally bad and unenforceable as it had the effect of nullifying the decision of the Special Commissioners given in Case No. PKR 256 in 1978.It was the contention of the Revenue that the words of the amendment to the proviso to paragraph 33 of Schedule 9 to the Act were clear. It was the intention of the legislature to overrule the decision in Case No. PKR 256 and the amendment had that effect. It was also pointed out that retrospective tax legislation is possible if it is expressed in sufficiently clear terms. It was therefore the Revenue's submission that the intention to make the amendment retrospective was in clear terms and therefore valid.

Held

That the appeal by the taxpayer be allowed and the assessments be discharged. Since there is a doubt as to the intention of the legislature to impair the existing right of the taxpayer, the ambiguity has not been removed by sufficiently clear words to achieve that purpose.

This appeal by the NLFCS Ltd. (the tax payer) raised the question whether the words of the amendment made by Act A471 to paragraph 33 of Schedule 9 of the Income Tax Act, 1967 (the Act) was capable of removing the exemption from tax granted to the tax payer by section 13(1)(f)(ii) of the Income Tax Ordinance, 1947 (Repealed).

The Special Commissioners of Income Tax in their Deciding Order dated 10th June 1987 found that the tax payer is a society registered on the 4th day of June 1960 under section 7 of the Co-operative Societies Ordinance, 1948. It was therefore exempted from payment of income tax under the said section 13(1)(f)(ii) of the Income Tax Ordinance, 1947 which conferred exemption from the payment of income tax on any co-operative society registered under the law in force relating to the registration of co-operative societies. The Income Tax Act, 1967 came into force on the 28th September 1967 and repealed the Income Tax Ordinance, 1947 and sub-section 3 of section 1 of that Act stipulates that the Act shall have effect for the year of assessment 1968 and subsequent years of assessment. The exemption conferred by the Income Tax Ordinance, 1947, was continued by paragraph 33 of Schedule 9 of the Act and by the said paragraph 33 that exemption was "deemed to have been made by an order under section 127 of the Act".

There was no dispute that paragraph 33 of Schedule 9 of the Act continued the previous exemption under the Ordinance. The DGIR (the Revenue) had previously disputed that the exemption was continued under the Act and had raised tax on the tax payer for the years of assessment 1968 to 1975 under the Act when it came into force. In a case No. PKR 256, the Special Commissioners of Income Tax had discharged those assessments on 2 November 1978 and held that the tax payer continued to enjoy the exemption by virtue of the said paragraph 33 read with Section 156 of the Act relating to transitional and saving provisions. It was held by the Special Commissioners that those provisions prevailed over paragraph 12 of Schedule 6 of the Act which limited exemptions from tax for co-operative societies. The Revenue accepted that decision as good law for the purposes of the present appeal. But the Revenue also contended that the amendment to the proviso to the said paragraph 33 by Act A471 of 1980, which came into force on 1 February 1980, had removed the exemption and moreover by section 1(5) of that Amendment Act A471, the amendment to paragraph 33 of the Act was made retrospective to the year of assessment 1968. Therefore acting under the said Amendment Act A471, the Revenue raised assessments afresh on the tax payer for the years of assessment 1977 to 1981.

In a Deciding Order given on 10th June, 1987, the Special Commissioners discharged the said assessments and held that the amendment to paragraph 33 of Schedule 9 of the Act did not have the effect of removing the exemption from tax. On appeal by the Revenue, the High Court on 19th October, 1987, re-

versed the decision of the Special Commissioners and held that the tax payer no longer enjoyed the exemption by virtue of the said amendment. Unfortunately no written grounds of judgement are available although this appeal has been adjourned several times by the Supreme Court to enable the learned Judge to give his grounds of decision.

On appeal before us on 11th October, 1993, Mr. CVD, leading counsel for the tax payer, contended that the learned Judge had misconstrued the said amendment and the effect it had on paragraph 33 of Schedule 9 of the Act. He pointed out that paragraph 33 remained the same and that the only change made by the Amendment Act was the alteration of the proviso to paragraph 33 by the addition of a paragraph (a) which reads as follows:-

"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;"

Counsel contended that in construing the said amendment certain principles relating to the interpretation of taxing statutes must be followed. Firstly, there is no room for intendment in tax legislation and the rule of strict construction applies. Unless there are clear words tax cannot be imposed. (per Rowlatt J. in Cape Brandy Syndicate v. I.R.C.)[1]. Another principle is that where the meaning of a statute is in doubt the ambiguity must be construed in favour of the subject. Yet another principle is that an exemption from tax cannot be removed except by sufficiently clear words to achieve that purpose.

On the question of the retrospectivity of the amendment, counsel pointed out that by section 1(5) of the Amendment Act, the amendment to paragraph 33 of Schedule 9 of the Act was backdated to 1968. That technically covers the period backwards of 12 years from 1980 when the Amendment Act came into force and is allowable for assessments and additional assessments of back tax under section 91 of the Act. The Revenue had therefore raised tax going back to the years of assessment 1977 to 1981 and in doing so had proceeded on the assumption that the tax payer had lost the exemption from tax not prospectively but retrospectively. Counsel for the tax payer contended that section 1(5) of the Amendment Act which made the amendment retrospective is bad in law as it deprived the tax payer of an existing and acquired right which is protected by section 30(1)(b) of the Interpretation Act, 1967.

It was also the contention of counsel that a statute would not be read retrospectively to deprive some one of existing and acquired rights and he referred to the Privy Council case of Yew Bon Tew v. Kenderaan Bas Mara[2] and the House of Lords' case of Pearce v. Secretary of State for Defence[3] to support his contention. Counsel referred us specifically to the speech of Lord Brightman in Yew Bon Tew's case where His Lordship said as follows:-

"There are two other statutory provisions which are relevant. Section 13 of the Interpretation and General Clauses Ordinance 1948 provided:

> 'Where a written law repeals in whole or in part any other written law, then, unless the contrary intention appears, the repeal shall not ... (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed ...'

This Act was replaced by the Interpretation Act 1967, s 30(1)(b) of which says the same thing in different words."

Counsel contended that the tax payer's acquired right was even stronger under the present section 30 of the Interpretation Act, 1967 which reads as follows:

"30.Matters not affected by repeal.

(1) The repeal of a written law in whole or in part shall not -

(a) affect the previous operation of the repealed law or anything duly done or suffered thereunder; or

(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law; or

(c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed law; or

(d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been made.

(2) Without prejudice to the generality of subsection (1) -

(a) the repeal of a written law which adopts, extends or applies another written law shall not -

(i) invalidate the adoption, extension or application; or

(ii) prejudicially affect the continued operation of the adopted, extended or applied law; and

(b) the repeal of a written law which amends another written law shall not -

(i) invalidate the amendments made by the repealed law; or

(ii) prejudicially affect the continued operation of that other law as amended."

Mr CVD also contended that the exemption granted to the tax payer is a substantive right because by Section 127(5) of the Act any of its income was not to be taxed as income for the purpose of tax. He pointed out that the Interpretation Act applies for the construction of a taxing statute and referred us to the House of Lords' case of Floor v. Davis (Inspector of Taxes)[4] in which case Viscount Dilhorne, Lord

Diplock and Lord Edmund-Davies all held that in construing provisions of the U.K. Finance Acts one must, as when construing provisions of other Acts, have regard to the Interpretation Act. It must be borne in mind that the Interpretation Act is to apply unless a contrary intention is shown. It is not the case that an intention that the Act should apply has to be shown for it to apply.

Counsel then contended that the retrospection by section 1[5] of the Amendment Act to 1968 was constitutionally bad because it had the effect of nullifying the decision of the Special Commissioners given in PKR 256 in November 1978 in respect of the years of assessments 1968 to 1975. He contended that it violated the essential constitutional principle inherent in a government structured under the separation of powers doctrine that a judicial decision cannot be nullified by a legislative act, although it may be changed prospectively by legislative enactment. In support of his contention he referred to the Privy Council case of Liyanage & Ors. v. Reginam (5), and pointed out that although tax was not levied for the period 1968 to 1977, the amendment has the effect, according to the Revenue's interpretation, of making the tax payer liable to tax for the whole backdated period. He stated that by a judicial decision between the same parties it had been decided that the tax payer was not liable for tax even after 1967. He pointed out that the interpretation contended for by the Revenue would necessarily involve nullifying the decision of the Special Commissioners as to the post-1967 tax liability of the tax payer at least for a period of 12 years going back to 1968. Counsel also contended that in as much as the Revenue relied on a law that has to treat the judicial decision as inoperative, such a law is constitutionally bad under our separation of powers doctrine based on Liyanage's case. He contended that section 1(5) of the Amendment Act is therefore bad in law and unenforceable and the assessments enabled by it retrospectivity should therefore be discharged.

It was the submission of the Revenue that the words of the amendment to the proviso to paragraph 33 of Schedule 9 of the Act made by the Amendment Act A471 had the effect of qualifying the provisions of that paragraph in the Act. Quite apart from the clear construction of the said proviso it was also contended by the Revenue that it is necessary and relevant also to refer to the scheme of the Act and the history leading to the said amendment. The scheme of the Act was to subject the income of co-operative societies to tax unless the income falls within the ambit of paragraph 12 of Schedule 6 of the Act. The amendment was also as a result of the decision in the case No. PKR 256 as it was the intention to overrule that decision. The leading Revenue counsel, Encik AKAJ, contended that it was the intention of the legislature that the said proviso was to qualify paragraph 33 of Schedule 9 of the Act and the Amendment Act A471 had the effect of qualifying the said Schedule 9.

The Revenue did not dispute that the tax payer's income was exempted from income tax under the repealed Income Tax Ordinance, 1947, and that the status was saved by section 156 of the Act read with paragraph 33 of Schedule 9. It was contended, however, that the operation of the main provision of paragraph 33 was now subjected to the qualification, or limitation provided in the proviso thereto as amended by Act A471. It was also pointed out that it is a fact that the provisions have been made in paragraph 12 of Schedule 6 of the Act in respect of a qualified exemption on income of co-operative societies. But it was contended by the Revenue that the proviso to paragraph 33 of Schedule 9 had the effect of qualifying the application of the main paragraph 33 and that the learned Judge was right in his interpretation of the said proviso. Revenue counsel also pointed out that retrospective tax legislation is possible if it is expressed in clear terms and referred to Simon's Taxes, Vol. A at page 225, wherein it is stated that:-

"A statute is construed as having retrospective effect only if its retrospective operation is stated in clear terms or arises by necessary and distinct application from its terms."

Three cases were cited in support of the above statement viz Government of Malaysia v. Zainal bin Hashim[6], Keith Sellar v. Lee Kwang[7], James v. C.I.R.[8]. Reference was also made to section 2(3) of the Interpretation Act, 1967, which states as follows:-

"2. (3) PART I shall not apply where there is

(a) express provision to the contrary; or

(b) something in the subject or context inconsistent with or repugnant to its application."

But it was the contention of the Revenue that in the present appeal the Amendment Act A471 by section 1(5) therein has provided as follows:-

"1(5) Section 16 amending the proviso to paragraph 33, the disputed proviso - shall be deemed to have effect for the year of assessment 1968 and subsequent year of assessment."

It was the Revenue's submission that the intention to make the amendment retrospective was in clear terms and therefore valid.

There are ample authorities to show that courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists. In Re-Micklewait[9] it was held that a subject was not to be taxed without clear words. We realise that revenue from taxation is essential to enable Government to administer the country and that the courts should help in the collection of taxes whilst remaining fair to tax payers. Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J. in Cape Brandy Syndicate v. I.R.C.[1]:-

"... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used ..."

It has also been said by the Judicial Committee in Oriental Bank Corporation v. Wright[10] "that the intention to impose a charge upon a subject must be shown by clear and unambiguous language."

On the retrospective operation of Acts, the presumption is that an enacment is not intended to have a retrospective operation unless a contrary intention appears. In this case that presumption has been rebutted because section 1(5) of the Amendment Act A471 states in clear terms that the amendment was intended to be retrospective. But a retrospective operation should not be given to a statute to impair an existing right and it has been stated by the U.K. Court of Appeal in E.W.P. Limited v. Moore[11]:

" ... that those who have arranged their affairs, as the saying is, in reliance on a decision of these courts which has stood for many years should not find that their plans have been retrospectively upset, ..."

Moreover, one should avoid a construction that inflicts a detriment and as Lord Brightman has said in Yew Bon Tew v. Kenderaan Bas Mara[2]:

"that a retrospective enactment inflicts a detriment if it takes away or impairs a vested right acquired under existing laws or create a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past."

In this case it is clear that the tax payer had an acquired right to exemption from tax under the Income Tax Ordinance, 1947, when the Act came into force on 20th September 1967. That acquired right which was confirmed by the Special Commissioners of Income Tax in Case No. PKR 256 should only be overruled prospectively and not retrospectively. Admittedly the legislature had made its intention clear in Section 1(5) of the Amendment Act A471 that Section 16 therein which amended Schedule 9 of the Act shall be deemed to have effect for the year of assessment 1968 and subsequent years of assessment. But the Amendment Act A471 did not also expressly provide that Part I of the Interpretation Acts 1948 and 1967 (Act 388) which includes the said Section 30 of that Act shall not apply. Therefore following the decision of Viscount Dilhorne, Lord Diplock and Lord Edmund-Davies in the House of Lords' case of Floor Davis (Inspector of Taxes)(4), the provisions of the Act must be construed having regard to the Interpretation Acts, 1948 and 1967. There is therefore a doubt whether the Legislature had intended to impair the existing right of the tax payer and inflict a detriment to it as it takes away a vested right under the existing law to exemption from tax. As there is a doubt the ambiguity must be construed in favour of the tax payer as the said exemption from tax has not been removed by sufficiently clear words to achieve that purpose. We therefore allowed the appeal with costs here and below, set aside the decision of the learned Judge and restored the Deciding Order of the Special Commissioners that the assessments be discharged. We also ordered that the deposit be refunded to the tax payer.

[1] 12 T.C. 358
[2] (1982) 3 All E.R. 833
[3] (1988) 2 All E.R. 348
[4] (1980) A.C. 695
[5] (1966) 1 All E.R. 650
[6] (1977) 2 MLJ 254 (F.C.)
[7] (1980) 2 MLJ 191
[8] 51 T.C. 628
[9] (1855) 11 Exch. 452
[10] (1880) 5 A.C. 842, 856
[11] 1992) 1 All E.R. 880 at 891

NEW BOOKS AT THE MIT SECTION

1. Ismail Noor et. al. (Malaysian Institute of Directors). The Company Director's Guidebook. Kuala Lumpur : Pelanduk Publications, 1993.

   Complimentary copy from IBS Buku Sdn Bhd.

2. Arjunan Subramaniam. Malaysian Stamp Duty Handbook. Kuala Lumpur : Pelanduk Publications, 1993.

   Complimentary copy from IBS Buku Sdn Bhd.

3. Al-Harran, Saad Abdul Sattar. Islamic Finance ; Partnership Financing. Kuala Lumpur : Pelanduk Publications, 1993.

4. Proffessor Madya Barjoyai Bardai. Malaysian Tax Policy : Applied General Equilibrium Analysis. Kuala Lumpur : Pelanduk Publications, 1993.

   Complimentary copy from IBS Buku Sdn Bhd.

5. Rice, Steven J. Introduction To Taxation. New York : Harper Collins, 1992.

   Complimentary copy from Asia Foundation.

6. Choong Kwai Fatt Et. al. Advance Malaysian Taxation. Kuala Lumpur: U - Text, 1994.

   Complimentary copy from Choong Kwai Fatt

7. ACCACMADIA, Journal of School of Accountancy. MARA Institute of Technology.
   V. 1 12. No. 1: December 1993

   Complimentary copy from Ho Juan Keng, MARA Institute of Technology

Income Tax On Profits From Land

RAYUAN NO. P.K.R. 423

KLE SDN. BHD.
LWN
KETUA PENGARAH
HASIL DALAM NEGERI

FACTS

KLE Sdn Bhd acquired a piece of land in Tampoi, Johor in November 1967 at a price of RM5.5 million. The purchase was financed by way of issued share capital of RM5.5 million. In November 1972, the company sold the land at a price of RM8 million and made a profit of RM2.39 million. In March 1982, the profit was assessed to income tax.

LHK was the Company's Secretary from October 1969 to May 1985. Every dealing with the Inland Revenue Department was done by the Secretary. In January 1981, in reply to a query from the IRD, LHK stated that the land has been acquired "with intention to develop the said land into a housing estate".

Between the purchase and the sale, a sum of RM28,813 i.e. about 0.52% of the total purchase price was spent on earthworks "to make good erosion caused by rain water " on the land.

ARGUMENTS

The appellant contended that the profit was an investment profit not subject to income tax on the following grounds : KLE Sdn Bhd was an investment holding company, the land had been treated as a fixed asset in the accounts, the land was unsuitable for development into a housing estate, the activities of the Appellant after the purchase did not correspond to those of a developer, the appellant had the ability to hold on to the land as it was financed by way of share capital and not through borrowings and up to 1972 the said transaction was the Appellant's one and only transaction in land. In addition, the Appellant had done nothing to improve or develop the land, the Appellant had no proper business office or organisation to operate as a property developer and none of the staff or directors were skilled in property development. Profits from the disposal of the Appellant's other lands in 1985 had been treated by the IRD as capital gains. Furthermore, it was contended that LHK's letter stating that the land was to be developed into a housing estate "was wrong and was mistakenly made" and this had been rectified subsequently by one of the directors.

The IRD contended that KLE Sdn. Bhd was both an investment holding company and a company trading in land as reflected in the dominant objectives of its Memorandum of Association. The Appellant's stated intention was to develop the land into a housing estate and this had not changed. The Company's business had consistently been declared as 'construction' in the income tax returns. The fact that the land was sold to a development company is ample proof that the land was ripe for development and must have been acquired for that purpose. The company had acquired two pieces of land in Kuala Lumpur soon after the sale of the subject land, also for development. In addition, the land was far in excess of the company's need and it did not yield any personal enjoyment or income during the period of ownership. Finally, the length of period of ownership is not an acid test that the property is an investment.

HELD

The activity done was in pursuance of the intention to trade and was indeed an adventure in the nature of trade and therefore the profit therefrom was trading profit assessable to income tax under section 4(a) of the Income Tax Act 1967.

At the meetings of the Special Commissioners of Income Tax held in Kuala Lumpur on 12th October 1992 and 18th May 1993, the Appellant, KLE Sdn. Bhd. appealed against the Income Tax Assessment, Form J(4) for the Year of Assessment 1973 dated 27th March 198 showing total liability of RM1,373,149.05.

2. The issue for the determination of the Special Commissioners was whether the profit from the disposal of part of a piece of land known as/or held under Lot A and comprised in Q.T(R) No. 1 Town of Tampoi, Mukim of Tebrau, Johor: the subject land, was an investment profit and therefore was not assessable to income tax, or was it a business profit or trading profit and consequently assessable to income tax under section 4(a) of the Income Tax Act 1967.

3. The Appellant was represented by Encik LHB, an advocate and solicitor, assisted by Mr. LHK, an accountant who was the Appellant's second witness (SP2). Encik LHK, a former Company Secretary of the Appellant was the Appellant's first witness (SP1). The Respondent was represented by Encik MBHI, peguam kanan persekutuan, Jabatan Hasil Dalam Negeri.

4. The following documents were tendered during the meetings:

(i) Statement of Agreed Facts - marked A

(ii) Agreed Bundle of Documents - marked B

(iii) Non-Agreed Bundle of Documents - marked C

(iv) Appellant's Written Submission - marked D

(v) Respondent's Written Submission - marked E

(vi) Respondent's List of Authorities - marked F

(vii) Minutes of Board of Directors' Meeting - marked R1

(viii) Income Tax Form C:

(a) Year of Assessment 1968 - marked R2(A)

(b) Year of Assessment 1969 - marked R2(B)

(c) Year of Assessment 1970 - marked R2(C)

(d) Year of Assessment 1971 - marked R2(D)

(e) Year of Assessment 1972 - marked R2(E)

(f) Year of Assessment 1973 - marked R2(F)

(g) Year of Assessment 1974 - marked R2(G)

(h) Year of Assessment 1975 - marked R2(H)

(i) Year of Assessment 1976 - marked R2(I)

(ix) Appellant's letter to the Respondent dated 21.11.1981 - marked R3

(x) Appellant's letter to the Respondent dated 23.6.1982 - marked P4

(xi) Calculation of Profit on disposal of the subject land - marked P5

5. Facts of the case
The facts of the case are as stated in paragraphs 3 and 4 of the Grounds Of Decision.

6. Contentions of the parties
The Appellant contended that the profit from the disposal of the subject land was not assessable to income tax being proceeds of the disposal of his capital asset. The Respondent contended that the profit was business or trading profit and was therefore assessable to income tax under section 4(a) of the Income Tax Act 1967.

7. We gave our decision in a Deciding Order dated 22nd. March, 1994 a copy of which is attached hereto and marked "BAM", holding that the profit from the disposal of the subject land was a trading profit and should be assessable to income tax.

8. The Appellant by a notice dated 4th April, 1994 filed an appeal on a point of law and requested a case to be stated for the opinion of the High Court.

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

GROUNDS OF DECISION

1. This is an appeal by KLE Sdn Bhd (the Appellant) against the imposition of income tax for the Year of Assessment 1973 by the Director General of Inland Revenue (the Respondent) on the profits from the disposal of part of a piece of land known as/or held under Lot A and comprised in Q.T(R) No. 4291 Town of Tampoi, Mukim of Tebrau, Johor, the subject land.

2. THE ISSUE
The question for the determination by the Special Commissioners is whether the profit from the disposal of the subject land was an investment profit and therefore was not assessable to income tax, or it was a business or trading profit and consequently was assessable to income tax under section 4(a) of the Income Tax Act 1967.

3. THE FACTS
The facts as in the Statement of Agreed Facts (marked A) and as in the Agreed Bundle of Documents (marked B) are as follows:-

(i) KLE Limited, the Appellant was incorporated on the 27th day of August 1964 and having an authorised capital of $25,000,000.00.

(ii) The Appellant's Memorandum of Association provided the objects for which the Appellant Company was established.

(iii) In November 1967, the Appellant Company acquired a piece of land at Tampoi in the Mukim of Tebrau, Johore being part of Lot A and comprised in Q.T. (R) No.1, containing an area of 189 acres 1 Rood 20 poles at the price of $5,500,000.

(iv) The purchase of the land was financed by way of issued share capital of $5.5m.

(v) The land was situated near the Hospital.

(vi) By a Director's resolution dated the 20th day of December 1967 it was resolved that the above said acquisition be ratified and confirmed.

(vii) On 16th November 1972, the Appellant Company sold the said property to RSHKI Limited at the price of $8,000,000.00 (Malaysian Ringgit Eight Million Only) and made a profit of $2,389,957.00.

(viii) By a Company's resolution dated 16th day of November 1972, it was resolved that the above sale be approved.

(ix) By Income Tax Form J (4) dated 27.3.1982 the profit was assessed to Income Tax Act 1967 and a tax in the sum of $1,373,149.05 was imposed.

(x) The Appellant contended that the profit was not subject to income tax liability and by a Form Q dated 28.5.1982 the Appellant appealed against the assessment.

4. THE ADDITIONAL FACTS FOUND:
We have also found the following additional facts during the hearings:

(i) The New Management took over the Appellant Company on 22.ll.1967.

(ii) Mr. LHK (SP1) was the Appellant Company's Secretary from 29.10.1969 until 16.5.1985 when the Appellant appointed a liquidator.

(iii) The Company Secretary's responsibilities included corresponding with the Registrar of Companies, preparing Minutes of Meetings, preparing Accounts, drafting Resolutions, filing Returns and dealing with Income Tax correspondence.

(iv) The Secretary only attended the Appellant Company's Board meetings on invitation.

(v) Every dealing with the Income Tax Department was done by the Secretary.

(vi) The Appellant's Memorandum and Articles of Association had not changed despite the change of Management; and

(vii) A sum of $28,813/- i.e. about 0.52% of the total purchase price of the subject land was spent on earthworks "to make good erosion caused by rain water" on the subject land.

5. THE APPELLANT'S CONTENTION:

The Appellant submitted a written submission marked 'D' and briefly the Appellant argued that the said profit was an investment profit and therefore was not assessable to income tax because :-

(1) The Appellant was an investment-holding company.

(2) The subject land was not bought with the intention to trade. This is evidenced by -

(a) the way the Appellant treated the subject land in the Accounts i.e. it was always treated as a fixed asset;

(b) that the subject land was unsuitable for development into a housing estate because:

(i) it was located near the Hospital;

(ii) it was quite a distance from the nearest village of Tampoi; and

iii) it was situated behind the GMA Plant.

(c) the subsequent activities of the Appellant did not correspond with that of a company whose intention was to carry on the business of a housing developer.

(3) The Appellant had the ability to hold on the subject land as an investment asset rather than trading asset because its acquisition was financed by way of issued capital which does not involve repayment of the loan and interest.

(4) The Appellant's Memorandum of Association did not permit it to traffic in land or deal in land or to carry on the business of a housing developer. And even if some of its objects could be construed as permitting it to trade, the Appellant had not undertaken any action which a trader would ordinarily undertake in the normal course of business.

(5) Up to 1972 the sale of the subject land was the Appellant's only one and isolated transaction. Whereas a trade would usually consist of a series of transactions implying continuity and repetition of acts of buying and selling or manufacturing and selling. (see Erichson v. Last 4 T.C. 422 @ 427; E. v. DGIR (1970) 2 MLJ 117 @ 122; D.E.F. v. C.I.T.(1961) MLJ 55 @ 61).

(6) The Appellant did not do anything to improve or develop the subject land apart from spending a sum of only $28,813/= which was only 0.52% of the purchase price "to make good erosion caused by rain water". Nor was action taken to convert its use from agriculture to housing or to subdivide it or to advertise for its sale.

(7) The Appellant did not have a proper business office or an organisation to undertake the responsibilities of a housing developer nor did it employ any staff skilled in the development and construction of properties. In fact none of the Directors or the shareholders at the time of the acquisition of the subject land was skilled or involved in the business of housing or land development.

(8) The subject land was held for about five years before disposal. A land-dealing company would normally dispose it of within a much shorter period. Accretion in value through the passage of time is holding gain and is capital in nature.

(9) Since the profits from the disposal of the Appellant's other lands in 1985 were treated by the Respondent as capital gains, the profits from the disposal of the subject land by the Appellant some 12 years earlier should be viewed in the same vein.

(10) The letter written by the Company's Secretary (SP1) dated 29.1.1981 (R3) to the Respondent stating that the intention of the Appellant in acquiring the subject land was to develop it into a housing estate "was wrong and was mistakenly made" and this had been rectified subsequently by one of the Directors, one Mrs. B.L.T in her letter to the Respondent dated 5/1/1983 (pp.15 - 21C).

6. THE RESPONDENT'S CONTENTION

The Respondent also submitted a written submission marked 'E' and briefly the Respondent contended that:-

(1) The Appellant was both an investment-holding company and a company trading in land as reflected in the two dominant objects, 3(3) and 3(5) of the Appellant's Memorandum of Association which are:

3(3)"to acquire by purchase, lease, exchange, hire, or otherwise by way of investment or with a view to resale or otherwise any lands and hereditaments of any tenure....."

3(5)"To develop and turn into account any land acquired by or in which the Company is interested, and in particular b laying out and preparing the same for building purposes, constructing, altering....."

However, the latter activity projected itself in this appeal . This is evidencedby:-

(a) the Appellant's declared in-

tention as found in the Appellant's letter to the Respondent dated 29/1/1981 (R3) in reply to the latter's query, which stated that the subject land was acquired with intention to develop it into a housing estate, and the fact that that intention had not changed even after the take-over of the Company by the New Mangement on 29.11.1967;

(b) Appellant's consistent declaration in the Income Tax Returns, Forms C for the Years of Assessment 1968-1976 (prepared on the advice of a tax agent) which stated that the nature of the Appellant's business was "construction" (R2A-R2I).

(2) The manner the subject land was treated in the Statement of Accounts i.e. as a fixed asset, does not necessarily indicate the true nature of the transaction. It must be weighed against other evidence. See Shadford v. H. Fairweather & Co. Ltd. (1966) 43 T.C. 291.

(3) Land, though a neutral factor, could also be a subject of speculation especially if it is situated near a town, or development area and in this case the subject land is near Johor Bahru Town and Tampoi. That it was sold to a development company is ample proof that it was suitable and ripe for development and the Appellant must have acquired it for that purpose.

(4) The fact that the acquisition of two pieces of land in Kuala Lumpur was made soon after the disposal of the subject land, and also with the intention to develop them (R3) proves that the Appellant was engaged in land speculation and treated its lands as stock-in-trade because subsequent transactions could throw light on the nature of the previous transactions. See Leach v. Pogson (H.M. Inspector of Taxes) (1962) 40 T.C. 585.

(5) The concept of investment generally would imply returns such as from rentals, royalties, dividends, interests etc. No prudent investment company would let a large piece of land with such a big capital laid out on it like the subject land, remain idle and dormant for five years if the intention of acquiring it is to invest. In this case the subject land was not utilised to generate income during the period of its ownership by the Appellant nor was it utilised for personal use or personal enjoyment. This would suggest that the Appellant was waiting for the right moment to dispose it of for profits and such transaction is very much in the nature of trade.

(6) Although the disposal of the subject land was the Appellant's only transaction in land up to 1972, the fact that the land was greatly in excess of the Appellant's need and that it did not yield personal enjoyment to the Appellant during the period of ownership, it could be construed to be in the nature of trade. See Commissioners of Inland Revenue v. Fraser (1942) 24 T.C. 498.

(7) The length of the period of ownership is not a complete acid test that the property owned is an investment. It must also be weighed against other evidence. In this case it was relatively a short period - the subject land was acquired, held idle for five years and then disposed of. This act was more in step with actions usually taken in the nature of trade than actions taken in the nature of capital investment.

(8) The letter indicating that it was the Appellant's intention to develop the subject land into a housing estate written by the Appellant Company's Secretary (SP1) dated 29.1.1981 (R3) on behalf of the Appellant, was written honestly and was not a mistake. On the other hand, the letter of revocation of this intent dated 5.1.1983 written by one of the Directors of the Appellant Company (pp.15 - 21C) was an afterthought.

(9) The Appellant had consistently declared in the Income Tax Returns, Forms C for the Years of Assessment 1968 to 1976 that the nature of his business was "construction" (R2A - R2I); and if he maintains that the gains from that vocation are not profits from a trade but profits from an investment then the onus is on him to discharge. In this case he has not done so.

Therefore the Respondent submitted that the profit from the disposal of the subject land was a profit from a transaction in the nature of trade and consequently was assessable to income tax.

7. THE DECISION

(1) What was the intention of the Appellant when it was incorporated on 27.8.1964? The answer is of course in the Objects for which it was established. Amongst the objects as set forth in its Memorandum of Association (pp.3-7B, the underlinings are ours), are as follows:-

"3(3)To acquire by purchase, lease, exchange, hire or otherwise by way of investment or with a view to resale or otherwise any lands and hereditaments of any tenure, or any other property whether movable or immovable or any interest in the same or in any mortgage, shares and securities.

(4)To sell, lease, let, mortgage or otherwise dispose of the lands, houses, buildings, hereditaments and other property of the Company.

(5)To develop and turn to account any land acquired by or in which the Company is interested, and in particular by laying out and preparing the same for building purposes, construction, altering, pulling down, decorating, maintaining, furnishing, fitting up, and

improving buildings, and by planting, paving, draining, farming, cultivating, letting on building lease, or building agreement, and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants and others.

(7)To carry on all or any of the following businesses, namely builders and contractors, decorators, merchants, and dealers in stones, sand, lime, bricks, timber, hardware, and other building requisites, brick and tile and terra cotta makers, jobmasters, carriers, licensed victuallers, and house agents.

(12)To carry on any other business whether similar to the foregoing or not which may seem to the Company capable of being conveniently carried on in connection with any of the objects of the Company or calculated directly or indirectly to enhance the value of or render profitable any of the Company's property or rights.

(25)To sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company."

From the above, it is crystal clear that the objects of the Appellant were very wide and were not restrictive. They included the power to acquire lands and hold them as investments, and also the power to carry on the business of a property dealing company i.e. among others, dealing in lands by purchasing and then developing or reselling them with a view to making profit. In other words the Appellant had the intention to invest and also to trade and therefore could be both an investment-holding as well as a trading company.

It is relevant to note that these objects did not change despite the change in the management of the Appellant company on 22.11.1967.

(2) Next point to consider is: Was the disposal of the subject land an act in pursuance of the intention to invest or was it an act in pursuance of the intention to carry out a trading activity? This question naturely must centre around the totality of the circumstances surrounding its acquisition and disposal.

(3) In the oft-quoted cases of Leeming v. Jones, 15 T.C. 333, E. v. Comptroller of Inland Revenue (1970) 2 MLJ 117 and N.Y.F Realty Sdn. Bhd. v. DGIR (1974)1 MLJ 182, a number of guidelines or tests had been laid down by the courts in England and in Malaysia to distinguish gains from the disposals of investments and gains from trades, adventures or concerns in the nature of trade. The following are the most common of those tests, and they touch on specific aspects of the property disposed of and on the circumstances surrounding the acquisition and the disposal of the property. Nevertheless it must be borne in mind that each and all of these tests must also be weighed against the other available evidence.

(i) Subject Matter of The Disposal
The first test states: "Property which does not yield income or personal enjoyment to its owner by virtue of its ownership, and that which is normally the subject of investments, is more likely to have been acquired for the purpose of resale at a profit than property which does yield such income or enjoyment."

In this appeal the subject matter of the disposal was land which by itself was neutral factor. It could be the subject of investment or the subject of trading depending on what the owner intended to do with it and what he actually did with it.

The subject land was acquired in 1967 and after having been held for about five years, it was disposed of in 1972. Its area was slightly more than 189 acres, a considerably big size which if held as an investment should have yielded substantial benefit to the owner during that period of ownership. But the evidence before us does not reveal that it had yielded any income, let alone substantial income nor did it give any personal enjoyment to the owner. Therefore, the subject land must have been acquired with the intention to profitable development or resale i.e. to trade. This in fact was confirmed by the letter written by the Appellant Company's Secretary himself (SP1) dated 29.1.1981 (R3) to the Respondent in reply to the latter's query dated 1.12.1980. The said letter stated among other things, that the Appellant Company had acquired the subject land ".....at the price of $5,500.00/= with intention to develop the said land into a housing estate."

(ii) Period of Ownership
The second test says: "The fact that a property is held for a short period after its acquisition may tend to indicate that the sole purpose of acquisition is resale at a profit. On the other hand if it is held for a longer period after acquisition it indicates investment."

In this case before us the subject land was disposed of about five years after its acquisition by the Appellant. However, the terms "short period" and "long period" are not defined or specified. The period is relative. A person holds a property for various reasons some of which are:-

(a) personal enjoyment;

(b) investment;

(c) development; and

(e) speculation.

The Appellant argued that the subject land (the property) was held as an investment and had never been developed - it was acquired as a piece of agricultural land and had remained so until its disposal.

In reply the Respondent argued

that land especially if it is situated near a town, could also be a subject of speculation and in this case the subject land was situated near a built up or developed area with a hospital and a motor factory close by and was in close proximity to Johor Bahru Town, and was held for a relatively short period, if at all it is an investment, for only five years.

The evidence before us does not show that the subject land did give any personal enjoyment to the owner nor was it used as a subject of investment in the sense that the Appellant had intended to hold it more permanently and derive income from it despite having expended a huge sum of money in aquiring it. In fact it was not utilised at all - it was not developed but was held idle for the whole period of its ownership by the Appellant. *What was it* for then if it was not for speculation which was indeed an element in the nature of trade! Thus the length of the period of ownership, here five years, becomes relatively less significant!

(iii) Frequency of Transactions

The third test states, "If there had been a number of transactions in the same kind of property it may be presumed that the taxpayer's purpose of purchasing that particular property was its resale at a profit."

On this aspect the Appellant argued that up to 1972 the disposal of the subject land was the Appellant's one and only one transaction in land, and therefore that isolated transaction could not and should not be regarded as trading.

The Respondent on the other hand, argued that even though it was an isolated transaction that could not refute that the subject land was meant for trading because:-

(a) the Appellant's objects included trading (pp3 - 7B);

(b) the Appellant had intended to develop the subject land into a housing estate (R3),

(c) the size of the subject land was far in excess of the Appellant's need,

(d) the subject land did not give any personal enjoyment to the owner nor did it yield any income (for the whole period of its ownership i.e. 5 years) as an investment normally would especially so with a $5 million expended; and

(e) the subject land was not utilised at all during the period of its ownership by the Appellant.

For these reasons the Respondent concluded that the subject land could not have been acquired for any purpose other than for speculation and trading.

We are of the view that although the transaction by the Appellant was a single and isolated one, it was very similar to the purchase of 1,000,000 toilet rolls in Rutledge v. C.I.R. 14 T.C. 490, a single acquisition of copper-bearing land in California Copper Syndicate v. Haris, a purchase of a complete cotton-spinning plant in Edwards v. Bairstow and Harrison 36 T.C. 207 and the sale of an estate by trustees in Balgownie Land Trust Ltd. v. C.I.R. 14 T.C. 684.

It appears to us that the facts of this case before us fit in very well with the opinion of Viscount Dilhorne in International Investment Ltd. v. Comptroller General of Inland Revenue 1 MLJ (1979) pp.4 - 6 which says: "a company whose business is or includes trading prima facie begins to trade as soon as it embarks upon the first transaction of a trading nature. The transaction in this case could therefore constitute trading even if it was isolated."

(iv) Alteration to Property to Make it More Saleable

This test says: "The fact that material alterations or improvements have been made to the property or that its character or quality has been changed so as to render it more marketable would tend to indicate that the property was derived for a profit-making-undertaking or scheme. However, if the property was clearly acquired for other purposes, extensive activities to render it more saleable after it is no longer useful for such original purposes would not cause any selling profit to be taxable."

The Appellant argued that nothing was done to improve or develop the subject land or to keep it in good tenantable condition apart from the earthworks involving a sum of $28,813/= which was only 0.52% of the acquisition price ".....to make good erosion caused by rain water." Nor was there any action taken to convert its use from agricultural to housing.

While it is true that the amount spent on earthworks was very small in relation to the acquisition price it cannot be denied that the earthworks had enhanced its saleability or had made it a little more attractive and therefore more marketable to the would be purchaser. And the fact that only a small 'repair' had to be done to the land of that size shows that the subject land as a whole was good land. That the subject land could fetch a very good price on disposal despite the fact that there had been very little alteration or improvement made to it is self-evident that the land was inherently valuable -valuable for development and for resale. The substantial difference obtained between the disposal price and its acquisition price is proof of this! There was therefore no further effort necessary to change its character or quality, in order to make it

more saleable.

(v) Methods Employed in Disposing of Property
According to this test: "If special exertion is made to find or attract purchasers such as the opening up of an office or advertising extensively, such facts will indicate the presence of a profit-making undertaking. However, such facts would not of themselves cause the profit to be taxable if the original purpose in acquiring the property was to use it rather than to sell it at a profit."

The Appellant stated that the Appellant Company did not have a proper business office or an organization to undertake the responsibilities of a housing developer and it did not employ any staff skilled in the development and construction of properties. In fact none of the directors and share holders at the time when the land was purchased was skilled or involved in the business of housing or land development. Further, the Appellant added that there was no effort made to advertise the sale of the subject land.

Whilst the Appellant's contention may hold some truth but the fact that the subject land managed to fetch a handsome disposal price of $8 million, an increase of RM2.5 million (about 41.8%) over its acquisition price after a period of five years confirms what has already been said above, i.e. the subject land must have had good commercial potential.

Equally true is the fact that the original purpose of the Appellant in acquiring the subject land was not to use it because the evidence before us shows that it was never used at all during the entire period of its ownership by the Appellant. What does the whole transaction indicate other than the presence of a profit-making undertaking in the form of speculation which is in the nature of trade!

The subject land's commercial potential together with its good location, being near developed areas, - a government hospital, Johor Bahru Town Centre, and a motor assembly plant, was a very good ready-made advertisement in itself. Therefore, there was no necessity to have a specialised organization with skilled staff, and there was no further exertion needed to promote its resale. Further exertion, to our mind, would be otiose.

(vi) Circumstances Responsible for Sale
The sixth test says: "If sale of property is occassioned by sudden emergency or unanticipated needs for funds, such facts will tend to indicate that the property was not acquired for the purpose of resale at a profit and that the sale was not pursuant to a profit-making undertaking."

In this case was the Appellant confronted with an unexpected need for funds? The evidence before us does not indicate this at all. On the contrary, the Appellant's Income Tax Form J (4) for the Year of Assessment 1973 (p30B) shows that the Appellant had a chargeable income of $744,171/= in the year the subject land was disposed of, apart from the profits arising from that disposal.

Therefore the irresistable inference is the Appellant was not in dire need of money at the material time, and the subject land must have been acquired by the Appellant for the purpose of resale at a profit and that its disposal (resale) was carried out pursuant to that purpose.

During the period of its ownership by the Appellant, apart from the "small earth works" nothing was done to, or was done with the subject land, contrary to what should normally have been the case in the ordinary course of a company's business if the land was intended to be held for investment. In fact it was not utilised at all. It was acquired and was held idle for five years without yielding any personal enjoyment to the owner nor any returns despite its enormous size, which was very much in excess of the owner's need, and despite the big sum of money laid out upon it. And when it was disposed of there was no evidence to suggest that its disposal was prompted by an urgent need for money!

(4) Be that as they may these tests need to be weighed against other available evidence. They are:-

(i) Accounting Methdology
The Appellant submitted that the way his yearly Accounts were kept corroborated his assertion that the land was for investment purposes, that is, it was listed as "fixed assets". In answering this it is pertinent to quote Buckley J. in Shadford (H.M. Inspector of Taxes) v. H. Fairweather & Co. Ltd. (1966) 43. T.C.299 where he said:

".....For, however genuinely the accounts may have been framed by those responsible for them, and however carefully they may have been studied by those responsible for auditing them, the other evidence may show that in fact they do not truly indicate the nature of the relevant operations."

(ii) Admission by P.P.
The Appellant contended that the nature of its activity was as an investment company but this is belied by:

(a) the Appellant's consistent declaration in the Income Tax Form "C" for the Years of Assessment 1968 - 1976 covering the whole period of its ownership i.e. 1967 - 1972

(R2A-R2I) that the nature of the Appellant's business was "construction". The declaration manifestly revealed the intention to do business and that the Appellant had been doing just that.

(b) the letter by the Appellant Company's Secretary (SP1) to the Respondent which stated that the intention of acquiring the subject land was to develop it into a housing estate. Although this admission was denied subsequently by a member of the Board of Directors, one Mrs. B.L. T, it should be noted that the letter by SP1, the Company's Secretary, was written long before the imposition of the tax and the letter written by Mrs. B.L.Then was written about fourteen months after the imposition of the tax. And considering the fact that a company secretary normally works under the directions set by the Company's Board of Directors and that in this case attending to dealings with the Department of Inland Revenue was one of the Company Secretary's responsiblities and that at the time of writing R3, SP1 had already been the Appellant Company's Secretary for more than twelve years, we are of the view that R3 had been written honestly, to depict the true intention of the Appellant in acquiring the subject land then. In fact SP1 himself agreed in his evidence given before this Court on 12.10.1992 that the statement in paragraph 2 on page 16C, in the letter written by Mrs. B.L.T, was an afterthought and a reconsideration.

(iii) The Formation of a Company:
It must also be remembered that the Appellant is a company and not an individual. In this connection it is well to quote Raja Azlan Shah F.J. (as he then was) in International Investment Ltd. v. Comptroller General of Inland Revenue, 1975, 1 MLJ 212:

"....As a general rule, the mere setting up of a company points to its business intention because of its implied continuity. That would be a strong presumption that it intends to do business ....."

Here the company was formed in 1964 with the avowed objects both to trade and to invest. Then in 1967 there was a change at the helm with a complete change of directors but unfortunately the objects remained the same. If it was the intention or the dominant intention to invest one would expect a resolution to that effect would be adopted. However this was not done but the objects set by the predecessor continued unchanged.

In our case here the dominant intention to do business i.e to trade seemed to prevail and permeate throughout the 5 years the subject land was held on to, and it was carried out to fruition in the form of the acquisition and the disposal of the subject land.

(5) Onus
Lastly we like to touch on whom lies the onus to prove his case. Paragraph 13 of Schedule 5 states:

'The onus of proving that an assessment against which an appeal is made is excessive or erroneous shall be on the appellant".

The onus to dispel that the Appellant was not trading or carrying out an adventure in the nature of trade has not shown to be discharged. On the contrary, after having carefully considered all the evidence before us, the objects of the Appellant Company, the nature of the subject land and the circumstances surrounding its acquisition and its disposal by the Appellant and applying all the above tests we could not but conclude and determine that the subject land was not acquired either for personal enjoyment or investment but in an activity done in pursuance of the intention to trade and was indeed an adventure in the nature of trade, and therefore the profit obtained therefrom was trading profit and should be assessable to income tax under Section 4(a) of the Act.

8. DECIDING ORDER
We hereby confirm the Notice of Assessment for the Year of Assessment 1973, Income Tax Form J (4) dated 27.3.1982 and dismiss the appeal.

(ABA)
Pengerusi
Pesuruhjaya Khas Cukai Pendapatan

(DHMGHMH)
Pesuruhjaya Khas Cukai Pendapatan

(HIBHN)
Pesuruhjaya Khas Cukai Pendapatan

PERINTAH KEPUTUSAN

MALAYSIA
PESURUHJAYA KHAS CUKAI PENDAPATAN
RAYUAN NO. P.K.R. 423
DI ANTARA

KLE SDN. BHD.... PIHAK PERAYU

DAN

KPJHDN .. PIHAK RESPONDEN

PERINTAH KEPUTUSAN
RAYUAN INI yang telah dibicarakan pada 12.10.1992 dan 18.5.1993 di Kuala Lumpur dengan kehadiran Encik LHB, peguambela dan peguamcara bagi pihak Pihak Perayu dan Encik MBHI, peguam kanan persekutuan bagi pihak KPJHDN, Pihak Responden, dan

SETELAH MENDENGAR KEDUA-DUA PIHAK ADALAH DIPUTUSKAN BAHAWA

(1) Keuntungan daripada pelupusan sebahagian daripada Lot a Q.T.(R) No. 1, Tampoi, Mukim Tebrau,

Johor itu adalah keuntungan dari perlakuan dalam aktiviti perniagaan dan dengan yang demikian hendaklah dikenakan cukai di bawah Seksyen 4(a) Akta Cukai Pendapatan 1967.

DAN DENGAN INI ADALAH DIPERINTAHKAN BAHAWA

(1) Notis Taksiran bertarikh 27.3.1982 bagi Tahun Taksiran 1973 itu disahkan; dan

(2) Rayuan ini ditolak.

Bertarikh di Kuala Lumpur pada 22 Mac 1994.

(ABA)
Pengerusi
Pesuruhjaya Khas Cukai Pendapatan

(DHMGHMH)
Pesuruhjaya Khas Cukai Pendapatan

(HIBHN)
Pesuruhjaya Khas Cukai Pendapatan

N O T I C E

TO ALL MEMBERS

We wish to apologise for the delay in the Membership Directory. This is due to the fact that much of the data needs to be updated. We hope that you will assist us in our process to update the membership data by completing the form below and returning it by **15 August 1994**. Also, in view of this delay, we have reproduced a list of members in the Tax Nasional.

Name (Membership No.) : _____

Mailing Address : _____

Tel. No. (Residence) : _____

I.C. No. : _____

Firm Address : _____

Designation : _____

Tel No. (Office) : _____

Fax No. : _____

1. Tax Agent Licence Number and Date when licence first issued : _____

2. Audit Licence Number and Date when licence first issued : _____

3. Advanced course examination and Date when certificate issued : _____

Sample of the Membership Directory;

Name	**Class /M. No.**	**Practising As**
Abdul Salim bin Ghazali 8, JalanSeri Bunga Taman Bunga 58800 Johor Bahru Johor	A 3524	Partner XYZ Tax Services Sdn Bhd No. 2, Jalan Mawar 58800 Joohor Bahru Johor

I.C No. : 2999341

Tel. No. : 3388554

A 1438 /7/90 (J)

Cont. from page 12

We urge the Ministry to consider the matters with the office of the Lord President of the Supreme Court and the Attorney-General. A solution is to allow taxpayers to file a Notice of Appeal directly to the Special Commissioners without having to send it through the Inland Revenue Department which is the party against whose decision the taxpayer is appealing.

Recent Tax Cases

1. TCY v The Government of Malaysia & Ors
2. Government of Malaysia v Datuk HKMM & Ors
3. SC Bank (Nominees to LTS) v DGIR
4. KSBSB v Pemungut Hasil Tanah P.D.
5. GBH v KPJHDN

Membership Status of MIT as at May 13, 1994

Honorary Fellows	4
Fellows (Founder Council Members)	15
Associate Members*	669
	684

* **Associate Members**

Public Accountants of MIA	426
Registered Accountants of MIA	56
Licensed Accountants of MIA	15
Advanced Course Exam of IRD	70
Advocates & Solicitors	5
Approved Tax Agents	96
Others	1
	669

MIT MEMBERS AS AT JUNE 1994.

Malaysian Institute Of Taxation

Honorary Fellows

Tan Sri M S Sundaram
Eu Boon Hor
YM Raja Datuk Seri Abdul Aziz bin Raja Salim
Tan Sri Lim Leong Seng

NAME	MEMBERSHIP NO.
JOHOR	
BALBIR SINGH @ DERBAL SINGH A/L BABU SINGH	568
CHAN AH HING @ CHAN ENG CHAW	157
CHIA CHIN SENG	88
CHIN TIAM YU	46
CHONG CHAI PIN	606
CHONG YUE CHOY	657
CHOONG SAU PING	379
CHUA SEW CHU	318
CHUA TECK HWEE	577
CHUNG WEE KONG	598
CLOTILDE DAVIDINE D'CRUZ A/P BRUNEL D' CRUZ	74
DENNIS LEONG TENG HOO	395
EDWARD ROBERT SUNDARARAJ A/L E V JOSEPH	246
GOH WAN SENG	60
GOW KOW	614
HAN JIK KUANG	573
HENG JEE SUAN	655
HENG SOOK CHOO	535
HUANG YAN TEO	310
HUNG BENG GUAN	289
JAMBULINGAM SETHURAMAN RAKI	329
KANG TAI PENG	509
KOH SAI TIAN	278
KUAN WEI HENG @ KWONG WEE HON	367
KUMARASAMY S/O NADARAJAH	54
KUNATHASAN CHELLIAH	34
LAU CHIN PARK	82
LEE AH CHOON @ LEE HONG CHOON	368
LEE BOON KENG	672
LEE KEH THIAM	109
LEE MOI MOI	303
LIANG MUI YIN	389
LIANG TEH HAI	560
LIEW JUI HEE	104
LIEW KA KIANG	526
LIM KAI SIANG	100
LIM MENG SEE	663
LIM SWEE CHONG	561
LIM TENG JEN	523
LIM THIAN POO @ HO THIAM POO	453
LOH KUN YING	321
LOO LEAN YEONG	635
NG CHAT CHOON @ NG CHET CHIANG	489
ONG CHEE YOW	587
OOI BOON BENG	524
PHUNG GIM LOK	547
PUN KHENG HOCK	97
SEAH CHEOH WAH (C)	39
TENG DAN ROO	595
TENG ENG KEY	365
VIVAMOORTHY A/L SHANMUGAM	438

NAME	MEMBERSHIP NO.
SOO HOO KOK WEE	458
TAN CHEE HUAT	304
TAN HUAI LEONG	401
TAN KHAI BON @ TAN KHAI BOON	647
TAN PENG CHAY	93
TANG SIM CHEOW	530
TAY YOK SUAN @ TAY YOKE SOON	99
TEE BOON HIN	295
TEO CHENG HUA	87
THERESA NGU MEE HUNG	402
V.VENKATACHALAM A/L M.V.VENKATACHALAM	44
VALLATHARASU S/O A S GANAPATHI	150
YAI YEN HON @ CHUA YEN HON	59
YEN HENG YIAP	506
YEO ENG THONG	241
YEOH BENG SANG	461
KEDAH	
CHENG BAK CHOOI	528
JEYAPALAN A/L KASIPILLAI	144
OOI SOO KOK	223
POR LEE TEE	256
TAN GAIK YEAH	536
TANG ENG KIANG	466
TSEN KENG YAM, ADRIAN	185
KELANTAN	
HASSAN BIN HJ TAIB	175
KOK FONG MENG	182
LAU KENG CHIAN	497
LEE KIN HUA	483
LOO KOK THAI	543
WEE KHEY LIAM	201
MELAKA	
AH KOW @ CHOO AH KOW	596
CHAN BOON HOCK	570
KHOR KAY CHAM @ KOH KAY CHAM	51
KOH FOO GHE	575
LIM AIK @ LIM YEOK	294
LIM HER LENG	262
LIM PEY LIN	656
LIM WUAY CHERN	325
MOHD KHALID BIN IDRIS	317
TAN CHIEW HEE	117
TAN SEK HWEE	220
TEY KIM HIAN @ TEY TEI KOH	40
VIKNESVARAN S/O ARUMUGAM	502
YEO OOI LENG	572
NEGERI SEMBILAN	
LEE SOO HONG @ LEE SOO PIN	508
LEW POW ONN	621
LOW HOI HIONG	540
CHINNADURAI A/L N. MUTHURAMAN CHETTIAR	291
SIT KAM HOCK	138
TAN BOON SWEE @ DANNIE TAN	154
PAHANG	
AHMAD JANA BIN ABDULLAH	490

NAME	MEMBERSHIP NO.
CHANG HONG SEONG	682
FOO BOON FONG	146
JOSEPH FOO TUI LEE	445
TAN TIONG HWEE	95
WONG SENG CHONG	188
YAU HUN LING	211
YEO CHEE LIANG	33
PENANG	
ALAN RAJENDRAM S/O JEYA RAJENDRAM	668
CHAN THENG SUNG	468
CHEW HOCK LIN	255
CHEW SOON HOE	446
CHONG TON NEN, PETER	126
CHOONG LAI HENG	242
GEOFFREY JAMBU	611
HNG CHAI HENG	67
KAN AH LEK @ KAN KWONG KONG	298
KOAY SENG LEONG	467
LAU KOK CHEW	47
LIM CHENG HONG	465
LIM SIN HIN	224
LOW TENG LUM	305
MARY GERALDINE PHIPPS	98
NG KIM LONG @ NG ABA	358
NG YOKE WING @ NG YOKE WENG	443
ONG EWE KOK	140
ONG SENG HAI	613
ONG THWEE TUAN	307
OOI GHEE TEONG	610
OOI GUAT SEE	215
OOI WAN ENG	377
SALLEHAH BT SALLEH	600
SAMBASIVAM S/O MURUGESU	127
SAW CHIN ENG	297
TAN ENG HWA	381
TAN KEAN WAH	290
TAN KEK WAH @ TAN KHEOK HUA	136
TAN PHAIK GUAN	421
TAN TCHEOW WOEI	383
TEOH KAH WAH	48
TIOH SEOK HING	442
UNG PENG JOO	234
WONG KUAN BENG	398
WONG TET LOOK	356
YEAP GEOK LAKE @ YEAP GEOK LEAK	513
YEOH GUAN	76
YEOH OON LEONG	586
PERAK	
AW KONG NGEK	685
CHAI MENG FATT	75
CHAN LAI YOONG	106
CHAN NGOW	609
CHANDRA KUMAR S/O PONNAMPALAM	462
CHEN KIT LIN @ CHEN KEAT LIM	162
CHING AH SENG	279
CHONG ENG HONG	35
CHOONG YAN TAI	72
DEVADASON S/O ASIRVATHAM	81
DING MING DOK @ TING LING THU	32
DR. PETER RETHINASAMY	632

Malaysian Institute Of Taxation

MIT MEMBERS AS AT JUNE 1994

NAME	MEMBERSHIP NO.
HO CHENG WANG	283
KANG TATT YOW	142
KHONG KAM HOU	441
KONG SAM CHIN	366
LEE HOOI SENG	96
LEE KIM SENG @ LI KEAN LIN	26
LEE SIEW THONG	192
LEE TAT CHEE	391
LEE TEIK SWEE	137
LEE YAT KONG (C)	651
LEONG CHOOI MAY	119
LOH BOON ENG	123
LOW MEE LIONG	326
MAH SIEW SENG	191
MARGARET GOH KIM CHOO	428
N. NARAYANAN S/O KT NARAYANAN CHETTIAR	361
NG KIAN CHONG	184
NG KOON MEE	507
NG POH WAT @ OOI POH WAT	372
PHUAH LAI HOCK	219
SHUM CHEE SHUI @ SAM SEE	101
SINGARAVELU S/O ACHUTHAMPILLAI	435
TAN GEE TOH	380
TAN TEE SENG	61
THERESA WONG LAI HAR	292
TIO JOON GUAN	669
WAN YAT CHENG	264
WONG HON CHOONG	132
WONG HON KAI	210
WONG ONN LAN	420

PERLIS

LEE HOR YIN	615

SABAH

ADAM LEONG BIN ABDULLAH	280
ANITA DHAWAN A/P TILAK RAJ DHAWAN	679
BOBBY TAN KOK LI	636
CHAN CHUN KAIN @ KENNY	664
CHEN FOO SIONG	171
CHIA KON POW	670
CHIA TSE FUNG	503
CHIN KUI MIN	492
CHIN KUI VUN	640
CHIN LOK THART	275
CHOK KON PHIN @ JAMES CHOK	229
CHONG FOOK HIN	491
CHONG KET VUI	135
CHONG KUI PHIN @ PHILIP CHONG	222
CHONG NYET WUI	525
CHONG SHU PHAU	439
CHUA KIAN SINN	128
CHUA SOON LAN	431
EDWARD CHIA KUO KYUN	533
FOO SAN KAN	348
G.B.B.NANDY @ GAANESH	69
GOH CHEE SAN	447
HIEW SEE KEONG	147
HII JOON TECK	414
HO KOON KEAW	413
HO TOH CHEE	548
HO YUN KONG @ HO YUN HEE	107
KAN SIEW CHUN	83
KHOO PUAY CHEW	474
KOH CHIAT HONG	53
KOK CHAN CHUAN	151
KONG FUI KIEN	158
LAI KHENG HEONG	633
LAI VAI MING @ LAI KHENG MING	605
LAU SIE JOOE	628
LAW NGO ENG	427
LEE CHAN VUN @ LEE KON VUN	480
LEE WING CHONG	237
LIAU SIEW KIM	643
LIAW CHEE SHING, JOHN	174
LIEW NYUK KONG	584
LIM KIAT KONG	478
LIM SHAW KEONG @ ALFRED LIM	352
LIM SU	225
LOOI CHEE THONG	495
MICHAEL TONG YIN SHIEW	180
OH EI FUN	571
POON CHIONG PHUI	221
SABIN BIN SAMITAH @ SAPILIN	324
TAN YONG CHANG	84
TEO CHEE SHI	267
VALENTINE JOSEPH FERNANDEZ	567
WAI TEAK CHONG @ NGUI TEAK CHONG	539
WONG KEE YU @ WONG NYUK FOO	666
WONG TSU SHI	133
YONG KET INN	562

SARAWAK

CHAI KHIN CHUK	396
CHAN CHEE CHONG	579
CHAN LIANG SOON	550
CHIA CHU FATT, ANDY	344
CHIENG YEW HEE	603
CHIENG YEW MING	415
CHONG THIAN POH	589
CHRISTOPHER SIM PEAK SOON	85
CHUO DUONG SING	626
DAVID WONG SIEW CHOW	207
DORA SONG HIE HEE	299
GAN EK BOON	578
HII CHING GIU	179
HII DOH MING	588
HO SIEW HUA	249
HU KIE SOON	452
HUANG WUI HING	263
JEFFREY LIM HUP CHOON	434
KIU CHIONG MING	322
KONG PAK NAM	487
LAM KAM WING	89
LAU HIN SIANG	374
LAU HONG THIAM	680
LAU KAH NGIU	254
LAU KIING YIING	357
LAU NGI KIONG	270
LAU SIE HUI	228
LAU WEE HUNG	500
LAU YAW JOO	287
LAW BOON CHAI	233
LEE NYI MIN @ LEE GEE BENG	70
LEE SIK NGEE	91
LIAW THIAN SOONG	159
LIEW JIEW NEANG	677
LIEW TOW CHEN	678
LIEW YU TECK	630
LIM TIN CHIN	393
LIM YU HOCK @ LIM JEW HUCK	406
LING ING HOON @ LING ING HUNG	259
LING LEE CHUONG	189
LING LIONG HUONG	103
LING MING LEH	479
LING TONG UNG	272
LING TUNG MING	351
LOKE YEE SENG @ LOKE YIK KWANG	77
LUCY NGU KEK HIE	499
MICHAEL MANA AK LUBI	653
MICHAEL ONG KEE TUAN	364
NGU KUNG DENG @ NGU KOON TENG	282
NGU LIONG CHUI	208
NGU WOO HIENG	105
NGU YING PING	118
PAW CHIN TIN	403
PETER YAP SENG	247
POLYCARP TEO SEBOM	684
RICHARD KIEW JIAT FONG	152
ROBERT LAU HOI CHEW	409
SIM JIN NGO	350
SIM KUI HOCK @ RICHARD EVEREST SIM	627
SIM SU HUAT	616
SU BUONG KIONG	634
SU YU JIT	665
TAN ENG TONG	177
TAN SIEW BEE	112
TANG MOON HUONG @ LUCY TANG MUNG HUNG	425
TANG TUONG HOCK @ TANG KUOK KIONG	501
TAY CHZE CHENG @ TAY CHZE MANG	313
TEO YONG KWANG @ TEO ENG HAI	405
THOMAS KONG THAU KHIONG	92
TIEW SZE SING	315
TING HUA CHEONG @ TING HWA CHIONG	375
TIONG HUA KUONG	306
TIONG MEE KING	94
TOH YONG LAI	349
TONG HIE TUNG @ TONG HING YUNG	113
WONG CHIE BIN	327
WONG CHING YONG	183
WONG LIENG HIONG	252
WONG LIONG KIAT, JOHN	360
WONG SOON MOI @ WONG SOON MIN	617
YEO ENG SIANG	521
YONG CHUNG SING	476
YU CHEE HUNG	496

SELANGOR

ABDUL HAMID BIN MOHD HASSAN (C)	590
ABU ZAHAROFF BIN ABU BAKAR	511
AHMAD MUSTAPHA GHAZALI (C)	F1
CH'NG KEOK TONG	141
CHAN KEE HWA	353

MIT MEMBERS AS AT JUNE 1994

Malaysian Institute Of Taxation

NAME	MEMBERSHIP NO.
CHAN PIN CHAN	642
CHAN SIN YIK	683
CHAN WAN SIEW	475
CHEAH KIN YIN @ CHEAH KIN YOON	62
CHEAH KWET HIONG	243
CHEAM TAT GEE	644
CHEONG NAM SAN	407
CHERYL CHAN HOH PIK	602
CHIA JIN SIAN	477
CHIN PAK WENG @ YAN CHYE	335
CHONG MEE YOONG	529
CHONG YOKE CHOY	519
CHOONG KWAI FATT	625
CHU AH MENG	612
CHUAH SAI MOOI	236
ENG GING KIAT	235
ENG TEE SING	194
FOO TIANG YOONG	110
GAN CHEONG POON	455
GOH BOON KIAT	392
GONG WOOI TEIK	239
HENG KHIM LIANG @ LARRY HENG	464
HO AH SENG @ HO THAM SENG	168
JAMES LOH CHING YEW	170
KAM YONG KAN	370
KHOO HUAT LEONG	534
KHOO KIM HONG	433
KONG POK SENG	469
KRISNAN @ RAMAKRISHNAN A/L SUBRAMANIAM	681
LAW HOCK HUA	273
LAWRENCE MON FOK SENG	309
LEAN CHEE SENG	510
LEE CHEW YAM	423
LEE GOOD YEW	66
LEE HOCK KHOON	486
LEE LEE KIM (C)	161
LEONG CHEE YIN @ LEONG CHEE YEN	49
LEONG KHAI WAH	274
LEONG PARK YIP	566
LEONG WING THONG	542
LEOW HOE HONG	637
LEW KWONG ANN	481
LIEW HIN CHOY	482
LIM BA @ LIM KIM CHEONG	115
LIM CHIAM KAY	340
LIM HENG HOW	319
LIM KHENG KOOI	248
LIM KIAM TENG	355
LIM SIEW SAN	591
LIM YEW KUAN	204
LIM YU LENG	209
LING ENG CHAN	522
LOH SHAN SHUNG	484
LOK SAM WAH	347
LOO KOW TEE @ LOO SENG ANN	331
LOO LEAN HOCK	576
MABEL WEE SWEE HIN	646
MAH KWONG KEONG	139
MARY LEE SIEW CHENG	202
MOEY CHEE SENG @ MOEY CHEE THIM	17
MOHAMAD RAMLI BIN YAHYA	557
MUHAMAD SAHIR BIN SANAWI	238

NAME	MEMBERSHIP NO.
NG CHEONG CHYE	385
NG CHOON THEONG	163
NG HIAN TION	671
NG KIM LIAN	143
NG OI LENG	334
NG SEING LIONG	167
NG YEW HOON	553
ONG KIM SON @ ONG KIM SOON	354
ONG TENG PING	153
ONG WHEE TIONG	394
OOI CHEE KUN	120
OOI PHAIK SWEE	660
PATRICK TAN KIM LOONG	187
PHOON SOW CHENG	338
PO YIH MING	585
PUAA YOCK BING @ PHUAH HIAN KEE	245
RAFEAH BINTI JAAFAR	648
S GUNASEHARAN S/O P SUBRAMANIAM	594
SENTHEVADIVEL S/O SENTHERATNAM	359
SEOW SWEE PIN	515
SHYU SIAK POH	565
SIVA SUBRAMANIAM A/L A.R.NAIR	387
SKELCHY ANTHONY JOSEPH	240
SU HOW SOON	639
T V SEKHAR S/O T G VENKATESAN	451
TAN AH MOI	200
TAN BUN POO	42
TAN CHOON HWA @ ESTHER TAN CHOON HWA	378
TAN KARK BIN	102
TAN KHENG HONG	114
TAN LAY BENG	597
TAN SWEE GEOK	662
TAN TECK LEONG	217
TANG KOK KEE	532
TANG MENG KEE	122
TAY TEK HIAN	618
TEE CHIN HOCK	631
TEH CHEE MENG	64
TEH KHYE SAN	592
TEH KOK LEONG (P)	F2
TENG WOON SOON	173
TEOH GAIK HONG	641
TEY SAH FAH	156
THARMA ISWARA A/L S SUBRAMANIAM	440
THAYANANDAH A/L SENATHIRAJAH	362
THEAN AH NOOI	416
THIANG KAI GOH	265
TOH HAN SOH @ TOO HAN SOH	404
VEERINDERJEET SINGH	457
VIRUTHASALAM PILLAI AL-MANIAM	432
WONG CHEK CHOONG	485
WONG CHIN AIK	373
WONG CHOK HA	527
WONG JEE MUN	541
WONG KUN WAH	271
WOON YOKE LEE	281
YAP KIM YIN	186
YEOH POH YEW	178
YONG POH CHYE (P)	F16
YONG WENG FAI	629

NAME	MEMBERSHIP NO.
TERENGGANU	
MOHAMED BIN AWANG	258
MOHD ALI JAAFAR BIN MOHAMED	52
QUEK HONG HOON	284
SU LIM	218
TEO AH TONG	551
TOH SENG THONG	216
WEE BING HOK	293
WILAYAH PERSEKUTUAN	
AB. HALIM BIN MOHYIDDIN	90
ABD. RAZAK BIN NAZAH DIN	269
ABDUL HALIM BIN IHSAN	661
ABDUL JABBAR BIN ABDUL MAJID	124
ARULJOTHI A/L KANAGARETNAM	300
ARUMUGAM A/L GURUSAMY	206
ASH'ARI AYUB (P)	F14
ATAREK KAMIL BIN IBRAHIM (C)	411
BALASUBRAMIAM S/O KARUPPIAH	253
BALDEV SINGH A/L GURDIAL SINGH @ NIKAH SINGH	131
BATTCHOO RATILAL A/L RATILAL HIRACHAND	134
BEH LAI HUAT @ BEH LYE HUAT	18
BEH TOK KOAY	429
CHAN ENG MAT	296
CHAN TAK MAN	424
CHAN TUCK LOONG	563
CHAN YOKE YING	214
CHEAH KIEN YUEN	649
CHEN YOW SEONG	472
CHEONG KAM THO	108
CHEONG PANG CHENG	390
CHEONG SHAW GOR	333
CHEONG SIEW KAI	160
CHEONG SIEW KEONG	172
CHEONG THIAM LEONG	363
CHEW WENG KIT	470
CHIA KWAI CHAN	312
CHIA KWONG CHOW	371
CHIANG LI CHIAN	57
CHIANG SZE CHEA	341
CHIEW GUAN BENG	620
CHIN CHEE KEE	346
CHIN CHEW WONG	190
CHIN YOONG KHEONG	31
CHO WAI LOON	650
CHONG FOOK SIN	145
CHONG SWEE LING	654
CHOO KWEE YIN	582
CHOOI TAT CHEW (C)	285
CHOONG KIEN YEONG	342
CHOONG LEE MEI	607
CHOW CHAN KONG @ CHOW CHUN YIN	261
CHOW KEE KAN (C)	F11
CHOW KEE SIEW	286
CHOW KENG HENG	257
CHUA HUNG KEARN	244
CHUAH BEE LOON	73
CHUAH GOAY BENG	558
CHUAH SEONG PHAIK	199
CHUNG KOK PENG	599
DATO' HANIFAH NOORDIN (P)	F5

Malaysian Institute Of Taxation

MIT MEMBERS AS AT JUNE 1994

NAME	MEMBERSHIP NO.
DAVID CHONG ENG TEE	504
DORIS WONG YEET PENG	676
DR ARJUNAN SUBRAMANIAM (P)	F10
FELIX TAN SOO KIM	125
FOONG WENG CHEE	308
FUA KIA PHA	336
GAN KIM GUAN	564
GNANACHANDRAN AYADURAI	384
GOONASEGARAN A/L KUPUSAMY	544
HAMZAH BIN H M SAMAN (C)	F4
HAN SWAN KWONG @ ADRIAN HAN	337
HARPAL SINGH DHILLON (C)	555
HENG THENG SIANG	608
HONG WONG KWEE	418
HUN KIOW	444
JAMALIAH BT SUKAIMI	601
KANG BENG HOE (C)	580
KEE BEE HONG	463
KEW YIK SANG	65
KHOO CHIN GUAN	27
KHOO PEK LING	111
KHOO PENG LAI	121
KHOO SIONG KEE	231
KHOO SOO BENG	488
KHOR SIAM HUAT	193
KIRPAL SINGH	623
KOK HEE YOONG	667
KOK KENG SIONG	20
KOK KHOON TEIK	330
KOOLANTHAVELU A/L MURUGASEN	583
KUI JEE YENG	25
LAI KOK CHEONG	268
LAM CHUNG FATT	301
LEE BENG FYE (P)	F8
LEE HWA BENG (P)	F3
LEE KIM FOON	164
LEE KOK WEI	314
LEE SIEW FATT	538
LENG WA NAM	266
LEONG AH KOW @ LEONG SIEW MUN	79
LEONG CHEE SON	624
LEONG LAI CHOON	419
LEONG SIEW HOONG	339
LEONG YEE CHIEW @ LEONG KOW	50
LEOW CHIN	569
LER CHENG CHYE	260
LIEW YOW KEONG	165
LIM AUN TIAH	559
LIM BOON HIONG	311
LIM CHEE HONG	659
LIM CHIEW	328
LIM ENG SENG	397
LIM HON CHEW	276
LIM JIEW SIEW	376
LIM KAH FAN	345
LIM SIN KIONG	410
LIM TOCK OOI	400
LIM YAM SAN	63
LIONEL KOH KOK PENG	531
LIONG LIAN CHUN	86
LIONG TUCK MENG	226
LOI SHANG DUTT	426
LOO CHOR SIN	675
LOO QUEK SIN	23
LOW CHOI KAM	323
LUM CHEE KEONG	205
LUM TUCK CHEONG	71
MAHINDER SINGH A/L HARBAN SINGH	24
MAK KUM CHOON	37
MANHARLAL BHAICHAND GATHANI JAIN	196
MATHEW KERALAVAKAYIL MATHAI	155
MICHAEL LOH POOH KEE (C)	F13
MOHD NOOR BIN ABU BAKAR	422
MOHD SUHAIMI JAAFAR	388
NAVARATNAM S/O A.PONNIAM	437
NG ENG KIAT	517
NG MAN SING	430
NG MENG KWAI	36
NG SAM KOW	581
NGAN YEENG BEE	166
OMAR ARIF ABDULLAH	212
ONG KONG LAI	21
ONG LAY SEONG	554
PALANI VELOO S/O MURUGIAH	68
PHLIP A/L K.O. KUNJAPPY	181
PUNG KONG SEONG	55
QUAH CHENG CHOON	45
QUAH POH KEAT (C)	28
QUAH SIN HOR	645
RAJA ARSHAD RAJA TUN UDA (P)	F7
RAJA NAZUDDIN BIN RAJA MOHD NORDIN ALHAJ	516
RAMLI BIN IBRAHIM (P)	F9
RANJIT SINGH S/O MAAN SINGH (C)	F15
RAZIMAH BINTI ABDULLAH	493
SATHYA SEELAN CHELLIAH	622
SAW ENG GUAN	369
SAW THIAM SIN	176
SEOW WEE CHONG	29
SHA THIAM FOOK	58
SIEW BOON YEONG	652
SIM HOOK WAN	38
SIM LIAN HING	197
SIVADASAN A/L NARAYANAN NAIR	518
SOH LAI SIM	619
SOMASKANTHAN S/O SEVANTHY NATHAN	382
SOO HUK KHEONG	19
SOON TECK THONG	549
SOONG HOE SENG	277
STEPHEN GEH SIM WHYE	473
SUBRAMANIAM S/O MUTHUSAMY	130
SUBRAMANIAM SANKAR	448
SYED MD AMIN BIN SYED JAN ALJEFFRI (C)	514
TA SAY SENG	556
TAI YOONG NOOR	251
TAM KAM SING	545
TAN AH CHOO	417
TAN AH MOOI	316
TAN CHIN HOCK	148
TAN HOCK KIM	498
TAN KIM LEONG	22
TAN LAY KENG	593
TAN MENG CHUA	436
TAN POH LIAN	494
TAN SUI LIM LEGSY	
TAN TIN	674
TAN WEE KEONG	232
TAN WENG CHUAN	552
TANG CHIN FOOK	332
TANG KHAI KONG	56
TANG SWEE GUAN	288
TEE SIEW KAI	574
TEH AH KIAM @ TEH LEONG CHUAN	250
TEH CHEE GHEE	658
TEH WEE HONG	129
TEOH BENG LEONG	471
TEOH HOCK SENG	302
TEOH KIM HOOI	227
THANNEERMALAI A/L SP. SM SOMASUNDARAM	149
TONG LAI KOK	78
TOR PEN KUAN @ TOH PEN KUAN	537
VIOLET LIM SWEE LAN	450
WANG SHI TSANG	169
WONG CHEW HANN	604
WONG CHONG WAH	460
WONG SAU YEE	386
WONG SON HENG	520
WONG SOON FONG	638
WONG TUCK ONN	449
WONG YENG MUN	198
WONG YIT MEY	454
WONG YOK CHIN	412
YAP AH BAH	230
YAP KOK LEONG @ YIP KOK LEONG	41
YAP PIAN SEEN	673
YAP PING KON	116
YEO ENG SENG	505
YEO MIOW CHENG	408
YEO WEE KIAT	399
YEOH CHONG KEAT	43
YEOH CHONG SWEE (P)	F12
YIP WEE WOON	512
YONG KOK KUANG @ YONG KOK KONG	195
YONG SIEW CHUEN @ YONG SIEU KEN	459
YOON MUN CHIEW	30
YOONG CHAN PONG	546
YUEN KING MUN	80

OVERSEAS

FARIDAH BT AHMAD	456
CHIN SIN BENG	343
LEE FOOK HONG	203
LOOI KENG CHUAN	320
TAN JIN SWEE	212

Note:

C = Council Members
P = Past Council Members
F = Fellow Members

TAX NASIONAL SUBSCRIPTION FORM 1994

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

SUBSCRIPTION RATES		
	RATES	
	PER ISSUE	PER ANNUM
Non MIT member	RM 20.50	RM 62.00
Student	RM 5.50	RM 22.00
Overseas	US$ 11.50	US$ 36.00

The above prices are inclusive of postage.

Please Use Capital Letters

Mr/Mrs/Miss _____ Designation _____

Address _____

_____

_____ Poscode _____

Tel No. _____ Fax No. _____

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

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

TAX NASIONAL ADVERTISEMENT

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

ADVERTISE IN THE TAX NASIONAL!

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

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

For more information,
CALL US TODAY at the MIT secretariat:
Tel. No. 03-2745055 or Fax No. 03-2731016.

1994 ADVERTISEMENT RATES		
	Full Colour	Black & White
DISPLAY ADVERTISEMENT		
Full Page	RM1,500.00	RM1,000.00
Half Page	RM 800.00	RM 600.00
Back Cover	+ 20%	
Inside Front/Back Cover	+ 10%	
Centrespread	+ 20%	
CLASSIFIED		
Full Page		RM400.00
Half Page		RM200.00
Other sizes		RM 4.00 per column cm

Malaysian Institute Of Taxation

HOW TO BECOME A MEMBER OF THE MALAYSIAN INSTITUTE OF TAXATION

Benefits and Privileges of Membership

The Principal benefits to be derived from membership are:

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

Qualification Required For Membership

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

Associate Membership

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

Fellow Membership

1. A Fellow may be elected by the Council provided the applicant has been an Associate Member for not less than five (5) years and in the opinion of the Council he is a fit and proper person to be admitted as a Fellow.
2. Notwithstanding, Article 8(1) of the Articles of Association, the First Council Members shall be deemed to be Fellows of the Institute.

Application of Membership

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

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

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

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

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

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

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