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TAX NASIONAL

OFFICIAL JOURNAL OF THE
MALAYSIAN INSTITUTE OF TAXATION
ISSN 0128-7850 KDN PP 7829/12/96
http://www.jaring.my/yes/mia
QUARTERLY JUNE 1997

Malaysian Institute of Taxation

C O N T E N T S

OFFICE & ADDRESS

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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.

WHETHER UNUSED OBSOLETE STOCK FOR CONSUMABLE STORES AND SPARE PARTS DEDUCTABLE?

RAYUAN NO. PKR 654

ISSUE

The question for our determination was whether the Respondent was correct in not allowing a deduction as expenses under section 33(1)(c) of the Act a sum of "RM96,732.00 written off by the Appellant for unused obsolete stock for consumable stores and spare parts used by the Appellant to maintain and service income producing plant and equipment for timber operations".

FACTS

(a) The Appellant's activities were logging and export of logs, manufacturing and plantation.

(b) The timber logging activity ceased in 1985.

(c) For carrying on the timber logging activity, the Appellant had to maintain a large fleet of heavy mobile equipment, three (3) factories with machineries and quarters for workers at three (3) logging camps. For the camps, the Appellant had to supply free electricity, water, recreational facilities, a clinic with free medical services.

(d) In order to ensure continuous logging activities, the Appellant had to stock spare parts for the machineries and mobile equipment. These spare parts were imported mainly from Canada and the U.S.A.

(e) When spares were purchased, the Appellant debited "Stocks of Spares" and credited "Cash" and when the spares were utilized, the Appellant debited "Repairs and Maintenance" and credited "Stocks of Spares".

(f) Some machineries and heavy equipment were superseded or ran out of their useful life and as a result the related spares which were in stock had to be written off. Valued at RM96,732.00.

(g) For the Year of Assessment 1984, the Respondent issued a Computation of Repayment dated 10 June 1988 showing RM1,939,501.00 as tax payable and a refund of RM60,499.00 by the Respondent.

(h) The Appellant filed an appeal against the Computation of Repayment.

Form Q dated 12 July 1988 was filed citing the following grounds -

"That an amount of $96,732.00 written off in respect of obsolete stock for consumable stores and spare parts used by the company to maintain and service income-producing plant and equipment for timber operations has been denied as a deduction for income tax purposes under Section 33(1)(c) of the Income Tax Act.

The total tax repayable should be $99,631.20 instead of $60,499.00. ".

ARGUMENTS BY TAXPAYER

(a) The amount of RM96,732.00 written off in respect of obsolete stock for consumable stores and spare parts used by the company to maintain and service income-producing plant and equipment for timber operations should be allowed as a deduction for income tax purposes under section 33(1)(c) of the Act.

(b) The total tax repayable should be RM99,631.20 instead of RM60,499.00.

ARGUMENTS BY REVENUE

It is the contention of the Respondent that the sum of RM96,732.00 written off in respect of obsolete stock in consumable stores and spare parts kept by the Appellant to maintain and service income producing plant and equipment for timber operations should not be allowed for deduction under section 33(1)(c) of the Act.

HELD

Appeal Dismissed

Note:
The Taxpayer has filed an appeal to the High Court against the decision.

SHARES – STOCK IN TRADE OR LONG TERM INVESTMENTS

RAYUAN NO. PKR 662

ISSUE

The issues for our determination were -

(i) whether the acquisitions of the subject shares and their subsequent disposals by the Appellant constitute investment realization which is not assessable to income tax, or trading in shares which is assessable to income tax;

(ii) if the subject shares were held to be stock in trade, whether they should be valued in accordance with section 35(3)(a) of the Act; and

(iii) whether the interest incurred on borrowed monies used for the acquisitions of the subject shares should be disallowed as deductions under section 33(2) of the Act.

FACTS

As a result of the evidence, both oral and documentary, adduced before us we found the following facts proved or admitted -

(a) Facts admitted -

(i) The Appellant was incorporated on 29 November 1972 under the Companies Act 1965;

(ii) Amongst the principal objects for which the Appellant was established, as disclosed in Clause 3 of its Memorandum of Association, are-

"(5)To acquire by purchase, lease, exchange, hire or otherwise for any whatsoever purpose including investment or resale and to deal in and traffic with all whatsoever property whether moveable or immoveable and any chose in action or any interest in the same and to charge, mortgage, surrender or otherwise deal with property of every description, whether immoveable or moveable real or personal and whether for valuable consideration or otherwise, and in particular so that the consideration may be wholly or partly satisfied by the allotment of shares, debentures, debenture stock or securities of the Company or of any other company and also to apply for, accept and receive, convert, obtain, surrender or renounce any title to or grants for land, certificates of title, leases, mukim extracts, licences concessions, permits and such other instruments, documents, rights, privileges, licences or permission and also to apply for or otherwise howsoever obtain such alterations, amendments, modifications, rescissions and renewals thereof or of any term or condition (express or implied) therein or attached thereto as may seem expedient."

"(32) To subscribe for conditionally or unconditionally to underwrite, issue on commission or otherwise take, hold, deal in and convert stocks and shares in any company or corporation, local or foreign in which the liability of the members shall be limited to the amount of their shares or stocks and securities of all kinds and to enter into partnership or into any arrangement for sharing profits, union of interest, reciprocal concession or co-operation with any person, partnership, or company, local or foreign and to promote and aid in promoting, constituting, forming or organising companies, syndicates or partnerships, whether local or foreign of all kinds for the purpose of acquiring and undertaking any properties and liabilities of the Company or of advancing directly or indirectly the objects thereof for any other purpose which the Company may think expedient, and carry on all kinds of promotion business and in particular to form, constitute, float, lend money to subsidize, assist and control as agents, managing agents, secretaries or otherwise any companies, associations, partnerships, undertakings whatsoever."

(iii) Pursuant to its objects, Appellant had purchased quoted shares as well as acquired unquoted shares. Some of these shares were later disposed of while others were still being held by the Appellant at the material times. Particulars of movements of these shares are summarised as follows -

(a) Unquoted shares

During the years of assessment 1974 to 1991 the Appellant acquired shares in the following subsidiary companies (herein referred to as "the subject shares") –

(i) M S P Sdn. Bhd.

(ii) Q I Sdn. Bhd.

(iii) KPMS Sdn. Bhd.

(iv) K N Sdn . Bhd .

(v) R M C (M) Sdn. Bhd.

(vi) K P M N Sdn. Bhd.

(vii) B H Sdn. Bhd.

The transfer of shares in M S P Sdn. Bhd. in 1982 gave rise to a loss of RM6.3 million.

(b) Quoted Shares

The number of quoted shares held as at 31 December of each year is as follows –

(i) D E Berhad

Year	No of shares acquired	No of shares sold	No of shares held
1974	5,500,000	Nil	5,500,000
1975	Nil	Nil	5,500,000
1976	Nil	Nil	5,500,000
1977	Nil	Nil	5,500,000
1978	Nil	Nil	5,500,000
1979	Nil	100,000	5,400,000
1980	Nil	Nil	5,400,000
1981	Nil	540,000	4,860,000
1982	Nil	4,860,000	Nil

(ii) U P Berhad

Year	No of shares acquired	No of shares sold	No of shares held
1973	450,000	Nil	450,000
1974	Nil	Nil	450,000
1975	Nil	Nil	450,000
1976	Nil	Nil	450,000
1977	450,000	Nil	900,000
1978	Nil	Nil	900,000
1979	90,000	Nil	990,000
1980	247,500	Nil	1,237,500
1981	123,750	1,361,250	Nil

(iii) M T I Bhd

Year	No of shares acquired	No of shares sold	No of shares held
1979	57,000	Nil	57,000
1980	Nil	Nil	57,000
1981	28,500	Nil	85,500
1982	Nil	Nil	85,500
1983	Nil	Nil	85,500
1984	Nil	Nil	153,900

(iv) During the relevant years the Appellant received interest from advances made to related companies;

(v) By letter dated 10th August 1991, the Respondent informed the Appellant that the Appellant was carrying on the business of investment dealing from year of assessment 1974 to 1983 and such business ceased in year of assessment 1984. During the relevant years the Appellant also held the subject shares in its subsidiary companies. The material parts of the said letter reads as follows -

> "Penelitian telah dibuat ke atas semua akaun-akaun syarikat dari mula-mula urusniaga dijalankan iaitu dari tahun taksiran 1974 hingga ke tahun taksiran 1991 dan adalah diputuskan bahawa syarikat ini menjalankan Perniagaan Pelaburan (Investment Dealing). Kemudian perniagaan ini tamat pada akhir tahun taksiran 1983 apabila didapati bahawa bermula dari tahun taksiran 1984 syarikat hanya menjalankan kegiatan Pegangan Pelaburan (Investment Holding) sahaja . . . ".

(vi) In ascertaining the adjusted income of the Appellant, the Respondent did not apply the provision of section 35(3)(a) of the Act in respect of the subject shares on the ground that the Appellant was not trading or dealing in those shares. In other words the Respondent held that the subject shares were not stock in trade;

(vii) As regards interest on borrowed monies, the Respondent applied section 33(2) of the Act and disallowed deduction of interest incurred in respect of the subject shares;

(viii) For the years of assessment 1978, 1979, 1980, 1983, 1984 and 1985 the Respondent made assessments on the basis that the Appellant in acquiring and disposing of the subject shares was merely realising its investments;

(ix) The Appellant was aggrieved by these assessments and accordingly lodged Notices of Appeal under Forms Q dated 18 September 1991.

b) **Facts proved -**

(i) Soon after the May 13 incident in 1969, the Government formulated the New Economic Policy with the objective of encouraging bumiputra participation in commerce and industry;

(ii) In line with that policy BPM was established;

(iii) BPM then established K P M H Sdn Bhd which subsequently established three other subsidiary companies, namely K P M M Sdn. Bhd. (the Appellant), K P M K Sdn. Bhd and K P M N Sdn. Bhd., each with its special functions. The Appellant was established to be involved in the capital market, in investment trading and to go into companies where bumiputra participation was lacking;

(iv) The Appellant's witness, Dr. AS (AW1) said in his evidence that the acquisition of the subject shares was for the purpose of nursing the companies for eventual taking over by bumiputras when the companies become viable;

(v) The Appellant acquired shares in M S P Sdn. Bhd., a subsidiary of the Appellant, as follows-

Date of Acquisition		No of Shares Acquired
08.11.1973		900,000
15.08.1975		1,500,000
25.08.1975		1,000,000
01.05.1978		500,000
10.12.1982		7,300,000
	TOTAL	11,200,000

These shares were transferred in 1982 to KPM Sdn. Bhd., another subsidiary in the KPM Group of Companies, resulting in a loss of RM6.3 million. The witness (AW1) was not able to confirm whether the disposal of the shares was for cash or mere transfer;

(vi) The first 900,000 shares acquired by the Appellant in M S P Sdn. Bhd. were by direct subscription to the company. Another 500,000 shares were acquired from T S S Products Sdn. Bhd. M S P Sdn. Bhd. was incorporated on 31 May 1973 and at all times the Appellant had more th 50% equity in the company;

(vii) The Appellant also gave a loan to M S P Sd Bhd. which later on was converted to equit

(viii) The Appellant acquired shares in Q I Sd Bhd. as follows -

Date of Acquisition		No of Shares Acquired
24.12.1973		599,998
24.12.1973		2
03.09.1974		300,000
01.07.1976		1,500,000
	TOTAL	2,400,000

These shares were disposed of on 1 May 1978 t KPM Sdn. Bhd;

(ix) The Appellant acquired shares in KPM Sdn. Bhd. a subsidiary of the Appellant, as follows -

Date of Acquisition		No of Shares Acquired
01.05.1978		4,975,000
08.10.1985		12,500
08.10.1985		12,500
	TOTAL	5,000,000

These shares were still being retained by the Appellant at the material time;

(x) The Appellant acquired shares in K N Sdn. Bhd. a subsidiary of the Appellant, as follows -

Date of Acquisition		No of Shares Acquired
30.12.1973		9,998
30.12.1973		2
	TOTAL	10,000

These shares were still being retained by the Appellant at the material time;

(xi) The Appellant acquired shares in B B Sdn. Bhd., an Associate Company, as follows -

Date of Acquisition	No of Shares Acquired
19.12.1983	100,000
19.12.1983	65,000
19.12.1983	38,998
19.12.1983	5,001
19.12.1983	1
TOTAL	209,000

These shares were still being retained by the Appellant at the material time;

(xii) The Supporting Notes to the Accounts of the Appellant for year ended 31 December 1973 show that in 1973 the Appellant acquired 17,400,000 shares in D H Sdn Bhd of which 11,850,000 shares were sold during the year.

ARGUMENTS BY TAXPAYER

It was contended on behalf of the Appellant that -

(a) It was carrying on the business of an investment dealing company and has not ceased to carry on that business in the year of assessment 1984 and that all the shares quoted and unquoted, including the subject shares, constitute its stock in trade. The loss of RM6.3 million on the disposal of the shares in M S P Sdn. Bhd. should therefore be allowed as deduction for the year of assessment 1984;

(b) The Memorandum and Articles of Association gave the Appellant the power to trade in shares;

(c) In ascertaining its adjusted income the value of stock in trade in respect of the subject shares should be determined in accordance with section 35(3)(a) of the Act; and

(d) As the borrowed monies are used for the purchase of the subject shares which constitute the stock in trade, the restriction of interest under section 33(2) of the Act is not applicable.

ARGUMENTS BY REVENUE

It was contended by the Respondent that -

(a) The disposal of the subject shares of the subsidiary companies of the Appellant was a realization of investment for the following reasons -

(i) The Appellant's Memorandum and Articles of Association allows it not only to trade but also to hold shares;

(ii) The subject shares are not readily marketable;

(iii) The subject shares were held for long periods and not for the purpose of trading. The shares were acquired in newly-formed companies which needed a longer gestation period to produce dividend income.

(b) Since the subject shares are not stock in trade of the Appellant, section 35(3)(a) of the Act is therefore not applicable; and

(c) Since the subject shares are not stock in trade, the interest on borrowed monies used to acquire them is not an allowable deduction in accordance with section 33(2) of the Act.

HELD

Appeal Dismissed

Note:
The Taxpayer has filed an appeal to the High Court against the decision.

Q U O T E

'We do Not Remember Days; We Remember Moments.'

Cesare Pavese

UNQUOTED SHARES – STOCK IN TRADE OR LONG TERM INVESTMENTS

RAYUAN NO. PKR 673

ISSUE

The issue for our determination was whether the Appellant's unquoted shares in two companies were stock in trade and therefore the profits derived from the sale thereof was chargeable to income tax or that they were long term investments and therefore not assessable to income tax.

FACTS

As a result of the evidence, both oral and documentary adduced before us, we found the following facts proved or admitted -

1. The Appellant, a private limited company was incorporated on 31 December 1974 under the name of SESB and changed its name to SYHSB in 1977.

2. The Appellant's witness, NSH and his wife were the only shareholders and directors of the company. NSH was the Chairman, Managing Director as well as the Company Secretary who conducted the day to day operations of Appellant.

3. The objects of the Appellant, as per the Memorandum of Association are, inter alia -

> "3(1) To purchase for investment or resale and to traffic in land and house and other property of any tenure and any interest therein and to create, sell and deal in freehold and leasehold ground rents and to make advances upon the security of land or houses or other property or any interest therein and generally to deal in, traffic by way of sale, lease, exchange or otherwise with land and house property and any other properties whether real or personal.
>
> (35) To acquire and hold for investment shares, stocks debentures, debenture stocks, bonds, obligations and securities issued or guaranteed by any company or private undertaking or any syndicate or persons constituted or carrying on business in Malaysia or elsewhere and debentures, debenture stock, bonds obligations and securities issued or guaranteed by any Government, sovereign ruler, commissioners, public body or authority supreme Municipal, local or otherwise and to acquire any such shares, stock, debenture stock, bonds obligations or securities by original subscription, tender, purchase, transfer, exchange or otherwise and generally to enforce and exercise all rights and powers conferred by or incident to the ownership thereof and in particular to sell, transfer, exchange or otherwise dispose of the same."

4. In 1979, 1980 and 1981 the Appellant acquired 20% of the shares in two private limited companies known as MSB and TPCSB.

5. Apart from MSB and TPCSB, the Appellant had also owned unquoted shares in two other private limited companies, namely, KAJSB and HAE which were subsequently sold.

6. When the shares in MSB and TPCSB were acquired there were no company resolutions. However, resolutions were passed for both acquisitions on 17 December 1979 and 19 January 1980 respectively which were after the dates of incorporation of the two companies.

7. The shares in MSB and TPCSB were disposed of in 1982, 3 years from the date of purchase. The disposal of the shares resulted in profits for the Appellant.

8. During the said period of 3 years, the investments in the two companies produced no income at all.

9. The shares in MSB and TPCSB were not disposed of to raise capital.

10. The shares in KAI were sold after 10 years because the company was in need of capital and it under went restructuring exercise.

11. The shares in HAE were disposed of within 3 years from the date of acquisition because the investment was small.

ARGUMENTS BY TAXPAYER

1. The investments in MSB and TPCSB. were long term investments and not stock in trade meant for disposal for profit.

2. They were acquired when the two companies were incorporated although the resolutions were passed much later.

3. Both the shares in question were classified as unquoted investments of the company in the Balance Sheets for the years ended 31 December 1979, 31 December 1980 and 31 December 1981.

4. The shares were disposed of because of disagreements regarding the development concept amongst the shareholders in MSB as well as in TPCSB.

5. The activities of MSB and TPCSB were in landed properties with a view to housing development and building of holiday chalets.

6. The disposal of the shares in MSB as well as in TPCSB were forced sales due to disagreement among the shareholders as regards development concept.

7. That the proceeds from the sale of the shares in question were realization of investments caused by forced sale and therefore were not subject to income tax.

8. The two Directors' Resolutions will show the intention of the Appellant that the investments were to be held as long term investments of the company and that the resolutions must be taken on their face value, and if signed by all the Directors shall be valid and effectual as if they had been passed at a meeting of Directors duly called and constituted for that purpose.

9. The fact that the investments are stated separately in the accounts i.e. quoted and unquoted investments and that the quoted shares were held as short term investments and classified under current assets, while other shares were held as long term investment and shown as unquoted investments, is cogent evidence and manifestations of the taxpayer.

ARGUMENTS BY REVENUE

It was the contention of the Respondent that the gains from the sale of the said shares are revenue receipts and are subject to section 4(a) of the Act for the following reasons -

1. That at the time of purchase of the shares, there was no intention of long term investment as evidenced by the two resolutions which were passed much later than the dates of incorporation of the two companies, to wit, MSB and TPCSB.

2. The shares were bought by way of shareholders fund and therefore an inference can be drawn that the shares were acquired and disposed of for a profit.

3. That the said shares were disposed of within a short term, in 1982 - three years after their acquisition, like other quoted shares held by the Appellant.

4. There was no evidence of forced sale adduced by the Appellant except a statement by the witness that there were disagreement as regards development concept.

5. The Appellant company was incorporated with the intention, inter alia, of trading in shares. Being an investment dealing company, its main business is that of buying and selling shares. Therefore, the quoted and unquoted shares should not be treated differently, so long as they are shares, they are the trading-stock of the company.

HELD

Appeal Dismissed

Note:
The Taxpayer has filed an appeal to the High Court against the decision.

Interest - Section 4(a) or 4(c)?

RAYUAN NO. PKR 688

ISSUE

The issue for our determination was whether the Appellant's interest income from "short term" and "long term" deposits are interest income within the meaning of section 4(c) of the Act and so taxable or are gains and profits arising from a business inclusive of an adventure in the nature of trade or ancillary to its business under section 4(a) of the Act.

FACTS

1. The Appellant called one witness. The Respondent did not call any witness. Immediately after the witness for the Appellant had given evidence under cross-examination, it was agreed by both parties that no further witness be called and the hearing be proceeded with on submissions only as it was agreed -

   (a) that the interest income were derived from short terns and long term deposits; and

   (b) that the only issue to be determined would be whether the said interest income are income under section 4(a) or 4(c) of the Act.

2. Based on the evidence of the Appellant's witness, on the documents tendered and on the submissions of both counsel, we found the following facts proved or admitted -

   (i) The Appellant was incorporated under the Companies Act 1965 on 1 April 1977 and is carrying on the business of refining and processing of palm oil. The objects of the Appellant as set out in its Memorandum of Association are, inter alia -

   "(1) To carry on the business of producers, refiners, manufacturers, storers, suppliers and distributors of oil palm and oil palm products by fractionating crude palm oil into palm olein and stearin, refining crude palm oil, olein and stearin and blending the refined oil with other oils or fractionated products to produce vanaspati and cooking oil and any other oil palm products;

   (2) To process, extract, refine, buy, sell, dispose and deal in edible and inedible oils and fats vegetable and animal origins and in all residu products resulting from the manufacture production thereof and to carry on all the bus nesses that are usually or may be convenient carried on by such manufacturers or produ ers;

   (31) To transact business as financiers, promoter and financial and monetary agents in any pa of the world and for such purposes to establis agencies, and to appoint financial and manag ing agents and attorneys and to produce th Company to be registered or recognized;

   (33) To lend and advance money or give credit t such person or companies and on such terms a may seem expedient, and in particular to cus tomers, companies, corporation, firms and oth ers having dealings with the Company, and to give guarantees or become surety and give security for any such persons or companies,

   (36) To advance, deposit, or lend money and property, to or with such persons and on such terms as may seem expedient and to discount, buy, sell bills, notes, warrants, coupons and other negotiable or transferable documents.";

   (ii) The price of crude palm oil, the raw material for the Appellant's business, fluctuates from time to time;

   (iii) The volume of cash needed to purchase the raw material, crude palm oil, therefore, varies from time to time;

   (iv) Certain portion of (cash) proceeds from the sale of products, therefore, needs to be readily held for the purchase of raw lnaterials, namely, the crude palm oil;

   (v) When the price of raw material falls, less cash is needed to fund the purchase;

   (vi) When the price of raw materials rises, more cash is needed to fund the purchase of raw material;

(vii) When less cash is needed when the price of raw material falls, the excess cash is placed on short term and long term deposits and on Negotiable Certificate of Deposits, that is, on very short term negotiable deposits;

(viii) Certain banks require that the Appellant do place such deposits with the relevant bank where the Appellant has overdraft facilities, however this is not as security;

(ix) The short term deposits are all for very short terms, i.e. 30 days or 1 day call. There was only one deposit for a period of one and half years and this was lifted by assigning it;

(x) The placing of deposits and lifting of deposits continued on a regular and repetitive basis (daily basis, week in and week out in each month) for the relevant Years of Assessment under appeal and still continue to do so up to date;

(xi) The object of placing on short term deposits is to deal with excess money on hand, to turn over and make a profit;

(xii) The Respondent raised assessments on the Appellant on the basis that the interest income is chargeable under section 4(c) of the Act -

(xiii) In order to place all the deposits, the Appellant exercised managerial and organizational skills by monitoring the fluctuating prices of palm oil by resorting to Reuter reports, newspaper reports and bankers' advice daily.

ARGUMENTS BY TAXPAYER

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

The Appellant's submission, inter alia, was as follows-

(a) The Memorandum and Articles of Association provide authority to advance deposits or lend money. The company did just that, and that is a business activity of the company. This prima facie fact of doing business has not been displaced by the Respondent;

(b) In this case, the manner of repeated placements of deposits amounts to business;

(c) The placement of deposits was not an investment because -

(i) the subject matter is cash;

(ii) the deposits were short term ranging from one day to less than thirty days, or one day call, except for the long term deposits;

(iii) the deposits, both long term and short terms, were lifted as and when required for business purposes and such lifting was on a daily basis;

(iv) the consistent placement of deposits shows a policy of profit scheming and not investment;

(v) the placement of deposit was from sale proceeds of palm oil products and from cheques issued but not cleared; and

(vi) the deposits follow a cycle of prices of palm oil and therefore, cannot be said to be held as investment;

(d) The manner of daily placing of deposits of the excess cash available on very short term deposits points to trafficking (dealing) in cash. In other words, in turning over the cash in terms of interest and making profits thereby;

(e) The interest income in this case arises out of the carrying out of their other business activity, namely, the purchase of raw material. It follows that the placing of deposits and deriving interest is ancillary to the Appellant's main trade and therefore, the interest is business income;

PAYMENT FOR DEMISE HIRE FOR SHIPS AND EQUIPMENT

RAYUAN NO. PKR 670

ISSUE

The question for our determination was whether the Respondent had correctly disallowed as a deduction from Appellant's gross income, payment of demise hire for ship(s) and equipment hire in accordance with section 39(1)(j) of the Act as a result of the failure of the Appellant to deduct tax upon payment of the demise hire to a non-resident person in compliance with section 109B of the Act.

FACTS

As a result of the evidence both oral and documentary adduced before us, we found the following facts proved or admitted -

(a) Facts admitted

(i) The Appellant is a company incorporated in the United Kingdom.

(ii) The Appellant's principal activity was the "care and supervision of vessels during lay-up in Brunei Bay, Sabah".

(iii) The Appellant commenced the business on 1 January 1979 and it ceased carrying on the business on 1 July 1986, when its activities were taken over by Shipcare Sdn. Bhd.

(iv) In carrying out the business, the Appellant chartered base ship(s) in Brunei Bay to provide accommodation for their staff, repair facilities, fuel, water storage and communication facilities. The staff based on the base ship(s) carried out visits and conducted inspection and maintenance on laid-up vessels.

(v) For the purpose of carrying out the business, the Appellant hired from Shipping Ltd. ship(s), which were used as base ship(s) and certain equipment. Demised hire of ships and hire of equipment were paid by the Appellant to Shipping Ltd., a non-resident in Malaysia.

(vi) On 17 February 1993 the Respondent wrote to the Appellant's tax agent, saying that the demise hire of ships and hire of equipment for the years of assessment 1980 to 1987 inclusive were subject to tax deduction under the provisions of section 109 (for the period before 21 October 1983) and section 109B (for the period after 21 October 1983) of the Act and since no such deductions were made or paid under those sections, the deductions for the demise hire of the ships and hire of equipment claimed by the Appellant and initially allowed by the Respondent for the relevant years of assessment would be disallowed and added back.

(vii) The quantum of demise hire of ships and hire of equipment for the relevant years of assessment in respect of which appeals have been lodged are as follows -

Year of Assessment	Demise hire of Ships		Hire of Equipment	
	L	RM	L	RM
1984	934,192	3,296,390	4,045	14,273
1985	934,194	2,936,452	16,540	51,990
1986	594,689	1,888,851	13,140	41,735
1987	266,071	1,003,327	3,640	13,726

(viii) The tax deductions on the payment of the demise hire of ships and hire of equipment were finally paid in full by the Appellant in 1994.

(ix) Notwithstanding that the tax deductions were subsequently paid in full, the payment for demise charter hire of the ships and hire of equipment were denied deductions from the gross income of the Appellant by the Respondent under section 39(1)(j) of the Act.

(x) The following notices of additional assessment were issued to the Appellant on 6 January 1994 -

Year of Assessment	Amount of Tax Payable	
1984	RM	1,755,363.50
1985	RM	1,487,876.00
1986	RM	934,723.68
1987	RM	426,663.90

(xi) The Appellant appealed against the said additional assessments by way of Forms Q dated 8 August 1995.

(b) Facts proved

(i) The Appellant was incorporated in the United Kingdom and carried on business in Malaysia and it was liable to Malaysian income tax on its Malaysian source of income.

(ii) Shipping Ltd., was incorporated in the United Kingdom. They did not have any business or place of business in Malaysia. The principal activity of Shipping Ltd. is transportation of oil and the chartering of oil tankers.

(iii) The demise hire payments for the ships and hire of equipment received by Shipping Ltd. were declared as its business income to the tax authorities in the United Kingdom.

(iv) The demise hire payment disallowed for the year of assessment 1984 refers to the whole year's payment for 1983. There was no apportionment made from the effective date 21 October 1983 of the implementation of section 109B of the Act as the Appellant was unable to produce documentary evidence to show the amount of the payment made for the period 21 October to 31 December 1983.

(v) In the original assesstments, the demise hire was claimed and allowed as deduction by the Respondent.

ARGUMENTS BY TAXPAYER

It was contended on behalf of the Appellant that -

(i) The payments of the demise hire of the ships and hire of equipment to the non-resident company - Shipping Ltd. - were part of the latter's business income and by virtue of Article VI of the United Kingdom/Malaysia Double Taxation Agreement the income is exempted from Malaysian income tax as Shipping Ltd. has no permanent establishment in Malaysia.

(ii) Since no Malaysian income tax is payable by Shipping Ltd. on the income received in the form of demise hire from Malaysia there can be no obligation on the part of the Appellant to deduct tax in accordance with section 109B of the Act.

(iii) In the alternative, even if section 109B of the Act is applicable, in view of the fact that the tax to be deducted for the relevant years of assessment were subsequently paid in full in 1994, the Respondent should exercise his discretion by allowing an extension of time to make the payment under section 109B(l) Proviso (ii) and not to disallow the deduction for the demise hire under section 39(1)(j) of the Act.

(iv) The payments of the demise hire and hire of equipment were within the meaning of section 33(1) of the Act being wholly and exclusively incurred in the production of gross income.

(v) There was no deception or non-disclosure of the payments made to the non-resident company as the Respondent had all along the information since 1984. No claim for the payment of the tax deductions was made by the Respondent until nine (9) years later, that is, in February 1993 when the Respondent held that the payments fall under section 109B of the Act.

(vi) If section 109B of the Act is applicable, the tax to be deducted tax tor the year of assessment 1984 should only be imposed on payments made after 21 October 1993 when the section came into force.

ARGUMENTS BY REVENUE

It is the contention of the Respondent that -

(i) Section 109B of the Act imposes an obligation or it is mandatory on the part of the Appellant to withhold an amount at the rate applicable on paying the demise hire and hire of equipment to the recipient irrespective of whether the recipient is liable to Malaysian tax or otherwise.

(ii) The provisions of the United Kingdom/Malaysia Dotlble Taxation Relief is not relevant in this case.

(iii) The payments of the demise hire and hire of equipment to the non-resident company were only disclosed upon enquiry by the Respondent.

(iv) As no tax was deducted and remitted on payment of the demise hire and hire of equipment to the Respondent within one month, the provisions of section 39(1)(j) of the Act is applicable.

(v) There is no authority under the Act which allows for the apportionment of the payment of the demise hire and hire of equipment for the year of assessment 1984. There was no evidence adduced by the Appellant that the payments were made periodically. It was for the Appellant to show when payments were made. If the Appellant were to show proof that any payments were made prior to 2l October 1983, apportionment and appropriate deduction from the gross involve would be allowed accordingly .

HELD

Appeal Dismissed

Note:
The Taxpayer has filed an appeal to the High Court against the decision.

INCOME RECEIVED - SECTION 4(a) OR 4A ITA?

RAYUAN NO. PKR 658

ISSUE

The issue for our determination is whether the income of the Appellant is chargeable under section 4(a) or section 4A of the Act.

FACTS

At the commencement of the hearing, both parties applied that the decision in this case shall bind the appeal by PKR 687, the facts of which case are similar to the facts in this case. We the Special Commissioners agreed to this application.

As a result of the evidence, both oral and documentary, adduced before us we find the following facts proved or admitted -

(i) The Appellant is a partnership registered in Texas United States of America;

(ii) The Appellant is a non-resident in Malaysia;

(iii) C (M) Sdn. Bhd. (hereinafter referred to as "C"), a Malaysian registered company with 70 % of its equity owned by Bumiputra was set up to provide drilling services in Malaysia. C was in possession of a license issued by Petronas to enable C to procure petroleum services contract (including drilling contract) from other petroleum companies;

(iv) C entered into ail agreement entitled "Drilling Contract") on 20 May 1991 "EPMI" (a corporation organised under the laws of the State of Delaware of the United States of America) to furnish the drilling unit and associated equipment and to carry out drilling operations:

(v) One of the terms of the Drilling Contract is that C was prohibited from assigning the contract **without the written approval** of EPMI;

(vi) On 12 June 1990, C had entered into a Vessel Charter Party (VCP) Agreement with the Appellant because C did not have the necessary drilling unit and equipment to carry out the contract it entered into with EPMI;

(vii) The terms of the VCP are, inter alia -

(a) Appellant "agrees to let" and C "agrees to hire the drilling unit 'Hunter'...";

(b) The terms of the charter shall be for two years i.e. from 15 July 1990;

(c) That certain number of technicians and specialis shall be provided by the Appellant onshore offshore as deemed required by the Appellant assist in managing and operating the vessel safe and efficiently;

(d) C will pay to the Appellant for the use of the sa vessel charter hire at US $11,000 per day; and

(e) The Appellant gave a performance guarantee EPMI to guarantee the full and complete perfo mance of all obligations of C under the Drillin Contract. The performance guarantee was undate

ARGUMENTS BY TAXPAYER

The Appellant contended that the income derived fro Malaysia-

(i) was business income derived from the performance o drilling work in Malaysia being work rendered i connection with the contract project i.e. the drilling project (within the meaning of section 107A of the Act)

(ii) was not rent or other payments received for the use o moveable property under section 4A(iii) of the Act and

(iii) was liable to tax under section 4(a) and not section 4A(iii) of the Act.

ARGUMENTS BY REVENUE

The Respondent contended that the income derived by the Appellant is income derived by a person not resident in Malaysia for-

(i) services rendered by the person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any plant, machinery or other apparatus purchased from, such person; or

(ii) rent or other payments not being payments of film rentals made under any agreement or arrangement for the use of any moveable property.

Therefore, the Respondent contends that the Appellant's income falls under section 4A(i) or (iii) of the Act.

HELD

Appeal Dismissed

Note:
The Taxpayer has filed an appeal to the High Court against the decision.

PURCHASE OF STANDING TIMBER OR USE OF TIMBER LICENCE

RAYUAN NO. PKR 672

ISSUE

The issue for our determination is whether the Appellant's claim for deduction in respect of payments made to Lembaga Kemajuan Tenggara (LKT) and State Economic Development Corporation (SEDC) is an allowable deduction under section 33(1) of the Act.

FACTS

As a result of the evidence both oral and documentary adduced before us, we found the following facts proved or admitted -

(i) The Appellant is a partnership having been registered on 18 May 1973 under the Registration of Businesses Act 1956.

(ii) The State Government had granted LKT the "right to extract and fell all that timber found in an area consisting of Sg. K, 2,607 acres".

(iii) Similarly, the State Government had granted SEDC the "right to extract and fell all that timber found its an area consisting 1,200 acres".

(iv) Further, the State Government had granted LKT the "right to extract and fell all that timber found in an area consisting of 423 acres".

(v) The Appellant entered into various agreements with LKT and SEDC to extract and fell timber in specified areas.

(vi) The agreements between the Appellant and LKT gave the Appellant "the exclusive rights to work out, fell, exploit and extract all the timber found in the specified areas.".

(vii) The agreement between Appellant and SEDC *was also "to work out, fell, exploit and extract all* that timber found in that area.".

(viii) Payments were made directly by the Appellant to LKT and SEDC "the statutory bodies").

ARGUMENTS BY THE TAXPAYER

It was contended on behalf of the Appellant that -

(i) the said payments were for the purchase of standing timber and not for the use of the license or permit to extract timber; or

(ii) alternatively, licenses or permits were granted to the Appellant.

Therefore, such payments were deductible under section 33(l) of the Act.

ARGUMENTS BY REVENUE

It was the contention of the Respondent that the payments made by the the Appellant to LKT and SEDC pursuant to the agreements were not deductible under section 33(1) read together with section 39(1)(g) of the Act.

HELD

Appeal Dismissed

Note:
The Taxpayer has filed an appeal to the High Court against the decision.

Q U O T E

'The risk of being successful is the arrogance of thinking that what you have done in the past will work in the future.'

C. William Pollard

LEASING PORTFOLIO AND NON LEASING PORTFOLIO – COMMON EXPENSES, INTEREST AND CAPITAL ALLOWANCES

RAYUAN NO. PKR 663

ISSUE

The issue for our determination was whether the method adopted by the Respondent in the apportionment of comm expenses, interests and capital allowances allowances attributable to the leasing portfolio and non-leasing portfoli correct.

FACTS

As a result of the evidence both oral and documentary adduced before us, we found the following facts proved admitted-

(a) Facts admitted -

(i) The Appellant is principally engaged in the provision of leasing, factoring and hire purchase financing facilitie In essence, the Appellant carries on only one business i.e. that of offering financing although various modes financing are made available to their customers to suit their respective requirements.

(ii) There are expenses and interest payments on loans from the Appellant's holding company common to both th leasing and non-leasing portfolios of the Appellant (the Common Expenses) which require apportionmen between the two. The Appellant is unable to specifically attribute the exact amount of the Common Expenses t the respective portfolios.

(iii) the tax payable by the Appellant as assessed by the Respondent for the years of assessment 1987 to 1992 are a follows -

Year of Assessment	Date of Assessment	Form	Tax Assessed Payable (RM)
1987	30.6.1993	JA	96,870.60
1988	30.6.1993	JA	243,415.35
1989	30.6.1993	J	77,158.40
1990	30.6.1993	J	130,202.28
1991	30.6.1993	J	86,330.68
1992	30.6.1993	J	156,014.94

iv) Income from the leasing and non-leasing portfolios and common expenses as shown in the account for the relevan years are as follows -

Item Year of Assessment	(a) sum of total of lease total rentals received and receivable and Year of income from leasing Operations excluding profit from sale of leased assets	(b) income from Leasing portfolio	(c) income from Non-Leasing portfolio	(d) sum total of the Common Expenses
1987	5,002,252.00	1,323,083.00	833,204.00	732,702.00
1988	5,076,098.00	670,943.00	161,972.00	1,084,670.00
1989	2,747,701.00	645,147.00	847,166.00	958,880.00
1990	2,514,209.00	673,681.00	639,467.00	769,299.00
1991	3,074,336.00	780,995.00	487,234.00	811,285.00
1992	4,165,240.00	805,815.00	508,712.00	960,371.00

(v) The Common Expenses and interest attributable to the leasing portfolios respectively are derived in accordance with the following formulae -

Leasing portfolio -

$$L = \frac{X}{X + Y} \times Z$$

Non leasing portfolio -

$$NL = \frac{X}{X + Y} \times Z$$

Where L is thc apportioned expenses for the leasing porfolio

NL is the apportioned expenses for the non leasing portfolio

X is disputed and forms the subject matter of this appeal. For the Appellant, X represents the figures shown in column (b) of the table above. For the Respondent, X represents the figures shown in column (a) of table above.

Y represents the figures shown in column (c) of tlle table above

Z represents the figures shown in column (d) of the table above

(vi) The following figures which appear from the profit and loss accounts of the Appellant are the interest element of the rentals receivable for the leasing portfolio in the respective years of assessment -

Year of Assessment	Interest Income (RM)
1987	1,158,622.00
1988	553,441.00
1989	619,548.00
1990	637,086.00
1991	753,730.00
1992	777,316.00

(vii) The Respondent's method was used to apportion the Common Expenses for the purpose of determining the adjusted income from the Leasing and Non-Leasing Portfolios. After deducting capital allowances in respect of the leased assets, the tax payable for each of the years of assessment 1987 to 1992 is as shown in the six Notices of Assessment (Form J) and Additional Assessment (Form J), all dated 30 June 1993.

(b) **Facts proved -**

(i) The **gross income from the leasing portfolio comprised lease rentals** that is **principal plus interest** and incidental income while the **gross income from the non-leasing portfolio comprised only interest** and incidental income.

LEASING & NON-LEASING BUSINESS – COMMON EXPENSES AND CAPITAL ALLOWANCES

RAYUAN NO. PKR 664

ISSUE

The question for our determination was whether the method adopted by the Respondent in the apportionment of comm expenses and capital allowances on fixed assets attributable to the leasing business and non-leasing business is corre

FACTS

From the evidence both oral and documentary adduced before us, we find the following facts proved or admitted -

(a) Facts admitted

(i) The Appellant is engaged in the business of lease financing, factoring and hire purchase.

(ii) In accordance with the Income Tax Leasing Regulations 1986 (hereinafter referred to as "the ITLR") the leasin activity is deemed to be a separate and distinct business.

(iii) The gross income of the leasing business of the Appellant were as follows -

Year of Assessment	Gross Income
1986	RM 24.132,143
1987	RM 33,569.157
1988	RM 26,852,942

(iv) Common expenses consisting of operating expenses and financing costs and capital allowances on fixed assets attributable to the leasing business and non-leasing business are as follows -

Year of Assessment	*Expenses* Operating	*Financing* Costs	*Capital Allowances* on Fixed Assets
1986	RM 1,308,552	RM 6,287,121	RM 200,893
1987	RM 1,809,725	RM 7,853,488	RM 282,841
1988	RM 1,145,685	RM 7,440,019	RM 69,653

(v) The Appellant is unable to specifically attribute the exact amount of the common expenses and capital allowances to its leasing business and non-leasing business respectively. As such, the common expenses and capital allowances would have to be apportioned accordingly.

(vi) The Respondent adopted a method of apportionment based on turnover where the gross income of the leasing business is recognized.

$$\text{Common expenses, financing costs and capital allowances on company's fixed assets apportioned to leasing business [non-leasing business]} = \frac{R[N]}{R + N} \times D$$

Where R = Gross income derived from leasing business;

N = Gross income derived from non-leasing business; and

D = Allowable common expenses, financing cost and capital allowances on fixed assets.

(vii) Accordingly the following assessments were raised against the Appellant -

Year of Assessment	Date of Assessment	Tax Payable
1986	29.08.1989	RM 362,694.60
1987	29.08.1989	RM 460,337.85
1988	29.08.1989	RM 208,684.35

(viii) The Appellant appealed against the said Notices of Assessments by way of Forms Q dated 7 August 1992.

(ix) **Facts proved**

(a) In the audited accounts of the Appellant leasing income constitutes only the interest element and does not include the principal.

(b) The rental received and receivable constitutes the gross income of the leasing business.

ARGUMENTS BY THE TAXPAYER

It was contended on behalf of the Appellant that -

(i) There is no specific provision in the Act to prescribe the manner of apportioning the common expenses and capital allowances between the leasing business and the non-leasing business;

(ii) The Respondent had erroneously computed the apportionment between the two sources according to the ratio of lease rental receivable to gross income from other sources;

(iii) The method of apportionment as adopted by the Respondent will result in a disproportionate amount of the common expenses and capital allowances allocated to leasing business. This does not reflect the nature of the business; and

(iv) The Appellant further contended that the following method of apportionment should be adopted -

$$\text{Common expenses, financing cost and capital allowances on company's assets apportioned to leasing business} = \frac{A}{A + B + C} \times D$$

$$\text{Conlmon expenses, financing cost and capital allowances on company's assets apportioned to other businesses} = \frac{B + C}{A + B + C} \times D$$

Where A = Interest income derived from leasing business;

B = Interest income derived from hire purchase business;

C = Interest and commission income derived from factoring business; and

D = Allowable common expenses, financing cost and capital allowances on company's assets.

ARGUMENTS BY REVENUE

It was contended by the Respondent that the common expenses and capital allowances have been correctly apportion based on gross income as construed under the Act which in the case of leasing business by virtue of regulation 3 of t ITLR includes the principal amount.

HELD

Appeal Dismissed

Note:
The Taxpayer has filed an appeal to the High Court against the decision.

Tax Planning for Landed Transactions

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INTRODUCTION

In recent years, Malaysian tax authorities are very focus on the landed transactions. Every transaction if not properly structured would fall into the ambit of Income Tax Act 1967 and thus subject to tax. On the contrary, such transaction would be a capital gain if it has been structured to be a long term investment.

The test relied by the tax authorities as well as the court is considered in the badges of trade. As such, a careful understanding of the badges of trade is crucial.

Malaysia charges tax on business income under Section 4(a) of the Income Tax Act 1967 (The Act). Business includes profession, vocation and trade and every manufacture, adventure or concern in the nature of trade, but excludes employment.

THE MEANING OF PROFESSION

The meaning of profession is not defined in the Act. In IRC v Maxse (CA) 12 TC 41, Scrutton LJ said on p.61,

> "Profession involves the idea of an occupation requiring either purely intellectual skill, or if any manual skill, as in printing and sculpture, or surgery, skill controlled by the intellectual skill of the operator, as distinguished from on operation which is substantially the production or sale, or arrangements for the production or sale, of commodities".

> Relying on this principle, it may be held that a practice of religion, preaching Christian gospel, Buddhist meditation may amount to 'vocation

A company may carry on a profession even as an individual. Reading the definition of business, all profession are business but not all business are professions.

THE MEANING OF 'VOCATION'

The meaning of 'vocation' is not defined in the Act. In Partridge v Mallandaine, the word 'vocation' was held to be

> 'analogous to 'calling', a word of wide signification, meaning the way in which a man passes his life'.

Relying on this principle, it may be held that a practice of religion, preaching Christian gospel, Buddhist meditation may amount to 'vocation'.

THE MEANING OF 'TRADE'

Trade is not defined in the Act. It should be noted that although 'trade' and 'adventure or concern in the nature of trade' are classified under 'business' but there are two different concept.

In CIR v Forth conservancy Board (16 TC 103), Lord Buckmaster said

> "Trade involves something in the nature of a commercial undertaking, of which buying and selling are the most obvious characteristics".

In *E v. Comptroller-General of Inland Revenue* (1950-1985) MSTC 106 at p.112: *Gill* F.J. speaking for the Federal Court said this:

> "Whilst a trade usually consists of a series of transactions implying some continuity and repetition of acts of buying and selling or manufacturing and selling, in view of the definition of `trade', the mere fact that there is only one transaction does not preclude the possibility that transaction is in the nature of a trade. Thus, one single purchase and sale or one purchase and many sales have been held in the English and Scottish courts to be trading....."

In *Simmons v. I.R.C. (ibid)* at p. 1197, Lord *Wilberforce* answered the question "what is trading?", in the following passage:

> "One must ask, first, what the Commissioners were required or entitled to find. Trading requires an intention to trade: normally the question to be asked is whether this intention existed at the time of the acquisition of the asset. Was it acquired with the intention of disposing of it at a profit, or was it acquired as a permanent investment? Often it is

Tax Planning for Landed Transactions

necessary to ask further questions: a permanent investment may be sold in order to acquire another investment thought to be more satisfactory; that does not involve an operation of trade, whether the first investment is sold at a profit or at a loss. Intention may be changed. What was first an investment may be put into the trading stock, and, I suppose, vice versa. If findings of this kind are to be made precision is required, since a shift of an asset from one category to another will involve changes in the company's accounts, and, possibly, a liability to tax (of *Sharkey (Inspector of Taxes) v. Wernher* (1956) A.C. 58; 36 TC 275). What I think is not possible is for an asset to be both trading stock and permanent investment at the same time, nor to possess an indeterminate status, neither trading stock nor permanent asset. It must be one or other, even though, and this seems to me legitimate and intelligible, the company, in whatever character it acquires the asset, may reserve an intention to change its character. To do so would, in fact, amount to little more than making explicit what is necessarily implicit in all commercial operations, namely that situations are open to review".

It should be noted that Simmons case was followed by the Privy Council in Lim Foo Yong Sdn. Bhd. v CGIR (1986) 2 MLJ1 61 and by the Supreme Court in Lower Perak Co-operative Housing Society v DGIR (1994) 2MLJ 713.

> In practice, the tax authorities would assessed tax on an isolated profitable transaction on the basis that the tax-payer is 'adventure in the nature of trade

THE MEANING OF 'MANUFACTURE'

Manufacture is not defined in the Act. In Aditya Mills Ltd v Union of India (1989) 73 STC 195, manufacture is defined as a process where

'the original material must undergo a transformation so that a new and different article or product emerges. The new substance or article must have a distinct name, character or use. The new commodity must be a commercially separate and distinct commodity having its own character and use".

THE MEANING OF 'ADVENTURE OR CONCERN IN THE NATURE OF TRADE'

In practice, the tax authorities would assessed tax on an isolated profitable transaction on the basis that the taxpayer is 'adventure in the nature of trade'. This is because it would be difficult to hold that an isolated transaction amounted to trade but it is certainly easier to establish that the transaction is an adventure in the nature of trade.

In Leeming v Jones (15 TC 333 it was established that the presence of any of the following conditions is sufficient to support an 'adventure' or 'concern in the nature of trade':-

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

In Malaysia, the Court would not rely solely on the above cases but went on to consider the 'badges of trade' to decide whether the activity in dispute constitute trade or adventure in the nature of trade.

BADGES OF TRADE

Over the years, the courts in Malaysia have laid down various guidelines or tests to distinguish gains arising from the disposal of an investment and gains from trade or an adventure or concern in the nature of trade. It is the total effect of all relevant factors and circumstances that determine the character of the transaction.

1. Subject matter of the transactions

Where the property does not itself yield income or personal enjoyment to its owner merely by virtue of its ownership, and which is normally the subject of trading and rarely 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.

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Edgar Joseph Jr SCJ said at p.741 in Lower Perak case

"Then, again in considering the question whether there has been an intention to trade, a factor to which regard may be had is the nature of the subject matter in question; more particularly, whether the subject is prima facie an investment. Thus, in *Commissioners of Inland Revenue v. Reinhold* 34 TC 389 at p.393, Lord *Carmont* said this:

'A disclosed intention not to hold what was being bought might, as Lord *Dunedin* said, provide an item of evidence that the buyer intended to trade and if the commodity purchased in the single transaction was not of a kind normally used for investment but for trading and if the commodity could not produce an annual return by retention in the hands of the purchaser, then the conclusion may easily be reached that the adventure was a trading one. If, however, the subject matter of the transaction is normally used for investment - land, houses, stocks and shares - the inference is not so readily to be drawn from an admitted intention in regard to a single transaction to sell on the arrival of a suitable preselected time or circumstances and does not warrant the same definite conclusion as regards trading or even that the transaction is in the nature of trade'."

However, if the subject matter is to be treated as trading stock, then the sale of it would be subject to income tax even though it was sale in a hard pressed situation. This does not change the character of trading stock or trading activities.

Where the owner of an investment chooses to realise its investment, and obtains a greater price for it than he original acquired it, the enhanced price is not profit assessable to tax. [E v CIR (1970) 1MLJ 182]

2. Period of ownership

Generally, the longer the period of ownership of the subject matter before its disposal, the less likely that such disposal would be considered to be part of a trade. The retention of a property for a period followed by its subsequent sale does not preclude the profits from being treated as a trading receipt. [ME (Pte) Ltd v CIT] (1987) 2 MLJ 130.

However, the terms "short period" and "long period" are not defined in the Act or case laws. The period is a relative one. In recent years, the Malaysian court even went on to rule that a period of 5 years does not necessarily reinforce the investment motive.

The decisions were mainly relying on the comment from Whiteman on Income Tax 3rd Edition which says

"This test is not of great value: a long period between acquisition and sale will only negative a finding of trading where other factors do not lead to an opposite conclusion".

It is a settled law that in the case of a company incorporated for the purpose of making profits for its shareholders any gainful use to which it puts any of its assets prima facie amounts to the carrying on of a business. (ALB CO Sdn Bhd v DGIR (1978) 1 MLJ 1).

As such, a company may hold a property for a long period of time, any subsequent disposal may still be viewed as business income because they may be viewed as waiting for the right opportunity to realise profits.

Raja Azlan Shah F.J. (as His Royal Highness then was) said in *I Investment Ltd v.* CGIR (1975) 2 MLJ 208 at pp. 212-213:

"If a company was formed to carry on business, and in fact it carried it on, I think, it cannot matter that its activities had been an isolated one ... A company's business may have been quiescent for a number of reasons. For example, following a business set-back, consolidating its business, waiting for the right opportunity to occur."

In KLE Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (1975) 2 MSTC 2245, the Company had purchased a piece of land which was left idle for 5 years after acquisition, producing no income nor personal enjoyment to the company; subsequent disposal at a profit was held by the Special Commissioners to be trading income.

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3. Frequency of transactions

If there had been a number of transactions in the same kind of property, (a repetition of transactions) it may be presumed that the taxpayer's purpose in purchasing the particular property was its resale at a profit.

However, a single or isolated transaction can also constitute trading. [International Investment Ltd v CGIR (1979) 1 MLJ 4]

Viscount Dilhorne commented,

> "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".

Rowlatt J said in Pickford v Quirke (13 TC 251) at p.263:

> "Now, of course, it is well known that one transaction of buying and selling a thing does not make a man a trader, but if it is repeated and becomes systematic, then he becomes a trader and the profits of the transaction, not taxable so long as they remain isolated, became taxable as items in a trade as a whole".

There need not be many purchases to constitute trade. The one purchase of large quantity of shares or any quantity of property or commodity or anything can be for the purpose of a business or transaction or an adventure in the nature of trade.

4. Alterations to the property

The fact that material alterations or improvements have been made to property acquired or that its character or quality has been changed so as to render it more merchantable would tend to indicate that the property was derived from a profit making undertaking or scheme.

However, if the property was clearly acquired for other purposes, extensive activities to render it more salable after it is no longer useful for such original purposes would not cause any selling profit to be taxable. [NYF Realty Sdn Bhd v CIR (1974) 1 MLJ 182].

In the case of land when the taxpayer took step to subdivide the land, such move would be view by the tax authorities as a step in his adventure in the trade.

5. Circumstances responsible for the realisation

The circumstances under which the subject matter is disposed of may be relevant as to whether such disposal is part of a trade. If the sale of property is occasioned by sudden emergency or unanticipated need 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 scheme or undertaking.

One has to ask whether the taxpayer disposed of the property because he was hard pressed for funds or whether he was presented with an opportunity to sell at a profit and hence proceeded to do so.

Edger Joseph Jr SCJ said in Lower Perak Co-operative Housing Society Bhd v DGIR (1994) 2 MLJ 713 at p.747,

> "The circumstances necessitating the realisation of an asset may be of prime importance as it may afford an explanation for the realisation that negatives the idea that any plan of dealing motivated the original purchase".

According to the general income tax law, sale must be consensual and of one's own free will before the proceeds can be chargeable to income tax. A force sale cannot constitute a sale the proceeds of which are subject to tax because the element of compulsion vitiates the intention to trade.

6. Motive/Intention of Taxpayer

A good test to determine whether the subject matter held is investment or stock-in-trade is to establish the intention of the company at the time of acquisition of such subject matter.

Thus where the subject matter was acquired with the underlying purpose of profit-making, the profits from the realisation thereof will be treated as income. There must be a sole or main object of realising a gain, which must exist at the time of acquisition of the subject matter. The conduct of the tax-

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payer vis-à-vis the subject matter would have to be examined to discover his true intent at the time of acquisition. [Bukit Yew Sdn. Bhd. v DGIR (1987) 2 MLJ 379].

For the purpose of ascertaining the object and intention with which a limited liability company makes a particular purchase, it is permissible to look at the objects of the company as described in its constitution in the memorandum of association.

In **S.L. Sdn Bhd**. v **DGIR** (1988) MSTC 198, a company tried to camouflage its intentions by planting fruit trees on the land purchased and subsequently sold off the land. The company was then voluntarily wound up. the Special Commissioners found that the company had embarked on an adventure in the nature of trade by intentionally buying the land at a low price and then selling it in period of escalating prices.

It should be noted that a permanent investment may be sold in order to acquire another investment thought to be more satisfactory, that does not involve an intention of trade, whether the first investment is sold at a profit or at a loss.

7. Methods employed in disposing of property

If special exertion is made to find or attract purchasers such as the opening up of an office, 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 resell it at a profit.

In KLE Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (1995) 2 MSTC 2245, The Special Commissioners held that the subject land's commercial potential together with its good location, being near developed areas was a very good ready made advertisement in itself. Therefore there was no necessity to have a specialised organisation with skilled staff, and there was no further exertion needed to promote its resale.

8. Financing arrangements

The mode of finance placed great importance in determining whether the taxpayer is trading in property or merely realising its investment. If a company had the intention to hold the property as along term investment, then the company should inject more fund into the company instead of borrowed funds [**SCL Pte Ltd** v **CIT** (1991) 1 MSTC 5032].

However, it is by no means determinative. It depends on the facts of each case. In Lim Foo Yong Sdn Bhd v CGIR (1980) 2 MLJ 161, the asset was held to be an investment though it was financed by borrowed money.

9. Accounting evidence

It is settled law that accounting evidence is not conclusive as to whether the taxpayer is trading or not, it being merely a factor to be taken into consideration. [***CGIR*** v ***LFY Sdn Bhd*** (1983) 1 MLJ 43].

The fact that if property is categorized as fixed asset is acceptable evidence of the intention of the taxpayer to treat it as capital asset instead of trading asset. A trading asset would be entered under "Current Asset". Sale of a fixed asset does not attract income tax. [***DGIR*** v ***Khoo Ewe Aik Realty*** (1990) 3 MTC 149].

In the case of a company, the objects clause in its Memorandum of Association is important. Hence, where a company describes its business as property development or itself as a property developer, it is prima facie carrying on the business of property development for sale and not for investment or for both vis-à-vis property which is has disposed of [***M.E. (Pte) Ltd***. v **CIT** (1988) 1 MSTC 7005].

However, the existence of powers to deal in properties and other investments in the memorandum is not a reliable indicator as to the nature of the transaction. The nature of the transaction must be judged not so much by what its object clauses say, but by what the company actually does. [***E*** v ***CIR*** (1970) 2 MLJ 117].

10. Conclusion

The question whether the taxpayer is carrying on a trade is a question of fact to be decided after taking into account all

Tax Planning for Landed Transactions

the surrounding circumstances. The test is the objective one.

Ban Hin Leong v ***CIT*** (1975) (Income Tax Appeal No.7.)

DERIVATION OF BUSINESS INCOME (SECTION 12)

It is crucial to examine the business derivation scope because if the business income is deemed derived from Malaysia, then it would be taxed in Malaysia irrespective whether such income is received in Malaysia or not.

On the contrary, if the business income is accrued/derived outside Malaysia, then resident companies (other than Banking, Insurance, Sea and Air transport companies) which received such income in Malaysia from outside Malaysia would be exempted from tax. (Sec 3C).

The amount exempted is credited to an exempt income account, of which exempt dividend income can be declared (two tiers basis).

The derivation scope is shown in Chart A.

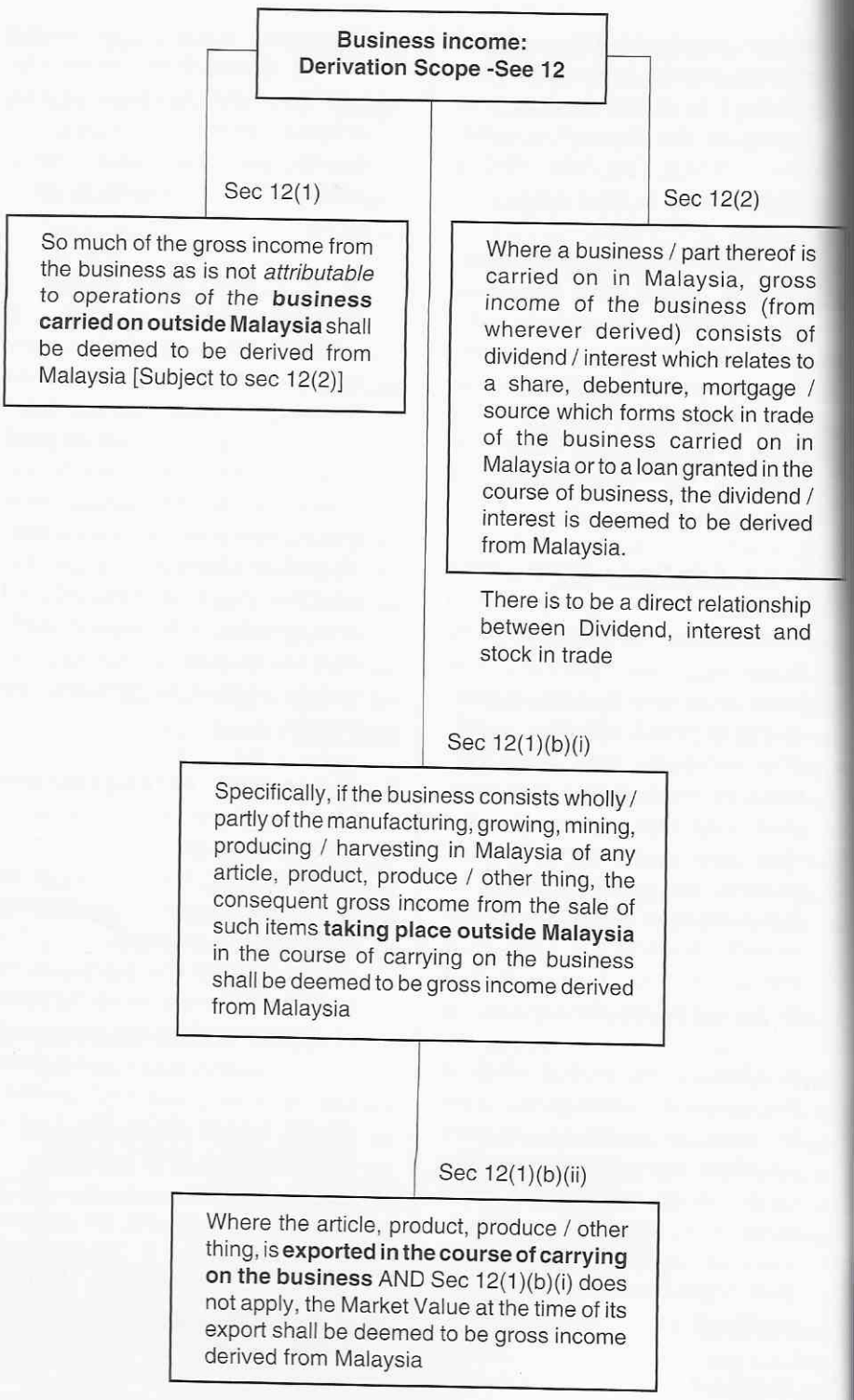
SINGLE OR SEPARATE BUSINESS

The determination of single or separate business source is important for Malaysian tax purposes particularly in relation to the utilization of capital allowance as capital allowances from one business source cannot be set-off against income from another business source.

Whether a company in commencing a new activity is regarded as

Chart A

Derivation of Business income



RESIDUAL DEFINITION

Factors to be considered:

1. Contract concluded in Malaysia
2. Stocks are maintained in Malaysia from which orders are fulfilled
3. Passing of ownership/risk in Malaysia
4. Sale proceeds received in Malaysia
5. Services are rendered in Malaysia

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> Once the bill is issued to the customer, it would form part of the gross income notwithstanding that the payment is not received

ing extended its existing business or commenced a new business source depends essentially the nature and interdependence of the activities. There no specific rules for making a determination and guidance will have to be sought from general principles established the courts. The determination of that question depends upon the facts and circumstances of each case.

The case laws decisions

The test which has been frequently invoked in order to determine whether two or more businesses are separate businesses or single business is laid down by Rowlatt J in Scales v George Thompson & Co. Ltd (13 TC 83),

> "... was there any interconnection, any interlacing, any interdependence between, and any unity at all embracing those two businesses?...."

If one of two activities cannot be stopped without affecting the framework of the other, it would be persuasive that they constitute the same business.

However, the converse is not true. The possibility of stopping one without affecting the other is not an indication that they are different businesses.

2. Malaysian experience

In Director General of Inland Revenue v Central Sugars Bhd (HC) (1978) 2 MLJ 71, the company enjoyed pioneer status of which profit is exempted from income tax. The company also undertook the activity of hedging, briefly consists of forward sales and purchases of raw sugar.

The issue for the determination is whether the hedging activity constitute separate business or same business of the manufacture of refined sugars.

The High Court decided that the hedging and the sugar refinery constitute one business source.

Chang Min Tat, F.J. remarked that,

> "The primary source (for production of refined sugar) would be the purchase of the raw sugar and the one recognized method of stabilizing the price of the required sugar is to hedge on the terminal markets.

Hedging is therefore,

> "an adjunct, ancillary to and a very advantageous adjunct to "the business of sugar refinery. Hedging does not in the context of this case become a separate business".

In River Estates Sdn Bhd v Director General of Inland Revenue (FC)(1981) 1 MLJ 99, the company commercially engaged in plantation operations on some estates and timber extraction on other estates, was held by the Malaysian courts and affirmed by the Privy Council to be carrying on separate businesses notwithstanding that-

(i) the direction .and management of the company's operations were centralised at head office;
(ii) all senior executives were planters;
(iii) estate and camp managers and other subordinate staff were moved from estate duties to timber operations, and vice versa;
(iv) plant and machinery, if unable both in planting and logging, were moved around as needed;
(v) stores were centrally purchased;
(vi) financial management and disbursements was controlled at head office;
(vii) detailed records were kept by estate and camp managers with monthly returns to head office; and
(viii) results of both plantation and timber operations were aggregated into a head office set of accounts.

It is submitted that River Estate case should not be regarded as an authority as it was decided based on the findings of the Special Commissioners.

Lord Scarman Said at p.67

> "It cannot be denied that the two types of operation could be included in one business: equally, they could be separate business. Either conclusion being open to the Special Commissioners, it is difficult to assert that either conclusion is the `true and only reasonable conclusion'".

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THE ASCERTAINMENT OF GROSS INCOME FROM A BUSINESS

1. Gross income generally

Section 22(1) and (2) of the Act said

"**22. Gross income generally**

(1) Subject to this Act, the gross income of a person from a source of his for the basis period for a year of assessment shall be the gross income from that source for that period ascertained in accordance with the following provisions of this Chapter (that person and that period being referred to in those provisions as the relevant person and the relevant period respectively).

(2) Subject to this Act, the gross income of a person from a source of his for the basis period for a year of assessment shall include any sums receivable or deemed to have been received for that basis period in relation to that source by way of -

(a) insurance, indemnity, recoupment, recovery, reimbursement or otherwise -

(i) where such **sums** are in respect of the kind of outgoings and **expenses** deductible in **ascertaining** the **adjusted income** of that person from that source; or

(ii) under a contract of indemnity;

(b) compensation for loss of income from that source; and

(c) a rebate under section 6B."

It should be noted that section 22 only applies to revenue receipts. As such, the sum of recoveries under section 22(2)(a)(i) has to be referred to circulating capital (current asset).

Example

Insurance recoveries from the destroy of trading stock.

2. Trading debts

Section 24(1) of the Act said "(1) Where in the relevant period a debt owing to the relevant person arises in respect of -

(a) any stock in trade sold (or parted with on requisition or compulsory acquisition or in a similar manner) in or before the relevant period in the course of carrying on a business;

(b) any services rendered at any time in the course of carrying on a business; or

(c) the use or enjoyment of any property dealt with at any time in the course of carrying on a business,

the amount of the debt shall be treated as gross income of the relevant person from the business for the relevant period."

The effect of this section assessed the tax on an accrual basis. Once the bill is issued to the customer, it would form part of the gross income notwithstanding that the payment is not received.

3. Others

Section 24(2),(3)

the market value of stock in trade which has been taken for private purposes without payment or stock withdrawn from business.

Section 24(4)

dividend income of a share dealing business.

Section 24(5)

interest income of an investment dealing business or a money lending business.

Section 24(6)

market value of the goods exported in the course of carrying on the business.

Section 30(1)

recovery of a bad debt which has previously been allowed as a deduction in ascertaining the adjusted income.

Section 30(3)

the excess of recovered expenditure within the meaning of Schedule 2 (essentially the sale consideration) over the:-

(a) residual expenditure of a mine at the beginning the basis period, and

(b) qualifying mining expenditure incurred during the basis period,

in the case of a person engaged in the working of a mine.

Section 30(4)

waiver of debts by creditors which pertaining to any amount of expenditure previously allowed as a deduction in ascertaining the adjusted income.

The following is an extraction of the minutes of meeting of the Consultative Panel between the Royal Customs and Excise Department and Private Sector which was held on 18 November 1996.

Jabatan Kastam Dan Eksais Di Raja Malaysia

Minit Mesyuarat
PANEL PERUNDINGAN KASTAM/SWASTA 2/96

BAHAGIAN II

PERKARA-PERKARA BERBANGKIT

Perkara 1 : **Pengeksportan Barangan Siap**

Intisari Perbincangan

FMM memohon supaya diberi kebenaran kepada peniaga-peniaga untuk mengeksport barangan siap bagi pihak pengilang yang menikmati pengecualian duti di bawah Seksyen 14(2) Akta Kastam 1967. Sehubungan dengan itu pihak perbendaharaan pada dasarnya telah bersetuju untuk menambahkan syarat bagi membenarkan pengeksportan dibuat melalui pihak ketiga. Notis prosedur akan dikeluarkan setelah syarat pengecualian tersebut dikeluarkan kelak. Sehingga notis dikeluarkan, kebenaran akan diberi secara *case by case*.

Keputusan

Surat pekeliling berkenaan kemudahan pengeksportan melalui pihak ketiga telah dikeluarkan bersama-sama format permohonan untuk kegunaan pekilang-pekilang. Dokumen-dokumen berkaitan telah diedarkan ke negeri-negeri dan diharapkan mana-mana pihak yang ingin menggunakan kemudahan ini dapat menghubungi pejabat Pengarah Kastam Negeri di tempat masing-masing.

Untuk makluman

Perkara 2 : **Masalah Pengeksportan Buah-Buahan oleh FAMA**

Intisari Perbincangan

AFAM telah diminta menghubungi pihak Persatuan Pengeksport Buah-buahan Malaysia (FEAM) mengenai masalah pihak FAMA yang tidak berbincang dahulu dengan pihak pengeksport malahan bertindak sendiri sebagai pengeksport buah-buahan. Memandangkan AFAM masih tidak dapat menghubungi FEAM, Jabatan telah dipohon untuk membantu AFAM bagi mendapatkan penjelasan mengenai perkara ini.

Keputusan

FAMA yang terletak di bawah bidang kuasa Kementerian Pertanian telah dihubungi pada 28 Jun 1996. Pihak FAMA telah menjelaskan bahawa aktiviti import/eksport oleh FAMA adalah dijalankan oleh FAMACO Cooperation, anak syarikat FAMA yang telah diluluskan oleh Kementerian Pertanian. Sekiranya AFAM tidak berpuas hati bolehlah menyalurkan bantahan terus kepada pihak Kementerian Pertanian.

Untuk makluman

Perkara 3 : ***Replanting/Research Cess Payable On Rubber Export Shipments***

Intisari Perbincangan

FMFF memohon supaya pihak kastam tidak menganggap pembayaran ses bagi *rubber shipment* sebagai duti kastam dan seterusnya mempertimbangkan perkara-perkara berikut:-

(i) Menyarankan pihak RRI cara lain untuk kutipan ses tsrsebut.

(ii) *Downgrade* status bayaran ses sebagai *secondary/ tertiary party collection* supaya pelepasan dapat dikeluarkan sebagaimana status barangan tidak berduti.

Namun di bawah Seksyen 2 Akta Kastam 1967, ses adalah termasuk di dalam definisi duti kastam. Ini bererti pihak Kastam tidak boleh melepaskan mana-mana pengeksportan getah selagi bayaran ses tidak

disempurnakan. Oleh itu, prosedur dan amalan bagi pengeksportan getah yang tertakluk kepada ses perlu dikekalkan. Bagaimanapun oleh kerana perkara mengenai ses ini adalah di bawah bidang kuasa Kementerian Perusahaan Utama dan Kementerian Kewangan, maka sebarang pindaan yang dibuat ke atas cara mana ses perlu dipungut hendaklah dirujukkan kepada Kementerian berkenaan terlebih dahulu bagi mendapatkan pandangan dan keputusannya.

Keputusan

Kementerian Perusahaan Utama menjelaskan bahawa pada masa ini pihaknya tidak berupaya dan berkemampuan untuk mengambil alih tugas pungutan ses daripada Jabatan Kastam berdasarkan kepada faktor-faktor berikut:-

i) Kementerian Perusahaan Utama dan agensi-agensi getah di bawah pentadbirannya tidak mempunyai infrastruktur untuk mengambil alih tugas pungutan ses tersebut daripada Jabatan Kastam. Untuk mengadakan infrastruktur tersebut akan melibatkan tenaga kerja, kos yang tinggi serta perancangan dan masa yang lama.

ii) Jabatan Kastam telah mempunyai infrastruktur yang sedia ada bagi terus melaksanakan tugas pungutan ses berkenaan, malahan Jabatan Kastam telah dapat melaksanakan tugas terus dengan cekap dan berkesan. Oleh itu tiada sebab mengapa ia harus dipindahkan kepada pihak lain yang tidak mempunyai kemudahan dan pengalaman.

iii) Amalan dan prosidur sekarang yang berkaitan dengan pungutan ses tersebut telah pun difahami oleh semua pihak yang terlibat. Oleh itu jika amalan tersebut ditukar ia akan lebih menimbulkan berbagai masalah dan kekeliruan kerana mereka perlu berhubung dengan pihak-pihak yang baru.

iv) Kerajaan telah pun memutuskan untuk mencantumkan ketiga-tiga agensi di bawah Kementerian ini iaitu Lembaga Penyelidikan Dan Kemajuan Getah Malaysia (MRRDB), Institut Penyelidikan Getah Malaysia (RRIM) dan Lembaga Pemasaran Dan Pelesenan Getah Malaysia (MRECB) menjadi satu Lembaga iaitu Lembaga Getah Malaysia (LGM) di bawah Akta 551 tahun 1998. Kesan daripada tindakan ini ialah pengurangan keperluan perjawatan dan tenaga kerja. Di bawah Akta 551 peruntukan kutipan ses akan diubah bagi membolehkan pengenaan yang lebih luas. Oleh itu apabila sampai masanya kelak adalah dirasakan bahawa peruntukan di bawah Akta 551 tersebut perlu dibincangkan dengan Jabatan Kastam dan Perbendaharaan memandangkan ses disifatkan bagi maksud pungutan dan penguatkuasaannya sebagai suatu duti kastam di bawah Akta Kastam 1967.

Untuk maklumat

Perkara 4 : **Senarai Pegawai, Nombor Telefon dan Faks**

Intisari Perbincangan

FMFF menyarankan supaya Jabatan menyediakan satu senarai pegawai, no. telefon dan no. faks bagi tujuan rujukan syarikat-syarikat yang berurusan dengan Jabatan. Unit Perhubungan Awam menjelaskan buku panduan telefon yang memuatkan senarai pegawai, no. telefon dan faks yang kemaskini telah pun diedarkan kepada pihak swasta pada 16 Januari 1996. Di samping itu notis pertukaran/penempatan pegawai-pegawai kanan Jabatan turut dihantar dari masa ke masa. Pengumuman melalui akhbar juga akan dibuat sekiranya terdapat pertukaran yang melibatkan pegawai tinggi Jabatan.

Bagi tujuan perkongsian maklumat di antara pihak kastam dan swasta, dicadangkan penyediaan buku panduan telefon yang juga memuatkan nama, nombor telefon dan faks serta *contact persons* bagi badan-badan pertubuhan swasta yang berkaitan. Untuk tujuan ini kerjasama pihak FMFF adalah dipohon untuk menguruskan penerbitan buku tersebut.

Keputusan

Unit Perhubungan Awam menjelaskan bahawa masih terdapat 3 daripada 14 persatuan/pertubuhan yang menjadi ahli dalam Mesyuarat Panel Perundingan Kastam/swasta yang belum mengemukakan senarai nama, no. telefon dan no. fax *contact persons* mereka. Pihak FMFF yang bertanggungjawab menerbitkan Buku Panduan Telefon Kastam/swasta mengesyorkan penerbitan buku tersebut dibuat melalui sumbangan daripada penganjur yang akan diusahakan oleh pihak FMFF. Ini adalah selaras dengan Semangat Dasar Persyarikatan Malaysia.

Tindakan : Unit Perhubungan Awam *FMFF*

Perkara 5 : **Penjenisan *Controller Assembly for Air Conditioner***

Intisari Perbincangan

MICCI menjelaskan bahawa pihaknya telahpun mengemukakan permohonan penjenisan *controller assembly for air conditioner* kepada Ibu Pejabat pada 29.9.1995 yang lalu. Bagaimanapun hingga kini masih belum menerima jawapan.

Cawangan Pengurusan Penjenisan menjelaskan, barangan tersebut berkemungkinan sesuai diperjeniskan di bawah dua kod tarif iaitu:

i) Sebagai *regulator or controlling equipment* di bawah kod tarif 9032.89 900 yang tidak tertakluk kepada duti import dan dikecualikan daripada cukai jualan.

ii) Sebagai *program switchboard/panel* di bawah kod tarif 8537.10 900 yang tertakluk kepada duti import sebanyak 15% dan cukai jualan 10%.

Memandangkan ia boleh diperjeniskan di bawah dua no. kepala, Cawangan Pengurusan Penjenisan telah merujuk kes ini kepada pakar iaitu Ketua Jurutera JKR Bahagian Elektrikal untuk mendapatkan nasihat. Walau bagaimanapun surat tersebut telah tersilap hantar ke Bahagian Mekanikal dan bukan Elektrikal. Namun pembetulan telah dibuat dan pilhak JKR Bahagian Elektrikal berjanji akan mengemukakan jawapan seberapa segera. Penjenisan akan dibuat sebaik sahaja jawapan tersebut diterima.

Keputusan

Cawangan Pengurusan Penjenisan telah mengemukakan contoh dan risalah barangan kepada Pengarah, Cawangan Kejuruteraan Mekanikal, Ibu Pejabat, Jabatan Kerja Raya, Malaysia untuk mendapat nasihat pakarnya. Laporan pakar mengesahkan bahawa barangan yang berkenaan didapati sesuai diperjeniskan sebagai *part for air-conditioning machine*. Sehubungan dengan itu Jabatan telah memperjeniskannya di bawah kod tarif 8415.90 900. Surat perjenisan telah pun dikeluarkan kepada Sanyo Industries (Malaysia) Bhd. pada 18 Mei 1996.

Untuk makluman

Perkara 6 : **Jaminan Bank Untuk Bayaran Duti Kastam**

Intisari Perbincangan

MIA mendakwa bahawa pihak kastam tidak membenarkan pemindahan barangan berduti tanpa jaminan bank yang berasingan bagi setiap stesen import. MIA menegaskan adalah wajar bagi Jabatan Kastam menerima *one single bank guarantee* bagi meliputi semua stesen kastam.

Cawangan import/eksport menjelaskan bahawa memang telah wujud amalan menggunakan *one single bank guarantee* bagi pemindahan barang-barang berduti yang meliputi semua stesen import. Kemudahan ini tidak dapat berjalan dengan lancar disebabkan masalah pengesahan jaminan bank yang didaftarkan di stesen lain. Masalah ini akan dapat diatasi apabla sistem kawalan jaminan bank berkomputer dan secara *on line* antara stesen-stesen kastam dilaksanakan melalui program SMK di seluruh negara. Buat sementara waktu Jabatan akan berusaha mendapatkan cara yang lebih praktikal dan mudah untuk menjayakan pelaksanaan kemudahan menggunakan *single bank guarantee* ini.

Keputusan

Amalan penggunaan *single bank guarantee* bagi pemindahan barang-barang berduti yang meliputi semua stesen kastam telah dipermudahkan lagi pelaksanaannya di mana satu prosedur baru khusus mengenainya telah diperkenalkan. Di bawah prosedur baru ini stesen-stesen kastam telah diarah supaya menyegerakan pengesahan sesuatu jaminan bank yang diminta oleh stesen import bagi membolehkan jaminan bank tersebut digunakan bagi menjamin duti ke atas barang-barang yang akan dipindahkan. Pelaksanaan prosedur ini dibuat menggunakan mesin faks dengan melengkapkan borang khas yang disediakan.

Untuk makluman

Perkara 7 : ***ATA Carnet***

Intisari Perbincangan

MICCI membangkitkan masalah *ATA Carnet* dan sering mendapat teguran daripada pihak Dewan Perniagaan Antarabangsa kerana pengesahan dokumen yang tidak sempurna atau tidak betul. Ini mungkin disebabkan pegawai-pegawai kastam di stesen-stesen import

kurang pengetahuan mengenai cara-cara mengesahkan dokumen *ATA Carnet*. Oleh itu MICCI mencadangkan supaya Jabatan mengadakan *in-house training* untuk para pegawai yang berkenaan.

Keputusan

Satu kursus berkaitan dengan *ATA Carnet* dan Import Sementara telah diadakan pada 14.11.96 di Ibu Pejabat, Jalan Duta, yang telah dihadiri oleh 14 orang Pegawai Kanan Kastam dari seluruh negara. Kursus tersebut telah dikendalikan oleh Cawangan Latihan dan Pembangunan Kerjaya, Ibu Pejabat Kastam dengan kerjasama Bahagian Kastam dan MICCI. Kursus ini bertujuan untuk melatih Pegawai Kanan sebagai trainers yang mana mereka akan mengendalikan *in-house training* di stesen masing-masing berhubung dengan *ATA Carnet* dan Import Sementara.

Untuk makluman

Perkara 8 : **Pelaksanaan SMK di ICD Sg. Way**

Intisari Perbincangan

Kontena Nasional meminta penjelasan mengenai kedudukan pelaksanaan SMK di ICD Sg. Way.

Keputusan

Bahagian Sistem Maklumat Pengurusan (SISMAP) menjelaskan, untuk membuat pelepasan dagangan dari Kastam ICD, Sg. Way, ejen penghantaran dikehendaki menghantar;

- Borang ikrar CUSDEC K1 (Bonded) dan selepas itu Borang Ikrar CUSDEC K9 untuk mengeluarkan sebahagian daripada konsaimen.

- Borang Ikrar CUSDEC K1 untuk mengeluarkan satu konsaimen sekali gus.

- Borang Ikrar CUSDEC K8 untuk memindahkan barang dagangan ke gudang lain.

Kebanyakan transaksi yang terlibat di Kastam ICD. Sg. Way adalah CUSDEC K1. Masih terdapat sedikit masalah teknikal dalam transaksi yang melibatkan CUSDEC K8 dan K9 dan kini dalam proses ujian terakhir dengan pihak EDI Malaysia. Sekiranya ejen penghantaran yang berurusan dengan Kastam ICD, SG. Way telah dilengkapi dengan perisian CUSDEC K1 yang dibekalkan oleh EDI Malaysia, *pilot run* di ICD, Sg. Way boleh dimulakan dengan transaksi CUSDEC K1. Pihak kastam memerlukan maklumbalas dari EDI Malaysia mengenai kedudukan instalasi *Frontend software* di premis agen penghantaran yang berurusan dengan Kastam ICD, Sg. Way. Lain-lain persediaan di Kastam ICD, Sg. Way seperti peralatan dan latihan telah disempurnakan.

Untuk makluman

II. PERKARA-PERKARA YANG DIBINCANGKAN

1. *Service Tax Ruling*

MICCI memohon penjelasan mengenai peraturan cukai perkhidmatan sama ada cukai perkhidmatan dikenakan atau tidak ke atas perkhidmatan kejuruteraan seperti berikut:-

a) Perkhidmatan yang disediakan di luar Malaysia oleh syarikat di luar Malaysia (*non-resident*) untuk pelanggan di Malaysia dan kerja fizikal untuk projek yang dirancang adalah di Malaysia.

b) Perkhidmatan yang disediakan di Malaysia oleh syarikat tempatan untuk pelanggan di luar Malaysia. Adakah perkhidmatan seperti ini dianggap eksport?

c) Perkhidmatan yang disediakan di Malaysia oleh syarikat Zon Bebas, Langkawi dan Labuan.

Keputusan

a) Perkhidmatan disediakan di luar Malaysia oleh syarikat di luar Malaysia untuk pelanggan di Malaysia dan kerja fizikal untuk projek yang dicadangkan adalah di Malaysia, tidak dikenakan cukai perkhidmatan.

b) Perkhidmatan disediakan di Malaysia oleh syarikat tempatan untuk pelanggan di luar Malaysia tidak tertakluk kepada cukai perkhidmatan berdasarkan pindaan kepada Akta Cukai Perkhidmatan 1975 baru-baru ini. Ia dianggap sebagai *exported taxable service* dan tidak dikenakan cukai perkhidmatan di bawah peruntukan seksyen 3.

c) Perkhidmatan disediakan di Malaysia oleh Syarikat Zon Bebas, Langkawi atau Labuan tidak dikenakan cukai perkhidmatan. Syarikat-syarikat di Zon Bebas, Langkawi dan Labuan tidak perlu dilesenkan di bawah Akta Cukai Perkhidmatan 1975.

Melalui Belanjawan 1997, perkhidmatan yang dieksport tidak lagi dikenakan cukai perkhidmatan.

Untuk makluman

2. ***Multiple Level Service Tax Payment***

MICCI menjelaskan Syarikat Project Consultant yang memegang lesen cukai perkhidmatan telah mengeluarkan bil *professional fees* dan 5% cukai perkhidmatan kepada Syarikat Consulting Engineering. Syarikat Consulting Engineering telah dinasihatkan oleh Jabatan Kastam supaya membayar cukai perkhidmatan bahagiannya sahaja dan tidak cukai Syarikat Project Consultant. Masalah timbul apabila bil yang dikeluarkan kepada pelanggan adalah *at lump sum basis or scale of fees* yang tidak mengasingkan perkhidmatan Syarikat Project Consultant, bermakna cukai perkhidmatan dibayar sepenuhnya kepada Jabatan Kastam. Bagi mengatasi masalah ini Syarikat Consultant Engineering mencadangkan pendekatan berikut:

a) Bayar cukai perkhidmatan bagi kedua-dua syarikat sebaik sahaja menerima bayaran daripada pelanggan atau 12 bulan dari tarikh mengeluarkan bil (yang mana dahulu). Kemudian surat pengesahan dikeluarkan kepada Syarikat Project Consultant bagi menyatakan bayaran yang dibuat kepada Jabatan Kastam oleh Syarikat Consulting Engineering.

b) Syarikat Consulting Engineering akan membayar cukai perkhidmatan bahagiannya sahaja selepas *netting off* cukai Syarikat Project Consultant yang mana cukai perkhidmatan di dalam bil tidak akan menunjukkan cukai perkhidmatan sebenar dibayar.

Keputusan

Disahkan bahawa tiap-tiap bil/invois yang dikeluarkan oleh pelesen mestilah menunjukkan elemen cukai perkhidmatan berkaitan. Semasa penyata CP No. 3 disediakan oleh Syarikat Consulting Engineering, penolakan boleh dibuat untuk cukai perkhidmatan yang telah dibayar kepada pelesen berkenaan iaitu Syarikat Project Consultant. Ini bererti cadangan seperti (b) di atas boleh diterima dengan syarat permohonan dibuat terlebih dahulu kepada stesen di mana syarikat dilesenkan.

Untuk makluman

3. ***Tariff Rate Under CEPT Scheme For Purchases of Component Parts/Raw Materials From LMW or FZ***

FMM menjelaskan bahawa import duti dikenakan ke atas komponen/bahan mentah daripada Gudang Pengilangan Berlesen (GPB) dan Zon Bebas (ZB) yang dijual di Kawasan Utama Kastam kecuali mendapat pengecualian daripada Perbendaharaan. Komponen/bahan mentah yang dikeluarkan oleh LMW atau ZB boleh juga diimport daripada negara-negara ASEAN. Pengimport komponen/bahan mentah tersebut (sekiranya layak) akan menikmati kemudahan kadar duti di bawah Skim CEPT. Ini akan menggalakkan pengimportan dan tidak penggunaan komponen/bahan mentah tempatan. Oleh yang demikian FMM mencadangkan supaya pembeli/pengimport menikmati kemudahan kadar tarif di bawah Skim CEPT bagi pembelian komponen/bahan mentah yang dibekalkan oleh GPB atau ZB.

Keputusan

Jabatan bersetuju untuk memberi kemudahan pembayaran duti import mengikut kadar CEPT bagi barang-barang daripada Zon Bebas dan Gudang pengilangan Berlesen yang dijual di Kawasan utama Kastam. Walau bagaimanapun setelah merujuk kepada pihak Peguam Negara didapati perundangan yang ada pada masa ini perlu diubahsuai untuk membolehkan barang-barang daripada ZB dan GPB layak mendapat kadar duti di bawah Perintah Duti Kastam (Barang-barang Berasal dari Negeri-negeri ASEAN) Tarif Keutamaan Samarata 1995. Jabatan sedang mengambil tindakan untuk meminda perundangan berkenaan.

Walau bagaimanapun sekiranya ada permohonan, Jabatan akan merujuk kepada Perbendaharaan untuk pertimbangan selanjutnya secara kes demi kes.

Tindakan : Cawangan Zon Bebas dan Kawalan GPB

4. **Cukai Perkhidmatan Atas Perkhidmatan Yang Dieksport**

MIA menjelaskan di dalam satu sesi dialog Jabatan Kastam telah menerangkan bahawa perkhidmatan yang disediakan kepada pelanggan di luar negera pada masa hadapan tidak dikenakan 5% cukai perkhidmatan. Bagaimanapun bagi syarikat yang dahulunya menyediakan perkhidmatan tersebut tetapi tidak mengenakan cukai perkhidmatan tertakluk kepada pembayaran cukai tersebut dan juga penalti. MIA seterusnya mencadangkan kepada Jabatan Kastam supaya menghapuskan cukai dan juga penalti tersebut.

Keputusan

Masalah ini telah diselesaikan melalui perundangan yang dibentangkan di dalam Belanjawan 1997 di mana definisi *exported taxable service* telah diperuntukkan di bawah Akta Cukai Perkhidmatan 1975. Dengan ini semua perkhidmatan yang dieksport adalah dikecualikan daripada cukai perkhidmatan.

Rayuan kepada pihak berkuasa bolehlah dikemukakan sekiranya terdapat sebarang masalah yang timbul sebelumnya berkaitan dengan perkara ini.

Untuk makluman

5. **Peruntukan Bagi Perkhidmatan Kesetiausahaan Syarikat (*Company Secretarial Services*)**

MIA menjelaskan di bawah seksyen 3 Akta Cukai Perkhidmatan 1975, cukai perkhidmatan dikenakan terhadap *"any prescribed services" provided either by or in:-*

i) any prescribed professional establishment or
ii) any prescribed establishment

Jabatan Kastam tidak menganggap perkhidmatan kesetiausahaan syarikat sebagai *"prescribed service"* oleh itu tidak dikenakan cukai perkhidmatan sekiranya disediakan oleh syarikat-syarikat selain daripada syarikat akauntan awam. Cukai perkhidmatan dikenakan sekiranya perkhidmatan tersebut disediakan oleh Syarikat Akauntan Awam yang merupakan *"prescribed establishment"*. Memandangkan terdapat ketidak seragaman di dalam perkara ini MIA mencadangkan supaya Jabatan Kastam tidak mengenakan Cukai Perkhidmatan terhadap perkhidmatan kesetiausahaan dan juga taxation services yang disediakan oleh apa jua syarikat profesional.

Keputusan

Menurut Jadual Kedua, Peraturan-peraturan Cukai Perkhidmatan 1975, disahkan bahawa perkhidmatan kesetiausahaan syarikat bukanlah merupakan perkhidmatan yang ditetapkan. Oleh yang demikian ia tidaklah tertakluk kepada cukai perkhidmatan. Walau bagaimanapun perkhidmatan tersebut yang disediakan oleh pelesen akauntan awam adalah tertakluk kepada cukai perkhidmatan disebabkan perkhidmatan kesetiausahaan syarikat (*company secretarial services*) dan juga *taxation sevices* dianggap sebagai perkhidmatan profesional yang biasa disediakan oleh akauntan awam.

Ia diliputi oleh perkara 12, Bahagian C kepada Jadual Kedua, Peraturan-peraturan Cukai Perkhidmatan 1975. Perkhidmatan kesetiausahaan syarikat yang disediakan oleh tempat-tempat perniagaan profesional lain yang ditetapkan seperti syarikat *consultancy* juga tertakluk kepada cukai perkhidmatan. Memandangkan terdapat ketidak seragaman di dalam perkara ini, satu kajian akan dijalankan.

Tindakan : Cawangan Cukai Perkhidmatan

6. ***Secondment of Staff***

MIA menjelaskan bahawa perkhidmatan meminjamkan pekerja mahir/pakar (*Secondment of staff*) secara sementara adalah perlu dari masa ke masa bagi tujuan memberi *in-house training*. MIA seterusnya meminta penjelasan daripada Jabatan sama ada perkhidmatan seumpama ini tertakluk kepada cukai perkhidmatan.

Keputusan

Secara tidak langsung, perkhidmatan pembekalan pekerja mahir/pakar atau peminjaman anggota (*secondment of staff*) dianggap sebagai pemberian khidmat perunding dan *passing of skills* iaitu melalui pekerja pakar berkenaan. Semasa perbincangan sesi dialog dengan pihak swasta pada tahun 1993, Jabatan telah memutuskan bahawa *secondment of staff* adalah tertakluk kepada cukai perkhidmatan. *Conducting training/teaching* sahaja tidak tertakluk kepada cukai perkhidmatan.

Untuk makluman

7. ***Annual Sales Turnover Treshold***

Jualan Perolehan tahunan (annual sales turnow threshhold) bagi prescribed professional establishment yang melebihi threshold adalah tertakluk kepada cukai perkhidmatan. Oleh itu MIA memohon penjelasan daripada Jabatan Kastam mengenai pengiraan jualan perolehan tahunan sama ada diambil kira jualan/hasil bagi *perkhidmatan yang tidak ditetapkan* (non-taxable services).

Keputusan

Untuk tujuan pengiraan jualan perolehan tahunan (*threshold*), semua perkhidmatan yang ditetapkan yang disediakan oleh tempat perniagaan yang ditetapkan hendaklah diambil kira. Ia tidak meliputi jualan/hasil daripada perkhidmatan yang tidak ditetapkan sekiranya ia boleh ditunjukkan berasingan di dalam bil atau invois yang dikeluarkan oleh syarikat. Oleh itu menjadi tanggungjawab pelesen untuk mengasingkan di dalam bil atau invois berkenaan mana-mana perkhidmatan yang dikenakan cukai perkhidmatan dengan yang tidak dikenakan cukai perkhidmatan. Cukai akan dikenakan secara *lump sum* sekiranya tidak berbuat demikian.

Untuk makluman

USUL-USUL DARIPADA JABATAN KASTAM

8. **Bahan-bahan Rujukan/maklumat Awam Dicetak Oleh Pihak Swasta**

Bahagian Perkhidmatan Teknik menjelaskan bahawa Jabatan dari masa ke masa mengeluarkan bahan-bahan maklumat untuk edaran kepada pihak swasta. Bahan-bahan maklumat tersebut hanya dapat dicetakkan oleh Percetakan Nasional Bhd. Disamping mengenakan caj yang tinggi pencetak tersebut juga mengambil masa yang lama. Bertujuan supaya bahan-bahan maklumat dapat disebarkan kepada pihak swasta lebih cepat dan mengurangkan tanggungan Jabatan, adalah dicadangkan supaya bahan-bahan maklumat yang disediakan oleh Jabatan diberi kepada pihak swasta untuk dicetak. Contoh bahan-bahan maklumat yang boleh dimasukkan dalam rancangan perkongsian ini ialah Beritakod, Kompendium Prosedur Kastam dan lain-lain. Jika ini dipersetujui, ia boleh dijadikan sebagai projek *Smart Partnership* pertama Panel Perundingan Kastam/swasta.

Keputusan

Memandangkan tiada respon daripada pihak swasta, Tuan Pengerusi memberi tempoh sebulan untuk pihak swasta menghubungi terus Pengarah Bahagian Perkhidmatan Teknik sekiranya ingin menyumbang. Sekiranya tidak ada respon daripada pihak swasta, Jabatan terpaksa meneruskan pengurusan dengan pihak Percetakan Nasional yang mana pengedaran bahan-bahan kelak lambat dan tidak menyeluruh disebabkan kos yang tinggi. Kemungkinan juga urusan percetakan akan diswastakan dan ini akan mengakibatkan bahan-bahan tersebut tidak dapat lagi diberi secara percuma sebaliknya dikenakan bayaran.

Tindakan: Bahagian Perkhidmatan Teknik Pihak swasta

(TN. HJ. AHMAD PABZLI B. MOHYIDDIN)
Pengerusi
Panel Perundingan Kastam/Swasta,
Ibu Pejabat
Kastam dan Eksais Diraja,
Malaysia.

(MD. HALID B.SIRAJ)
Setiausaha,
Panel Perundingan Kastam/Swasta,
Ibu Pejabat
Kastam dan Eksais Diraja,
Malaysia.

EPS/PP/1997

GUIDELINES ON REINVESTMENT ALLOWANCE UNDER SCHEDULE 7A OF INCOME TAX ACT 1967 FOR AGRICULTURAL PROJECTS

1. OBJECTIVE

These guidelines explain the entitlement to Reinvestment Allowance (RA) under Schedule 7A of the ITA 1967 for agricultural projects and shall have effect for the year of assessment 1997 and subsequent years of assessment.

2. CRITERIA FOR ELIGIBILITY

2.1. The incentive is available to any company which incurred capital expenditure on **expanding or modernising or diversifying its activities in relation to qualifying food production**.

(a) The term company has been specifically defined to include an agro-based co-operative society (within the meaning assigned to it under the Farmers' Organization Act 1973), an Area Farmers' Association, a National Farmers' Association, a State Farmers' Association (within the meanings assigned to them under the Farmers' Organization Act 1973), an Area Fishermens' Association, a National Fishermens' Association and a State Fishermens' Association (within the meanings assigned to them under the Fishermens' Associations Act 1971).

(b) The applicant company is resident in Malaysia for the basis year for a year of assessment in which the claim is made.

(c) The scope of the definition of "related product within the same industry" has been extended for purposes of RA. For example, an agricultural based company (rearing of chickens) that diversifies its activity into an activity (cultivation of bananas) that does not relate to its existing product would qualify for the incentive or a manufacturing company that diversifies its activities to agricultural activities (food production) would also qualify for the incentive.

(d) The qualifying food production are as follows:-

i. Cultivation of rice and maize;

ii. Cultivation of vegetables, tubers and roots;

iii. Cultivation of fruits;

iv. Livestock farming;

v. Spawning, breeding or culturing of aquatic products (excluding ornamental fish); and

vi. Any other agricultural activities concerning food production activities approved by the Minister.

(e) Capital expenditure eligible for agricultural projects means capital expenditure incured in respect of:-

i. the clearing and preparation of land;

ii. the planting of crops;

iii. the provision of irrigation or drainage systems;

iv. the provision of plant and machinery;

v. the construction of access roads including bridges; or

vi. the construction or purchase of buildings (including those provided for the welfare

of persons or as living accommodation for persons) and structural improvements on land or other structures.

3. COMPANIES OR EXPENDITURE NOT ENTITLED TO RA

RA is not applicable to a company -

3.1. for the period during which the company -

(a) has been granted pioneer status under the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product and which is applying or intends to apply for the grant of a pioneer certificate; or

(b) has been granted pioneer certificate under the Promotion of Investment Acts 1986 in respect of a promoted activity or promoted product and whose tax relief period has not ended;

3.2 has been granted Investment Tax Allowance (ITA) under the Promotion of Investments Act 1986 or has not surrendered its eligibility to the ITA or the period of the ITA has not expired;

3.3. has been granted abatement of adjusted income for location under the Promotion of Investments Act 1986;

3.4. for the period during which that company, notwithstanding the repeal of the Investment Incentives Act 1968 -

(a) has been granted pioneer status, labour utilisation relief, locational incentive relief under the Act and the tax relief period has not ended; or

(b) has been granted investment tax credit (ITC) and incurs capital expenditure which qualifies for ITC.

3.5. has been granted industrial adjustment allowance under the Promotion of Investments Act 1986;

3.6. has been granted approval (in respect of approved agriculture project) under schedule 4A, ITA 1967;

3.7. incurred capital expenditure on plant and machinery where such plant or machinery is provided wholly or partly for the use of a director or an individual who is a member of the management, administrative or clerical staff.

4. PROCEDURE IN MAKING THE CLAIM FOR RA

A company claiming RA should submit the relevant particulars to the Inland Revenue Board of Malaysia by completing two copies of form EPS(PP/1/1997):

The original copy [with relevant *supporting documents] to:*

Senior Assisstant Director,
Inland Revenue Board
.....
[Branch where the company submits its annual Income Tax Return]
and;

The second copy to:
Executive Chairman,
Inland Revenue Board,
Technical Division,Block 11,
15th Floor,
Kompleks Pejabat Kerajaan,
Jalan Duta,50600 Kuala Lumpur.

The claim will be processed at the relevant branch concerned and no approval letter will be issued. Companies will be notified accordingly through the issuance of the notice of assessment.

INLAND REVENUE BOARD OF MALAYSIA
April 1997

GUIDELINE ON TYPES OF SERIOUS DISEASES UNDER SECTION 46(g) INCOME TAX ACT, 1967

1. Objective

The objective of these guidelines is to provide an explanation on the types of serious diseases which can be considered for tax deduction under Section 46(g) of the Income Tax Act 1967. The new paragraph 46(g) grants relief to an individual of an amount, limited to a maximum of five thousand ringgit expended for medical expenses by the individual for himself/herself, spouse or child who is suffering from a serious disease.

2. Procedures For Claim

The claim must be **evidenced by a receipt** and **certification** issued by a medical practitioner that treatment was provided to the individual, spouse or child for that disease. A **certification** by any **registered medical practitioner** will be acceptable. A provisional diagnosis given by a registered medical practitioner cannot be deemed to be a certification as such.

3. Schedule of Serious Diseases

3.1 Cancer

A disease due to uncontrolled growth and spread of malignant cells and invasion of tissues evidenced by definite histology and includes leukemia (excluding chronic lymphocytic leukemia) lymphoma and Hodkin's disease, but excludes all benign and non-invasive cancers-in-situ and skin cancers except malignant melanoma.

3.2 Heart Attack

A condition which is due to the death of a portion of the heart muscle (myocardium) as a result of inadequate blood supply to the relevant area (infarction), evidenced by symptoms of typical chest pain, new electrocardiographic (ECG) changes characteristic of myocardial infarction and by elevated levels of cardiac enzymes.

A heart attack may lead to the following:-

i. **Replacement Or Repair Of Heart Valve**
Procedure in which open-heart surgery is carried out to replace or repair cardiac valves as a consequence of heart valve defects.

ii. **Coronary Artery Surgery/ Coronary Anglioplasty**
Procedure in which coronary artery by-pass surgery is carried out to correct stenosis or occlusion in the coronary arteries, and includes angioplasty.

iii. **Surgery To Aorta**
Procedure for a disease of the aorta (main artery from the heart) needing excision and surgical replacement of the diseased part with a graft. The aorta in this context will mean the thoracic and abdominal aorta.

3.3 Pulmonary Hypertension

Primary pulmonary hypertension as established by clinical and laboratory investigations including cardiac catheterisation,

3.4 Chronic Kidney Disease

Disease in which both kidney present with chronic irreversible failure to function, and necessitating either long-term renal dialysis or a renal transplant, both certified by specialists in that field.

3.5 Chronic Liver Disease

Disease of the liver evidenced by jaundice, ascites and/or hepatic encephalopathy.

3.6 Fulminant Viral Hepatitis

Massive or partial necrosis of the liver caused by the Hepatitis virus leading to liver failure, as evidenced by it and by liver function tests showing massive parenchymal liver disease and by signs of portasystemic encephalopathy.

3.7 Accidental Head Injury

Accidental head injury (including due to assault) resulting in major head trauma with neurological deficit, leading to death on the initial emergency admission, or, if alive, with significant permanent functional impairment or paralysis, certified by a neurophysician or a neurosurgeon.

3.8 Tumour And Vascular Malformation In The Brain

A condition with any tumour in the brain, or vascular malformation, which is life threatening, characterised by symptoms of increased intracranial pressure, mental symptoms, seizures and motor or sensory impairment as confirmed by CT scan or MRI or vascular studies, certified by a neurophysician atau neurosurgeon.

3.9 Major Burns

Third degree burns covering at least 40% of the body surface area, leading to death on emergency admission to hospital, or to cosmetic or functional disability, requiring further corrective surgery.

3.10 Major Organ Transplant

The procedure whereby a person receives the transplant of a kidney, liver, heart, lung, pancreas or bone marrow.

3.11 Parkinson's Disease

3.12 HIV Infection and AIDS

3.13 Major Amputation Of Limbs

This is not a disease per se. However, major amputation of any one or more of the four limbs, in the upper limb: including the shoulder joint or at levels distal to it to the whole hand: and in the lower limb: including the hip joint or at levels distal to it to the whole foot, due to disease or accident. This does **not** include minor amputations of digits in the hand or parts of the foot.

4. Rationale

4.1 The Schedule includes both acute and chronic serious diseases.

4.2 An accident in which the victim admitted to the hospital alive but in a serious, life-threatening condition, with multiple injuries, to which the subject subsequently succumbs, during the same admission, can be considered for tax relief. The rationale for this is that the cost of prolonged intensive care for such seriously ill patients can be heavy. The expenses, in this instance, are a one-time event.

4.3 Burns (and scalds) caused by accident, and of a serious nature, and defined by a measurement of the area of the body involved, leading to either death in the hospital on the first admission, or serious disability, leading to disfigurement or loss of limb function, requiring further surgical procedures, can be considered for tax relief.

4.4 Disabilities per se do not merit tax relief under Section 46(g), as this claim is provided under Section 46(d). However, the expenses incurred in the treatment in hospital, on the initial admission, leading to that particular disability, like an amputation or paralysis of one or more major limb, can be considered for tax relief.

4.5 A Chronic disease (like diabetes or renal failure) can have a single acute complication which can lead to a major permanent disability, like an amputation of a major limb can also be considered for tax relief.

4.6 In special instances of some serious diseases not in the Schedule, due consideration may be given to the recommendation by the registered medical specialist, based on major permanent disability and the expense incurred, for tax relief. It must first be approved by Technical Division, Inland Revenue Board.

4.7 Tax relief claimed under this provision should be applicable to treatment received in Malaysia or in foreign countries.

LEMBAGA HASIL DALAM
NEGERI,
UNIT 35, BAHAGIAN TEKNIKAL,
TINGKAT 15, BLOK 11,
KOMPLEKS BANGUNAN
KERAJAAN,
JALAN DUTA,
50600 KUALA LUMPUR

Income Tax Ruling ITR 1997/1

REMISIERS - TAX TREATMENT ON INCOME AND EXPENSES

Date of Issue : 7th April 1997

PREAMBLE

1. This ruling is applicable to a person deriving income as a commissioned dealer's representative or commonly known as a remisier.

RULING

2. TAX TREATMENT ON CERTAIN INCOME AND EXPENSES

Income

2.1 **Commission Income**

Commission (by whatever name called) which is calculated based on brokerage charged on securities transacted through the remisier is to be treated as business income and will be taxed under section 4(a) of the Income Tax Act 1967 (hereinafter referred to as "the Act").

2.2 **Recovery of Contra Loss**

Contra losses which have been deducted from the remisier's commission or security deposit etc. and allowed as a deduction under section 33 of the Act when subsequently recovered will be treated as business income under section 30(4)(a) of the same Act in the year it was recovered.

2.3 **Interest Income On Security Deposit**

Interest received by a remisier on his security deposit in the form of cash placed with the stockbroking company to make good against debts or business income and assessable under section 4(a) of the Act as the deposit forms an essential part of the remisier's normal business.

Expenses

2.4 **Deduction In General**

The provisions for deductions are covered under section 33 of the Act. In general, all outgoings and expenses wholly and exclusively incurred in the production of income are allowable as a deduction in arriving at the adjusted income. Section 39 however sets out expenses which are strictly prohibited. The common ones being domestic and private expenditure and expenses of a capital nature.

2.5 **Expenses Charged By The Stockbroking Company**

The following common types of expenses charged by the stockbroking company to the remisier will be allowed as deduction:-

(i) Contra loss and losses due to buying-in/selling-out

(ii) Contra interest

(iii) Error account (for example error in executing clients' order)

(iv) Legal fees in respect of debt collection

(v) Scrip loss

(vi) Allocation of administrative expenses(vii) Expenses paid on behalf of the remisiers

Expenses mentioned in items (i) to (v) above must be in relation to losses/expenditure arising from the remisier's clients only. Personal losses incurred through dealings using accounts of nominees will not be allowed as a deduction against the commission income.

For expenses mentioned under items (vi) and (vii), to be allowed it must be expenses of a revenue nature. Expenditure charged on purchase of, for example, computers and hand phones would not be allowed as a deduction. However if the assets are owned and used at the end of the basis period by the remisier capital allowances may be allowed.

2.6 **Other Expenses**

Expenses incurred in addition to the expenses charged by the stockbroking company in the course of carrying on his business as a remisier will also be allowed as a deduction provided that it is allowable under section 33 of the Act and is not prohibited by section 39.

2.7 Any expenses claimed will have to be substantiated or supported with details as mentioned in Paragraph 3.2 below.

3. **Documentation Required**

3.1 **Annual Statement From The Stockbroking Company**

Annual statement of income and expenses to be furnished by the stockbroking company must indicate at least all the items below. The following format may be adopted.

STATEMENT OF INCOME AND EXPENSES FOR THE PERIOD .....

Gross Commission			xxxxxx
Less: Contra Losses		xxxx	
Other Charges	xxxx		xxxx
(to be itemised)	____		____
			xxxxxx
Add: Contra Loss Recovered			xxxx
			____
Net Commission			xxxxxx
Interest On Security Deposit (if any)			xxx
Other Income (to specify)			xxx
			____
Total Income			xxxxxx
			=====

Certification

Named company .....
Signature .....
Name of officer .....
Designation .....

3.2 **In respect of expenses claimed the following particulars have to be furnished.**

(i) **Contra Loss/Buying-in Loss/Selling-out Loss**
- Name I/C No. and address of client
- Date and contract note number
- Amount of loss
- Amount recovered
- Net amount claimed
- Action taken to recover the debt
- Confirm whether the client has been suspended from trading and his name has been included in the KLSE Defaulter List by submitting a documentary evidence.

(ii) **Contra Interest**
- Name and I/C No. of client
- Amount of losses
- Amount of interest claimed

(iii) **Error account**
- Nature of error
- How the error arises
- Amount claimed

(iv) **Scrip loss**
- Name of counters
- Amount claimed
- Circumstances under which the scrip was lost

The particulars required in paragraphs 3.2(i) to 3.2(iv) above need not be certified by the stockbroking company. However the Revenue reserves the right to call for any information should the need arises.

(v) **Salaries/commission**
- Name, IC No. and address of recepient
- Amount paid and claimed
- Whether payment by cash, cheque etc.
- Services performed by the recepient
- If the recepient is an employee of the remisier, state whether Income Tax (Deduction From Remuneration) (Amendment) Rules 1997 has been complied with.

Conditions

4. The Inland Revenue Board of Malaysia reserves the right to amend any part of this Ruling or repeal the whole Ruling without giving any reason thereof.

5. This Ruling does not deprive taxpayers of the right of appeal to the Special Commissioner Of Income Tax.

Inland Revenue Board Of Malaysia
7th April 1997
LHDN. 91/35/(S)/42/51/84-1

Income Tax Ruling ITR 1997/1 (Remisiers - Tax Treatment On Income And Expenses)

The Inland Revenue Board ("IRB") has issued the following clarifications on the above ITR 1997/1:

c) The ITR 1997/1 is effective from the year of assessment 1997.

d) The IRB will not amend those remisiers' cases, involving years of assessment prior to 1997, that have been finalised under Section 97 of the Income Tax Act, 1967 following the release of the ITR 1997/1.

3rd National Conference

TAX PLANNING FOR PROPERTY TRANSACTIONS

PREVIOUS TWO EVENTS SOLD OUT

August 6, 1997 | **Hotel Equatorial** | **Kuala Lumpur**

CASE STUDIES

Conference Highlights

- Critical evaluation of real property
- In-depth discussion and implementation of tax planning opportunities
- Transferring of properties with minimum tax burden
- Trader or adventurer in real properties
- How to minimise tax on disposal of property-based companies
- Update on recent case laws
- Income from property

Panel of leading Tax Professionals

- ☆ **Mr Ooi Kock Aun**
  Tax Manager
  Established public listed organisation
- ☆ **Mr Veerinderjeet Singh**
  Executive Director
  Arthur Andersen HRM Tax Services S/B
- ☆ **Mr Ronnie Chia**
  Tax Manager
  Land & General Bhd
- ☆ **Mr Richard Thornton**
  Tax Consultant

TAX PLANNING WORKSHOP

AUGUST 7, 1997

Led by **Mr Ooi Kock Aun**, B. Bus, CPA (Aust), RA of MIA, ATII

A practical hands-on session where the following issues will be presented and discussed:

- Stamp duty on real property transactions.
- Implication of stock withdrawal under Section 24, Income Tax Act 1967.
- Actual case studies on real property transactions.
- Practical tax planning guide for real property transactions.

Participants of the workshop are also given the opportunity to discuss in-depth tax matters in respect of actual problems faced by them when dealing with real property transactions.

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1997 Programme For Submission of Return Forms "Programme"

On 17 March 1997, IRB held its annual dialogue with five professional bodies to seek their comments on the above Programme. The dialogue was chaired by the Head of the Operations Division, Mr. M. Selveindran.

The professional bodies present are MIA, MIT, MACPA, MATA and MAICSA. MIA was represented by Mr Tony Seah, Mr Neoh Chin Wah while Mr Quah Poh Keat, Mr Lee Yat Kong and Mr Chin Pak Weng represented MIT.

The IRB had originally proposed to introduce the following changes for the 1997 Programme:-

- No extension of time beyond 31 May 1997 for all SG and OG Cases.
- C cases to be submitted on the following dates i.e. 31 May 1997, 30 June and 31 July 1997.

MIA/MIT and other professional bodies reacted spontaneously in unison and presented, in turn, its reasons for objections to the above proposals.

The main objections centred on the short timeframe given by the IRB to introduce the changes for 1997 and the acute staff shortages faced by many practitioners.

After lengthy discussions with the professional bodies, the IRB accepted the reasonableness of the objections raised. The programme was subsequently revised as follows.-

- Extension of time given for OG cases until 31 July 1997 subject to the fulfilment of certain conditions.
- Extension of time for C cases to follow 1996 Programme i.e. four filing dates up to 30 August 1997.

The above revision agreed to by the IRB should be seen in its proper perspective as a negotiated agreement between the IRB and the professions. It is contrary to the mistaken beliefs still held by some members that MIA/MIT had given in too easily to the IRB without regard for their problems and plight.

In the final analysis, the revised Programme is needed is indeed a triumph for consensus rather than confrontations and represents the best solutions under the circumstances. It also reflects the IRB's recent approaches to problems solving which exhibited flexibility, co-operation with taxpayers and procedural transparency.

MIA/MIT wishes to remind members that, in agreeing to postpone the implementation of the original features of the Programme, the IRB gave notice to the professions that those held-over changes would introduced in 1998.

MIA-MIT is currently, working on alternative proposals for filing of 1998 returns. These proposals, when finalised, will be submitted to the IRB for its consideration.

FEE REVISION ANNOUNCED AT 5TH ANNUAL GENERAL MEETING

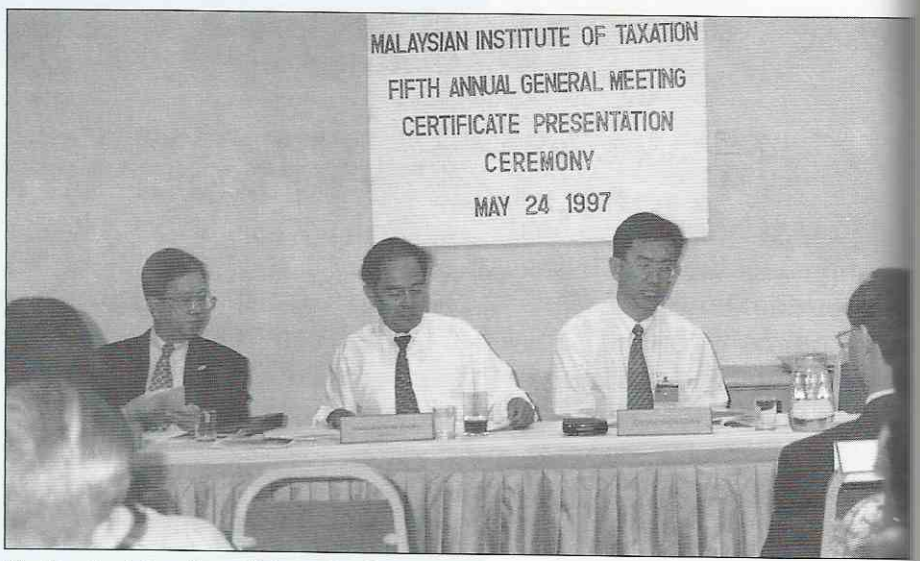
The Institute held its Fifth Annual General Meeting on Saturday, 24 May 1997. The President, En Ahmad Mustapha Ghazali in his addressing speech thanked the members for attending the meeting and their continuous support to the activities of the Institute.

The President further announced that almost 60% of the Associate members who were eligible for the Fellow status recently had applied and been conferred as Fellows of the Institute. He further informed that those Associate members who would be eligible in the coming months would be informed of their eligibility and be invited to apply for the change in status.

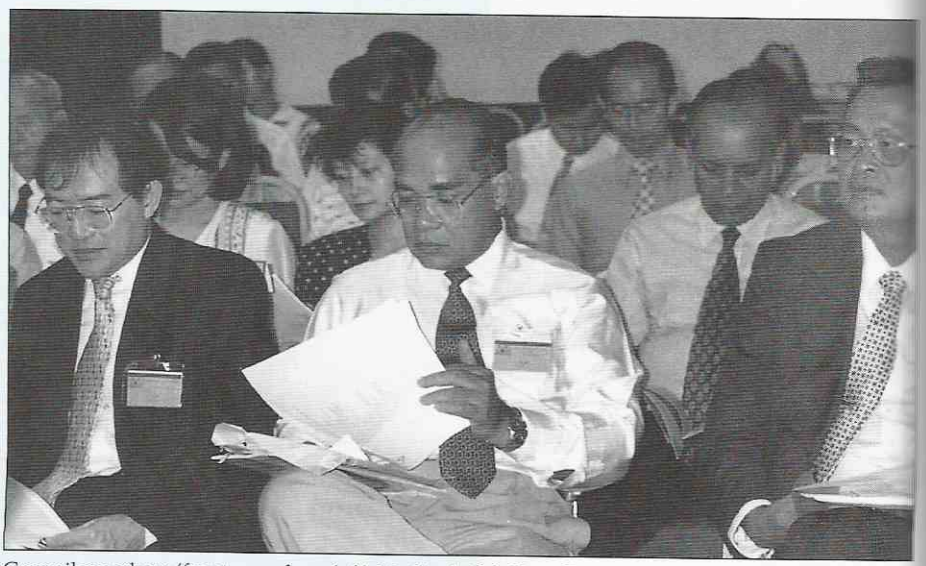
Members were also informed of the number of senior officers from the Inland Revenue and the Royal Customs and Excise Department who are serving in various Committees and study groups formed by the Institute. The contributions by these officers, though they may not be members of the Institute, have been very crucial to ensure that projects of the Institute are aligned with the objectives of the said Government bodies.

Members who were interested to participate in the Islamic Financial Instruments and Transactions Study Group and the recently formed Self-assessment and field audit working group under the Editorial & Research Committee were encouraged to do so. The formation of such groups would be on-going to tackle current issues affecting practitioners and the profession as a whole. Members who have issues that they would like the Institute to look into are encouraged to inform the Institute.

The President assured members that most of the activities of the various Committees of the Institute are geared towards an important priority of the Institute that is for recognition as a national taxation body. He added that Ms Teh Siew Lin who is the Chairperson of the Government Affairs Committee had been given the special task of gaining recognition for the Institute. As a start, a memorandum had been submitted to the Ministry of Finance to seek recognition for members to act as Tax Agents under Section 153(3) of the Income Tax Act, 1967.



The President, En. Ahmad Mustapha Ghazali (centre) chairing the meeting. On his right is Deputy President, Mr Michael Loh and on his left is the Honarary Secretary, Mr Chuah Soon Guan.



Council members (front row, from left) Mr Quah Poh Keat, Tn. Hj. Abdul Hamid bin Mohd Hassan and Mr Lee Yat Kong at the AGM.

The President also informed members that the Council would prepare another memorandum which is to be submitted to the Public Services Department to have the qualifications of the Institute accredited. This recognition is envisaged to provide graduates of the Institute an alternative career path as well as to make the MIT qualification more attractive.

Members are also urged to participate and be part of the history of the First Convention of the Asia-Oceania Tax

FEE REVISION ANNOUNCED AT 5TH ANNUAL GENERAL MEETING

Consultants' Association (AOTCA) hosted by the Institute to be held in Kuala Lumpur in November 1998.

Another matter brought up during this meeting was on the revision in the annual subscription fees which the Council has been deliberating over the past two years. The President informed that out of the current RM75.00 annual subscription, the Institute has only RM15.00 to service per member for the whole year as they have to pay RM60.00 per member per annum to the Malaysian Institute of Accountants (MIA) for secretariat support. Previously, from 1991 to 1995 the Institute was paying RM36.00 per annum to MIA which was increased to RM48.00 per annum in 1996. He added that the Council had agreed on the fee of RM120.00 for Associate members and RM145.00 for Fellows members which would come into effect from 1 January 1998. The increased fee would allow the Institute to carry on its objectives and the Council hopes to provide members with increased services in the near future.

The President ended his speech with a note of thanks to all Council and Committee members who have unselfishly contributed to the achievement of the Institute's objectives and also to the Council of the MIA for their continuing support.

A section of the crowd at the AGM. On the left is Council member Mr Tony Seah and at the centre is former Advisor to Council, Y. Bhg. Tan Sri Lim Leong Seng

The President later announced the reappointment of 8 members to the Institute's Council as MIA Appointees namely En Ahmad Mustapha Ghazali, Mr Chow Kee Kan, Y. Bhg. Dato' Hanifah Noordin, Mr Harpal Singh Dhillon, Mr Lee Yat Kong, Mr Quah Poh Keat, Mr Seah Cheoh Wah and Ms Teh Siew Lin. The Council members re-elected during this meeting were En Atarek Kamil Ibrahim, Tn Hj Abdul Hamid bin Mohd Hassan, En Hamzah HM Saman, Mr Kang Beng Hoe, Mr Ranjit Singh s/o Maan Singh, Mr Thanneermalai s/o SP SM Somasundaram and Mr Veerinderjeet Singh.

A certificate presentation ceremony was also held in conjunction to this meeting. New members as well as members who were conferred Fellow status recently were seen receiving their certificates from the President of the Institute.

* ANNOUNCEMENT OF REVISION OF FEES

We wish to inform members that effective from **1 January 1998** the annual subscription fees would be revised as follows:

	ASSOCIATES MEMBERS		FELLOWS MEMBERS	
	Currently	**As at 1.1.98**	**Currently**	**As at 1.1.98**
Admission Fee	RM200	RM200	RM300	RM300
Subscription Fee	RM75	RM120	RM100	RM145

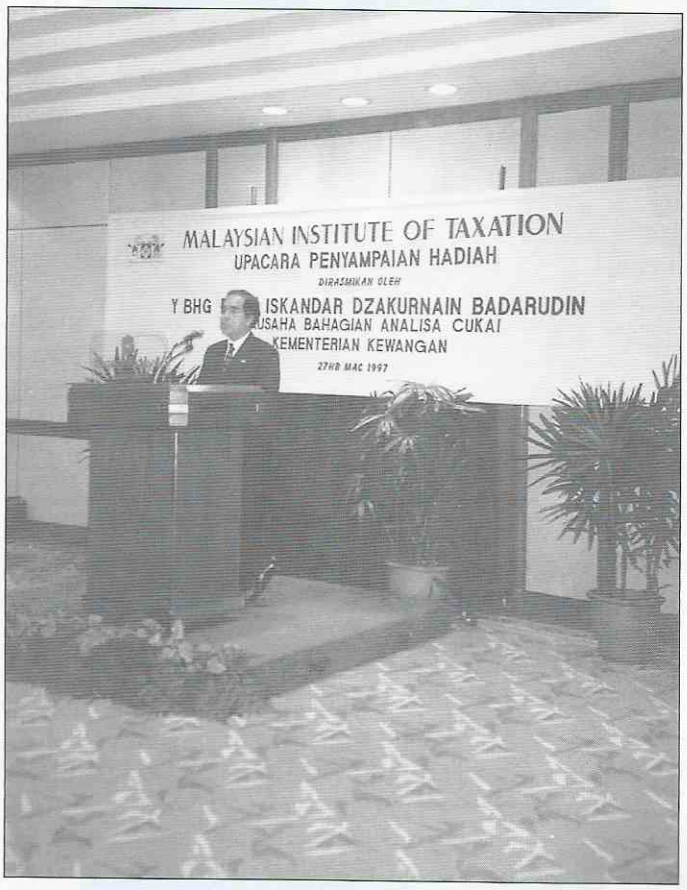
** This announcement was officially made during the AGM of the Institute.*

OUR FIRST GRADUATE

Our first graduate, Mr Patrick Ting receiving his certificate from the Secretary of the Tax Analysis Division, Y. Bhg. Dato' Iskandar Dzarkurnain Badarudin

In recognition of the outstanding performance of the students of the MIT professional examinations held in December 1996, a prize giving ceremony cum luncheon was organised by the Education & Training Committee of the Institute. The ceremony held on 27 March 1997 at Shangri-La Hotel, Kuala Lumpur was attended by around 60 invited guests from the government as well as the private sector.

During the ceremony, prize winners were awarded their certificates and medals by the Secretary to the Tax Analysis Department of the Ministry of Finance Y Bhg Dato' Iskandar Dzakurnain Badarudin, who was the Guest-of-Honour for the ceremony.



President of the Institute, En. Ahmad Mustapha Ghazali delivering his speech

Awards for best performance in Taxation I, Taxation II and Taxation III as determined by the Council was given to Ms Meriel Chow Mei Lai, Mr Samuel Ho Gwo-Woei and Mr Wong Kok Keng respectively while Ms Tea Sor Hua won the best award for overall performance in Foundation Level. Mr Patrick Ting Chin Kiong created history in the Institute's annals by being the first graduate of the Institute.

Among the important guests present at the ceremony were Director-General of the Inland Revenue Pn Najirah bt Mohd Tassaduk Khan, Executive Chairman of the Inland Revenue Board, Y Bhg Dato' Mohd Ali Hassan, former adviser to the Institute, Y Bhg Tan Sri Lim Leong Seng and Y Bhg Dato' Shamsir Omar, the former Accountant-General.

Dato' Dzakurnain in his speech congratulated the Institute for successfully conducting the professional examinations for the past two consecutive years. He further added that it is very

OUR FIRST GRADUATE

Y. Bhg. Dato' Iskandar posing with the prize winners

timely that the Institute is taking a pro-active approach to meet the challenges to increase the number of tax professionals as there is a great demand for tax professionals which is increasing rapidly with the growth of the country's economy. Dato' Dzakurnain went on to stress the importance of the tax profession and their key roles in the economy of the country.

He also took the opportunity to inform the guests that the Institute's application to the Ministry of Finance on recognition of its members as Tax Agents under Section 153(3) of the Income Tax Act, 1967 is currently being reviewed by the Ministry and that the Institute would be informed of the status in due course.

President, En Ahmad Mustapha Ghazali in his speech gave his assurance that the Institute as an organisation that strives to align its objectives with the Government's would use its resources to train qualified tax professionals to contribute meaningfully to the country's rapid progression as a fully industrialized nation. He later briefed the guests on the many activities of the Institute which are conducted through the various Committees of the Institute.

Commenting on the memorandum sent to Ministry of Finance recently, the President expressed his sincere hope that the Government would share his views that all MIT members have worked extremely hard since the Institute's inception to be recognised as a responsible taxation body by achieving their objectives and contributing value added services to both the Government and the public. He further hoped that the Institute would receive positive news from the Government on this application.

He later congratulated the prize winners for successfully passing the professional examinations of the Institute.

Subsequently, the Chairman of the Examination Committee, Mr Veerinderjeet Singh spoke of the efforts taken by the respective Committees of the Institute in preparation of the MIT examinations. The colleges offering courses for the examinations includes KLC School of Business and Professional Studies, Strategic Business School, CNM Taxlink in Johor Bahru and Disted College in Penang. The Chairman expressed his hopes that more colleges especially those in other states will offer such programmes in the future.

He further added that experienced tax personnel were co-opted into the Examination Committee to ensure that the syllabus of the examinations is acceptable to both the public and private sectors. He also commented on the performance of students in the December 1996 sitting of the examinations, which he rated as reasonably encouraging.

The ceremony ended with an enjoyable lunch.

PRIZE WINNERS

Meriel Chow Mei Lai
Taxation I

Samuel Ho Gwo-Woei
Taxation II

Wong Kok Keng
Taxation III

Tea Sor Hua
Best Overall Performance In foundation Level

Successful candidates for the 1996 Examinations as determined by the Council

LEVEL 1

Taxation I

Mark Lai Fun
Yew Chin Mee
Hong Kim Soon
Lee Lai Teng
Abdul Kader Mohd Noorul Hak
Ng Chew Nam
Tan Teck Bee
Lee Kim Eng
Kasthuri Veerasamy
Tea Sor Hua
Setra Devi Kandasamy
Leo Yoon Heong
Meriel Chow Mei Lai
Chu Ming Thing
Low Saw Heok
See Swee Hong

Financial Accounting I

Hiew Lee Leng
Hong Kim Soon
Lee Lai Teng
Tham Yew Wai
Abdul Kader Mohd Noorul Hak
Ng Sow Yoong
Tan Teck Bee
Lee Kim Eng
Cheong @ Chong Man Fong
Chuah Lien Chai
Tee Wei Keong
Angie Ng Lin Yean
Tea Sor Hua
Chu Ming Thing
Cheng Lian Bee
Loo Eng Chew
Low Saw Heok
Leong Lep Ken
Tan Soo Fong

Economics and Business Statistics

Ng Sow Yoong
Tea Sor Hua
Meriel Chow Mei Lai
Abdullah Abdul Salam Chandran

LEVEL 2

Taxation II

Foong Kok Keong
So Bee Leng
Nagalingam Haridass
Wong Wee Kee
Samuel Ho Gwo-Woei
Eileen Chan Bee Hong
Norita Ja'afar
Noronha Robin Anthony
Balaya Madasamy
Cheam Lea Pheng
Wong Kok Keng

Taxation III

Betty Soh Lee Nie
Yow Kok Chaw
Loh Ee Sum
Deep Singh s/o Gorpal Singh
Chan Yat Chen
Ho Chee Kong
Samuel Ho Gwo-Woei
Balaya Madasamy
Lim Huan Siang
Teoh Siew Hoon
Wong Kok Keng
Wong Cheng Jam
Suto Wai Sun
Pang Mei Yun

Company and Business Law

Koh Kheng Boon
Wong Wee Kee
Eileen Chan Bee Hong
Noronha Robin Anthony
Balaya Madasamy
Chang Chin Loong
Wong Cheng Jam

LEVEL 3

Taxation IV

Yow Kok Chaw
Deep Singh s/o Gorpal Singh
Lim Siew Mui
Teoh Siew Hoon
Tang Yeth Fong
Patrick Ting Chin Kiong

Taxation V

Koo Wan Foong
Teoh Siew Hoon
Patrick Ting Chin Kiong

Financial Accounting II

Koh Kheng Boon
Lee Yon Chong
Tang Yeth Fong

Business & Financial Management

Mahadevan Gengadaram
Koh Kheng Boon
Lee Yon Chong

MIT ORGANISES STUDENTS DIALOGUE

A dialogue session was organised for the MIT students on Saturday, 26 April 1997 at 10.00am by the Examinations and the Education & Training Committees. Mr Veerinderjeet Singh and Mr Michael Loh, the chairmen of the Examination and Education & Training Committees respectively, chaired the session. The objective of the dialogue was to inform the students of the amendments to the syllabus and reading guide as well as to receive feedback from students of matters pertaining to the examinations.

This is the first time the Students' Guide has been revised since the launch of the MIT examinations in 1995. Reading guides have been up-dated and the recommended text books and reference materials are now made available at the Institute's library. The syllabus for the examination papers have been updated and made clearer. For example, the Investments Incentives topic in Taxation III has been moved to Taxation V and Economics, Business Statistics & Computer Knowledge has been renamed to Economics and Business Statistics. Guidance Notes would be issued towards the examination session to assist students.

The dialogue session was very interesting as Mr Veerinderjeet Singh and Mr Michael Loh briefed the students of their performance in the last two examination sessions, clarifying the Students' Guide and the students in return, raised many challenging questions. They requested for the examination sessions to be held twice a year instead of currently one, more student dialogues sessions to be organised and availability of materials for practice etc.

Mr Veerinderjeet Singh also assured the students that the Institute would organise from time to time 'Examination Techniques' sessions, revision courses, publish Guidance Notes, regularly update the books in the library and other activities to assist students in their examinations.

Those who are interested in the MIT examinations or wish to obtain a revised copy of the Students' Guide, please contact:

Ms P Sujatani Poosparajah
Education Department
Malaysian Institute of Taxation
No 2, Dewan Akauntan
Jalan Tun Sambanthan 3
Brickfields
50470 Kuala Lumpur
Tel : 2745055
Fax : 2737533

Q U O T E

"If you do the little jobs well, the big ones will tend to take care of themselves."

Dale Carnegie

MEETING WITH COLLEGES

On 15 May 1997, a meeting with colleges offering courses for the MIT professional examinations as well as those interested in offering the courses was held to discuss ways and means of fostering greater co-operation between colleges and the Institute.

Attendance from colleges for this meeting was very encouraging. Among the many representatives from the colleges who attended the meeting were Mr Selvanathan from KLC School of Business and Professional Studies, Mr Paul Cheng from Kolej Aman, Dr S. Sivamoorthy from Consultancy Network of Malaysia (CNM Taxlink), Ms Susie Toh from Help Institute and Mr Rangasamy from Strategic Business School Sdn Bhd.

The Institute was represented by the Chairman of the Examination Committee Mr Veerinderjeet Singh, Chairman of the Education & Training Committee Mr Michael Loh and Tn Hj Abdul Hamid bin Mohd Hassan from the Examination Committee.

Mr Veerindeerjeet in his introduction, highlighted the rapid progress of the professional examinations of the Institute which was first held in December 1995. He also thanked the colleges currently offering the courses for their unwavering support to the Institute and its examinations. Currently, KLC is the only college at the moment offering all levels of the examinations for the MIT students. The other colleges such as Strategic is offering Level I and Level II papers while CNM Taxlink had started with Level I.

The Chairman stressed the importance of the colleges in assisting the Institute to run the courses as it would ensure that students have the means and are fully equipped with the necessary channels to prepare themselves for the examinations. Later, he opened the floor for discussion.

Among the many matters discussed were on the possibility of granting exemption for the MIT examinations through internal diploma courses of the various colleges that would be accredited by the Institute, entrance requirement for mature students and also the syllabus of the examinations.

The colleges were also informed of a memorandum that had been sent to the Ministry of Finance by the Institute on gaining recognition for its members as Tax Agents under Section 153(3) of the Income Tax Act, 1967.

Through this discussion with the colleges, the Institute is satisfied to learn that the MIT examinations are well received by the colleges and the fact that the colleges acknowledge the high standard of the examinations gives an added boost to the young Institute.

PILOT PAPERS , DECEMBER 1995 & 1996 EXAMINATIONS QUESTIONS AND ANSWERS BOOKLET ORDER FORM

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No. 2 Jalan Tun Sambanthan 3
Brickfields
50470 Kuala Lumpur

Full Name Mr/Mrs/Miss/Ms: _____

Address: _____

_____ Student Reg. No: _____

MIT REGISTERED STUDENTS & MIT MEMBERS

1996 EXAMINATIONS BOOKLETS		1995 EXAMINATIONS BOOKLETS		PILOT PAPERS BOOKLETS	
LEVEL	COST PER LEVEL	LEVEL	COST PER LEVEL	LEVEL	COST PER LEVEL
Level I/Foundation	RM4.00	Level I/Foundation	RM4.00	Level I/Foundation	RM4.00
Level II/Intermediate	RM5.00	Level II/Intermediate	RM5.00	Level II/Intermediate	RM5.00
Level III/Final	RM9.00	Level III/Final	RM4.50	Level III/Final	RM9.00

NON-REGISTERED STUDENTS & NON-MIT MEMBERS

1996 EXAMINATIONS BOOKLETS		1995 EXAMINATIONS BOOKLETS		PILOT PAPERS BOOKLETS	
LEVEL	COST PER LEVEL	LEVEL	COST PER LEVEL	LEVEL	COST PER LEVEL
Level I/Foundation	RM6.00	Level I/Foundation	RM6.00	Level I/Foundation	RM6.00
Level II/Intermediate	RM7.00	Level II/Intermediate	RM7.00	Level II/Intermediate	RM7.00
Level III/Final	RM11.00	Level III/Final	RM6.50	Level III/Final	RM11.00

Please tick box(es) to indicate your order.

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

Student's Signature: _____ Date: _____

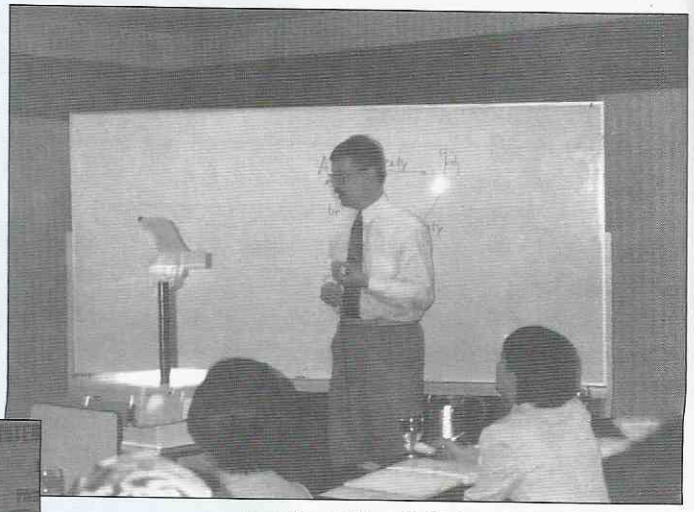
WORKSHOP ON INTERNATIONAL TAX PLANNING

Close to 40 participants attended a workshop on International Tax Planning which was jointly organised by the Institute and MIA in collaboration with the International Bureau of Fiscal Documentation (IBFD). The four day workshop was held at Hyatt Regency Saujana from 3rd to 7th March 1997 with renowned speakers like Prof Dr Willem G. Kuiper who is the Director of the IBFD International Tax Academy (ITA) and Dr Geerten M. M. Michielese who is the Project Co-ordinator and Principle Lecturer for IBFD.

The workshop was divided into three groups where Workshop 1 covered a 2-day workshop on International Tax Planning & Advisory, Workshop 2 covered a 1-day workshop on Tax Efficient Structure & Holding Companies while Workshop 3 covered a 1-day advanced level workshop on International Tax Avoidance and Anti-Avoidance.

The rapid economic expansion of our country has caused many Malaysian companies and multinational enterprises residing in the country to increasingly conduct cross border businesses. Thus this has forced our accountants to be equipped with knowledge in international tax planning to deal with difficult and complex tax questions relating to different laws in two or more countries, each subject to interpretation which may not be uniform. This workshop was organised with a hope of assisting our members and the public to overcome the situation. The Government's encouragement to explore all corners of the global market has made it more essential to understand cross-border taxation.

Participants of this workshop are expected to have gained as much knowledge as possible on the international tax planning as it would assist them in their work.



Prof. Dr. Willem G. Kuiper explaining the intricasies of International Tax Planning

Participants listening attentively

MEMBERSHIP OF MIT AS AT 22 APRIL 1997

The following persons have been admitted as associate members of the Institute as at 22 April 1997.

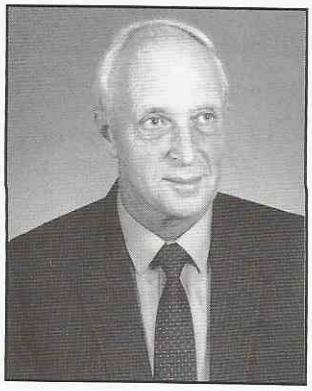
NAME	MEMBERSHIP NO
NG WEE KWONG	1305
SHANMUGHANATHAN A/L VELLANTHURAI	1306
HOR YOW KOK	1307
TAN JOO KHENG	1308
YEAP LING WENG	1309
LAW TIAM HOCK	1310
HUP LAI HOCK	1311
SOON CHOO KUAN	1312
LIM AI LEE	1313
LIM CHIEW BENG	1314
SAU CHIN BON	1315
THAM LEE KING @ KAM LEE KING	1316
NEE CHOONG SING	1317
TAN YOKE LEONG	1318
LIM LIP TAT	1319
YAU WEN CHIN	1320
YONG YEE KONG	1321
TAN BEE LENG	1322
YII HOO PING	1323
FATHIMA RUBY A/P KULANDAISAMY	1324
MUGUNAN @ MUGUNAM A/L RAMAN	1325
PUNITHAVATHY A/P R GUNARATNAM	1326
NOOR AZIAN BT ABDUL HAMID	1327
LEE CHIEW ING	1328
KHO HONG @ KHAW MEE HONG	1329
ONG YOKE YEW	1330
CHOW CHEE YEN	1331
LEE AH KAM	1332
SHELYN CHIN CHOOI LENG	1333
PHAN YEW HIN	1334
WONG YAEK KIEW	1335
OOI KOCK AUN	1336
NG FOOK ON	1337
LAU THENG CHIM	1338
CHOO MIN JIN	1339
YAP YOU MUN	1340
YEOH LEAN IMM	1341
LEE TUCK WAI	1342
KOH YONG HENG	1343
TAN KENG CHUN	1344
ONG SWEE TOOK	1345
TEOH GEOK POH	1346
TAN MUI GIAP	1347
WONG YAT KEONG	1348
LEE YUE WEI	1349
TAN BOON WOOI	1350
CHANDRA DEVAN A/L A. THEAIVENDIRAM	1351
ONG KEE YONG	1352
FUNG HIUK BING	1353
ONG FUN AIK	1354
LIM SU SING	1355
LEW YUN LIN	1356
GAN ENG KEONG	1357
CHIM WENG SUM	1358
TANG YOW SAN	1359
TAM KOK MENG	1360
THAYAPARAN A/L M RASIAH	1361
LEOW SUET FONG	1362
ONG ENG TEONG	1363
HOY AKAM @ HOY AH KAM	1364
TAN LEH KIAH	1365
MISLINA HANIM IBRAHIM	1366
TEOH BOON KEE	1367
TIONG IAN PING	1368
LEE KIAN CHIANG	1369
DATO' DR ONG SING SEAN	1370
LIM HOCK SIONG	1371
LOH LIK KHAN	1372
CLEMENTS A/L V I JOSEPH	1373
CHENG TUCK MENG	1374
HAROL J S GOMEZ	1375
GABRIEL REUBEN KUA BENG GHYE	1376
YOK HOCK CHOON	1377
BOCK WAN CHEK	1378

The following persons have been admitted as fellows members of the Institute as at 22 April 1997

NAME
MOEY CHEE SENG @ MOEY CHEE THIM
BEH LAI HUAT @ BEH LYE HUAT
SOO HUK KHEONG
KOK KENG SIONG
TAN KIM LEONG
MAHINDER SINGH A/L HARBAN SINGH
KUI JEE YENG
KHOO CHIN GUAN
QUAH POH KEAT
YOON MUN CHIEW
CHIN YOON KHEONG
DING MING DOK
YEO CHEE LIANG
CHONG ENG HONG
SEAH CHEOH WAH
CHOONG TUCK YEW

MEMBERSHIP STATUS OF MIT AS AT 22 APRIL 1997

Honorary Fellows	4
Fellows	30
Associate Members*	1340
	1370
* **Associate Members**	
Public Accountants of MIA	808
Registered Accountants of MIA	145
Licensed Accountants of MIA	17
Advanced Course Exam of IRD	105
Advocates & Solicitors	7
Approved Tax Agents	110
Others	153
Deceased/Resigned	(5)
	1340



RESIDENCE AND NON-RESIDENCE - COMPANIES

Prepared by:
Richard Thornton

In the previous article in this series (March 1997), we took a look at the rules about residence of an individual. This time we shall be looking at the rules applying to companies.

Unlike individuals, the rate of tax payable by a company is not affected by its residence situation but residence or non-residence will be important for other reasons, such as the application of withholding tax, the franking of dividend payments and the availability of tax incentives.

A company is defined for income tax as meaning a body corporate including any body of persons established with a separate legal identity by or under the laws of a territory outside Malaysia, so it is obvious that we are considering foreign companies as well as Malaysian companies.

In dealing with a company, it is important to remember that the company has a legal existence separate and distinct from that of its shareholders and directors. The tax residence of those individuals does not determine the residence of the company.

THE RULES OF RESIDENCE

Whereas the residence of an individual is determined largely on the basis of where he or she happens to be, the residence of a company is decided by reference to different factors. A company will have a place of incorporation and, usually, a registered office, but these are of little importance for Malaysian tax purposes, although some countries (for example the United States of America, The United Kingdom and Australia) do use the place of incorporation in deciding on tax residence.

The residence of a company for Malaysian tax purposes is based solely upon the exercise of 'management and control'. Section 8 of the Income Tax Act 1967 specifies the situations in which a company will be resident in Malaysia. It also deals with the residence of a Hindu joint family and with an unincorporated body of persons, but we shall not be concerned with those aspects. A company is resident for the basis year for a year of assessment:

- in the case of a company carrying on a business or businesses, if at any time during that basis year the management and control of its business or any one of its businesses, as the case may be, are exercised in Malaysia, and

- for any other company, if at any time during the basis year the management and control of its affairs are exercised in Malaysia by its directors or other controlling authority.

MANAGEMENT AND CONTROL

Although the meaning of this expression has been considered many times by the courts in other countries where the law is similar, it has not been considered in any depth by the Malaysian Courts. As a result we have to rely upon decisions made elsewhere.

One of the early and leading cases was *De Beers Consolidated Mines Ltd. v. Howe* (5 TC 198). A company registered in South Africa worked diamond mines there. Its head office was in South Africa and its shareholders' meetings were held there. Directors met in both South Africa and in the UK, but the real control in all the important matters of the company was exercised in the meetings in the UK where the majority of the directors resided. The English House of Lords held that the company was resident in the UK.

Lord Loreburn, in the course of his judgment stated:

> *The company resides for the purposes of income tax where its real business is carried on. The real business is carried on where the central management and control actually abides. This is a pure question of fact to be determined not according to the construction of this or that regulation or byelaw but by a scrutiny of the course of the business or trading.*

It becomes clear from examining a number of other decisions that what was meant by the 'real business' of the company did not mean either its day to day trading operations or the mere carrying out of its statutory duties.

In *Egyptian Hotels Ltd v. Mitchell* (6

TC 152), the House of Lords found the company to be resident in the UK. The company had an Egyptian board of directors who were in control of the company's trade in Egypt but also had a London board who controlled the share capital of the company and fixed the remuneration of the directors including the Egyptian directors.

In a not unsimilar case, *Todd v. Egyptian Delta Land & Investment Co. Ltd.* (14 TC 119), the House of Lords found the company to be not resident in the UK because all meetings of the directors were held in Egypt and the books and records were kept in Egypt whilst compliance with the Companies Act in London was handled by a London secretary.

For the purposes of the 'real business' test, as propounded in the *de Beers* case, the word 'business' has a meaning wider than the word 'trade', and probably wider than the meaning normally given to it in Malaysia. The UK Inland Revenue have indicated that they regard it as including the purchasing of stock in preparation for the commencement of trade and the holding of investments including shares in a subsidiary company.

CONTROL AND MANAGEMENT

In all of the leading cases, the courts have been looking for the place at which the directors meet to deal with the 'real business' of the company. They have attached great importance to the acts of the directors of the company. In *P Ltd* (1953)(SB VII(1)), a Singapore case, the Board of Review stated:

> *All the decided cases show conclusively that the statutory control of a company is vested in its directors and that a company was controlled where its directors effectively exercised that control*

To find out where the company's central management and control is located, it is necessary to see where the directors meet to exercise the authority properly given to them by the shareholders of the company. In *Stanley v. The Gramophone and Typewriter Ltd.* (5 TC 358), it was said that:

> *The directors are not servants to obey directions given by the shareholders as individuals*

Nevertheless, there can be situations where the rights of the directors to control the affairs of the company have been effectively usurped by some other party or parties. In that case the real control no longer rests with the directors and regard must be had to where the *de facto* control is exercised.

In *Malayan Shipping Co. Ltd* (3 AITR 258, 71 CLR 156), an Australian case, the company had been incorporated in the Straits Settlements. There were two directors resident in Singapore who held two shares but all of the rest of the share capital was held by Mr. Sleigh, a resident of Australia, who was managing director and managing agent. Mr. Sleigh had exercised complete management and control over the business operations of the company as well as over the central management and control of the company. It was this latter aspect, and not the former, that rendered the company resident in Australia.

A not uncommon situation is that of a company wholly owned by another company, the affairs of which are dominated by the parent company. A UK company had three subsidiaries carrying on business in East Africa and it took over the management and control of the subsidiaries so that the boards of the subsidiaries did not meet at all. The subsidiaries were held to be resident in the UK. (*Bullock v. The Unit Construction Co. Ltd* (38 TC 712). Every case must be decided according to the facts by examining the extent to which the subsidiary company board retains its autonomy. If it does so, even whilst following broad policies laid down by the parent company, regard can still be had to the actions of the subsidiary company board.

DUAL RESIDENCE

Where control and management of a company is divided between two countries, it may be resident in both and this principle was established *in Swedish Central Railway v. Thompson* (9 TC 342). In the later case *of Union Corporation Ltd. v. Commissioners of Inland Revenue* (34 TC 207), a South African company controlled the activities of 16 subsidiaries, 13 of which were managed from South Africa and 3 from London. A majority of the company's directors resided in London with a minority residing in South Africa but, in matters affecting policy or other general matters affecting the company, the supremacy was with the board in London. It was held that the court need not look only at the place of the final and supreme authority and that the company could be resident both in South Africa and in the UK.

By contrast, in *Koitaki Para Rubber Estates Ltd v. F.C.T.* (2 AITR 136), a company incorporated in New South Wales, Australia, having a rubber estate in Papua was held to be resident only in Australia and not also in Papua on the basis that control of the general affairs of the company was exercised in Australia and that:

> *a finding that a company is resident of more than one country ought not to be unless the control of the general affairs of the company is not centered in one country but is divided or distributed among two or more countries*

In the same way as for individuals, most double taxation agreements have a 'tie-breaker' clause to prevent double taxation resulting from dual residence of companies. Most work on the basis that where, under the laws of each country, a company is

resident in both, it is deemed to be resident where its place of effective management is situated.

TIME AND PLACE

Under the Malaysian definition of residence, a company will be resident or not resident for the whole of a basis year. There is no question of being resident for part of a year. A year of assessment is a calendar year and the basis year will always be the calendar year preceding that year of assessment, regardless of the company's accounting date or basis period for tax purposes, if any.

Although the acts of exercising management and control may not be performed continuously in Malaysia throughout the basis year, if they are performed in Malaysia at any time in the basis year the company will be resident for that basis year. Such a situation could arise where the company has directors resident in Malaysia and directors resident overseas who hold their meetings sometimes in Malaysia and sometimes overseas. One meeting in Malaysia, at which the directors are dealing with the 'real business' of the company would be sufficient to make the company resident for that year. Meetings may not be formal ones held in conventional surroundings. Real business could be dealt with at a get-together over lunch following a game of golf.

Remember also that Malaysia is defined for income tax purposes to include the territorial waters and the exclusive economic zone. What happens on luxury yachts in the Malacca Straights or on oil-rigs in the South China Sea could be happening in Malaysia.

With modern communication methods, such as teleconferencing, important decisions can be taken even when the individuals are not in the same place at the time. So far, no judicial guidance is available to help to apply the rules in these circumstances.

PRESUMPTION OF RESIDENCE

Section 8 goes on to state that where the residence of a company has been established with the Director General for a year of assessment, it is presumed until the contrary is proved that the company continues to be resident in Malaysia. This provision merely shifts the onus to the company to disprove its residence if necessary but it is sufficient to make it difficult for Malaysian incorporated companies to establish non-residence.

THE MALAYSIAN TEST OF RESIDENCE

Although we are obliged to rely upon overseas cases to interpret the meaning of management and control, it is worth noting some differences:

- Most of the leading cases apply to the UK tax jurisdiction where there is no statutory rule about company tax residence. The decided cases are the whole basis of the law upon company residence. It is different in Malaysia where we have a very specific law in section 8 of the Income Tax Act 1967.

- In the decided cases, the exercise by the directors of the real business of the company is the central issue, but section 8 seems to cast a wider net, by referring to 'a company carrying on a business, or businesses' and 'any other company'. Furthermore, the test for a company carrying on business does not refer to the directors whereas the test for 'any other company' does.

- 'Business' is defined, for the purposes of income tax in Malaysia, as including profession, vocation and trade and every manufacture, adventure or concern in the nature of trade (but not employment). The same word 'business' is used both to determine residence (under section 8) and to categorise income chargeable to tax (under section s.4(a)) and it must be presumed to have the same meaning in both places. However, the meaning of 'business' as understood for the *De Beers* line of cases seems to be different from the meaning of that word under the Income Tax Act 1967.

- Another way in which the Malaysian test of residence seems to be different is that the Malaysian test can be applied at any moment in time, whereas the test used for UK tax purposes is not related to any particular point in time.

The differences seem to make Malaysia's rules of residence for companies both more specific and wider-ranging but, until we have some judicial interpretation of them, there must remain some doubts as to how far, if at all, they depart from the classic case-law test of residence.

SUMMARY

The conditions under which a company will be resident in Malaysia (whether or not it is also resident somewhere else) might be summarised as follows:

- if control and management are exercised here by the directors

- if de facto control is exercised here by persons who are not the directors of the company

- if control and management is divided between two or more locations and Malaysia is one of them

- if it has been established that the company is resident here and the presumption of continuing residence has not been disproved.

MALAYSIAN INSTITUTE OF TAXATION

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These rules and regulations are made by the Council of the Malaysian Institute of Taxation pursuant to Article 22 of its Articles of Association and shall come into force on 1 September 1995.

Members are required to observe proper standards of professional conduct and specifically to refrain from acts which have been described in the rules and regulations as misconduct, which includes, but is not confined to, any act or default likely to bring discredit to himself, the Institute or the taxation profession.

Members who fail to observe such standards may be required to answer a complaint before the Investigation and Disciplinary Committees.

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CHANGES IN PROFESSIONAL APPOINTMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REFERRALS

12-1 No member in public practice who receives an assignment by referral from another member in public practice shall provide any other professional services to the referring member's client without informing the referring member.

INCAPACITY OR DEATH OF A SOLE PRACTITIONER

13-1 (i) A member in practice who is a sole practitioner should enter into an arrangement to enable his practice to continue with minimum disruption in the event of his death or incapacity. Provision for continuity in the proper management of a practice may be made in either of the following ways:

(a) by entering into an agreement with another sole practitioner or firm or with a firm of public accountants;

(b) by entering into some other arrangement whereby adequate provision is made.

(ii) Members should ensure that their executors and family will be aware, in the event of death or incapacity, of the arrangements made for the management of the practice.

Explanatory Note:

Unless appropriate arrangements have been made, the continuing incapacity or death of a sole practitioner will cause considerable difficulty and inconvenience to his clients. Furthermore, the resultant interuption of services will diminish the value of the practice and may even lead to its disintegration.

It is therefore important for a sole practitioner in his own interests no less than in those of his clients to enter into such arrangements with another member or firm as will enable the practice to be carried on with a minimum of disruption in the event of his incapacity or death. Such arrangements should be made as soon as possible and should provide so far as possible for the practice to be continued as a going concern until such time as the sole practitioner recovers or he or his representatives decide to dispose of the practice.

An arrangement, reciprocal or otherwise, between two sole practitioners may be appropriate. Alternatively, in many cases it will be advantageous for a sole practitioner to enter into an arrangement with a firm.

Although this arrangement may take the form of an agreement to manage, an arrangement for the sale of the practice on a predetermined basis may in many cases be more satisfactory.

When such arrangements are under consideration, the compatibility of the respective practices, especially in relation to procedures, fees and the general state of the work in both offices, should be borne in mind.

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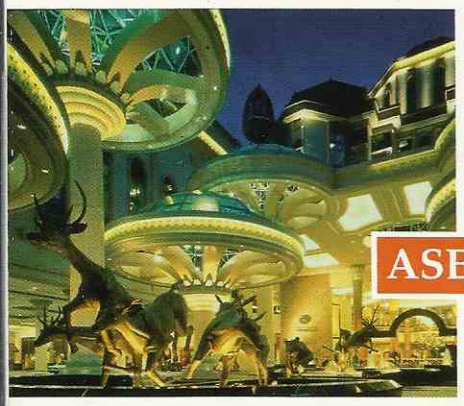

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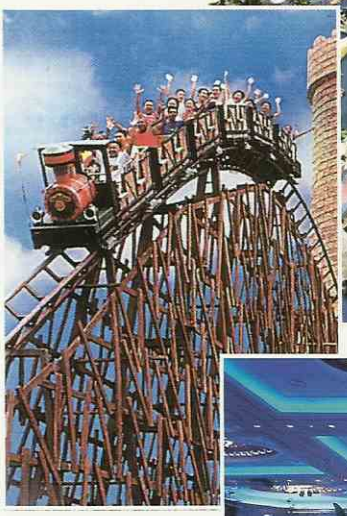

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