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- Mount Pleasure Corporation Sdn. Bhd.
- Pan Century Edible Oils Sdn. Bhd.
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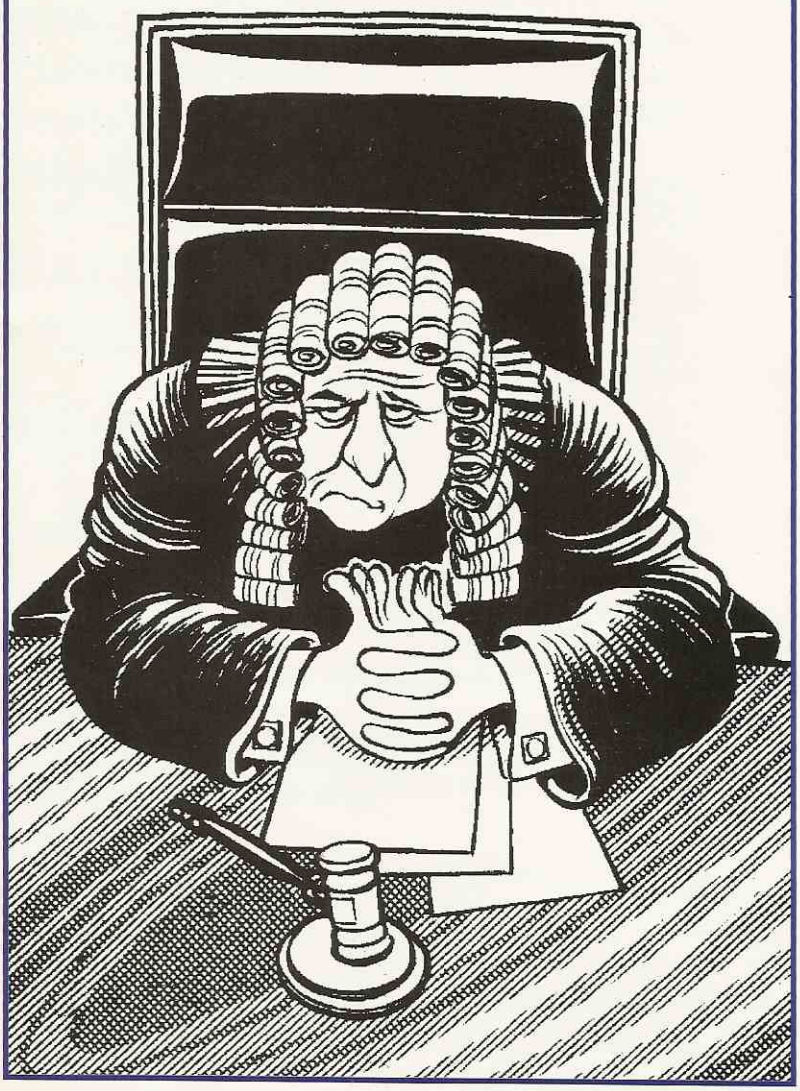

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Malaysian Institute of Taxation

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The objectives of the Institute are, inter alia:

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

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Contents

The Real Property Company After 17 October 1997

by
Tax Junior

This article seeks to lay out the position of the Real Property Company after 17 October 1997. Why this particular date? This was the date of the 1998 Budget announcements by the Minister of Finance. With one stroke of the pen, the Honourable Minister changed the law in no small way relating to such companies which had existed for the past 10 years since the legislation was introduced on 21 October 1988.

It has long been recognised that there were certain shortcomings in the RPC legislation as embodied in Paragraph 34A of the Real Property Gains Tax Act 1976. Therefore changes were expected to be introduced in the 1998 Budget though, prior to 17 October 1997 it was not certain in what form they would take, but certainly intended to close the shortcomings.

The Changes

The 1998 Budget and now the Finance Act 1998 (Act 578) has tightened up the legislation by essentially introducing two major amendments:-

- By changing the determination of acquisition price under sub-paragraph 3
- By deleting the provision which follows after sub-paragraph 2

The changes (in italics) in the Paragraph 34A legislation is clear when compared side by side:-

PRIOR TO BUDGET DAY 17 OCTOBER 1997	BUDGET DAY & THEREAFTER
34A.	34A.
(1) An acquisition of shares in a real property company (hereinafter referred to in this paragraph as "the relevant company") shall be deemed to be an acquisition of a *chargeable asset, and where such* shares are disposed of, such a disposal shall be deemed to be a disposal of a chargeable asset notwithstanding that at the time of disposal of such shares the relevant company is not regarded as a real property company.	(1) An acquisition of shares in a real property company (hereinafter referred to in this paragraph as "the relevant company") shall be deemed to be an acquisition of a *chargeable* asset, and where such shares are disposed of, such a disposal shall be deemed to be a disposal of a chargeable asset notwithstanding that at the time of disposal of such shares the relevant company is not regarded as a real property company.
(2) The chargeable asset in this paragraph shall be deemed to be acquired -	(2) The chargeable asset in this paragraph shall be deemed to be acquired -
(a) on the date the relevant company becomes a real property company; or	(a) on the date the relevant company becomes a real property company; or
(b) on the date of acquisition of the chargeable asset.	(b) on the date of acquisition of the chargeable asset.

PRIOR TO BUDGET DAY 17 OCTOBER 1997	BUDGET DAY & THEREAFTER
Provided that where that relevant company acquires additional real property or shares or both the defined value of which is equivalent to or exceeding fifty per cent of the defined value of the real property or shares or both it already owns, then the date of acquisition of the chargeable asset shall be deemed to be the date of acquisition of the additional real property or shares or both.	))))))))))
(3) Notwithstanding paragraphs 4 and 9, the chargeable asset in this paragraph shall be deemed to be acquired at an acquisition price equal to a sum determined in accordance with the formula - A --- x C, B where A is the number of shares deemed to be a chargeable asset; B is the total number of issued shares in the relevant company at the date of acquisition of the chargeable asset; and C is the defined value of the real property or shares or both owned by the relevant company at the date of acquisition of the chargeable asset.	PROVISION DELETED *(3) For the purposes of this paragraph, the acquisition price of a chargeable asset shall -* *(a) where subparagraph (2)(a) applies, be deemed to be equal to a sum determined in accordance with the formula-* *A* *--- x C,* *B* *where A is the number of shares deemed to be a chargeable asset;* *B is the total number of issued shares in the relevant company at the date of acquisition of the chargeable asset; and* *C is the defined value of the real property or shares or both owned by the relevant company at the date of acquisition of the chargeable asset;* *(b) where subparagraph (2)(b) applies, be determined in accordance with paragraph 4 or 9.*
(4) ..... (5) ..... (6)	(4) ..... (5) ..... (6) ..... SUB-PARAGRAPHS (4) TO (6) HAS NO CHANGES

1. 1st Amendment - Acquisition Price

The 1998 Budget changed the determination of acquisition price such that the formula "A/B x C" only now applies to the first instance when a company becomes a RPC. For all acquisitions of RPC shares after the company has become a RPC, the acquisition price of these shares will be the price that was paid for the shares.

If bonus shares were issued, these shares would have a zero acquisition price. Where rights are issued at par, then for purposes of the RPGT Act, they are now deemed to have an acquisition price of RM1 par each. If the rights are issued at a premium, then the acquisition price is with the premium uplift.

The Explanatory Statement which was issued with the Finance (No. 2) Bill 1997 stated clearly the intention of this amendment:-

"Clause 31 seeks to amend subparagraph 34A(3) of Schedule 2 to the Act so that the formula used for determining the acquisition price shall now only apply to a situation where the chargeable asset is deemed to be acquired on the date the company becomes a real property company. With this amendment, the acquisition price of shares in a real property company will be the actual acquisition price. Thus the acquisition price of bonus shares will be zero. This amendment will be effective from 17 October 1997."

Prior to 17 October 1997, the formula "A/B x C" applied to both situations, that is, when the company first becomes a RPC and when new shares are issued/acquired after the company has become a RPC. Under the old rules, bonus/rights shares had an acquisition price based on the market value of real properties or shares at the time when the RPC shares were issued.

The following example will clearly show the effects of this change:-

EXAMPLE

A new company purchased land on 1 January 1994 for RM5 million. The market value of this real property is not less than 75% of the company's total tangible assets at this date. On 1 January 1994, the number of issued shares was 100,000. On 1 March 1995, the shareholders (all non-individuals) subscribed for rights of 900,000 shares at RM1 par each at a time when the market value of the now-developed property was RM20 million. On 1 January 1996, bonus shares of 1,000,000 was issued; on this date the market value of the property was RM30 million. There are plans now (June 1998) to sell 100% of the shares in this company for RM20 million, based on the revalued worth of the company.

The RPGT position for the sale of the 2 million RPC shares, on the assumption that there had been no change in the RPC legislation, would have been as follows:-

	Shares deemed acquired on 1.1.94	Rights shares issued on 1.3.1995	Bonus shares issued on 1.1.96
Number of shares	100,000	900,000	1,000,000
	RM (million)	RM (millions)	RM (millions)
Disposal price (pro-rata)	1	9	10
Less:			
Acquisition price (A/B x C)			
100,000/100,000 x 5	(5)		
900,000/1,000,000 x 20		(18)	
1,000,000/2,000,000 x 30			(15)
Chargeable gains	NIL	NIL	Nil

The RPGT position now for the sale of these RPC shares with the new rule is as follows:-

	Shares deemed acquired on 1.1.94	Rights shares issued on 1.3.1995	Bonus shares issued on 1.1.96
Number of shares	100,000	900,000	1,000,000
	RM (million)	RM (millions)	RM (millions)
Disposal price (pro-rata)	1	9	10
Less:			
Acquisition price (A/B x C)			
100,000/100,000 x 5	(5)		
Price paid for the shares		(0.9)	
Price paid for the shares			(NIL)
Chargeable gains	NIL	8.1	10
RPGT rate	5%	15%	20%
RPGT payable	NIL	1.215	2

The severe implications of the change is now apparent for the shareholders: from a NIL tax position to a RM3,215,000 tax liability!

For the acquirer of these 2 million shares, his acquisition price for RPC purposes will be what he is paying for the shares. At RM20 million, this works out to be RM10 per share. If in the future he disposes such shares at any price above RM10 each, this will result in a chargeable gain for him.

2. 2nd Amendment - Deletion of the provision

Prior to Budget day, where a RPC acquired "additional real property or shares or both the defined value of which is equivalent to or exceeding fifty per cent of the defined value of the real property or shares or both it already owns, then the date of acquisition of the chargeable asset shall be deemed to be the date of acquisition of the additional real property or shares or both."

It is generally recognised that the effect of the above provision not only moves the acquisition date of the existing RPC shares to the date of the acquisition of the additional real property or shares or both, but also the acquisition price of these existing RPC shares is re-computed based on the current combined market price of the existing real property or shares or both. Therefore an immediate sale of the RPC shares soon after the acquisition of the said additional real property or shares or both will result in minimal or no tax at all as the acquisition price base is now the current market value of the underlying assets.

The following example will clearly show the effects of this change:-

EXAMPLE

A new company acquired land on 1 January 1994 for RM2 million. The market value of this real property is not less than 75% of the company's total tangible assets at this date. Issued shares at this date were 100,000. On 1 March 1998, the company acquired land worth RM10 million when the market value of its existing land was RM4 million. There are plans now (June 1998) to sell 100% of the shares in this company for RM12 million, based on the revalued worth of the company.

Upon a disposal of the RPC shares if the provision had not been deleted, the results would have been as follows:-

	Shares deemed acquired on 1.3.98
	RM (millions)
Disposal price	12
Less: Acquisition price	(14)
Chargeable gain	NIL

As the price of the additional land purchased at RM10 million is more than 50% of the market value of the existing property at RM4 million, the acquisition date of the 100,000 RPC shares originally deemed acquired on 1 January 1994 (when the company first becomes a RPC) moves forward to 1 March 1998. Based on the "A/B x C" formula, these RPC shares now have an acquisition price of RM14 million.

The RPGT position now for the sale of these RPC shares after the provision is deleted is as follows:-

	Shares deemed acquired on 1.1.94
	RM (millions)
Disposal price	12
Less: Acquisition price	(2)
Chargeable gain	10
RPGT rate	5%
RPGT payable	0.5

The implications of the change is now apparent: from a NIL tax position to a RM500,000 tax liability!

CONCLUSION

After the dust had settled, there are still some who maintain that the Budget changes in respect of the determination of the acquisition price only affects shares acquired/issued after 17 October 1997. This means that shares acquired prior to 17 October 1997, either on the date the company became a RPC or subsequently acquired after the company has become a RPC, continue to have their acquisition price based on the "A/B x C" formula. If based on this thinking then, there would therefore be no RPGT exposure in our first example above as all the shares were issued prior to 17 October 1997! Proponents of this approach put themselves in a false position as they will think that there is no tax at all.

Shareholders thinking of selling their RPC shares should now re-evaluate their position in the light of these new changes. Where they once expected little or no tax, their exposure will now be greater than what they thought.

QUOTE

Hard things are put in our way not to stop us,
but to call out our courage and our strengths

-Unknown Source-

Minutes of Meeting

CUSTOMS/PRIVATE CONSULTATIVE PANEL 2/97

MATTERS ARISING

Item 1

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

Point for discussion

Following the amendments, sales made to a LMW would therefore be an export sale.

Consequently, traders are eligible to use item 91 for sales to be made to LMWs. The sales tax authority, however, do not allow the use of item 91 for such sales to LMW, citing administrative inadequacies (there is no K2, the export declaration form, to prove that export has taken place). It must be emphasized that the Customs Act, 1967 do not treat LMWs as being outside the country, hence the question of export does not: arise.

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

Response

Item 91 exempts "any person approved by the Director General" and exempted goods are "all locally manufactured goods for export." LMWs are only granted exemption on "goods for use in the manufacture of other goods in a warehouse licensed under section 65A of the Customs Act 1967" as per item 28. Because LMWs are only exempted on goods used in the manufacture of other goods, application of item 91 is not allowed because that item exempts all goods. The same applies to FIZs which are regarded as outside Malaysia. They are only exempted in respect of goods used directly in manufacturing such as under item 27. Previously, trading companies are granted the facility under CJ5A and the Customs Department intends to continue to extend the facility using a different mechanism. For this purpose, the proposal to create a new item in the Sales Tax (Exemption) Order 1980 has been submitted for approval.

Item 14

Section 90 of the Customs Act 1967 gives provision for any person to apply to the Director General of Customs to operate as a customs agent. Administratively, the extent of the operation would only be at the customs station where the application was approved. However, one may apply to have the operation extended to other states.

Point for discussion

Section 90 gives the Director General the power to allow any person to operate as a customs agent. The fact that the approval was by the Director General should be enough to encompass the approval to any state/place in Malaysia. It would seem odd that the main approval being granted by the Director General would require an approval of the State Director in the case where the operation is to be extended to the said state. It is proposed that only one approval should be sufficient/required to enable any approved person to operate in any place; besides this will necessarily cut down on administrative cost both to the customs as well as the operators.

Response

Presently, all applications to become agents under section 90 are made to the State Director in the state where the agent operates. For administrative purposes, the Customs Department needs to know in which states the agent wishes to operate. Because of this, if he wishes to operate in another state, the State Director of the relevant state must be informed.

This issue submitted by the MIT merits consideration. As such, the Customs Department will take action to enable the State Director of a particular state to grant one approval which would be accepted as applicable in other approved stations.

Item 17

The Service Tax Regulation 1975 imposes a prescribed business threshold to determine whether certain establishment requires to be licensed. This threshold is based on the annual sales turnover of prescribed services.

Point for discussion

ii) The Regulation makes mention of "annual sales turnover" interpreted by the Customs HQ to mean the accumulated sales of any preceding 12 months. The Customs Office, Wilayah Persekutuan takes this to mean the accumulated sales of a 12-month period. Hence, there is inconsistency in treatment with respect to licensing.

iii) The threshold is calculated based on the value of the prescribed service provided. Certain businesses provide cross-category of prescribed services. In this case the threshold will be determined based on the accumulated amount of the prescribed services and will be licensed upon achieving the threshold, without considering the actual nature of the business. For example, a company whose principal activity is advertising (the threshold is RM300K) also provides (supplementary or incidental) consultancy services (the threshold is RM300K) will be licensed as a consultant upon reaching the threshold of RM300K. For the purpose of licensing the establishment, the threshold of he principle activity should be the criterion.

Response

For Determination of Annual Sales Turnover far Service Tax:

Headquarters has decided that twelve months for purpose of determining "threshold" means the preceding 12 months or part thereof, or 12 months starting from the date business commenced (revolving 12 months). Clarification was given at the meeting of the Panel (no. 1/96) (Clarification was also given in the "Buku Panduan Kastam Prosedur Cukai Perkhidmatan" para 5, page 6 -7). All stations have been informed of this matter. Action is also currently being taken to update the relevant Regulations and Acts with a view to bringing about uniformity in -procedures, definitions and other such matters. The computation of threshold is not subject to the principal activity of a business which provides several categories of prescribed services.

Section 3 of the Service Tax Act 1975 provides that "subject to this Act, there shall be charged and levied a tax known as service tax in respect of

a) any prescribed service (hereafter... referred to as "taxable service") provided by or in-"

b) any prescribed professional establishment, or

c) any prescribed establishment, except for exported taxable service. As such, when a prescribed establishment or professional establishment provides (Wherever and whatever) services that are prescribed services, it is subject to service tax when a threshold is reached, no matter for which one of the prescribed services.

Item 18

Interpretation of "prescribed establishment"

Issue for discussion

The Service fax Regulation stipulates the various establishments that fall under the "prescribed establishments" and "prescribed professional establishments." While the interpretation of what constitutes the "professional establishments' in some cases is clear since it makes reference to the business entity as a whole (the term "establishment/companies/firms"), in other cases-: the term "prescribed establishments" points to the place of business rather than to the business entity.

Response

"Prescribed establishment" as stated in the Service Tax Regulations 1997 is related to the business entity. According to section 8 of the Service Tax Act 1975: -

"Every person who carries on business of providing taxable service or selling taxable goods, either in any prescribed professional establishment or prescribed establishment shall apply to the senior officer of customs in the prescribed form for a licence, and subject to section 9, no person shall carry on such a business unless be is in possession of a licence issued under subsection (2)".

The concept of entity is applied on the basis of the above provision. For example, branches of "KFC Restaurant" should not be considered separately because each branch/place of business does not exist separately under the law, i.e. they are not registered separately with the ROC/ROB. As such, all branches of KFC are regarded as one entity. Threshold is computed based on the total annual turnover for the entity and not the annual turnover for each branch. (This matter has been explained in the "Buku Panduan Kastam Prosedur Cukai Perkhidmatan", para 5.5. on page 7.)

In a case where a food court and supermarket are located in the same building and under the same management, the food court is licensed as a restaurant for specific reasons, several stalls in a food court under one management company are regarded as one entity.

Food products sold in a supermarket are not subject to service tax although sold by the same company and in the same building because the government's intention is not to levy service tax on taxable goods sold in a supermarket.

Item 20

LMWs are allowed to sell a certain percentage of their goods in the domestic market. The sale of goods is subject to import duty and sales tax (where applicable). In this case LMW can choose to pay import duty based on the value of the imported raw materials or on the finished goods. Prior to the Amendment, the value upon which the sales tax is computed is based on the value of the finished goods sold which is inclusive of the import duty paid; section 7(1)(a) refers. The Amendment has placed LMWs as being outside the country; henceforth goods sold by LMWs to the domestic market are import sales. In this ease, the sales value is as determined by section 7(l)(d) whereby the tax is calculated based on the value of the finished goods and the import duty payable.

Point for discussion

Section 7(1)(d) does not give cognizance to the option of paying import duty based on imported raw materials/finished products. LMWs end up paying more sales tax even if they had opted to pay import duty based on imported raw materials.

The intention of the Government's stand on LMWs certainly is not to inhibit, rather to facilitate. Therefore this Amendment is counter-productive.

Response

i) *Presently LMWs are no longer sales tax licensees and sales tax must be paid together with customs duty by using Rorang Kastam 9. The determination of sales value is similar to goods imported and brought in from a FIZ based on section 7(l)(d) of the Act.*

ii) *Approval to pay import duty on raw materials/components, which have been exempted, has been withdrawn on 17 October 1997. This means that LMWs are required to pay customs duty on finished goods, and this has settled the issue in an indirect way,*

Item 21

Service Tax

Point for discussion

Consultancy is not defined and the ordinary meaning of consultancy is rather vague. Could the Customs and Excise Department provide a more specific definition of consultancy and give examples of what constitutes consultancy services?

Decision

Consultancy services have been subjected to service tax since 1 January 1992. Nevertheless, there is no definition for "consultancy" in the Service Tax Act 1975. It is therefore sufficient to apply the dictionary meaning: -

> *"The of (sic) providing expert (or professional/technical) advice (or opinions), and notification of fact and information. Mere provision of facts and information where no expert opinion is expressed is not regarded as consultancy."*

The Webster's Third New International Dictionary gives the meaning of "consultant" as

> *"One who gives professional advice or services regarding matters in the field of his special knowledge or training; an expert"*

(There is no definition that is more specific.)

Examples that cover "consultancy service"

After a study/survey is done, a report is prepared giving specific information as well as analysis of the information. The report is concluded with a proposal or expert opinion based on the study conducted.

The provision of this service constitutes "consultancy services."

If the report does not contain any proposal or expert opinion, the service provided is not regarded as consultancy service.

Notes: The full text of the Minutes is published on pages 38 to 47.

Income Tax Ruling ITR 1998/1

Reinvestment allowance schedule 7A income tax act 1967

(Issued on 6 April 1998)

I. Introduction

The ruling serves to explain the amendments to Schedule 7A, Income Tax Act 1967 introduced with effect from year of assessment 1998. It is also intended to lay down specific requirements to be complied with by companies intending to claim the incentive.

II. The Amendments To Schedule 7A

1. The amendments set new conditions for the granting of reinvestment allowance (RA) under Schedule 7A of the income Tax Act, 1967. The conditions for a Malaysian resident company to qualify for RA are:-

   (i) The company has been in operation for not less than twelve months (Paragraphs 1 and 1A).

   (ii) The company has shown an increase in productivity in the basis period for that year of assessment or in the basis period for the following year of assessment (Paragraph 1).

2. Other Amendments Include:-

   (i) The period of entitlement to RA is limited to five consecutive years of assessment beginning from the year of assessment for the basis period in which the capital expenditure was first incurred (paragraph 2).

   (ii) The RA given is to be withdrawn in respect of asset (purchased for purposes of any qualifying project) which is disposed of at any time within two years from the date of acquisition of that asset (paragraph 2A).

   (iii) The carrying forward of the unabsorbed allowance beyond the five years of assessment by reason of the restriction to the statutory income (paragraph 4).

   (iv) The definition of the word "incurred" (paragraph 9).

   (v) The definition of "qualifying project" (paragraph 9).

III. Explanation And Examples

The amendments are further clarified as follows:-

1. "Has Been in Operation For Not Less Than Twelve Months"

   1.1 Paragraphs 1 and 1A have been amended to include a new condition that is a company is only eligible for RA if it has been in operation for not less than twelve months. The above amendment is applicable to a company:

   (a) in respect of qualifying projects in both the manufacturing as well as the agricultural sectors (activities relating to food production only).

   (b) after it has commenced operation for twelve months or more and the twelve months period may overlap two basis periods.

   Example 1

   Company A commenced operation of its manufacturing business on 1.4.1996. It closes its accounts annually on 31 March. On 1.2.1997 the company purchased new plant and machinery and a new assembly line was installed in the

factory and immediately commenced production.

Company A is not eligible to claim RA for the year of assessment 1998.

2. "Has Shown An Increase In Productivity"

2.1 Compliance of the above condition is in respect of companies which are making claims for RA where the exemption to the allowances are restricted to seventy percent of the statutory income. The claim for RA is only given if a company has shown an increase in productivity in the basis period for the year of assessment the claim is made or in the basis period in the following year of assessment. The productivity to be achieved by the company is measured in terms of process efficiency (PE).

$$PE = \frac{\text{Output-BIMS}}{\text{Input-BIMS}}$$

Please refer to appendix A for details on formula. The above formula is adopted from National Productivity Corporation (NPC) and companies are required to compute the PE based on the above formula. There is no minimum rate for PE. This condition is not applicable to companies which are undertaking qualifying projects in the agricultural sector relating to qualifying food production activities. Related to the application of PE, IRB has decided that:-

(a) As long as the company has shown an increase of the PE in the basis period for the year of assessment the claim is made as compared to the previous year the company can be granted RA. If a company is unable to achieve the PE in the basis period for the year of assessment the claim is made, no RA is to be given for that year of assessment. However, if the PE is achieved in the immediately following year of assessment RA is to be given for the year of assessment the claim is made (refer examples 2,3 and 4). For the above purposes, computation of the PE will suffice. Companies are not required to file in claims for the following year of assessment unless the companies have undertaken other qualifying projects.

(b) For a company that undertakes a diversification project, the PE is to be computed based on the overall company's performance and not on the specific project or on a product basis.

(c) During the 5 year period that the company is eligible for RA, for each of the qualifying project undertaken, the company has to show an increase in productivity.

Example 2

Company B, a manufacturer of wooden furniture makes a claim for RA in respect of its expansion project for the year of assessment -1998. The company's PE for the year of assessment 1997 was 1.45. For the year of assessment 1998 the company's PE has shown an increase over the previous year of assessment to 1.51. The company is entitled to RA.

Example 3

Same facts as in example 2 except that the company's PE for the year of assessment 1998 is 1.38 which is lower than that of the year of assessment 1997. The company's PE for the year of assessment 1999 is 1.47. As such, the company's claim for RA for the year of assessment 1998 is rejected. However, because the PE for the year of assessment 1999 is higher than that of the year of assessment 1998 the claim for RA made by the company for the year of assessment 1998 can now be given. This is in line with paragraph 1(c) of schedule 7A ITA 1967.

Example 4

Same facts as in example 3 except that the company also puts in a claim for RA for the year of assessment 1999 in respect of its expansion project. As the company's PE for the year assessment 1999 (1.47) is higher than that of the year of assessment 1998 (1.38) the company's claim for the year of assessment 1999 can be given.

2.2 "Achieved The Level Of Productivity As Prescribed By The Minister"

In order to be eligible for the total exemption of the statutory income companies which are mak-

ing claims for RA (other than those companies which are situated within the promoted area) have to achieve the level of productivity as prescribed by the Minister. The level of productivity as prescribed by the Minister is in relation to the increase in the PE as achieved by a company for a year of assessment as compared to the immediately preceding year of assessment. In this respect a company is required to show that the PE has increased by at least the same rate as the growth rate of the particular manufacturing subsector as furnished by Treasury. Please refer to Appendix II for the list of growth rates. Companies that are able to comply with the rates as specified are eligible to claim 100% exemption of the statutory income. For companies that do not fall into any of the subsectors as listed the total manufacturing rate would apply. As for the year of assessment 1998 the total manufacturing rate is 12.5%. IRB will issue the list of growth rates of the manufacturing subsectors for each year of assessment.

This condition is not applicable to companies which are undertaking qualifying projects in the agricultural sector relating to qualifying food production activities.

3. "Five Consecutive Years Of Assessment"

3.1 Paragraph 2 has been amended to limit the period of eligibility to the incentive for a company to five consecutive years of assessment beginning from the year of assessment for the basis period in which the capital expenditure was first incurred. Previously, claim for RA was granted on a project basis. However, with the amendment, a company is only entitled to RA for five consecutive years of assessment irrespective of whether it undertakes an expansion, modernization or automation or diversification project. Commencing from the year of assessment 1998 RA is to be claimed on a company basis and not on a qualifying project basis. Companies are advised to plan properly before venturing into any of the qualifying project because once a claim is made for a year of assessment, the period of entitlement will commence and the period will lapse after the following four years of assessment.

Example 5

Company C, a manufacturer and exporter of high quality garments commenced operation of its business in 1986. As there is an increase in demand for its products, the company decides to increase its production capacity through automation of its plant and machinery and also to diversify into related products - knitwear. The following are the particulars of the activities carried out by the company for the basis periods ending 31.12.1997 - 31.12.2001.

Basis Periods	Qualifying Project	Capital Expenditure	PE
31.12.1996	-	-	2.45
31.12.1997	automation	3,000,000	2.70
31.12.1998	expansion	200.000	2.85
31.12.1999	-	-	2.90
31.12.2000	diversification	2,000,000	3.00
31.12.2001	-	-	3.10

The company puts in a claim for RA for each of the years of assessment 1998, 1999 and 2001.

Since the first capital expenditure was incurred in the basis period ending 31.12.1997, the first year of assessment the company is eligible for RA is year of assessment 1998. The period of incentive will commence from the year of assessment 1998 to 2002. However, since the company has claimed RA for years of assessment mentioned above, the incentive is only to be given for those years of assessment and as shown above the company meets the PE requirement. Even though the company is entitled to RA for five consecutive years of assessment from the year of assessment 1998, no RA is to be given for the years of assessment 2000 and 2002 as no qualifying projects are undertaken.

4. Disposal Of Asset Within Two Years From The Date of Acquisition

4.1 With the introduction of paragraph 2A to Schedule 7A, Income Tax Act 1967, a company which acquires assets for purposes of a qualifying project and has been given RA and where disposal of any of the asset occurs within two years from the date of acquisition of such assets, RA given in respect of such asset is to be withdrawn. 'Disposed of is defined in paragraph 9 which means "sold, conveyed, transferred, assigned, or alienated with or without: consideration"

4.2 Paragraph 2A should be read together with paragraph 6. As a result of the withdrawal of RA on assets disposed of, an assessment or additional assessment may be raised on the company in order to counteract any benefit obtained from the exemption or the relevant company may be directed to debit the exempt account with such amount as the circumstances require. Companies are advised to maintain a schedule of assets acquired and to inform IRB as and when disposals of such assets occur.

Example 6

Company E manufactures mould and die for the electrical and electronic industries. It commenced operation of its existing business in 1994. In expanding its business the company purchased used machinery from Germany. The company closes its accounts annually on 31 March. The following are the particulars of capital expenditure incurred by the company for the purposes of carrying out the qualifying projects:

Basis Period	Qualifying Project	Type of Plant & Machinery	Date Plant & Machinery Acquired	Capital Expenditure
31.3.1997	Expansion	Tooling Mould	29.10.1996	369,980
31.3.1998	Expansion	CNC Machine	1.2.1998	1,000,000
31.3.1999	-	-	-	-
31.3.2000	-	-	-	-
31.3.2001	Expansion	Lathe Machine (sold 1.7.2002)	30.12.2000	2,500,000

The company makes a claim for RA for each of the years of assessment 1998, 1999 and 2002. It meets the PE requirement for all the relevant years of assessment. However, on 1.4.2002 the company decides to close down its business due to its internal problems faced by the company. The factory is finally sold and the plant and machinery are shipped to its related company in Thailand on 1.7.2002.

The company's claim for RA for the years of assessment 1998, 1999 and 2002 can be given. However, for the year of assessment 2002 the Incentive that has been given is to be withdrawn since the "Lathe Machine" for which RA has been given is disposed of within two years from the date of acquisition of such asset.

5. Carry Forward Of Unabsorbed Allowance Beyond Five Years Of Assessment By Reason Of The Restriction To The Statutory Income

5.1 The amendment to paragraph 4 is to give effect to the amendment in paragraph 3 (which is effective from year of assessment 1997) where the exemption to the allowance is restricted to seventy percent of the statutory income. Unabsorbed allowance also occurs due to the restriction to the statutory income besides insufficiency or absence of the statutory income. Unabsorbed allowance may be carried forward beyond the five years of assessment that the company is entitled to RA.

6. The Definition of The Word "incurred"

6.1 The word "incurred" is now defined in paragraph 9 and the meaning assigned to the word is in accordance with paragraphs 46 and 55 of Schedule 3. Paragraph 46 refers to plant and machinery which are acquired under a hire purchase agreement and paragraph 55 refers to the date when capital expenditure on building, plant and machinery is deemed incurred.

6.2 Application Of Paragraph 46

6.2.1 Paragraph 46 reads:-

46. "Where a person incurs capital expenditure under a hire purchase agreement on the provision of any machinery or plant for the purposes of a business of his, he shall for the purposes of this Schedule be taken to be the owner of that machinery or plant; and the qualifying expenditure incurred by him on that machinery or plant in the basis period for a year of assessment shall be taken to be the capital portion of any instalment payment (or, where there is more than one such payment, of the aggregate of those payments) made by him under that agreement in that period".

Following the above principle, a company which acquires plant and machinery under a hire purchase agreement for purposes of a qualifying project will not be given RA on the total cost of assets acquired but only on the capital payments made by the company in the basis period for a year of assessment. Thus, where a company undertakes and completes a qualifying project within a basis period for a year of assessment, the company will not only be given RA on the capital payments made in that basis period but also

in respect of capital payments made in the following basis periods for the duration of the hire purchase agreement provided that it does not exceed the period of entitlement to RA.

Example 7

Company E, a small scale manufacturing company undertakes an expansion project in the basis period ending 31.12.2000. For purposes of the above project, the plant and machinery are purchased under a hire purchase agreement and the final payment is due in May 2002. The company again in the basis period ending 31.12.2003 carries out an expansion project and acquires plant and machinery under a hire purchase agreement. The final payment of hire purchase is due in June 2005. The following are the particulars of the hire purchase payments made by the company for the relevant basis periods.

Basis Period	Year of Assessment	Hire Purchase Payment	PE
31.12.2000	2001	35,000	1.34
31.12.2001	2002	60,000	1.40
31.12.2002	2003	25,000	1.36
31.12.2003	2004	42,000	1.38
31.12.2004	2005	84,000	1.45
31.12.2005	2006	42,000	1.60

The company has been in operation since 1991 and it is claiming RA for the relevant years of assessment.

As the expansion project is undertaken and the capital expenditure is first incurred in the basis period ending 31.12.2000, the first year of assessment that the company is entitled to RA is year of assessment 2001 and the period of entitlement to RA is to end in the year of assessment 2005. Whatever capital payments that the company makes in the basis periods ending 31.12.2001 and 31.12.2002 (in respect of qualifying project which is undertaken in the basis period ending 31.12.2000) will qualify for RA and similarly the company will qualify for RA for the capital payments made in the basis period ending 31.12.2004 (in respect of qualifying project which is undertaken in the basis period ending 31.12.2003). However, it will not qualify for RA for the capital payments made in the basis period ending 2005 as the period of entitlement has lapsed. Inland Revenue Board has made a stand that where for purposes of a qualifying project assets are acquired on hire purchase agreement:

(i) the company concerned is only required to make formal claims by filling in the neccessary forms for RA for the years of assessment that the qualifying projects are undertaken. As in the above example the company is only to make a claim for RA for each of the years of assessment 2001 and 2004. For the years of assessment 2002, 2003 and 2005 the company needs only to claim RA in the tax computation.

(ii) the company needs only to meet the PE requirement for the years of assessment that the qualifying projects are undertaken. As in the above example - years of assessment 2001 and 2004.

6.3 Application of Paragraph 55

6.3.1 Paragraph 55 reads:-

55. For the purposes of this Schedule -

(a) in the case of any expenditure incurred on the construction of a building, the day on which that expenditure is incurred is the day on which the construction of the building is completed and in the case of any expenditure incurred on the provision of machinery or plant for the purposes of a business the day on which that expenditure is incurred is the day on which the machinery or plant is capable of being used for the purposes of the business; and

(b) .....

Provided that, where a person incurs expenditure for the purposes of a business of his which he is about to carry on, that expenditure shall be deemed to be incurred when he commences to carry on the business.

6.3.2 Based on the above principle, a company can only claim RA on completion of the qualifying project.

Example 8

Company F, a fuel refinery company undertakes an expansion project which overlaps three basis periods commencing in the basis period ending 30.6.1998

As the qualifying project is completed in the basis period ending 30.6.2000 the company is eligible to claim for RA for the year of assessment 2001 and the period of entitlement is up to the year of assessment 2005.

Example 9

Same facts as in example 8 except that the company again undertakes an expansion project in the basis period ending 30.6.2004. The expansion is completed in the basis period ending 30.6.2006.

Since the project is completed in the basis period for the year of assessment 2007, the company is no longer eligible to apply for RA as the period of entitlement ends in the year of assessment 2005.

7. Definition of Qualifying Project

The new definition of qualifying project includes automating its existing business. A company that undertakes a project to automate its existing business is now eligible for RA from the year of assessment 1998 onwards.

8. 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(BT/111998).

The original [with relevant supporting documents] to:

Senior Assistant Director,
Inland Revenue Board,
.....

[Branch where the company submits its annual Income Tax Return]

and;

A copy to:

Chief Executive/Director General,
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.

APPENDIX A

CALCULATION OF PROCESS EFFICIENCY (PE)

$$\text{PROCESS EFFICIENCY (PE)} = \frac{\text{TOTAL OUTPUT - BIMS}}{\text{TOTAL INPUT - BIMS}}$$

Note: BIMS is Bought-in Materials and Services

ITEMS

	TOTAL OUTPUT[1]	**Notes**
1.	NET SALES	● Net Sales Gross sales less discounts less returns less rebates.
2.	CLOSING STOCKS OF FINISHED GOODS LESS OPENING STOCKS OF FINISHED GOODS	
3.	WORK-IN-PROCESS (CLOSING) LESS WORK-IN PROCESS (OPENING)	
4.	OWN CONSTRUCTION	Own Construction is a total cost paid for any internal activity/ project carried out by own resources for improvement/ enhancement objective. Example: up-grading of tools for moulding activity.
5.	INCOME FROM SALES OF GOODS PURCHASED IN SAME CONDITION	Example: Company XYZ is a tyre manufacturer but at the same time it acts as an agent for other tyre manufacturers and sell them in same condition to its clients.
6.	INCOME FROM SERVICES RENDERED	The type of services rendered should be related to main activity of company as listed in the company's memorandum of association
B	**BIMS (BOUGHT -IN MATERIALS AND SERVICES)**	
1.	MATERIALS CONSUMED	
2.	SUPPLIES, CONSUMABLES, PRINTING AND LUBRICANTS	Supplies: all related supplies such as stationery packaging materials, accessories, tools, parts for repairs and maintenance etc. Consumables: all related items consumed in a production process.
3.	COST OF GOODS SOLD IN SAME CONDITION	
4.	UTILITIES	Example: water, electricity and fuel.
5.	PAYMENT TO CONTRACTORS	Example: payment for subcontracting works.
6.	PAYMENTS FOR INDUSTRIAL WORK DONE BY OTHERS AND STORES & SUPPLIES	Example: payments for maintenance of parts & machinery and payments for storage of materials or purchased goods.
7.	PAYMENTS FOR NON-INDUSTRIAL SERVICES	Example. Acquisition of trade-mark & patent, payment for royalties, advertising fees, audit fees, legal fees, professional charges, postage, consultancy fees, etc.

C.	TOTAL INPUT	Notes
1.	MATERIALS CONSUMED	
2.	SUPPLIES, CONSUMABLES, PRINTING AND LUBRICANTS	Supplies: all related supplies such as stationery, packaging materials, accessories, tools, parts for repairs and maintenance and etc. Consumables: all related items consumed in a production process.
3.	COST OF GOODS SOLD IN SAME CONDITION	
4.	UTILITIES	Example: water, electricity and fuel.
5.	PAYMENT TO CONTRACTORS	Example: payment for subcontracting works
6.	PAYMENTS FOR INDUSTRIAL WORK DONE BY OTHERS AND STORES & SUPPLIES	Example: payments for maintenance of parts & machinery and payments for storage of materials or purchased goods.
7.	PAYMENT FOR NON-INDUSTRIAL SERVICES	Example: acquisition of trademark & pattern, payment for royalty, advertising fees, audit fees, legal fees, professional charges postage consultancy fees etc.
8.	SALARIES AND WAGES (PAID EMPLOYEES), INCLUDING PAYMENT/FEES TO WORKING/ NON-WORKING DIRECTORS	
9.	PAYMENT IN KIND TO PAID EMPLOYEES, EPF, SOCSO, FREE WEARING APPAREL, ETC.	
10.	TOTAL DEPRECIATION	
11.	BANK CHARGES	Example: interest/charges paid to financial institutions
12.	OTHER PAYMENTS (GRANTS/DONATION & OTHER EXPENDITURES) BUT EXCLUDING DIRECT TAXES	Example of grant: scholarship grant given to staff and their immediate family members. Donation subject to those from the approved list issued by the Inland Revenue Board.

1 (a) Other operating income **should be** included as part of Total Output. Example: Sales of scraps and by-products.

(b) Non-operating income **should not be** included as part of Total Output.
Examples of non-operating income are as listed below:

- Interest received
- Rent received
- Gain on investment
- Gain on sale of properties
- Gain on sale or evaluation of securities, stock and bonds
- Gain on foreign exchange transactions
- Other income on transaction of non-operating nature.

2. Non-operating expenses should not be included as part of Total Input. Examples of non-operating expenses are as listed below:

- Bad debts
- Loss on sale of properties
- Loss on sale **or** evaluation of securities, stock and bonds
- Loss on investment
- Stock written-off
- Other losses on transaction of non-operating in nature.

APPENDIX B

MANUFACTURING SECTOR -
THE GROWTH RATES OF VARIOUS SUB-SECTORS

	SUB-SECTORS	% GROWTH
1.	FOOD	7.8
2.	BEVERAGES	0.0
3.	TOBACCO	19.9
4.	TEXTILES	7.1
5.	WEARING APPAREL	2.2
6.	FOOTWEAR	-25.4
7.	PETROLEUM REFINERIES	9.9
8.	INDUSTRIAL CHEMICAL	16.6
9.	OTHER CHEMICAL PRODUCTS	7.6
10.	PLASTIC PRODUCTS	53.8
11.	PAPER AND PAPER PRODUCTS	13.0
12.	RUBBER PRODUTCTS	2.8
13.	WOOD PRODUCTS	-1.6
14.	NON-METALLIC MINERAL PRODUCTS	10.1
15.	GLASS & GLASS PRODUCTS	8.0
16.	IRON AND STEEL	7.8
17.	NON-FERROUS METAL PRODUCTS	34.4
18.	FABRICATED METAL PRODUCTS	11.9
19.	ELECTRICAL AND ELECTRONIC PRODUCTS AND MACHINERY	13.6
20.	PROFESSIONAL AND SCIENTIFIC AND MEASURING AND CONTROLLING EQUIPMENT	-0.3
21.	TRANSPORT EQUIPMENT	14.2
22.	MISCELLANEOUS PRODUCTS OF COAL AND PETROL	5.2
23.	TOTAL MANUFACTURING	12.5

INCOME TAX ACT 1967
INCOME TAX (EXEMPTION / AMENDMENT / DOUBLE TAXATION AGREEMENT) ORDERS 1998
(Income Tax Orders, Amendments and Treaties for the months of January to April 1998)

NO	TITLE	REFER P.U (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARKS
1	Income Tax (Returns by employers) Order 1998	2	1/1/98	Employer to Prepare And Deliver Return	From the date of the publication of this order in the Gazette.
2	Income Tax (Exemption) (No. 1) Order 1998	30	1/22/98	Tax Exemption up to an amount equivalent to 50% of all income (exclulding dividend income) of the Sarawak Land Consolidation and Rehabilitation Authority.	Y/A 1997 to Y/A 2001
3	Double Taxation Relief (The Government of The Arab Republic of Egypt) Order 1998	49	2/12/98	Agreement between the Government of Malaysian and the Government of the Arab Republica of Egypt for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.	Entry into Force (refer to Article 28 of this order).
4	Double Taxation Relief (The Government of The Argentine Republica) Order 1998	61	2/19/98	Agreement Between the Government of Malaysia and the Government of the Argentine Republic for Reciprocal Exemption with Respect to Taxes on Income for the Operating of Ships and Aircraft in International Traffic.	Date into Force (Refer to Article 8 of this order).
5	Income Tax (Exemption) (No. 40) Order 1997 (CORRIGENDUM)	62	2/19/98	Amendment to the gazette. P.U. (A) 382 published on 9/10/97 *substitute for the words '59"% appearing in paragraph 3 the words "50"%.)	
6	Income Tax (Exemption) (No. 2) Order 1998	69	2/26/98	Tax exemption for a non-resident person in respect of income arising from the use of any movable property by an offshore comany licensed under the Offshore Banking Act 1990 or approved by the Labuan Offshore Financial Services Authority (LOFSA) to carry out leasing business in Labuan.	10/25/97
7	Income Tax (Exemption) (No. 3) Order 1998	110	3/19/98	A Trading Permit Holder exempt from tax up to an amount equivalent to 70% of the adjusted income derived from the carrying on of a business at the Kuala Lumpur Options and Financial Futures Exchange. *"Trading Permit Holder" means any individual who is a holder of trading permit and is allowed to trade on the KL Options and Financial Futures Exchange for his own account in any futures market of the KL Options and Financial Futures Exchange.*	Y/A 1996 to Y/A 2000
8	Income Tax (Exemption) (No. 4) Order 1998	138	4/16/98	All income of the Small Medium Industries Development Corp. (excluding dividend income) exempt from tax.	Y/A 1997 to Y/A 2001
9	Income Tax (Exemption) (No. 5) Order 1998	140	4/16/98	All income of the Third World Network Bhd. (excluding dividend income) exempt form tax.	Y/A 1998 to Y/A 2002

INCOME TAX ACT 1967
INCOME TAX (EXEMPTION / AMENDMENT / DOUBLE TAXATION AGREEMENT) ORDERS 1998
(Income Tax Orders, Amendments and Treaties for the months of January to April 1998)

NO	TITLE	REFER P.U (A)	DATE OF GAZETTE NOTIFICATION	SUBJECT	EFFECTIVE DATE/REMARKS
10	Income Tax (Exemption) (No. 6) Order 1998	155	4/23/98	Tax exemption for an individual:- (a) on gains or profits accruing on a deposit of RM100,000 for a calender year which accrues for the basis year for a year of assessment in respect of money deposited in any savings account under the Interest-Free Banking Scheme with Bank Simpanan Nasional: (b) on gains or profits up to an amount equivalent ot gains or profits accruing on a deposit of RM100,000 for a calendar year which accrues for the basis year for a year of assessment in respect of money deposited in any investment account for the basis for a period of not exceeding twelve months under the Interest-Free Banking Scheme with Bank Simpanan Nasional; and (c) on gains or profits which accrues for the basis year for a year of assessment in respect of money deposited in any investment account for a period of twelve months or more under the interest-Free Banking Scheme with Bank Simpanan Nasional.	Y/A 1997 and subsequent Y/A
11	Income Tax (Exemption) (No. 7) Order 1998	171	4/30/98	Tax exemption up to an amount equivalent to 50% of all income (excluding dividend income) for the Lembaga Kemajuan Kelantan Selatan (KESEDAR).	Y/A 1997 to Y/A 2001
12	Income Tax (Exemption) (No. 8) Order 1998	172	4/30/98	All income of the Pahang Skills Development Centre (excluding dividend income) exempt from tax.	Y/A 1997 to Y/A 2001

ERRATA

In our article 'Q & A on Service Tax Proposals in the 1998 Budget' on page 47, of the March 1998 issue, we apologise that there is an error in one of the answers to the questions. The correct question and answers are republished accordingly.

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

- Provision of management services to:
  - FIZ — NO
  - LMW — YES
- Provision of management services to overseas countries; — NO

SUMMER VACATION IS NOT A SOCIAL VISIT

KETUA PENGARAH HASIL DALAM NEGERI
V
RICHARD ALLEN SONNET & ANOR.

HIGH COURT OF MALAYA, KUALA LUMPUR

[RAYUAN SIVIL NO. R3-14-15-97]

29 June 1998

ISSUES

The dispute is on the interpretation of section 7(1) (b) of he Income Tax Act 1967.

1. Whether the Taxpayers' absence from Malaysia for 52-days summer vacation can be taken into account to form part of the 182 or more days under section 7(1) (b) of the Act for the purpose of determining the Taxpayers' tax residence status for year of assesssment 1992.

2. Whether summer vacation is a social visit - the need for proof that summer vacation were spent on social visits.

3. Whether 14 days of absence need to be consecutive under proviso (iii) to section 7 (1) (b).

FACTS

1. The Taxpayers, Richard Allen Sonnet and Patricia Ann Sonnet, husband and wife, entered Malaysia on August 1, 1991. They were teachers on contract with the International School, Kuala Lumpur.

2. Richard Allen Sonnet alone attended a work-related conference held in Singapore, leaving Malaysia on 23 April 1992 and returning on 25 April 1992.

3. The two Taxpayers departed together from Malaysia on 18 June 1992 for their summer vacation and returned to Malaysia on 10 August 1992.

4. The Revenue treated the Taxpayers as non-resident for ta purposes for year of assessment 1992, for which a assessment of RM9,721.25 dated 27 October 1992 and a additional assessment of RM10,905.40 dated 8 Augu 1996 respectively were raised against Richard Allen Sonn and Patricia Ann Sonnet.

5. It is to be noted that the advantage of having tax residen status is that a tax resident individual is eligible for person reliefs whereas a non-resident will be liable to income ta at a flat rate of 32%.

ARGUMENTS BY REVENUE

1. The Revenue argued strongly that the Taxpayers were no resident for Malaysian tax purposes for year of assessmen 1992 as the Taxpayers were away for 52 days from 19 Jun 1992 until 9 August 1992.

2. Therefore the first 14 days of their absence cannot be take to form part of the 182 days by virtue of section 7(1)(b) o the Act.

3. According to him, the 52 days absence cannot be considered as temporary absence as the word "temporary" presupposes that the Taxpayers must return to Malaysia on the 15th day.

ARGUMENTS BY TAXPAYER

1. The Taxpayers argued that section 7(1) (b) allows 14 days of absence to be counted to make 182 or more consecutive days.

2. The 14 days need not be consecutive; nor need they be a the beginning, middle or at the end of the period making the 182 or more consecutive days.

3. Proviso (iii) to section 7(1)(b) allows temporary absence from Malaysia so long as the period is in respect of social visits and the absence must not exceed 14 days in the aggregate.

4. The 14 days absence of social visits need not be taken together at one time; they may be taken at intervals, and if so taken, then the total number days of absence for the social visits must not exceed 14 days.

5. The Taxpayer urged the Court to give a broad definition of the term "social visits" to mean that "summer vacation" is a "social visit".

THE COURT

1. Agreed with Taxpayer on first four points

2. However, stated that taxing statutes must be strictly interpreted and the words given their plain ordinary meaning and therefore applying this to the interpretation of the proviso (iii) to Section 7(1)(b), the words "summer vacation" is not anonymous with "social visits"

3. Without supporting evidence, social visits cannot be presumed to have been made during the summer vacation. They have to be proved.

4. If the Taxpayers wish to take advantage of that provision of the law, they would have to produce some evidence, or at least testify in person at the hearing, to show that while on summer vacation they were both actively engaged in social visits at least on each of the days from 19 to 30 June 1992.

5. This piece of evidence of fact is critical to the result of the present appeal because even if one single day within the period from 19 to 30 June 1992 is not found to have been spent on social visits, there would be a break in the continuity of the Taxpayers' deemed presence in Malaysia short of the minimum 182 days prescribed under section 7(1)(b) of the Act.

DECISION

Allowed the appeal with costs.

Presiding Judge
DATO' NIK HASHIM BIN NIK AB. RAHMAN

Counsel
C.F. Kok for the Revenue
Dr. Arjunan Subramaniam for the Taxpayers

WITHDRAWAL OF STOCK IN TRADE

MAKOK DEVELOPMENT SDN. BHD
V
KETUA PENGARAH HASIL DALAM NEGERI

HIGH COURT OF MALAYA, KUALA LUMPUR

[RAYUAN NO R3-14-3-94]

16 September 1997

ISSUES

1. Remission of case stated to Special Commissioners for amendment to add facts proved under paragraph 40(a) of Schedule 5 of the Income Tax Act 1967 - its criteria for remission.

2. Whether findings of Special Commissioners in the Case Stated sufficiently cover the proposed amendment.

3. Whether the notes of evidence recorded by the Special Commissioners can be ordered to be filed as part of the Case Stated.

FACTS

1. Makok Development Sdn. Bhd. (the Taxpayer) was assessed for income tax amounting to RM649,804.00 for the year of assessment 1983 by the Director General of Inland Revenue.

2. The Taxpayer appealed to the Special Commissioners against the said assessment on the grounds that -

   (a) Pursuant to section 24(2)(a) of the Act the withdrawal of No. 70, Jalan Bahari, Penang, during the basis period ending 31.7.79 by the Taxpayer for its own use should be treated as a disposal of stock-in-trade with a corresponding liability to income tax from the year of assessment 1980;

   (b) The said property should thereafter be regarded as the Taxpayer's fixed asset and not its stock-in-trade; and

(c) Accordingly, the Taxpayer should then have been liable for Real Property Gains Tax (if any) and not Income Tax for the subsequent disposal of the property on 31 January 1982.

3. The Special Commissioners dismissed the Taxpayer's appeal and held that the transfer of No. 70, Jalan Bahari, Penang does not amount to "withdrawn for his own use" within the meaning of section 24(2)(a) of the Act, and thereby confirmed the assessment.

4. The Taxpayer, being dissatisfied with the findings of fact contained in the case stated, has applied for an order that the case stated be remitted to the Special Commissioners for amendment to add facts proved by the Taxpayer.

5. Alternatively, the Taxpayer prays for all the notes of evidence taken by all the members of the Special Commissioners in connection with this appeal (Rayuan No. PKR 521) be filed in the High Court and be regarded as forming part of the Case Stated filed under paragraph 34 of Schedule 5 of the Act.

ARGUMENTS BY TAXPAYER

The Taxpayer whilst admitting that the proposed amendments had been considered by the Special Commissioners in the Case Stated, submitted nevertheless that the proposed amendments ought to have been included in the Case Stated based on the following grounds:

(i) the evidence was not challenged during cross-examination;

(ii) the additional facts are essential to the Taxpayer's appeal;

(iii) the Revenue must be deemed to have admitted to the amendments by not replying to the Taxpayer's letter dated 15.10.94 and not contradicting the contents of the affidavit by Dato' Mak Kok; and

(iv) this is a proper case for the Court to exercise its discretion to order the case to be remitted to the Special Commissioners for amendment.

ARGUMENTS BY REVENUE

The Revenue on the other hand, submitted that the Special Commissioners had considered the suggested facts proved by the Applicant as appeared at pages 14, 15, 16, 17, 18, and 19 of the Case Stated.

THE COURT

1. Reference made to Consolidated Goldfields Plc. v. [illegible] (1990) STC 357.

" If a request is made for a Case Stated to be remitted [illegible] additional findings to be made or to be considered, Applic[illegible] must, in my opinion, show that the desired findings are [illegible] material to some tenable argument, (b) at least reasonably [illegible] on the evidence that has been adduced, and (c) not inconsis[illegible] with the finding or findings that have already been made. [illegible] would add this: In my opinion the Commissisoners mus[illegible] protected from nit picking. If the Case Stated is full and fai[illegible] that its findings broadly cover the territory desired to be [illegible] with by the proposed additonal findings, the Court should I th[illegible] be slow to send the case back, particularly so if it appears that [illegible] Special Commissioners have had the proposed findings in m[illegible] when settling the final form of the Case stated."

2. Authorities have shown that the Special Commissione[illegible] need to consider all the suggestions for amendment th[illegible] have been made, but need not necessarily adopt them (se[illegible] per Somervell L.J. in Commissioners of Inland Revenue [illegible] Tootal Broadhurst Lee Co. Ltd. 29 TC 352, 361).

3. The decision to accept or to reject it depends upon th[illegible] probative value which the tribunal concerned would pla[illegible] upon such piece of evidence.

4. The Special Commissioners are entitled to draw their ow[illegible] conclusion from the facts found by them (per Salleh Abba[illegible] F.C. in Comptroller General of Inland Revenue v. Li[illegible] Foo Yong Sdn. (1983) 1 MLJ. 43).

5. The Special Commissioners are not required to state i[illegible] detail the evidence which had been adduced before them [illegible] for the acceptance or rejection of the evidence is a matte[illegible] for the Commissioners only (Fen Farming Co. Ltd. [illegible] Dunsford (Inspector of Taxes) (1973) STC. 474).

6. Applying the above principles to the present case, th[illegible] Court agreed with the submission of counsel for th[illegible] Revenue that the proposed amendment to add facts prove[illegible] by the Taxpayer had been taken into account sufficientl[illegible] by the Special Commissioners in the Case Stated.

DECISION

Dismissed with costs.

Presiding Judge
DATO' NIK HASHIM BIN NIK AB. RAHMAN

Counsel
K.L. Pang (T.J. Su with him) for the Taxpayer
Salmah bt Kasim for the Revenue

LAND - FIXED ASSET OR STOCK-IN-TRADE - OBJECTIVE TEST

UNT PLEASURE CORPORATION SDN BHD

UA PENGARAH HASIL DALAM NEGERI

H COURT OF MALAYA, KUALA LUMPUR
YUAN CUKAI NO. RI-14-9-95]

December 1997

UES

Appeal against the deciding order of the Special Commissioners of Income Tax dismissing the Appellant's appeal to hold that the cost of the acquired property should be the original cost when it was acquired in 1971 as stipulated in the proviso to section 35 (3) (a) of the Income Tax Act 1967.

The questions for the determination of the High Court are -

(a) Whether on evidence there was an appropriation of the acquired property from fixed asset to the current asset in 1978.

(b) Whether other features of the case can be taken into account in order to establish the status of the property.

CTS

The Taxpayer purchased Holdings Nos. 45 and 39, Bandar Bukit Ferringhi Section 2, Pulau Pinang and Holdings Nos. 78(1), 78(2) and 80, Mukim 17 North East District of Pulau Pinang (the said property) for RM570,000 in 1971. Their layout plan to develop the said property was approved in March 1979.

ARGUMENTS BY TAXPAYER

1. The Taxpayer submitted that its intention at the time of the acquisition of the land, was to construct on the said property, a hotel complex and theatre club and to operate thereupon a casino on 12 April 1972.

2. Therefore, according to the Taxpayer, the said property at the time of its acquisition was endowed with the nature of a capital asset. It was only in March 1979 that the Appellant changed its intention.

3. The Taxpayer contended that this altered intention made the said property part of the Taxpayer's stock-in-trade.

4. Therefore, with this change, the land was duly appropriated from being an investment to that of being part of the stock-in-trade and the value of the acquisition of the land as stock-in-trade should be the date when this intention attached, namely the year 1978.

ARGUMENTS BY REVENUE

1. The said property was stock-in-trade from the date of purchase in 1971;

2. There was no change of intention on the part of the Appellant; and

3. The cost of the said property should be the original cost as at the date of acquisition in 1971.

THE COURT

1. The Special Commissioners' decision is correct in law to hold that the cost of the acquired property should be the original cost when it was acquired in 1971 based on what the Taxpayer had done rather than its intention.

2. On the question of intention of the Taxpayer to utilize the land as a casino, the Special Commissioners had directed their minds and considered the issue fully and came to the following findings correctly.

".... The plan to operate a casino in the hotel complex cannot be taken into account as no licence was granted to operate it in the Mount Pleasure. In any event it must be noted that the obtaining of a casino licence was something that was wholly

beyond the control of their will. It was something severely circumscribed and its implementation indefinite in point of time. Thus the intention of obtaining a casino licence cannot amount to an intention in law. It therefore follows that the intention of operating a casino can be of no assistance in determining the status of the said property."

3. The purpose or intention alone cannot prevail over what the Taxpayer in fact had done. In order to determine the status of the property, the Special Commissioners had applied the decision of Privy Council in Iswera v. Commissioners of Inland Revenue (1965) 1 WLR 663 where it was held that in order to get what he wants, the taxpayer has to embark on an adventure which has all the characteristics of trading, his purpose or object alone cannot prevail over what he in fact does.

4. The Special Commissioners also considered other features of the case such as the method and frequency of transaction, the development or processing of asset, the organization and special skill, the method of finance and generation of income in order to establish the status of the said property at the time of its acquisition.

5. The purchase of the property was financed by family funds and there was no admissible evidence to show that the land was purchased for investment.

DECISION

Dismissed with costs.

Presiding Judge
DATO' NIK HASHIM BIN NIK AB. RAHMAN

Counsel
S. Woodhull for the Appellant
Salmah bt. Kasim for the Respondent

INTEREST INCOME 4(a) or 4(c)

Director General of Inland Revenue — Appellant

AND

Pan Century Edible Oils Sdn. Bhd. — Respondent

DALAM MAHKAMAH TINGGI MALAYA DI KUAL LUMPUR
(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)

TAX APPEAL NO. R1-14-9-97

21 October 1997

ISSUES

This is an appeal by way of case stated against the Decidi Order of the Special Commissioners of Income Tax (th Commissioners) of 13'" March 1997 allowing the appeal of th Taxpayer to them against the Notices of Assessment raised b the Revenue under the Income Tax Act 1967 (the Act) for th years of assessment 1987 to 1990 in respect of interest incom which the Taxpayer received from its deposits of excess cas with the banks.

The issue for the determination of the Commisioners wa whether the interest income mentioned earlier which wa derived by the Taxpayer from the short term and long ter deposits are business income under section 4(a) or are intere income under section 4(c) of the Act.

FACTS

1. The Taxpayer was incorporated under the Companies Ac 1965 on 1st April 1977 and is carrying on the business o refining and processing of palm oil;

2. The price of crude palm oil, the raw material for th Taxpayer's business, fluctuates from time to time;

3. The volume of cash needed to purchase the raw materia

crude palm oil, therefore, varies from time to time;

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

When the price of raw material falls, less cash is needed to fund the purchase and vice versa;

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;

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

The short term deposits are all for very short terms, i.e. 30 days on 1 day call. There was only one deposit of RM1,760,000.00 with St. Andrews Estate (1986) evidenced by 8 certificates of deposits each for RM220,000.00 for a period of one and half years and this was lifted by absolutely assigning it to PICA (M) Sdn. Bhd. vide a Deed of Assignment dated 28th December 1988;

The placing of deposits and lifting of deposits continued on a regular and repetitive basis for the relevant Years of Assessment under appeal and still continue to be so up to date;

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

The Revenue raised assessments on the Taxpayer on the basis that the interest income is chargeable under section 4(c) of the Act allegedly being income in respect of dividends, interest or premiums.

In order to place all the deposits, the Taxpayer exercised managerial and organisational skills by monitoring the fluctuating prices of palm oil by resorting to Reuters reports, newspaper reports and bankers' advice daily.

GUMENTS OF THE TAXPAYER

re the Commissioners, the contended that the Taxpayer est income from the 'short term' and the 'long term' as set above is part and parcel of its business income or ancillary s business or it is business income arising out of an enture or concern in the nature of a trade and should be geable to tax as income under section 4(a) of the Act as being income in respect of gains or profits from a business, for whatever period of time carried on, based on the following grounds:

1. The Taxpayer's Memorandum and Articles of Association provide authority to advance deposit or lend money. The Taxpayer did just that, and that is its business activity;

2. The manner of repeated placements of deposits amounts to business;

3. The placement of the 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 30 days, on one day call, except for the long term deposits;

   (iii) the deposits, both long term and short term, 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;

4. 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;

5. The income arises 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 Taxpayer's main trade and therefore, the interest is business income;

6. That the motive of the placing of cash on short term deposits was with the intention of making profits for the company;

7. The cash was primarily placed on short term deposits;

8. The property traded is in cash which arose from the business transactions of the company and not from borrowing, and therefore, any form of dealing with the cash is on a trading account, that is, revenue account, and it follows that it is part of the trading operations of the company or is in the nature of an adventure of trade;

9. The transactions are on a daily basis, week in and week out, in each month, repeated in each year of the relevant assessment year and continuing till to date;

ARGUMENTS BY REVENUE

The Revenue on the other hand contended before the Commissioners that such interest income should be taxed as income under section 4(c) of the Act on the basis that such interest income was clearly "interest" within the meaning of the subsection (a) and not "gains or profits from a business" within the meaning of subsection (a) thereof. It was based on the following contention:

1. Fixed deposits whether short term or long term are current assets and liquid cash can be obtained at any time;
2. There is no element of risk as no interest is payable on any one month fixed deposit which is uplifted before maturity and no interest is payable in the case of fixed deposits ranging from 3 to 60 months if they are uplifted before the completion of 3 months;
3. It is wrong to distinguish between short term and long term deposits as they depends on the maturity period;
4. Although the transactions were repetitive, they do not amount to trade;
5. The Taxpayer had placed idle cash in fixed deposits to earn interest income;
6. Placing of money in fixed deposits has no relevance with the business of palm oil;
7. It was not an adventure in the nature of trade as there was no profit making motive, nothing was bought for a quick sale at a profit and cash was not the stock in trade;
8. Depositing money in fixed deposits frequently is management of the funds of the company and does not amount to frequency of business transactions;
9. The badges of trade are not applicable in this case; and
10. Based on the facts, nothing was done to deem it an adventure. It was merely placing money in fixed deposits.

THE HIGH COURT

On the facts and the arguments put forward before them supported by various authorities both foreign and local, the Commissioners disagreed with the contention of the Taxpayer that the placings of the deposits were ancillary to the main trade of palm oil business. They also did not accept that the two activities i.e. processing and refining of palm oil, and the placings of the deposits are in any way closely allied. They were of the view that merely because the money earned or excess cash from the palm oil business is being placed in fixed deposits cannot, in all fairness, be said to bean activity ancillary to the processing and refining of palm oil. They looked at the motive for the deposits with intention to make profits for the company by using the idle funds or excess cash for the purpose which activity was being continued to date by the Taxpayer. However, from the evidence, it was clear to them that the Taxpayer did not specially set aside funds to place in time deposits. On the other hand, the Taxpayer merely did what is prudent, i.e. utilising idle funds in order to maximise profits for the company and what was done was placing the surplus or excess funds in time deposits. Thus the intention of investment was not there. They concluded that the interest income so received by the Taxpayer satisfied the criteria envisaged in order to qualify as business income or alternatively as income from an adventure or concern in the nature of trade, and the transactions were carried out through a genuine structure and not an artificial structure set up especially to take advantage of the fiscal benefit. In the circumstances they were satisfied that the Taxpayer had successfully discharged the onus of proving that the assessments so made by the Appellant is excessive and erroneous. They allowed the appeal of the Taxpayer and ordered that the Notices of Assessment be amended accordingly.

In the process of hearing this nature of appeal by case stated from the decision of the Commissioners, I am guided by what Lord Radcliffe said at page 229 in Edwards v. Bairstow (1953-1956) 36 TC 207 HL:

> *"When the Case comes before the Court, it is its duty to examine the determination having regard to its knowledge of the relevant law. If the Case contains ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the Court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination or as one in which the true and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test. For my part, I prefer the last of the three, since I think that it is rather misleading to speak of there*

being no evidence to support a conclusion when in cases such as these many of the facts are likely to be neutral in themselves and only to take their colour from the combination of circumstances in which they are found to occur".

Bearing this in mind and having considered the submissions of both the learned counsel for the Revenue and the Taxpayer before me supported by the various authorities cited and based on the materials found in the case stated, I cannot find anything ex facie bad law in the record which could tilt the balance in favour of the Revenue. The facts as found are simple. It is a case of a company whose purpose is to make as much profit as possible for its shareholders. Having excess cash over its daily business it diverted the said excess for such period until it is needed for the purpose of business, by putting it in the bank to earn income. Otherwise, those excess fund would remain idle to the disadvantage of its shareholders. It is not a case where a predetermined amount was set aside by the company from time to time for purpose of it being invested in banks to earn interest. Those excess fund in this case together with the interest earned would be ploughed back into the company to be used in its business of refining and processing of oil palm in time of need. Those excess funds were in fact the temporary surplus working capital of the Taxpayer as explained in paragraph 3 of Exhibit 'C'. Therefore, it is not right to say that any interest received on account of those short term deposits is interest within the meaning of subsection 4(c) of the Act as contended by the Appellant. On the facts, it is income in respect of gains or profits from a business, within the meaning of subsection 4(a) as claimed by the Taxpayer. The Commissioners are, therefore, correct in their decision in holding that the amount of interest, the subject matter of the appeal, comes within subsection 4(a) of the Act.

This appeal by the Revenue is accordingly dismissed with costs to the Taxpayer.

PRESIDING JUDGE
DATO' HAJI ABDUL KADIR BIN SULAIMAN

Counsel
Puan Hazlina Bt. Hussain for the Appellant:
Dr. Arjunan Subramaniam for the Respondent:

CONTRACT MANUFACTURING IS MANUFACTURING

Quaker Products (M) Sdn. Bhd — Appellant

AND

Ketua Pengarah Hasil Dalam Negeri — Respondent

HIGH COURT OF MALAYA, KUALA LUMPUR

INCOME TAX
APPEAL NO. R1-14-13-97

6 May 1998

ISSUES

This is an appeal by way of case stated by Quaker Products (M) Sdn. Bhd. against the deciding order of the Special Commissioners of Income Tax of 17th May 1994 holding that the Taxpayer was not the manufacturer/producer of the various exported goods of the Taxpayer which would entitle it to the deductions for purpose of tax under the Investment Incentives Act 1968 (hereinafter referred to as "the 1968 Act").

FACTS

The Taxpayer was incorporated in Malaysia on 9th June 1972. On 1st September 1975 the Taxpayer entered into a contract with Federal Oats Mills Sdn. Bhd. (hereinafter referred to as "Federal") relating to the manufacture of rolled oats under the trade name of "Quick Quaker Oats" belonging to the Taxpayer. On 1st February 1982 the Taxpayer entered into another contract, this time with Kontrak Manufacturing Services Sdn. Bhd. (hereinafter referred to as "KMS") relating to the manufacture of a liquid multi-surface spray cleaner under tha trade name of "Fantastik Spray Cleaner" also belonging to the Taxpayer. Principally, the Taxpayer was engaged in the business of manufacturing (through its contractors) and wholesaling of oats. In respect of Malaysia and Singapore, Federal operated as the sole licensee to contract manufacture Quaker Oats for the Taxpayer, and KMS was the contract manufacturer having been granted exclusive rights of using the Licensor's know-how for manufacturing Fantastic Spray

Cleaner and marketing the same between 1982 and 1984 when the Taxpayer as the Licensee ceased the sale of the product. The Licensor was Morton Norwich Products Inc. (a company incorporated in the USA). The exclusive rights for the Taxpayer to use the know-how to manufacture and market Fantastic Spray Cleaner in Malaysia and Singapore was given by Morton Norwich Products Inc. pursuant to a Licence Agreement entered into with the Taxpayer on 21st July 1981.

Pursuant to section 27 of 1968 Act and its Schedule 2 paragraph 4 the Taxpayer made a claim to the Revenue for deduction for promotion of export of Quick Quaker Oats and Fantastik Spray Cleaner, manufactured respectively by the two contractors, Federal and KMS. The Respondent disallowed the claim on the ground that they were not manufactured directly by the Taxpayer. As a result of the disallowance, the Respondent issued six notices of additional assessments each dated 9th August 1985 and one dated 6th August 1985 to the Taxpayer covering the years of assessment 1977 to 1984 totalling in all RM1,116,135.05. However, the amount in dispute involving the disallowance is only to the extent of RM294,848.30 of the total amount involved. On appeal to the Special Commissioners, it was dismissed on the ground that the Taxpayer was not the manufacturer / producer of the two products brought out by Federal and KMS. Before the Special Commissioners, the contention of the Taxpayer was that the products for purpose of section 27 and Schedule 2 of the 1968 Act were produced in Malaysia by the Taxpayer and therefore entitled for allowances for the purpose provided therein. As such the said assessments relating to the above deductions totalling RM294,848.30 should be discharged. On the other hand, the Respondent contended that the two products were not manufactured by the Appellant so that the outgoings incurred by the Taxpayer should not be allowed to be allowed to be deducted under the said provisions of the 1968 Act. As such, the said additional assessments relating to RM294,843.30 should stand. Statement of Facts put before the Special Commissioners, exhibited as "A" in this Case Stated states as follows:

"8. It is the contention of the Appellant that the deductions claimed by the Appellant were outgoings and expenses incurred by the Appellant primarily and principally for the purpose of seeking opportunities, or in creating or increasing a demand for the export of Quick Quaker Oats and Fantastik Spray Cleaner, produced in Malaysia by the Appellant pursuant to Section 27 and Schedule 2 of the Investment Incentives Act 1968. As such, the said assessments relating to the above deductions totalling $294,848.30 should be discharged stand.

"9. It is the contention of the Respondent that the Quick Quaker Oats and Fantastik Spray Cleaner were not manufactured by the Appellant so that the outgoings and expenses incurred by the Appellant should not be allowed to be deducted under Section 27 and Schedule 2 of the Investment Incentives Act 1968. As such, the said additional assessment relating to $294,848.30 should stand". (emphasis supplied).

Section 27 of the 1968 Act is a provision allowing the Minister to make rules prescribing deductions in respect of outgoings and expenses incurred by a taxpayer for the promotion of exports from Malaysia. Schedule 2 thereof is the Income Tax (Promotion of Exports) Rules 1968. On the issue before the Special Commissioners, paragraph 4 (1) of the Schedule is relevant which states as follows:

"4. (1) Subject to these rules, for the purpose of ascertaining under the principle Act the adjusted income of an approved company from its business for the basis period for a year of assessment, there shall be allowed as a deduction any outgoings and expenses of the kind described in paragraph (2) which -

(a) were incurred by that company during that basis period with respect to that business; and

(b) were incurred primarily and principally for the purpose of seeking opportunities, or in creating or increasing a demand, for the export of goods manufactured, produced, assembled, processed, packed, graded or sorted in Malaysia by that company." (emphasis supplied).

ARGUMENTS BY TAXPAYER

The Taxpayer submitted that under paragraph 4 of the said Schedule 2 the Taxpayer was entitled to a deduction under any of the seven different situations mentioned therein as regards expenses and outgoings incurred in the export of goods which includes manufacturing or producing. Apart from the six independent words ignored, the suggestion that the Taxpayer was not a manufacturer is inconsistent with, contradictory of and wholly unsupported by the evidence. It was further submitted that the scope for the inferences upon facts must be restricted to a determination of whether the products in question have been manufactured, produced, assembled, processed, packed, graded, or sorted by the Taxpayer. Even on the issue of manufacture of the said goods, the only reasonable conclusion to be drawn from the facts and not permissive of any other inference, is that the Taxpayer had caused into being the manufacture of the relevant products and effected their export. By entering into an agreement with Federal and KMS relating to the manufacture of the products, the Taxpayer had given rise to, brought about or brought into existence the products. The Taxpayer was instrumental in causing the products to be produced. The Taxpayer business had at all times been the business of manufacturing through its contractors, and wholesaling for oats. The two contractors merely occasioned

manufacture of the products on behalf of the Taxpayer. The relationship between the Taxpayer and the two contractors that of principal and contractor. The Taxpayer is the producer which has caused the production of the products and Federal and KMS are merely the contractors who have occasioned the manufacture of the products on behalf of the Taxpayer. In the circumstances the learned counsel submitted that the products were manufactured or in the alternative produced by the Taxpayer.

ARGUMENTS BY REVENUE

The Revenue submitted that the ingredients to bear in mind under the Schedule is that the business of the Taxpayer must come within the six categories mentioned in rule 4 (b) of the said Rules which is "manufactured, produced, assembled, processed, packed or sorted in Malaysia by that company", in order for the Taxpayer to enjoy the deduction claimed. He laid stress on the words "by that company" appearing at the end of sub-paragraph (b) of paragraph 4 of the Schedule meaning that the manufacture, etc. appearing in that paragraph must be that of the Taxpayer directly and not through contractors. It is further submitted by the learned counsel that a product caused to be manufactured by the Taxpayer through a third party, in this case the contractors, cannot mean that the product is manufactured by the Taxpayer. It is the third party which manufactured them. Being instrumental in causing the products to be produced is not the same as producing the products themselves. The products were produced by the third party. Being responsible for the packing of the products is also not the same as packing the products themselves by the taxpayer. The products were packed by the third party, so submitted the learned counsel. He cited the case of Cape Brandy Syndicate v. IRC 12 TC 358 and urged upon me to apply the principle of strict interpretation here because the words "through its contractors" are missing from the said sub-paragraph (b) of paragraph 4 of the Schedule to accommodate the Taxpayer. As such from the evidence both documentary and oral, it was clear that the Taxpayer's business is not that of "manufacturing, production, assembling, processing, packing or sorting of Quick Quaker Oats or Fantastic spray cleaner". The Notes of Accounts of the Taxpayer was closer to that of an agent for sale or wholesaling, so submitted the learned counsel. In the audited account for the year 1968, it was stated that the Taxpayer was engaged in the business of manufacturing (through its contractors) and wholesaling of oats. According to the learned counsel, to be a manufacturer in Malaysia, the Taxpayer must satisfy the court that it had a manufacturing licence and engaged in manufacturing and it had submitted returns to the Director General of Customs & Excise under the Sales Tax Act. In this case, according to him, it was Federal under the Sales Tax Act who is the taxable person and who paid the sales tax. The Taxpayer is a mere consumer which goods were bought inclusive of sales tax. To contend that an act of manufacturing can be done vicariously by way of contractual agreement is stretching the term "manufacturing" to a ridiculous conclusion, says the learned counsel for the Respondent. In the circumstances it cannot be said that the Taxpayer was principally engaged in the said business. All the acts are being done by Federal and KMS as the contract manufacturers and the agreements they entered into with the Taxpayer are mere sale and purchase agreement for the sale of the products by the contract manufacturers. Furthermore, the Taxpayer having bought the product from Federal did not sell the product itself but instead sold it to Muller & Phipps at a profit and the latter itself did the distribution on all the products. From the facts disclosed, the Taxpayer purchased the products from the contractors and the property in them passed to the Taxpayer only upon their delivery. In the case of Federal, 90% of its production capacity only devoted to the production of the products for the Taxpayer. Also that the Taxpayer had no building or machinery of its own for manufacturing purpose.

DECISION

Appeal Allowed

PRESIDING JUDGE
(DATO' HAJI ABDUL KADIR BIN SULAIMAN)
Judge

Counsel
Mr. S. Woodhull (Ms. Goh Ka Im with him) for the Appellant
Mr. Kok Keng Fai for the Respondent

DEDUCTIBILITY OF LEGAL EXPENSES

KETUA PENGARAH HASIL DALAM NEGERI
V
SEABANC KREDIT SDN. BHD.

HIGH COURT OF MALAYA, KUALA LUMPUR
[RAYUAN SIVIL NO. R3-14-10-97]

12 January 1998

ISSUES

Appeal on a case stated by the Revenue.

1. Whether expenditures such as loan processing fee, legal fee, stamping fee, guarantee fee, etc. incurred in securing bank loan, are tax deductible under section 33(1) of the Income Tax Act 1967.

2. Whether the Special Commissioners' decision allowing such expenses as tax deduction is correct in law.

3. Whether such expenses are caught by sec. 39(1) (b) of the Act.

FACTS

1. The Taxpayer is a finance leasing company whose primary object is to carry out hire purchase financing in accordance with the the Hire Purchase Act 1961 and lease financing in Malaysia and related financing business.

2. The Taxpayer raised bank loans for the period of 1982 to 1989 to carry out its business and in doing so had incurred expenditures in the forms of various fees as mentioned above during the relevant years of assessment.

3. The Commissioners held that due the nature and unique characteristics of the Taxpayer's business, the money borrowed was the Taxpayer's stock in trade. Accordingly, any expenses incurred in acquiring it should be allowed as deduction under section 33(1) of the Act.

ARGUMENTS BY REVENUE

The Revenue argued that the determination of the Commissioners is erroneous in point of law because they failed to consider the true nature of the payments or expenses incurred by the Respondent and cited Texas Land and Mortgage Company v. Holtham (1894) 3 TC 255; Ure v. Federal Commissioners of Taxation (S. C.) 80 ATC 4, 264, and Bennett and White Construction Co. Ltd. v. Minister of National Revenue 49 DTC 514 in support.

ARGUMENTS BY TAXPAYER

The Taxpayer submitted that -

1. the determination of the Commissioners is correct in law and what the Revenue is attempting to do is tantamount to questioning their findings of fact on appeal. It is trite law that an appellate court can only question the findings of fact made by Commissioners in very limited circumstances and

2. on the specific facts of this case, the expenses incurred were business expenses utilised in acquiring the stock in trade of the Taxpayer's business and are tax deductible as they fall within the opening words of section 33(1) of the Act, and quoted an Australian case of AVCO Financial Services Limited v. Federal Commissioners of Taxation (82) ATC 4246, which was relied by the Commissioners in their decision.

DECISION

Appeal Allowed.

PRESIDING JUDGE

DATO' NIK HASHIM BIN NIK AB. RAHMAN
Judge
Appellate & Special Powers Division
High Court
Kuala Lumpur

Counsel

Abu Tariq bin Jamaluddin for the Appellant
Anand Raj for the Respondent

WHETHER DTA OVERRIDES S4A INCOME PKR 668

Antara
SS (PTE.) LTD..... PERAYU

dan

KETUA PENGARAH HASIL DALAM NEGERI .... RESPONDEN

THE ISSUE

The issue for determination is whether, having regard to the Agreement set out in the Schedule to the Double Taxation Relief (Singapore) Order 1968 (hereinafter called "the Agreement"), the relevant payments to the Appellant were chargeable to tax under section 4A 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 -

1. The Taxpayer is a company incorporated and tax resident in Singapore;

2. The Taxpayer does not carry on business and has no permanent establishment in Malaysia;

3. The business of the Taxpayer in Singapore and elsewhere with its associated group of companies includes independent inspection and superintendence of agri-produce, minerals, petroleum and petrochemical products, industrial and consumer products and carrying on business of transport forwarding and shipping agent and customs agent;

4. On 18 February 1982, the Taxpayer was awarded a contract (hereinafter referred to as "the Contract") with PC Sdn. Bhd. Hereinafter referred to as "PCSB") for "Provision of Third Party Inspection and Expediting Services for the Peninsular Malaysia (Offshore) Gas Project" (hereinafter referred to as "the Project"). Briefly, the services to be rendered under the contract were for the inspection of materials and equipment procured by PCSB for the Project, liasion and co-ordinating activities pertaining to the inspection services at the vendors' premises, monitoring the vendors' production schedules and recommending remedial action on production delays and problems, preparing and submitting daily inspection reports, expediting services to ensure timely delivery of materials and equipment, and provision of qualified personnel on a full time basis when required. Evidence was adduced to indicate that 98% of the services was performed abroad in twelve countries by the Appellant's affiliates while the remaining 2% in Malaysia was rendered by its Malaysian affiliate PI (M) Sdn. Bhd.

5. In making payments under the Contract, PCSB deducted from each payment an amount in respect of withholding tax which was equal to 15% of such payment which was then paid over to the Revenue;

6. In a letter dated 25 February 1983 addressed to the Revenue, the Taxpayer's tax agent claimed inter alia that the Contract payments did not fall within the defination of "royalties" under Article VIII of the Agreement and therefore should not be subject to the withholding tax provisions of section 109 of the Act. The Revenue replied on 17 August 1983 that "it is the present view that if the payment falls under the defination of 'royalty' in

section 2 of the [Act], then the provisions of section 109 would automatically apply";

7. By letter dated 15 December 1983, the Revenue requested for particulars of the payments receivable by the Taxpayer before 21 October 1983 and payments receivable on or after that date. The payments made before 21 October 1983 had been subjected to tax under section 4(d) of the Act and tax was also withheld under section 109 of the Act, while the payments made on and after that date were subjected to tax under the new section 4A of the Act and tax was also withheld under 109B which came into force from that date;

8. On 12 February 1986, the Revenue sent to the Taxpayer a Computation of Repayment for each of the three Years of Assessment 1983, 1984 and 1985.

9. By letter dated 24 February 1986, the Taxpayer objected to the aforesaid Computations of Repayments on the grounds that it did not receive income chargeable to Malaysian income tax. The Taxpayer formally appealed against the tax imposed for the three Years of Assessment through three Form Qs all dated 11 June 1986 citing the following grounds -

"(i) That the payments received by SS (Pte) Ltd from Malaysia do not constitute royalties under Article VIII of the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion (the Agreement) between the Governments of Malaysia and Singapore and are therefore not subject to Malaysian tax under Part II (2) of Schedule 1 to the Income Tax Act 1967;

"(ii) That SS (Pte) Ltd, a company carrying on the business of providing inspection and superintendent services and transport, forwarding and shipping agents in Singapore, has no permanent establishment in Malaysia and therefore by virtue of Article IV of the Agreement is not liable to tax in Malaysia; and

(ii) That notwithstanding the provision of section 4A of the Income Tax Act 1967, the income derived by the Company is business income in its hands and is therefore excluded from Malaysia tax by virtue of Article IV of the said Agreement.".

[Paragraphs (i) and (ii) appeared in all three Form Qs while paragraph (iii) appeared only in the two Form Qs for Years of Assessment 1984 and 1985.];

10. On 2 June 1987, the Taxpayer's tax agent wrote to the Revenue as follows-

"2. We are pleased to note that you have verbally confirmed that the Inland Revenue Department (IRD) is prepared to consider a refund of the withholding tax paid prior to 21 October 1983. You had however asked us to advise you of the amount payments made before the aforementioned date in respect of services actually performed in Malaysia.

3. The total amount of witholding tax deducted and paid to the IRD prior to 21 October 1983 was $297,546.32 comprising $78,474.96 paid in 1982 and $219,071.36 paid in 1983. Of the total amount, only $2,674.69 was in respect of services actually performed in Malaysia. Please note that our client had sub-contracted this work to its Malaysian affiliate. It is therefore our opinion that the whole amount of $297,546.32 is refundable";

11. The Revenue furnished new Computation of Repayment dated 14 January 1988 for the two Years of Assessment 1983 and 1984, showing the refund of withholding tax totalling RM297,546.32 which had been collected for the period prior to 21 October 1983,

12. The total sums initially withheld for all the three Years of Assessment amounted to RM831,860.72. The refunds made by the Revenue and the outstanding sums claimed by the Taxpayer are as follows -

Year of Assessment	Tax Withheld RM	Tax Refunded RM	Balance RM
1983	78,474.96	78,474.96	0.00
1984	313,836.31	219,071.36	94,477.95
1985	439,836.45	0.00	439,836.45
	831,860.72	297,546.32	534,314.40

By letter dated 17 March 1988, the Taxpayer's tax agent informed the Revenue as follows -

"We refer to the Form Q that we had filed on 11 June 1986 in respect of the assessments for the Years of Assessment 1983 to 1985.

2. In view of the fact that the withholding tax in respect of the payments received by our client in 1982 has been refunded in full, our appeal in respect of the Year of Assessment 1983 would no longer be applicable. However, we wish to advise you that our client intends to proceed with the appeal in respect of the tax imposed on payments received as from 21 October 1983.

3. In accordance with section 102(2) of the Income Tax Act 1967, we would therefore request you to forward the appeal in respect of the Year of Assessment 1984 and 1985 to the Special Commissioners as soon as possible."

After several reminders from the Taxpayer regarding the appeal in respect of the tax imposed on payments received as from 21 October 1983, the Revenue on 24 January 1996 forwarded to the Special Commissioners all three Form Qs in respect of the three Years of Assessment 1983, 1984 and 1985.

GUMENTS BY TAXPAYER

as contended on behalf of the Taxpayer as follows-

by reason of the Agreement, the payments to the Taxpayer were the business income of the Taxpayer in Singapore and not assessable to tax in Malaysia; and

(ii) section 4A of the Act cannot and does not override the provisions of the Agreement or alter the character of the payments.

ARGUMENTS BY REVENUE

It was the contention of the Revenue that-

(i) the payments received by the Taxpayer were income upon which tax is chargeable under -

(a) section 4(d) of the Act in respect of payments received prior to 21 October 1983;

(b) section 4A (ii) of the Act in respect of payments received as from 21 October 1983; and

(ii) accordingly, the amounts were rightly withheld under sections 109 and 109B of the Act respectively;

(iii) the Agreement is inapplicable because the said payments were not income or profit of the Taxpayer within the meaning of Article IV of the Agreement; and

(iv) the said refunds were given by the Revenue under a mistake of law.

THE DECISION

The material part of the Deciding Order dated 6 December 1996, that we made is in the following terms -

"ADALAH DIPUTUSKAN BAHAWA bayaran-bayaran di bawah Kontrak No. 94870-116 merupakan pendapatan Perayu yang boleh dikenakan cukai menurut seksyen 4A Akta Cukai Pendapatan 1967

MAKA DENGAN ADALAH DIPERINTAHKAN bahawa rayuan ini ditolak

DAN DIPERINTAHKAN SELANJUTNYA BAHAWA taksiran cukai sebanyak RM94,477.95 bagi Tahun Taksiran 1984 dan RM439,836.45 bagi Tahun Taksiran 1985 yang ditunjukkan dalam Perhitungan Pembayaran Balik masing-masing bertarikh 14 Januari 1988 dan 12 Februari 1986 itu disahkan."

NOTE

There is an appeal pending at the High Court.

Dated 10 March 1998.

BASE RENTAL - CAPITAL EXPENDITURE PKR 13/97

Antara
DBM1 (M) BHD .... PERAYU

dan

KETUA PENGARAH HASIL DALAM NEGERI .... RESPONDEN

ISSUE

The questions for the determination of the Special Commissioners are -

(a) whether the sum of RM806,077 described as Base Rental paid and incurred by the Taxpayer in 1979 can be allowed as a deduction for Year of Assessment 1980 under section 33(1) of the Act; or

(b) in the alternative, the amortised amount of RM 161,215 charged in the Taxpayer profit and loss account for 1979 be allowed as a deduction for Year of Assessment 1980 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 -

(A) ADMITTED

1. The Taxpayer was incorporated under the Companies Ordinance, 1940 - 1946 on 30 May 1963.

2. The Taxpayer is engaged in the food-based industry, namely, the manufacture of condensed milk, milk powder, dairy products and fruit juices for distribution in domestic and international market.

3. The Taxpayer leased machinery from Ltd. of Hong Kong and AB Sweden under lease agreements dated 20/7/1979 and 24/7/1978 in order to manufacture ultra heat treated (UHT) milk and fruit juices.

4. The following types of lease rentals were paid in respect of the machinery by the Appellant -

(a) A Base Rental of Sw. Crs. 690,000 payable in instalments; 1/3rd at the signing of Lease Agreement, 1/3rd at the dispatch of the machine from a Swedish port and 1/3rd when the machine has arrived at the port of destination (i.e. a Malaysian port) in respect of machinery 6077 and a Base Rental of Sw. Crs. 650,900 in respect of machinery No.5631

(b) A Quartely Rental of Sw. Crs. 4,864 per quarter payable in advance for each quarter on the 20 day of the first month of the quarter in respect of machinery 6077. The quartely rental for machine No. 5631 is not stated in the lease agreement; and

(c) A Production Rental based on the number of filled, sold packages from the machine in respect of both the said machinery.

(B) PROVED

1. The Taxpayer leased machinery from AB Sweden and Ltd. of Hong Kong (hereinafter referred to as the "Lessors") under the two lease agreements dated 24 July 1978 and 20 July 1979 (herein referred to as the "Lease Agreements") in order to manufacture ultra heat treated (UHT) milk and fruit juices.

2. The Lease Agreement also contained inter alia the following terms and conditions -

   (a) The lease of each machine shall be considered effective as from the date on which the machine is installed and in operating condition, or sixty (60) days after delivery ex manufacturer's warehouse, whichever is the earlier;

   (b) After a lease has been effective for at least two years, the Lease Agreement may be terminated by the Appellant giving 12 month's notice in writing;

   (c) If the agreement shall terminate for any reason or in any manner whatsoever, the Lessors are under no obligation to repay any rentals paid by the Appellant; and

   (d) The leased machines at all times remain the property of the Lessors. On the termination of the lease agreement for any reason whatsoever, the Appellant shall promptly deliver the machines in good condition freight prepaid to such as the Lessors shall direct in writing.

3. From the Notes On The Account - 31 December 1979-

   (a) the Base Rental is written off at the rate of 20% per annum at cost;

   (b) the Base Rental is not included under fixed asset in the Appellant's accounts; and

   (c) there was no depreciation charged for the leased machinery.

ARGUMENTS BY TAXPAYER

It was the contention of the Taxpayer that -

1. The Base Rental is rental in advance for the periods during which the machines were leased to the Appellant;

2. The machines leased were fully in use in the Taxpayer's business when the lease period of the machines commenced;

3. The date of payment of Base Rental does not alter the fact that the Base Rental was paid for the use of the machines during the lease period in which the machines were in operation and used in the Taxpayer's business;

4. The machines at all times remained the property of the Lessors and the Base Rental was not deposit for the purchase of the machines or the acquisition of an enduring benefit and therefore, fall to be deductible under section 33(1) of the Act;

5. Under the terms of the Lease Agreements there were no obligations on the part of the Lessors to repay any rentals paid by the Taxpayer . However, in subsequent negotiations, the Lessors agreed to refund Base Rental in certain circumstances;

6. During the basis year 1979 for year of assessment 1980, the machines were in use in the Appellants's business, and it follows that payments of rentals for the period, whenever paid, were incurred during the basis period for the Year Of Assessment 1980 and thus qualify for a deduction under section 33(1) of the Act; and

7. In the alternative, the Appellant claimed that the amortised amount of RM161,215 which is 20% of

the Base Rentals paid and charged to the 1979 profit and loss account in accordance with the Appellant's accounting practice be allowed as a deduction under section 33(1) of he Act.

ARGUMENTS BY REVENUE

The Respondent contended that the Base Rental payment of RM806,077 did not represent rental paid in advance but was capital expenditure and therefore does not qualify as a deduction under section 33(1) of the Act in computing the adjusted income of the Appellant.

THE DECISION

1. The material part of the Deciding Order dated 24 May 1997 that we made is in the following terms -

   "ADALAH DIPUTUSKAN bahawa jumlah RM806,077 yang dibayar sebagai Sewaan Asas ("Base Rental") oleh Perahu dalam tahun 1979 ialah perbelanjaan modal dan oleh itu tidak dibenarkan potongan di bawah seksyen 33(1) Akta Cukai Pendapatan 1967

   MAKA DENGAN INI ADALAH DIPERINTAHKAN bahawa rayuan ini ditolak

   DAN DIPERINTAHKAN SELANJUTNYA bahawa Notis Taksiran Tambahan bertarikh 12 Jun 1982 yang menunjukkan RM1,096,908.75 sebagai cukai yang kena dibayar bagi tahun taksiran 1980 dikekalkan".

NOTE

There is an appeal pending at the High Court.
Dated 26 March 1998.

LIST OF NEW BOOKS IN LIBRARY

Arahan Perbendaharaan. Kuala Lumpur: Kementerian Kewangan Malaysia, 1998

The Annual Tax Review 1997-1998. Kuala Lumpur: MIA & MIT, 1998.

Bank Negara Malaysia: Laporan Tahunan 1997. Kuala Lumpur: Bank Negara Malaysia, 1998.

CPA Tax Review 1997/1998. Kuala Lumpur, MACPA, 1997

Going Public on MESDAQ. Kuala Lumpur: Malaysia Exchange of Securities Dealing & Automated Quotation Bhd., 1998.

Information Malaysia 1998: Yearbook. Kuala Lumpur: Berita Publishing, 1998.

Jeyapalan Kasipillai. Taxation in Malaysia: Assessment, Non-compliance & Investigations, 1997.
Compliments from the author.

Kod Etika Ejen Cukai (Code of Ethics for Tax Agents) Kuala Lumpur: Lembaga Hasil Dalam Negeri.

Ong Yoke Yew. Malaysia Tax Manual. 3rd ed. Kuala Lumpur: SBT Professional Pub., 1997.

R. L. Deutsch. Australian Tax Handbook. Australia: Australian Tax Practice, 1998.

Simon's Tax Cases: Cumulative Tables and Index. Edited by Susan J. Bell, London: Butterworths, 1998.

Simon's Tax Cases 1997. Editor by Susan J. Murhphy. London: Butterworths.

Yeo Miow Cheng. Advanced Malaysia Taxation. 10th ed. Kuala Lumpur: PAAC, 1998.

Yeo Miow Cheng. Malaysian Taxation, 13rd ed. Kuala Lumpur: PAAC, 1998.
Compliments from the author.

Choong Kwai Fatt. Malaysian Taxation: Principles and Practice. 3rd ed. Kuala Lumpur: Information World 1997.
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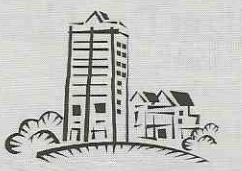

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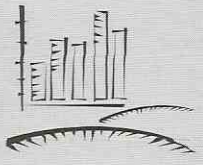

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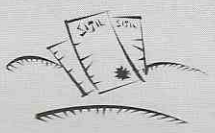

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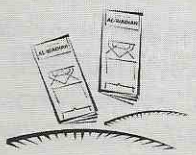

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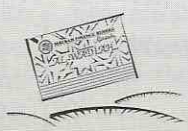

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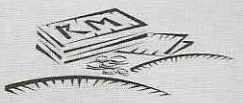

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The following is an extraction of the minutes of meeting of the Consultative Panel between the Royal Customs and Excise Department and Private Sector which was held on 25 November, 1997.

Jabatan Kastam Dan Eksais Di Raja Malaysia

MINIT MESYUARAT

PANEL PERUNDINGAN KASTAM/SWASTA 2/97

BAHAGIAN II

PERKARA-PERKARA BERBANGKIT

Perkara 1:
Sales tax exemption on raw materials, components and packaging materials for non-taxable finished goods

Intisari Perbincangan

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

Since there is no facility provided under the Sales Tax Act 1972 which allows the purchase of raw materials, components and packaging materials free from sales tax for the manufacture of non-taxable goods, the local manufacturers are placed in a very disadvantageous situation, making their finished goods less competitive. It is felt that the implication of this matter will discourage local manufacturing of these products and is also not in line with the Government's policy to support local manufacturing and promote Malaysian manufactured goods.

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

Keputusan

Sebagai satu 'komittee' keputusan mesyuarat panel perundingan kastam/swasta akan digunakan untuk merayu kepada Perbendaharaan untuk menyokong kepada usul-usul FMM.

Tindakan:Cawangan Cukai Jualan

Perkara 2:
Private and Public Bonded Warehouse Operators

Intisari Perbincangan

The Customs Department requires a comfortable amount of security deposit to cover the duties and taxes for goods temporarily deposited in these bonded warehouse as required under Section 65 of the Customs Act 1467.

Since the physical control is under the department for public bonded warehouse, the security deposit required should be reduced or institute other instrument rather then issuing a hefty bank guarantee amount. After all the license is issued by Ministry of Finance on yearly renewal. Should there be any default, their licence should be revoked.

Keputusan

Jaminan bank merupakan security yang paling selamat untuk menjamin keselamatan duti bagi barang-barang yang disimpan di dalam gudang berlesen. Pembatalan lesen sebagai tindakan ketidak pematuhan syarat pelesenan tidak dapat memastikan hasil terhutang diperolehi semula. Oleh itu Jabatan masih akan mengenakan jaminan bank kepada pelesen-pelesen gudang berlesen.

Untuk makluman

Perkara 3 :
LMW and Free Industrial Zone Manufacturers

Intisari Perbincangan

Same as scenario public and private bonded operator being licenced under Section 65A of the Customs Act 1967. To review the bank guarantee requirement, any decision to relief the requirement to deposit bank guarantee and replace with other controlled on monetary instrument will definitely encouraged more foreign investors to participate and invest in this country especially on the LMW manufacturing activities where it is an export oriented status whereby the main of will be to create more employment, reduce trade deficit and also an indicator on foreign exchange activities plus transfer of technology.

Keputusan

Peraturan semasa menetapkan bahawa jumlah jaminan bank hendaklah berasaskan kepada kadar 10% sahaja dari jumlah purata duti/cukai Yang terlibat pada satu bulan. Peraturan tersebut perlu dikekalkan kerana:

1) Syarikat-syarikat LMW dikawal secara dokumentri.

2) Sekiranya berlaku kehilangan barang-barang di LMW atas sebab-sebab tertentu seperti kecurian, kebakaran atau dikeluarkan tanpa kelulusan kastam, cukai yang terlibat akan dipungut. Sekiranya syarikat gagal membayar cukai yang terlibat, bank penjamin boleh diarah untuk menunaikan jaminan bank sejumlah duti yang terlibat dengan serta-merta.

Untuk makluman

Perkara 4:
Constraints faced by LMW and FZ companies due to amendments made in the Budget 1997 and Budget 1998.

Intisari Perbincangan

Arising from Budget 1997, manufacturers of taxable goods located in the Licensed Manufacturing Warehouse (LMW) *are no longer required to be licensed under the Sales Tax Act* 1972. As such, LMW companies lose their advantage of sales tax exemption when purchasing raw materials through third party and when subcontracting is done. There is an increase in the total sales tax value to be paid. In addition, amendment in the Sales Tax Act 1972 also require sales tax on finished goods to be valued base on the full import duty 'payable' on the finished goods even through the actual import duty 'paid' on raw materials is at a lower rate. Effectively, higher amount of sales tax is being paid and the increased cost will ultimately be passed on to the consumers in the form of a higher selling price. As the Budget 1998 did not address this matter, the LMW manufacturers have raised their concem on the constraints currently faced by them.

In addition, FMM would also like to bring to attention the announcement made in the Budget 1998 on the taxation policy on local sales by LMW and FZ companies According to the Budget, full import duty would be imposed on manufactured goods used directly by consumers. As such, LMWand FZ companies are no longer eligible to pay import duty on raw materials (input stage). Under such circumstances, manufacturers would have to pay a higher rate of import duty and the additional costs incurred on finished goods would eventually be passed on to the consumers. Hense,the LMW and FZ companies are placed in a very disadvantageous situation and this would affect the growth of these companies. In view of this, FMM would strongly urge the Customs Department to come out with clear guidelines and procedures to overcome the shortcomings caused by the amendments in both Budget 1997 and Budget 1998.

Keputusan

Perkara ini berkaitan dengan ucapan dasar YAB Menteri Kewangan, Perkara ini datang daripada Perbendaharaan di mana Jabatan dalam melaksanakan dasar yang telah ditetapkan melalui keputusan pada hari belanjawan yang lalu. Maka Jabatan telah mengambil tindakan-tindakan seperti berikut:

(a) Memungut duti import sepenuhnya berdasarkan ke atas barangan siap bagi barang-barang pengguna

keluaran FIZ/LMW yang dijual ke pasaran tempatan. (Full duty on finished product on consumer goods).

(b) Untuk jualan tempatan bagi barang-barang perantaraan (intermediate goods) yang ada dikeluarkanoleh pengilang-pengilang tempatan di PCA juga dikenakan duti import sepenuhnya berdasarkan duti ke atas barangan siap (intermediate goods in its finished form).

(c) Bagi jualan tempatan untuk barang-barang perantaraan yang tidak dikeluarkan (not manufacture in the PCA) oleh mana-mana pengilang tempatan dikecualikan duti import sekiranya syarikat syarikat yang terlibat mendapat kelulusan daripada Perbendaharaan.

Untuk makluman

Perkara 5:
Memohon pihak Jabatan menimbangkan penyertaan Bumiputera daripada 51% di semua kategori ke 30% dengan peruntukan Bumiputera sebanyak 30% bagi ejen perkapalan

Intisari perbincangan:

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

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

Keputusan

Penyertaan Bumiputra sebanyak 51% di dalam syarikat ejen penghantaran merupakan dasar kerajaan. Bagaimanapun Jabatan akan mengkaji usul ini untuk dikemukakan kepada Perbendaharaan.

Untuk makluman

Perkara 6:
Memohon jasa baik Jabatan menasihati ejen-ejen yang telah dibenarkan beroperasi di bawah Seksyen 90 Akta Kastam 1967 menganggotai mana-mana pertubuhan Yang bersesuaian atau menjadi ahli bersekutu FMFF.

Intisari Perbincangan

Buat masa ini lebih 60% daripada ejen-ejen yang terlibat menjadi ahli bersekutu FMFF. Yang lebihnya masih tidak mahu menjadi ahli dan ini amatlah menyukarkan pihak FMFF mengadakan tahap perkhidmatan yang standard. Mereka tidak dapat terlibat secara aktif di dalam semua aspek program yang dianjurkan oleh FMFF atau pihak persatuan yang lain seperti program latihan dengan AKMAL, General Freight Forwarding Certificate serta Diploma Level, program HRDC dan yang terkini adalah program latihan melalui majlis Latihan Vokasional Kebangsaan (MLVK) di bawah Kementerian Sumber Manusia.

Keputusan

Jabatan akan mengambil langkah untuk menasihati ejen-ejen yang dilesenkan supaya menjadi ahli pertubuhan demi kebaikan mereka, kerana semua maklumat-maklumat perkastaman akan hanya disalurkan melalui pertubuhan.

Tindakan : Bahagian Kastam

Perkara 7:
Implimentasi EDI SMK- Dagang Net Interface di Pulau Pinang, KLIA serta Johor Bahru

Intisari Perbincangan

Pihak FMFF amatlah berharap pihak Jabatan serta EDIM dapat mengadakan 'awareness programme' bagi stesen yang terlibat dan perlu dinyatakan bahawa pihak JOFFA (Johor Freight Forwarder Associations) ahli FMFF telah mengadakan 'awareness programme' bersama dengan pihak EDIM serta AFAK pada 17hb. Ogos serta 24hb. Ogos 1998. FMFF memerlukan pihak Jabatan sama yang terlibat bagi membantu pihak ejen memahami lebih lanjut sebelum beroperasi di stesen yang terlibat.

Keputusan

Projek SMK-Dagang*Net Interface akan dilaksanakan secara berperingkat-peringkat bermula dengan stesen-stesen dalam Lembah Klang. Peringkat-peringkat seterusnya adalah seperti berikut:

KLIA Sepang - Keperluan bagi SMK-Dagang*Net Interface secara keseluruhannya telah diambilkira dalam urusan tender 5/97 yang sedang dalam proses pembentangan kepada Lembaga tender Kementerian Kewangan. Tarikh mula pelaksanaannya terpulanglah kepada keputusan Lembaga Tender tersebut. Walau bagaimanapun satu penyelesaian secara interim di KLIA Sepang telahpun diluluskan oleh Perbendaharaan Malaysia pada 12.11.1997 yang lepas dan persediaan sedang dibuat bagi melaksanakan interim solution yang berkaitan. Projek interim ini melibatkan penyambungan sebilangan kecil terminal-terminal SMK dari KLIA Sepang ke Pusat Komputer LTSAAS Subang dan dengan sedikit ubahsuaian kepada sistem aplikasi. Interim solution ini bukan merupakan keperluan keseluruhan seperti yang diambilkira dalam spesifikasi tender kepada Tender 5/37. Interim solution ini dijangka akan mula beroperasi pada 1.4.1998.

Johor Bahru - Keperluan SMK-Dagang*Net Interface di Johor Bahru (Tambak Johor dan Laluan Kedua) juga telah diambilkira dalam urusan tender 5/97. Statusnya adalah seperti yang tersebut dalam para 1. Walau bagaimanapun Interim Solution tidak disediakan di Laluan Kedua- kemungkinan pelepasan dagangan di tempat tersebut akan dilaksanakan secara manual apabila Laluan Kedua mula beroperasi pada bulan Januari 1998.

Pulau Pinang - Pelaksaan SMK-Dagang*Net Interface di stesen ini termasuk dalam Projek SMK Fasa 11 (Peringkat Kedua) yang hanya akan bermula setelah stesen-stesen yang terlibat dalam urusan tender 5/97 mula beroperasi. Jangkaan awal tarikh pelaksanaan di Pulau Pinang ialah dalam tahun 2000 (tertakluk kepada keputusan tender 5/97diperolehi). Keutamaan ialah bagi melengkapkan pengkomputeran di KLIA Sepang, Westport dan Johor Bahru terlebih dahulu.

Cadangan program yang tersebut di atas melibatkan ketiga-tiga pihak (ejen EDI Malaysia, Jabatan Kastam dan ejen penghantaran) adalah dipersetujui dan dialu-alukan. Program pertama dicadangkan bermula dengan komuniti KLIA Sepang memandangkan Interim Solution KLIA Sepang dijangka akan mula beroperasi pada 1.4.1998. Juga dicadangkan pihak persatuan ejen, EDI Malaysia dan Jabatan Kastam (Bhg. SISMAP- Unit Fasilitasi Pungguna) mengadakan perbincangan bagi menyediakan satu jadual program yang konkrit. Kemudian program boleh dipanjangkan kepada komuniti Johor Bahru.

Untuk makluman

Perkara 8:
Standard Customs Operating Procedures

Intisari Perbincangan

"At present, the Customs Department have displayed a Client Charter informing and assuring members of the public that the Dept. is committed in giving quality service to users. We would like to request that your Dept. takes this Client Charter a step further by incorporating a Standard Operating Procedures (SOP) for the entire Customs process flow with time frame given for each stage of the flow process. Presently, the Road Transport Department have such a SOP and incorporating a time-frame, the Customs process flow will be more transparent and there will be more accountability. Presently, it is very common for some forwarding agents/users to the easyway out and avoid accountability by putting the blame on the Customs whenever there is a delay when confronted by their clients but with such a SOP, there will be less triger-pointing and more accountability among the various parties".

Keputusan

Jabatan bersetuju dengan cadangan FMFF, pada masa ini walaupun carta aliran proses kerja ada dipamerkan di pejabat-pejabat kastam sebagai panduan, tetapi time frame bagi setiap peringkat proses kerja belum dibuat secara menyeluruh . Jabatan akan mengedarkan surat arahan ke seluruh negara supaya carta aliran proses kerja / SOP Jabatan, yang dipamerkan menyatakan time frame yang diperlukan.

Tindakan:Semua Bahagian dan Cawangan

Perkara 9 :
Forwarding Agents

Currently forwarding agents are being approved under Section 90 of the Custom Act 1967. Under the present scenario, forwarding agents are paying customs duties and taxes either by using bank draft, by cheque or via electronic fund transfer (for Port Klang and Subang Airport only).

a) **Bank Draft**
Payable either by Importer direct to Customs Department or by Forwarding Agents if they exceed the maximum daily amount payable by Forwarding Agents cheques. Both parties will incur only bank charges.

b) **Payable by Cheques**
Only Forwarding Agents and Importers who has a

deposit through bank guarantee with the Customs department can pay by cheque with a certain amount limit per day transactions. Under the present practice, Forwarding Agents/Importers are required to deposit with Customs department 3 times the allowed amount per day transactions or local cheques and 6 times the allowed amount per day for outstation cheques payment.

Intisari Perbincangan

To reduce the amount to $1^1/_2$ times in view of the fact it is now under KLACH clearing system. Outstation cheques should be reduced to 3 times.

Keputusan

Jabatan merasakan masalah tersebut sepatutnya diselesaikan melalui perbincangan antara pihak bank dengan pihak wakil penghantaran.

Jabatan hanya memerlukan satu jaminan. Sebagai contoh apabila bayaran duti berjumlah RM3 juta sehari, Jabatan memerlukan satu jaminan berjumlah amaun yang sama untuk hari tersebut.

Apabila bank memerlukan jumlah masa untuk meluluskan cek tersebut, itu sememangnya merupakan amalan bank tersebut. Jabatan ada menerima surat daripada pihak bank di mana pihak bank memerlukan tiga hari untuk kelulusan cek tempatan dan lima hari untuk cek luar.

Usul tersebut tidak dapat dipertimbangkan.

Untuk makluman

Perkara 10:
Depositing Bank Guarantee pending Treasury approval under Section 14(2)

Intisari Perbincangan

Pending treasury approval, consignee is required to deposit bank guarantee either on individual transaction or blanket amount should shipments be affected tax exemptions is under process. For medium size company, it can be a financially constraint especially if the facility is being negotiated and they need to proceed with the manufacturing process to shorten the downtime of setting up the whole manufacturing process. Usually the consignee is required to provide a minimum of 3 months to 6 months bank guarantee period. If approval is obtained on the 2nd month, the consignee has to pay the service fee up to the validity period.

Again to utilize Bond 18 with all directors giving the undertaking and all customs duties and taxes are paid within 1 month from the date of approval for those items that are not given the tax exemptions.

Sila rujuk keputusan di Perkara 14

Perkara 11:
Temporary Importations under Section 97 of the Customs Act

Intisari Perbincangan

A security deposit is also required for such transactions. Minimum 3 months and maximum 1 year validity period. To facilitate trade, it is also proposed to utilize the Bond 18 with commitment by all directors.

Sila rujuk keputusan di Perkara 14

Perkara 12:
Movement in Transit.

Intisari Perbincangan

Forwarding Agents or Consignee are required to deposit a bank guarantee equivalent to the amount of duty involved for the conveyance of goods either by container, bonded truck or by rail from one bonded premise to another bonded premise.

Since the bonded truck has a bank guarantee deposited with the Customs Department and also the bonded operator has also bank guarantee deposited, it is only proper that a letter of undertaking such as Bond 18 is used to effect the conveyance.

The present requirement is not taking into considerations on the bank guarantee period required by the bank for such transactions which can be a one day movement affair.

Sila rujuk keputusan di Perkara 14

Perkara 13:
Payment Under Protest Pending Ruling On Tariff Classifications

Consignee is required to either pay cash upfront or via bank guarantee should there be a dispute on tariff classifications. The minimal period required is 3 months to 6 months. Beside depositing cash as collateral, Consignee has to service the bank interest.

Intisari Perbincangan

To utilize bond 18 with all directors giving the undertaking. Once the final ruling is issued Consignee must pay up within 14 days to redeem the Bond 18.

Keputusan

Bagi usul-usul di perkara-perkara tersebut :

(1) Pelepasan sementara menunggu kelulusan pengecualian Y.B. Menteri Kewangan

(2) Import sementara di bawah Seksyen 97 Akta Kastam 1967.

(3) Pemindahan

(4) Bayaran dengan bantahan sementara menunggu fatwa penjenisan.

Kebenaran menggunakan jaminan bank sudahpun merupakan satu kemudahan.

Tanpa kemudahan jaminan bank, pengimport perlu menjelaskan duti terlibat secara tunai semasa pengimportan dilakukan.

Jabatan bertanggungjawab atas keselamatan hasil negara. Jaminan bank merupakan satu jaminan yang lebih selamat di mana sebarang tuntutan boleh ditunaikan oleh pihak bank pada bila-bila masa diperlukan. Sedangkan Bon Am tidak dapat memberi jaminan yang sama. Oleh itu didapati usul yang dikemukakan tidak dapat dipersetujui.

Untuk makluman

Perkara 14:
Section 90 of the Customs Act, 1967 gives provision for any person to apply to the Director General of Customs to operate as a customs agent. Administratively, the extent of theoperation would only be at the customs station where the application was approved. However, one may apply to have the operation extended to other states.

Intisari Perbincangan

Section 90 gives the Director General the power to allow any person to operate as a customs agent. The fact that the approval was by the Director General should be enough to encompass the approval to any state/place in Malaysia. It would seem odd that the main approval being granted by the Director General would require an approval of the State Director in the case where the approval should be sufficient/ required to enable any approved person to operate in any place, besides this will necessarily cut down on administrative cost both to the customs as well as the operators.

Keputusan

Pelaksanaan pada masa kini, semua permohonan untuk menjadi ejen di bawah Seksyen 90 dibuat kepada PKN di negeri mana ejen berkenaan beroperasi. Bagi tujuan pentadbiran pihak kastam perlu mengetahui negeri-negeri di mana sesebuah ejen penghantaran ingin beroperasi. Oleh itu sekiranya ia juga hendak beroperasi di negeri lain,. syarikat perlu memaklumkan kepada PKN negen berkaitan.

Isu yang dikemukakan oleh Institut Percukaian Malaysia adalah wajar dan ada meritnya. Oleh itu Jabatan akan mengambil tindakan untuk membolehkan PKN sesuatu negeri memberi satu kelulusan yang dapat diterima pakai di stesen-stesen lain yang diluluskan.

Tindakan:Bahagian Kastam

Perkara 15:
Memohon pertimbangan pihak Jabatan samaada memansuhkan cukai perkhidmatan kepada semua ejen penghantaran yang diluluskan di bawah Seksyen 90 Akta Kastam 97 tidak kira samaada annual turnover melebihi RM 150,000.00

Intisari Perbincangan

Buat masa ini hanya ejen yang mempunyai annual turnover berjumlah RM150,000 diperlukan memungut cukai perkhidmatan sebanyak 5% daripada pelanggan.

Masalah yang timbul ialah antara lain:

1. Tidak dapat memungut 5% cukai pekhidmatan daripada pelanggan tetapi terpaksa membayar kepada Jabatan.

2. Pihak ejen yang tidak terlibat akan menggunakan 'option' tersebut sebagai 'marketing tool' bagi menyatakan kepada pelanggan mereka tidak perlu membayar cukai perkhidmatan 5%.

3. Ada di antara ejen yang tidak terlibat mengenakan cukai perkhidmatan 5% tetapi tidak membayar kepada Jabatan 'taking advantage of the situations:

Keputusan

Permohonan untuk pertimbangan Jabatan Kastam memansuhkan cukai perkhidmatan terhadap ejen penghantaran atau mengenakan cukai perkhidmatan terhadap semua ejen penghantaran yang diluluskan di bawah Seksyen 90 Akta Kastam 1967 tanpa apa-apa 'threshold' diberi perhatian. Ini berkaitan polisi yang perlu dikaji dengan mendalamnya untuk dikemukakan kepada pihak tertentu.(Jabatan tidak mempunyai kuasa untuk memansuhkan atau mengenakan sesuatu cukai).

Masalah yang ditimbulkan oleh FMFF boleh diatasi dengan menunjukkan secara berasingan dalam invois cukai perkhidmatan yang perlu dikenakan. Bagi ejen-ejen yang tidak dilesenkan di bawah Akta Cukai Perkhidmatan kerana dikatakan belum lagi mencapai 'threshold' mereka perlu sentiasa memonitor jualan perolehannya dan memastikan sama ada 'threshold' telah dicapai atau tidak. Bagi pengesahan 'tresholdnya' pula, Jabatan mempunyai kuasa untuk menjalankan pemeriksaan atas rekod/dokumen tertentu.

Diperhatikan bahawa kebiasaannya, pelanggan menggunakan ejen yang handal dan cekap dan bukan ejen yang mengenakan /menunjukkan cukai perkhidmatan dalam invoisnya. Pelanggan juga menggunakan ejen yang dikenalinya, seseorang yang boleh dipercayai.

Jumlah ejen penghantaran yang dilesenkan di bawah Akta Cukai Perkhidmatan adalah seperti berikut:

Tahun	Bilangan
1995	314
1996	344
1997(Sept)	342

Untuk makluman

Perkara 16:
Memorandum yang dikemukakan kepada pihak Kementerian Kewangan-Bahagian Ekonomi rujukan ADM/AFA/MOF/079/97 bertarikh 21 Julai, 97

Intisari Perbincangan

Untuk dibincangkan jika bersesuaian.

Keputusan

Memorandum yang telah dikemukakan kepada pihak Kementerian Kewangan, Bahagian Ekonomi, Rujukan ADM/AFA/MOF/079/97 bertarikh 21 Julai 1997 tidak disalinkan kepada bahagian ini. Dicadangkan ia tidak perlu dibincang dalam mesyuarat nanti.

Untuk makluman

Perkara 17 :
The Service Tax Regulation 1975 imposes a prescribed business threshold to determine whether certain establishment requires to be licensed. This threshold is based on the annual sales turnover of prescribed services

Intisari Perbincangan

1. The Regulation makes mention of "annual sales" interpreted by the Customs HQ to mean the accumulated sales of any preceeding 12 months. The Customs Office, Wilayah Persekutuan takes this to mean the accumulated sales of a 12 month period. Hence, there is inconsistency in treatment with respect to licensing.

2 The threshold is calculated based on the value of the prescribed service provided. Certain businesses provide cross-category of prescribed services. In this case the threshold will be determined based an the accumulated amount of the prescribed services and will be licensed upon achieving the threshold, without considering the actual nature of the business. For example, a company whose principal activity is advertising (the threshold is RM500K) also provides (Supplementary or incidental) consultancy services (the threshold is RM300K), will be licensed as a consultant upon reaching the threshold of RM300K. For the purpose of licensing the establishment, the threshold of the principle activity should be the criterion.

Keputusan

Untuk Penentuan Jualan Perolehan Tahunan Bagi Cukai Perkhidmatan.

Ibu Pejabat telah menetapkan bahawa dua belas bulan bagi tujuan pengiraan 'threshold' bermakna dua belas bulan kebelakangan atau mana-mana dua belas bulan atau sebagainya atau dua belas bulan mulai dari tarikh mula menjalankan perniagaan. ("revolving 12 months"). Penjelasan telah diberi pada sesi mesyuarat yang sama bil. 1/96. (Penjelasan telah diberi juga dalam Buku Panduan Kastam Prosedur Cukai Perkhidmatan para 5, muka surat 6-7). Semua stesen telah diberitahu tentang perkara ini. Tindakan juga sedang diambil untuk mengemaskini Perintah-Perintah dan Akta-Akta berkenaan dengan tujuan menyeragamkan prosedur, maksud dan sebagainya. Pengiraan 'threshold' tidak tertakluk kepada aktiviti utama sesuatu perniagaan sekiranya ini menyediakan beberapa kategori perkhidmatan yang ditetapkan. Seksyen 3 Akta Cukai Perkhidmatan 1975 memperuntukkan bahawa "Tertakluk kepada Akta ini hendaklah dikenakan dan didapatkan serta levi suatu cukai yang dinamakan cukai perkhidmatan berkenaan dengan:-

a) mana-mana perkhidmatan yang ditetapkan (kemudian daripada ini disebut "perkhidmatan yang kena dibayar cukai" dalam Akta ini) yang disediakan oleh atau di -

b) mana-mana tempat perniagaan professional yang ditetapkan, atau

c) mana-mana tempat perniagaan yang ditetapkan, kecuali untuk perkhidmatan yang kena dibayar cukai yang dieksportkan. Oleh yang demikian apabila sesuatu tempat perniagaan atau perniagaan professional yang ditetapkan menyedia mana-mana atau apa-apa perkhidmatan yang ditetapkan tertakluk kepada cukai perkhidmatan apabila mencapai 'threshold', tidak mengira untuk mana satu perkhidmatan yang ditetapkan".

Untuk makluman

Perkara 18:
Interpretation of the "prescribed establishment"

Intisari Perbincangan

The Service Tax Regulation stipulates the various establishments that falls under the "prescribed establishments" and "prescribed professional establishments". While the interpretation of what constitutes the "professional establishments" in some cases is clear since it makes reference to the business entity as a whole (the term "establishment/companies/firms"), in other cases the term "prescribed establishments" points to the place of business rather than to the business entity.

Keputusan

"Tempat Perniagaan yang Ditetapkan" seperti dinyatakan dalam Peraturan-Peraturan Cukai Perkhidmatan 1997, ada berkaitan dengan entiti perniagaan. Menurut Sek.8, Akta Cukai Perkhidmatan 1975,

"Tiap-tiap orang yang menjalankan perniagaan menyediakan perkhidmatan yang kena dibayar cukai yang disebut dalam Sek.3(a) atau menjual atau membekal barang yang kena dibayar cukai yang disebut dalam Sek. 3(b) hendaklah membuat permohonan kepada pegawai kanan kastam dalam bentuk yang ditetapkan untuk mendapat suatu lesen dan tertakluk kepada Sek. 9, tiada seseorang boleh menjalankan mana-mana perniagaan itu melainkan jika ia memilih suatu lesen yang dikeluarkan...."

Berdasarkan kepada peruntukan di atas konsep entiti telah digunakan. Bagi Restoran KFC misalnya, cawangan-cawangan yang telah dibuka tidak sesuai dianggap berasingan kerana tiap-tiap cawangan/tempat perniagaan tidak wujud secara berasingan di sisi undang-undang, iaitu tidak didaftar berasingan dengan ROC/ROB. Oleh yang demikian, semua cawangan-cawangan KFC dianggap sebagai satu entiti. Threshold dikira berasaskan semua jualan perolehan tahunan di bawah satu entiti dan bukan jualan perolehan tahunan bagi tiap-tiap cawangan. (Perkara ini telah dijelaskan dalam Buku Panduan Kastam Prosedur Cukai Perkhidmatan para 5.5 di muka surat 7).

Bagi kes/keadaan di mana ' food court' dan 'supermarket' terletak dalam satu bangunan dan di bawah pengurusan yang sama,'food court' telah dilesenkan sebagai 'restoran' atas sebab-sebab tertentu (beberapa gerai dalam 'food court' di bawah sebuah syarikat pengurusan dianggap sebagai satu entiti).

Barang makanan yang dijual dalam 'supermarket' tidak dikenakan cukai perkhidmatan walaupun dijual oleh syarikat dan dalam bangunan yang sama kerana hasrat kerajaan bukanlah untuk mengenakan cukai perkhidmatan atas barang yang ditetapkan yang dijual di 'supermarket'.

Untuk makluman

Perkara 19:

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

Intisari Perbincangan

Following the Amendments, sales made to a LMW would therefore be an export sale.

Consequently, traders are eligible to use item 91 for sales to be made to LMWs. The sales tax authority, however, do not allow the use of item 91 for such sales to LMWs. Citing administrative inadequacies (if there is no K2, the export declaration form to prove that export has taken place). It must be emphasized that the Customs Act, 1967 do not treat LMWs as being outside the country,hence the question of export does not arise. This position by the Sales Tax Authority has placed traders in a dilemma, since they will not be able to acquire goods tax-free for supply to a LMW nor will they be able to claim a drawback on sales tax-paid goods.

Keputusan

Butiran 91 mengecualikan 'any person approved by the Director General 'dan barang-barang yang dikecualikan ialah 'All locally manufactured goods for export. GPB hanya layak mendapat pengecualian ke atas 'Goods, for use in the manufacture of other goods in a warehouse licensed under section 65A of the Customs Act 1967' sebagaimana Butiran 28. Disebabkan GPB hanya layak mendapat pengecualian ke atas barang yang digunakan dalam pengilangan sahaja, pemakaian Butiran 91 tidak dibenarkan kerana ianya mengecualikan semua barang. Begitu juga keadaannya dengan Zon Perindustrian Bebas yang disifatkan di luar Malaysia hanya layak memohon pengecualian ke atas barang yang digunakan secara langsung dalam pengilangan seperti di Butiran 27. Sebelum ini syarikat 'trading' mendapat kemudahan ini meialui Borang CJ.5A dan Jabatan berhasrat meneruskan pemberian kemudahan ini dengan mekanisme yang lain. Bagi tujuan tersebut, cadangan mewujudkan Butiran Baru dalam Perintah Cukai Jualan (Pengecualian) 1980 telah dikemukakan untuk kelulusan.

Untuk makluman

Perkara 20:

LMWs areallowed to sell a certain percentage of their goods in the domestic market. The sale of goods are subject to import duty and sales tax (where applicable). In this case the LMW can choose to pay import duty based on the value of the or on the finished goods. Prior to the Amendment, the value upon which the sales tax is computed is based on the value of the finished goods sold which is inclusive of the import duty paid Section 7 (1)(a) refers. The Amendment has placed LMWs as being outside the country, henceforth goods sold by LMWs to the domestic market are import sates. In this case, the sales is as determined by Section 7(1)(d). Whereby the tax is calculated based on the value of the finished goods and the import duty payable.

Intisari Perbincangan

Section 7(1)(d) does not give cognizance to the option of paying import duty based on imported raw materials/finished products. LMWs end up paying more sales tax even if they had opted to pay import duty based on imported raw materials.

The intention of the Goverment's stand on LMWs certainly is not to inhibit, rather to facilitate. Therefore this Amendment is counterproductive.

Keputusan

1. GPB masakini bukan lagi pelesen cukai jualan dan cukai jualan perlu dibayar bersama-sama dengan duti kastam melalui Borang Kastam 9 Penentuan nilai jualan adalah bersamaan dengan barang yang diimport dan yang dibawa masuk dari Zon Perindustrian Bebas dengan berd asarkan Seksyen 7(1)(d) Akta.

2. Kelulusan membayar duti import ke atas bahan mentah /komponen yang dikecualikan telah ditarik balik pada 17.10.1997. Bermakna GPB perlu membayar duti kastam ke atas keluaran slap dan secara tidak langsung juga dapat menyelesaikan isu ini.

Untuk Maklumat

Perkara 21:
Cukai Perkhidmatan

Intisari Perbincangan

Consultancy is not defined and the ordinary meaning of consultancy is rather vague. Could the Customs and Excise Department provide a more specific definition of consultancy and give examples of what constitutes consultancy services.

Keputusan

Perkhidmatan Perunding tertakluk kepada cukai perkhidmatan sejak 1 Januari 1992. Memang tiada definisi untuk perunding dalam Akta Cukai Perkhidmatan 1975. Pemakaian definisi seperti dalam kamus memadai iaitu seperti :

"the of providing expert (or professional / technical) advice (or opinions), and notification of facts & information. Mere provision of facts & information where no expert opinion is expressed is not regarded as consultancy".

The Webter's Third New International Dicfionagl memberi maksud bagi 'consultant'.

"One who gives professional advice or sen/ices regarding matters in the field of his special knowledge or training, an expert".

(Tiada definisi yang lebih specific)

Contoh apa yang meliputi khidmat perunding ('consultancy services').

Setelah sesuatu kajian/survey dibuat laporan disediakan dengan maklumat tertentu serta analisisnya dan diakhiri/ lengkap dengan suatu cadangan atau syor dan pandangan pakar ekoran kajian tersebut. Penyediaan perkhidmatan tersebut dianggap 'consultancy services".

Sekiranya laporan berkenaan tidak mengandungi apa-apa cadangan/syor atau pandangan pakar, penyediaan perkhidmatan tersebut tidak dianggap khidmat perunding

BAHAGIAN 11

UCAPAN PENUTUP PENGERUSI

Dato' Pengerusi mengucapkan ribuan terima kasih kepada Tan Sri Timbalan Pengerusi serta semua pihak yang telah dapat menghadirkan diri dan telah mengeluarkan buah fikiran di dalam perbincangan pada hari ini.

Sekali lagi Dato' Pengerusi mengucapkan terima kasih kerana daripada maklum balas yang beliau terima daripada MAMPU dan agensi-agensi yang lain satu-satu panel perundingan yang masih berfungsi ialah panel perundingan kastam/swasta berbanding dengan panel-panel yang lain yang seringkali tidak cukup korum berbanding dengan panel perunding kastam swasta yang seringkali terpaksa ditolak permintaan untuk menganggotainya.

(DATO' AHMAD PADZLI MOHIYIDDIN)
Pengerusi
Panel Perundingan Kastam/Swasta
Ibu Pejabat
Kastam dan Eksais DiRaja
Malaysia

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

SERVICE TAX ACT 1975

Service Tax (Rate of Tax) (Amendment) Order 1998

In exercise of the powers conferred by subsection 5(1) of the Service Tax Act 1975, the Minister makes the following order:

1. This order may be cited as the **Service Tax (Rate of Tax) (Amendment) Order 1998** and shall come into force on 2 July 1998.

2. The Service Tax (Rate of Tax) Order 1975 is amended -

   (i) in paragraph 2 by substituting of subparagraph 1 (a) appearing under the collumn "Rate of Tax" the following:

   "(a) in the case of a charge or a credit card provided and issued by any person, the rate of tax shall be RM50.00 per card per year or any part thereof"; and

   (ii) by deleting the Schedule appearing after paragraph 2.

Made 25 June 1998.
[Sulit KE. HE. (96) 667/01; Perb. CR (8.09) 198-61 (SJ. 5) (SK. 4); PN. (PU²) 268]

Anwar Ibrahim
Minister of Finance

(To be laid on the table of the Dewan Rakyat pursuant to subsection 5(3) of the Service Tax Act 1975.)

SERVICE TAX ACT 1975

Service Tax (Amendment) Regulations 1998

In exercise of the powers conferred by section 41 of the Service Tax Act 1975, the Minister makes the following regulations:

1. These regulations may be cited as the **Service Tax (Amendment) Regulations 1998** and shall come into force on 2 July 1998.

2. The Service Tax Regulations 1975 is amended in the Second Schedule under the heading "A Prescribed Establishment" by substituting for item 9 the following:

   "9. Any person who provides and issues charge card or credit card."

Made 25 June 1998.
[Sulit KE. HE. (96) 667/01; Perb. CR (8.09) 198-61 (SJ. 5) (SK. 4); PN. (PU²) 268]

Anwar Ibrahim
Minister of Finance

INCOME TAX 1967

Income Tax (Exemption) (No. 18) Order 1998

In exercise of the powers conferred by paragraph 127(3)(b) of the Income Tax Act 1967 , the Minister makes the following order:

1. This order may be cited as the **Income Tax (Exemption) (No. 18) Order 1998** and shall be deemed to have come into force from the year of assessment 1996.

2. (1) The Minister exempts Syarikat Smit-Lloyd (Malaysia) Sendirian Berhad, Syarikat Maritime (Malaysia) Sendirian Berhad and Syarikat Jasa Merin (Malaysia) Sendirian Berhad from the payments of tax on income derived from the transporting and operating of crew, utility and supply for the usage of oil platforms for the supply bases in Malaysia for the years of assessment 1996 to 2000, both years inclusive, provided that the supply vessels used are -

   (a) owned by the company; and

   (b) registered under the Merchant Shipping Ordinance 1952.

   (2) Nothing in subparagraph (1) shall absolve or be deemed to have absolved the company from complying with any requirement to submit any return or statement of accounts or to furnish any other information under the Act in respect of the income exempted under this Order.

Made 25 June 1998.
[Perb. 0.3865/154 (Vol. 4); PN. (PU²) 80/XXV; LHDN. 01/35/(S)/42/51/231-3 Kit. 6.]

Anwar Ibrahim
Minister of Finance

(To be laid on the table of the Dewan Rakyat pursuant to subsection 127(4) of the Income Tax Act 1967.)

INCOME TAX 1967

Income Tax (Exemption) (No. 23) Order 1998

In exercise of the powers conferred by paragraph 127(3)(b) of the Income Tax Act 1967 , the Minister makes the following order:

1. (1) This order may be cited as the **Income Tax (Exemption) (No. 23) Order 1998**.

   (2) This Order shall be deemed to have come into force on 20 May 1998 and shall apply in respect of income received in Malaysia from outside Malaysia during the period from 20 May 1998 to 31 December 1998.

2. The Minister exempts from the tax the income, other than income accrued in or derived from Malaysia, of an individual resident in Malaysia where such income is received in Malaysia from outside Malaysia.

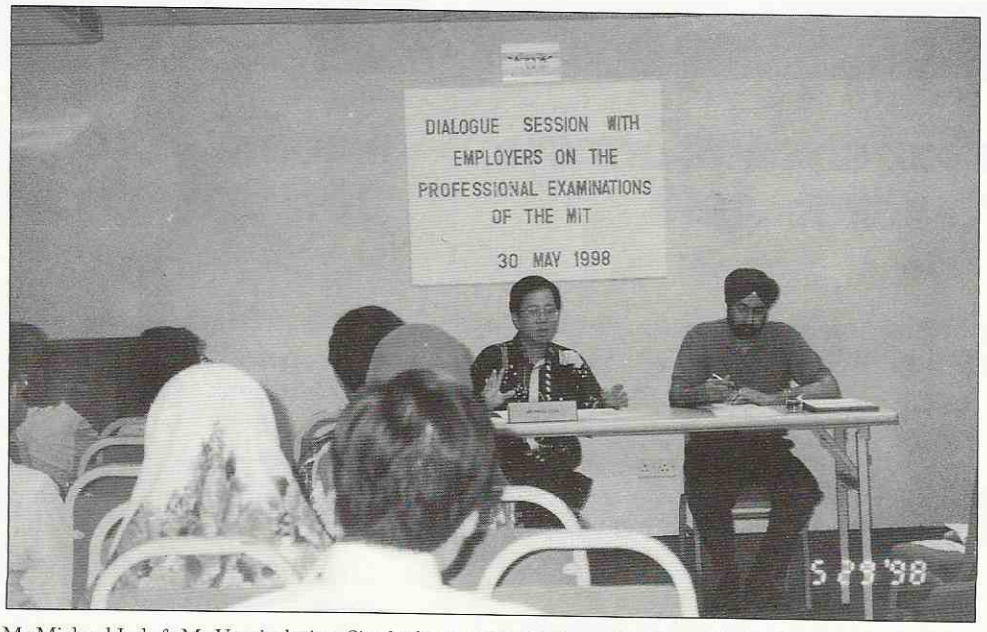
   Provided that such income remitted by him to Malaysia during the period from 20 May 1998 to 31 December 1998 has been granted approval for exemption by the Minister

Made 23 June 1998.
[CR (8.09) 681/2-61 (SJ. 12) Vol. 2 (14); PN. (PU²) 80/XXV; LHDN. 01/35/(S)/42/51/231-3 Kit. 6.]

Anwar Ibrahim
Minister of Finance

(To be laid on the table of the Dewan Rakyat pursuant to subsection 127(4) of the Income Tax Act 1967.)

DIALOGUE SESSION WITH EMPLOYERS



Mr Michael Loh & Mr Veerinderjeet Singh chairing the Dialogue Session with Employers

MIT launched its own examination about $3^1/_2$ years ago as part of its effort to produce more qualified tax professionals and to provide opportunities for persons who have been in the tax profession for many years to earn a professional qualification which provides scope for advancement in their organisation.

To-date, the Institute have almost 300 registered students and 8 students have completed their examinations and are now registered graduates of the Institute.

To further promote the examinations, the Institute recently conducted a Dialogue Session with Employers on 30 May 1998 at the MIT Office. This session attracted mostly employers from the member firms of the Malaysian Institute of Accountants (MIA) as well as from the private limited companies which are providing tax services. Some of the employers were also accompanied by their staff who are involved in the taxation work in their firm.

The session was aimed to get employers to encourage their staff to sit for the MIT examination and if possible, to employ students of the Institute in their firms. This will ensure that these students obtain the crucial practical training which is expected in order to be a proficient tax practitioner. On the other hand, employers would also gain from this scheme as it would help many practising firms in getting their staff trained at minimal cost.

The session was chaired by the Chairman of the Education & Training Committee Mr Michael Loh and the Chairman of Examinations Committee Mr Veerinderjeet Singh. Mr Veerinderjeet Singh briefed the employers on the MIT examinations which include its syllabus, standard and the requirement to sit for the said examinations. Employers were also informed that the pass rate for the examinations over the past 3 years has been gradually improving.

Employers took the opportunity to ask questions pertaining to the MIT qualifications as well as its recognition by the relevant authorities. Mr Veerinderjeet Singh explained that the Institute is currently seeking recognition for its qualification by the Public Service Department.

Mr Michael Loh then briefed employers on the seminars and courses offered by the Institute which are beneficial for the members as well as the students of the Institute. He also informed employers on the intensive revision courses and the *Dialogue Session with Students* which are conducted annually for the students who are preparing to sit for the examinations.

Employers were also informed on the colleges which are given accreditation by the Institute to run the courses for the MIT examinations. Also present during the dialogue session were representatives from some of these colleges namely Mr Nagendran Shanmugam from KL Centre For Higher Studies and Mr Rengasamy from Strategic Business School Sdn Bhd.

The Institute hopes to conduct similar sessions regularly to create awareness of the MIT examinations among the employers.

INSTITUTE'S PRIZE GIVING & GRADUATION CEREMONY

The Institute wishes to congratulate the prize winners, graduates and those who received certificates at the Graduation and prize presentation ceremony held recently on 2 April 1998. The candidate in the 1997 examination session which was held from 16-20 December 1997 showed a better performance compared to the previous years. Wong Li Ming, Lim Ai Wan and Teoh Siew Hoon were awarded prizes for Best Overall Performance in the Foundation Level, Intermediate Level and Final Level respectively. The best performance for the subject of Taxation I was awarded to Tang Hwee Fong.

It was indeed an honour to have Dr Syed Muhamad bin Syed Abdul Kadir, the Secretary of the Tax Analysis Division of the Ministry of Finance, as the Guest-of-Honour for this ceremony which was held at the Shangri-La Hotel.

Dr Syed Muhamad, in his speech congratulated the Institute for successfully conducting a professional examination on taxation which incorporates a locally developed syllabus. This, he added is in line with the Government's objective in making Malaysia as the center for educational excellence. Dr Syed believes that MIT would be able to produce quality professionals in the field of taxation for the needs of the country.

He further hoped that the Institute will continuously be involved in developing new programs, activities and strategies to enhance the profession and ensure that the tax practitioners maintain the highest professional integrity. The Institute could also play its part in assisting the Government in educating the public on the importance of paying tax promptly especially during the current economic crisis faced by the country.

MIT President En Ahmad Mustapha Ghazali, in his speech said that the Institute in recognising persons who have contributed to the advancement of the taxation profession, had conferred Honorary Fellowship status to a number of senior government officials. He also expressed his satisfaction on the encouraging response to the examinations from individuals who wish to pursue a taxation qualification to advance their career in taxation. There are currently 273 students registered with the Institute which is an increase of almost 125% compared to 1996. The President also encouraged all graduates to apply for the membership of the Institute once they are eligible.

He further added that the Institute maintains close co-operation with relevant Government bodies namely the Inland Revenue Board and the Royal Customs & Excise Department. The Institute is very grateful for their support.

Meanwhile, the Chairman of the Examination Committee, Mr Veerinderjeet Singh said that his Committee comprises of experienced tax personnel who ensures that the syllabus of the examinations is acceptable to both public and private sectors and that the syllabus are updated regularly.

The Institute takes this opportunity to thank firms namely Kassim Chan & Co, Price Waterhouse, KPMG Peat Marwick, Arthur Andersen, Atarek Kamil Ibrahim & Co as well as the President En Ahmad Mustapha Ghazali and Deputy President Mr Michael Loh for contributing prizes for the best performance in specific subjects and levels of the examinations.

Dr. Syed Muhamad (left) congratulating a recipient during the Gradution and Prize Giving Ceremony

ANNOUCEMENT

POSTPONEMENT OF THE 1998 AOTCA CONVENTION

We wish to inform members that the Institute and the Secretariat of the Asia-Oceania Tax Consultants' Association (AOTCA) had decided to postpone the 1st Convention of the AOTCA which was to be held from November 11 to 13, 1998.

Members will be informed on the new dates for the said Convention in due course.

Professional Examinations

of

The Malaysian Institute of Taxation

Professional Examinations

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

One avenue of producing qualified tax personnel is through professional examinations. As such, MIT conducted its first professional examinations in December 1995. Todate, the MIT had successfully conducted three examinations. This is the only professional examination in Malaysia in the discipline of taxation. The professional examinations also seeks to overcome the present shortage of qualified tax practitioners in the country.

Examination Structure

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

FOUNDATION LEVEL/LEVEL I

- Taxation I
- Economics
- Business Statistics
- Financial Accounting I

INTERMEDIATE/LEVEL II

- Taxation II
- Taxation III
- Company & Business Law

FINAL/LEVEL III

- Taxation IV
- Taxation V
- Business & Financial Management II
- Financial Accounting

How to Register

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

Entrance Requirements

(a) Minimum Entry
- At least 17 years old.
- At least two principal level passes of the HSC/STPM examination (excluding Kertas Am/Pengajian Am) or the equivalent.
- Credits in English Language and Mathematics and an ordinary pass in Bahasa Malaysia at MCE/SPM.

(b) Degrees, diplomas and professional qualifications (local/overseas) recognised by the Institute to supersede minimum requirements in (a).

(c) Full Members of local and overseas accounting bodies.

(d) Matured Age Entry (Minimum 23 years).

Exemptions

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

Exemption Fees

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

Examination Fees

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

DATES TO REMEMBER

September 1
Closing date for registration as a student to sit for the examination of that year.

October 15
Closing date for submission of examination entry form for the examination of that year.

December
EXAMINATION

PILOT PAPERS, DECEMBER 1995, 1996 & 1997 EXAMINATIONS QUESTIONS AND ANSWERS BOOKLET ORDER FORM

To:

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

Full Name Mr/Mrs/Miss/Ms: _____

Address: _____

_____ Student Reg. No: _____

MIT REGISTERED STUDENTS & MIT MEMBERS

YEAR	COST PER LEVEL					
	Level I/Foundation		Level II/Intermediate		Level III/Final	
1997 EXAMINATIONS BOOKLETS	RM5.00		RM6.00		RM11.00	
1996 EXAMINATIONS BOOKLETS	RM5.00		RM6.00		RM11.00	
1995 EXAMINATIONS BOOKLETS	RM5.00		RM6.00		RM5.50	
PILOT PAPERS BOOKLETS	RM5.00		RM6.00		RM11.00	

MIT REGISTERED STUDENTS & MIT MEMBERS

YEAR	COST PER LEVEL					
	Level I/Foundation		Level II/Intermediate		Level III/Final	
1997 EXAMINATIONS BOOKLETS	RM7.00		RM8.00		RM13.00	
1996 EXAMINATIONS BOOKLETS	RM7.00		RM8.00		RM13.00	
1995 EXAMINATIONS BOOKLETS	RM7.00		RM8.00		RM7.50	
PILOT PAPERS BOOKLETS	RM7.00		RM8.00		RM13.00	

Please tick box(es) to indicate your order.

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

Student's Signature: _____ Date: _____

6th ANNUAL GENERAL MEETING

Once again members of the Institute gathered on 28 March 1998 at the MIT Office for their Sixth Annual General Meeting. This year, there were almost 60 members who attended the meeting as there was a large number of newly admitted Fellow Members who turned up to receive their certificates during a Certificate Presentation Ceremony held in conjunction with the AGM.

The President with Mr Navaratnam s/o A. Ponniah, a new Fellow Member of the MIT

The President, En Ahmad Mustapha Ghazali in his speech, stressed the importance of a strong membership base. He encouraged members to help the Institute promote the membership among their colleagues in the profession. By having a strong membership base, more development can be achieved by the Institute.

He then informed that the MIT examinations had since its introduction been receiving an encouraging response from individuals who wish to gain a taxation qualification to advance their career in taxation. Members noted that there was an increase of almost 125% from the previous number of students registered by the end of 1996. This is truly encouraging as it shows the trust that the public has placed on the standard of the examinations.

Members were also informed on the status of the Institute's application for recognition for its members under Section 153 of the Income Tax Act, 1967. The President also informed that the Institute had prepared another memorandum to have the MIT qualification accredited by the Public Service Department. This would provide an opportunity for our graduates to serve in the public service although at present, the qualification is generally recognised by the private sector.

The President then spoke on the other development and activities of the Institute. Members were encouraged to continually attend seminars and talks which are organised jointly with the Malaysian Institute of Accountants to keep them updated with the latest issues in the tax profession.

Members were later informed that the Institute and the Secretariat of the Asia-Oceania Tax Consultants' Association (AOTCA) are intending to postpone the 1st Convention of the AOTCA to next year due to the uncertain economic situation faced by many countries in the Asia-Oceania region.

Members then noted the retirement of En Ranjit Singh s/o Maan Singh as a Council Member of the Institute. The President on behalf of the Institute thanked him for his invaluable services to the Council and the Institute, particularly, in the production of the Institute's Rules & Regulations. The President also welcomed Dr Jeyapalan Kasipillai to the Council. The other Council Members who were 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 Michael Loh Pooh Kee, Mr Thanneermalai s/o SP SM Somasundaram and Mr Veerinderjeet Singh.

The President also announced the re-appointment of 8 members to the Institute's Council as MIA Appointees namely En Ahmad Mustapha Ghazali, Mr Chow Kee Kan, Mr Chuah Soon Guan, Mr Harpal Singh Dhillon, Mr Lee Yat Kong, Mr Quah Poh Keat, Mr Seah Cheoh Wah and Ms Teh Siew Lin.

Following the meeting was a certificate presentation ceremony. Newly admitted Associate Members as well as members who were conferred Fellow status received their certificates from the President of the Institute.

MIT COUNCIL 1998

Ahmad Mustapha Ghazali
Atarek Kamil Ibrahim
Tn Hj Abdul Hamid bin Mohd Hassan
Chuah Soon Guan
Chow Kee Kan
Hamzah HM Saman
Harpal Singh Dhillon
Jeyapalan Kasipillai
Kang Beng Hoe
Lee Yat Kong
Michael Loh Pooh Kee
Seah Cheoh Wah, Tony
SM Thanneermalai
Teh Siew Lin
Quah Poh Keat
Veerinderjeet Singh

The Annual General Meeting at progress.

MEMBERSHIP OF MIT AS AT 26 MAY 1998

The following persons have been admitted as associate members of the Institute as at 26 May 1998.

NAME	MEMBERSHIP NO.
Lim Jit Kiow	1473
Wong Chee Fook	1474
Leou Thiam Lai	1475
Raja Nazim bin Raja Nazuddin	1476
Loo Saw Hoon	1477
Chau Man Kit	1478
Cheong Inn Teck	1479
Loke Kah Yang	1480
Lim Eng Kok	1481
Si Chay Beng	1482
Ng Swee Weng	1483
Ng Wee Teik	1484
Cherng Chin Guan	1485
Koay Chong Beng	1486
Siti Normala binti Sheikh Obid, Dr.	1487
Lim Sze Meng	1488
Wee Eng Poh	1489
Lim Kean Chai	1490
Lee Beng Ghee	1491
Yap Kim Fay	1492
Koay Hean Kee @ Luah Hean Kee	1493
Chen Keng Haw	1494
Dhajudeen bin Shahul Hameed	1495
Subhatra a/p Mahendraraj	1496
Ganesh Kumar a/l Kumarasamy	1497
Lee Chee Tuck	1498
Kuo Yew Chee	1499
Norain bte Mohd Nawawi	1500
Tan Wang Giap	1501

The following persons have been admitted as fellow members of the Institute as at 26 May 1998.

NAME	MEMBERSHIP NO.
Cheah Kin Yin @ Cheah Kin Yoon	62
Tan Kheng Hong	114
Wee Khey Liam	201
Lau Sie Hui	228
Lim Boon Hiong	311
Ting Hua Cheong @ Ting Hwa Chiong	375
Tan Tcheow Woei	383
Lim Tock Ooi	400
Paw Chin Tin	403
Mohd Noor Bin Abu Bakar	422
Law Ngo Eng	427
Chong Shu Phau	439
Joseph Foo Tui Lee	445
Goh Chee San	447
Wong Tuck Onn	449
Hu Kie Soon	452
Faridah bt Ahmad	456
Yong Siew Chuen @ Yong Sieu Ken	459
Wong Chong Wah	460
Yeoh Beng Sang	461
Kee Bee Hong	463
Tang Eng Kiang	466
Koay Seng Leong	467
Kong Pok Seng	469
Chew Weng Kit	470
Teoh Beng Leong	471
Chen Yow Seong	472
Stephen Geh Sim Whye	473
Chan Wan Siew	475
Yong Chung Sing	476
Chia Jin Sian	477
Lim Kiat Kong	478
Lew Kwong Ann	481
Lee Kin Hua	483
Lee Hock Khoon	486
Ahmad Jana bin Abdullah	490

MEMBERSHIP STATUS OF MIT AS AT 26 MAY 1998

Honorary Fellows	8
Fellows Members*	320
Associate Members*	1166
	1486

* **Fellow and Associate Members**

Public Accountants of MIA	872
Registered Accountants of MIA	169
Licensed Accountants of MIA	-
Advanced Course Exam of IRD	119
Advocates & Solicitors	7
Approved Tax Agents	125
MIT Graduate	1
Others	177
	1486

Siri Kursus Kefahaman Kastam

Bengkel Gudang Pengilangan Berlesen Dan Zon Perindustrian Bebas

(License Manufacturing Warehouse and Free Industrial Zone Workshop)

1 Oktober, 1998
(Khamis / *Thursday*)

Parkroyal, K. Lumpur,
(Ballroom, Lower Lobby)

PENDAHULUAN
INTRODUCTORY

Pengenalan:
- Pasaran eksport minima ialah 80%
- Bahan mentah dan Kompenen dikecualikan dari Duti Import dan Cukai Jualan
- Lokasi di luar kawasan bandar

Kemudahan diperolehi:
- Pengecualian duti/cukai jualan kepada pemegang lesen
- Pengecualian meliputi mesin-mesin yang diimport
- Tidak perlu memohon Tuntutan Tarikbalik Duti

Kursus meliputi:
- Syarat dan kelayakan
- Perundangan
- Kemudahan

Siapa Patut hadir:
- Syarikat beorientasi eksport
- Syarikat yang menikmati kemudahan pengecualian duti Perbendaharaan
- Syarikat yang menikmati kemudahan Tarikbalik Duti
- Syarikat di ZPB
- Agen Penghantaran
- Syarikat/individu yang berminat

Syarahan akan disampaikan dalam bahasa Inggeris

Pensyarah/*Lecturer:*
Pen. Kanan Pengarah Kastam W.P

Tarikh/*Date:*
1 Oktober, 1998 (Khamis)/
1 October, 1998 (Thursday)

Tempat/*Venue:*
Parkroyal, Kuala Lumpur

Yuran/*Fee:*
RM450.00 seorang */per person*
2 orang atau lebih dari syarikat yang sama, pendaftaran dikurang kepada RM400.00 seorang.

Tempahan dan Pertanyan/
Reservation and Enquiries:
Siti Baya bte. Berahan
03-2504026 (Tel.)

Ramli b. Mohd. Nor
03-2504913 (Tel.)
03-2540171 (Fax.)

Alamat/*Address:*
Setiausaha PPKKM (WP)
Aras 7, Block 1 Selatan, Pusat Bandar Damansara,
50596 Kuala Lumpur.

Borang Pendaftaran / *Registration Form*

Bengkel Gudang Pengilangan Berlesen
Dan Zon Perindustrian Bebas
(License Manufacturing Warehouse and Free Industrial Zone Workshop)

Bendahari
PPKKM (WP)
Aras 7, Blok 1 Selatan
Pusat Bandar Damansara
50596 Kuala Lumpur

Nama dan alamat Syarikat / Pertubuhan
Name and address of the Company / Organisation

.....
.....

Sila daftar peserta (-peserta) berikut untuk kursus di atas.
Please register the following participant(s) for the above course.

Nama (mengikut Kad Pengenalan) *Name (according to I. C)*	Jawatan *(Designation)*
1.	.....
2.	.....
3.	.....
4.	.....

Bersama ini saya sertakan cek/draf bank no.:..... bernilai RM.....
sebagai bayaran kursus di atas, atas nama:
I hereby enclose a cheque/bank draft no..... valued RM..... for the course fee made in favour of:

Bendahari PPKKM (WP), K.L

Nama dan Cop Syarikat
Name and Company's Seal

** **Pembayaran hendaklah dibuat sebelum atau pada 28-09-98.**

BERSATU MAJU SENTIASA SETIA

Anjuran (Organised By):
Persatuan Pegawai-pegawai Kanan Kastam Malaysia,
(Wilayah Persekutuan)
Kuala Lumpur.

Aturcara Kursus/Bengel
1 Oktober 1998

8.00pg - 9.00pg
Pendaftaran Peserta.

9.00pg - 9.30pg
Perasmian.

9.30pg - 10.00pg
Minuman ringan.

10.00pg - 12.30th
Lecture on License Manufacturing Warehouse.

12.30th - 2.00ptg
Rehat / Makan Tengahari.

2.00ptg - 3.00ptg
Free Industrial Zone

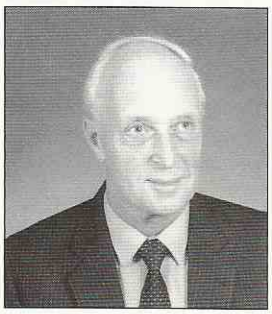
3.00ptg - 4.00ptg
Workshop / Questions / Answers.

4.00ptg - 4.30ptg
Penutup dan penyampaian sijil.

4.30ptg
Minuman petang dan bersurai.

THE TAXATION OF BENEFITS IN KIND

Prepared by:
Richard Thornton



Section 13 of the Income Tax Act 1967 ("the Act") provides for the taxation of benefits in kind ("BIK") derived from an employment. BIK may be enjoyed in other situations, such as by a partner or sole trader, but we are only concerned here with BIK enjoyed by an employee. Of course, the word employee must not be construed too narrowly. As defined by the Act it includes not only the servant in a master/servant relationship but also the holder of any appointment or office. A company director is an employee for this purpose, even if he is a controlling director. It should also be remembered that benefits provided for third parties may be taxable. A benefit, amenity or living accommodation used or enjoyed by the spouse, family, servants, dependants or guests of the employee are deemed to be used or enjoyed by him.

Remuneration paid in money or in monetary form is taxable by virtue of section 13(1)(a), whereas a BIK is dealt with under section 13(1)(b), which refers to any benefit or amenity (not being a benefit or amenity convertible into money) provided for the employee by and on behalf of the employer, or under section 13(1)(c) which deals with living accommodation provided rent free. The value of section 13(1)(a) remuneration is usually self-evident. It can be and is dealt with by deduction of tax at source under the potongan cukai bulanan ("PCB") arrangements, whereas a BIK is not. The Act states that the amount to be taxed, in the case of a BIK other than living accommodation, is the value of the use or enjoyment by the employee ascertained by whatever method is just and reasonable in the circumstances. This is usually taken to mean the cost to the employer of providing the BIK but, in many cases, the value will be governed by particular provisions of the Act or by the Inland Revenue Guidelines. The values of BIK should be declared by the employer in the employee's EA form.

The Board of Inland Revenue re-issued their Guidelines for Valuation of BIK as Income Tax Ruling ITR 1997/2 on 25th August 1997. They apply from year of assessment 1998. The Guidelines were modified by a further release issued as Appendix A in March 1998. This article will deal with some of the more important items but students would be well advised to familiarise themselves with the guidelines and modifications. The guidelines are not law. They are only a practical method of handling the administrative aspects of BIK. In most cases, they specify scale rates for BIK which are generous to the taxpayer, but there is no reason which a taxpayer dissatisfied with the way that they apply to him should not appeal for a treatment which is in accordance with the law.

NON-TAXABLE BENEFITS

Some kinds of BIK are not liable to tax:

- medical or dental treatment
- child care facilities
- specified leave passages
- goods and services offered a t a lower price or at a discount
- food and drinks provided/subsidised
- free transport

All six items are referred to in the Inland Revenue Guidelines but only the first three are specified under section 13.

It is customary for employers to pay the cost of medical and dental treatment for employees and their immediate family and payments are not likely to be questioned unless they are excessive.

Child care facilities provided on or near the employer's premises for all eligible members of staff, including male employees, would not normally be questioned.

Leave passages must be for cost of travel only for the employee and his immediate family, not exceeding one passage outside Malaysia in each calendar year and three passages within Malaysia in each calendar year. This BIK is not particularly tax-efficient because the cost of all leave passages must be disallowed as expenses for the employer by virtue of section 39(m) of the Act. When the employer has an effective tax rate of 28%, use of this BIK is disadvantageous if the employee's marginal tax rate is less than that.

The last three items have been specified in the latest issue of the guidelines and it is assumed that they should be used reasonably. Goods and services offered at a reduced price probably refers to goods normally made or sold by the employer and food and drinks or normal canteen-type meals and refreshments provided on the employer's premises. Attempts by 'smart alecs' to exploit the simple words used would probably be doomed to failure

EMPLOYEE TRAVEL

The principle that the cost of an employee's travel between his home and his place of work is not tax deductible has been well established by case law. However, it would not be sensible or practical to expect an employee to suffer tax on the benefit of

travel to and from work by company bus. Hence the mention in the guidelines of free transport, which should not be taken to have a wider application.

Commonly, employees are provided with the use of a company car and the guidelines prescribe a scale of benefits. It is structured in such a way that the journey from home to work need not be considered, it being assumed that this is already taken into account in the scale figures. In these days when toll charges are becoming ever more costly, it is good to see the statement that toll charges are deemed to be included in the scale value for the car. Indeed, everything seems to have been allowed for apart from the provision of fuel and of a driver, both of which are covered separately.

Motor Cars - Scale of Benefits

COST OF CAR WHEN NEW (RM)	ANNUAL VALUE OF BIK (RM)	FUEL PER ANNUM (RM)
Up to 50,000	1,200	600
50,001 - 75,000	2,400	900
75,001 - 100,000	3,600	1,200
100,001 - 150,000	5,000	1,500
150,001 - 200,000	7,000	1,800
200,001 - 250,000	9,000	2,100
250,001 - 350,000	15,000	2,400
350,001 - 500,000	21,250	2,700
500,001 and above	25,000	3,000

Only two factors determine the appropriate scale value, the cost of the car when new (including accessories, but excluding financial charges, insurance and road tax) and the age of the car. If the car is more than five years old, only half of the scale benefit is to be taken The cost of the car also determines the scale value for the fuel benefit, but this is not reduced for the age of the car.

Provision of a driver means a scale benefit of RM300 per month regardless of the cost, unless he comes from a 'drivers pool', in which case no BIK is assessed.

When the employee thinks that the scale benefit is too high, he may submit a claim for high business use so as to reduce the amount assessable, provided that his claim is agreed.

Sometimes, you might be asked to compare the offer of a loan to an employee to purchase his own car with the use of a company car. This would require a number of different factors to be considered so as to make a valid comparison:

- the employee might be assessed on a BIK from his concessionary loan.
- any interest or financial charges borne by the employee would not be tax deductible, whereas the employer would be able to claim a deduction for them if he had bought the car.
- the employee could claim from his employer for the cost of business travel at an agreed rate per kilometer.
- the scale benefit, which takes into account business and private use, is available to all and does not need any negotiation.
- capital allowances can be claimed by the employer if he purchases the car (although limited to a total of RM50,000.)

LIVING ACCOMMODATION

The special method of valuation for a benefit of living accommodation is covered in some detail by section 32 of the Act. It applies to the accommodation only. It is common for housing accommodation to be provided furnished or partly furnished. The value of contents is ascertained separately as mentioned below.

First, it is necessary to decide whether the accommodation provided is:

- a hotel, hostel or similar premises
- any premises on a plantation or in a forest
- any premises which, although in a rateable area, are not subject to public rates

If it is any of these, the value of the BIK will be determined under section 32(2)(b) at three per cent of the employee's gross employment income as determined under section 13(1)(a). Such income will include all monetary income including cash allowances, but not BIK.

Otherwise, the BIK will be determined under section 32(1)(a) at the lower of:

- the defined value or the living accommodation, or
- thirty per cent of the employee's gross employment income as determined under section 13(1)(a).

The defined value is:

- where the property is not leased by the employer, the rateable value if one exists, or otherwise
- the economic rent, ignoring any law restricting the rent

Use of the appropriate measure is mandatory and not a matter for election.

EXAMPLE

A senior employee of a plantation company has been offered the choice of rent free accommodation by his employer, being either a house on a plantation or a house in town which will be rented unfurnished by the employer for RM4,000 per month. The employee's salary, bonus and allowances falling under section 13(1)(a) are expected to be RM60,000 per annum.

Choice of the plantation house will give the employee a taxable BIK of RM1,800 per annum (3% of RM60,000.) Choice of the town house will give him a taxable benefit of RM18,000 per annum (the lower of the economic rent which is 12 x RM4,000 (RM48,000) and 30% of RM60,000 (RM18,000).)

Use of the three per cent or thirty per cent method is not available to a person for any year during which he is a director of a controlled company, except for a service director (a working director holding not more than five per cent of the ordinary share capital.) It is obviously feared that such a person would be in a position to manipulate the figures to his own advantage.

There are some circumstances in which the BIK may be at a reduced level:

- where the accommodation is to be wholly or partly shared with others
- where the employer requires his employee to reside in it
- where the employer requires or expects the employee to occupy accommodation which is larger or more valuable than he would otherwise need for the advancement of the employer's interests by the provision of hospitality or otherwise.

The BIK will then be so much of the defined value as is 'just and reasonable' with an over-riding limit of thirty per cent of the employee's gross employment income as determined under section 13(1)(a). No reduction will apply where the accommodation is such that the three per cent basis applies, or where it is occupied by a non service director of a controlled company.

Requirement to occupy, or what is otherwise known as 'representative occupation' is not lightly accepted. It usually applies to those occupations where a person is required to be on the premise at all times for security, emergency breakdowns or such reasons. Where this applies, the BIK is likely to be nil

Occupation of larger or more valuable accommodation may apply where, for example, an unmarried chief executive of a company is expected to occupy a six bedroom mansion in order to provide hospitality for frequent foreign or outstation visitors. The onus would be on him to justify the extent of the 'excess' and the amount of the defined value which is just and reasonable. However, it should be remembered that the thirty per cent limitation still applies. In the case of the example used above, there would be no point in proving that the employer expected the employee to occupy a town house twice as large as he needed. That would only reduce the defined value to RM24,000 and the BIK would still BIK would still be RM18,000.

House furniture and contents and utilities

Household Furnishings, Apparatus & Appliances - Scale of Benefits

TYPES OF BIK	ANNUAL VALUE OF BIK
1 Semi-furnished with furniture in the lounge, dining room, or bedrooms	RM840 (RM70 per month)
2 Semi-furnished with furniture as in 1 above and one or more of the following: air conditioners, curtains, carpets	RM1,680 (RM140 per month)
3 Fully-furnished with benefits as in 2 above plus one or more of kitchen equipment, crockery, utensils and appliances	RM3,360 (RM280 per month)

Only three different categories are provided and not every situation will fit neatly. A taxpayer aggrieved by the application of the scales could appeal, but the rates are generous to the taxpayer and appeals are unlikely. What is not included is what has been referred to as 'luxury items' that is TVs, VCRs, high fi, sauna. For such items, the guidelines prescribe the use of the formula:

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

Employers often defray other expenses in connection with living accommodation and, in most cases, this will imply a BIK. The following are stipulated by the guidelines:

- for service charges and other bills such as for water, electricity and telephone paid by the employer, the BIK is the amount paid.
- for each domestic servant, the scale BIK is RM4,800 per annum.
- for each gardener, the BIK is RM3,600 per annum.

As in the case of other benefits, the employee may disagree, particularly if the service is used partly for the employer's purposes, such as the home telephone, or the domestic servant who is required for entertaining customers or clients at home. He will need to submit details and claim for a reduced BIK to apply and he does have the right to appeal, if necessary.

(to be continued)

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Malaysian Institute of Taxation

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Benefits and Privileges of Membership

The Principal benefits to be derived from membership are:

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

Qualification Required For Membership

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

Associate Membership

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

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

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

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

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

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

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

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

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