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Malaysian Institute of Taxation

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

The objective of the Institute are, inter alia:

1. To provide an organisation for persons interested in or concerned with taxation matters in Malaysia.

2. To advance the status and interest of the taxation profession and to work in close co-operation with the Malaysian Institute of Accountants (MIA)

3. To exercise professional supervision over the members of the Institute and frame and establish rules made herein for observance in matters.

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

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Contents

OUR EDITOR

Mr Harpal Singh Dhillon is a tax professional with over 22 years of experience in Malaysian and International Taxation, and is currently employed by one of the "five". He is Editor of the official Journal of the Malaysian Institute of Taxation, "Tax Nasional", the Annual Tax Review and the Annual Tax & Business Information. Mr Harpal chairs the Self-Assessment Committee, the Islamic Financial Instruments & Research Study Group of the Institute, and the E-Commerce Working Group.

Mr Harpal is primarily involved in advising Malaysian outbound investments into Asia, Africa and the Caribbean; advising direct foreign investments into Malaysia; mergers, take-overs, amalgamations and reconstructions; joint venture structuring both outbound and offshore; founding/equity structuring; cross-border taxation planning and repatriation strategy; and Islamic taxation.

Mr Harpal was also the first Malaysian Examiner for ACCA & ICSA London. He is a regular speaker in Malaysia, Singapore and Hong Kong.

Harpal Singh Dhillon

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Malaysian Institute Of Taxation

Reform of Procedural Law - Right of Appeal to Federal Court

By
Dr. Arjunan Subramaniam
Geraldine Yeoh, Arjunan & Associates

I, Arjunan Subramaniam hereby solemnly affirm as follows:

I am an advocate and solicitor, a taxpayer and a writer of text books on tax matters, and therefore am duly authorised to advocate to the relevant authorities the following reforms.

I crave leave to refer to the restriction in Section 96 (a) of the Court of Judicature Act 1964, which reads as follows:

Subject to any... rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court granted in accordance with section 97 -

a. from any judgement or order of the Court of Appeal in respect to any civil cause or matter decided by the High Court in the exercise of its original jurisdiction; and

Simply, this allows an appeal to the Federal Court only from a decision of the Court of Appeal hearing an appeal from the High Court exercising "its original jurisdiction". Thus, in cases of income tax, a High Court does not exercise its original jurisdiction in hearing an appeal from the Deciding Order of the learned Special Commissioners of Income Tax pursuant of Schedule 5, Paragraph 34 of the Income Tax Act 1967. I am advised by my informers that the Federal Court in a recent case upheld the view that the Federal Court has no jurisdiction to hear a matter heard by the High Court exercising its appellate jurisdiction as opposed to its original jurisdiction.

I am advised that it is inconceivable that the highest court in the land has no jurisdiction to hear income tax cases originating from the Deciding Order of the Special Commissioners.

I believe that someone missed the importance of adjucating cases involving millions of ringgit, and move the authorities to initiate suitable amendments to the relevant legislation to enable the Federal Court to have jurisdiction to hear income tax cases originating from the Special Commissioners' decision. I believe the quicker this is done, the better it is for all parties.

Indeed the above shows that man is perfectly imperfect. But he does not know that and, therefore, goes on to achieve results which he would have otherwise not achieved!

The second reform advocate here deals with the notes of evidence adduced before the Special Commissioners of Income Tax. In some cases, and not too often, the Appellant claims he has established facts which do not appear in the Case Stated. A dispute arises. The Appellant is not given notes of evidence recorded by the three Special Commissioners. Of course the Appellant could apply for the Case Stated to be remitted to the Special Commissioners of Income Tax, which is an avenue open to the dissatisfied Appellant taxpayer. But added to that, the law should be reformed to give the taxpayer the notes of evidence recorded by the three Special Commissioners hearing the cases. Then we shall have five notes of evidence or more to compare - three from the Special Commissioners, one from the Revenue Counsel, and one or two from Counsel or Counsels of the Appellant taxpayer. Facts are for the Special Commissioners to find. But whether a fact was given in evidence and material to the Appellant's argument, this should not be thrown into a dispute. The notes of evidence must, therefore, be given to the Appellant before the case is closed. This will serve the ends of justice. An amendment in this direction is proposed.

Developers for Investment: Where Does Business Commence?

By Gurbachan Singh and Leon Kwong Wing
Khattor Wong & Partners, Singapore

Property developers as taxpayers are chargeable to tax in respect of the gains or profits of their business. The Singapore and Malaysian Income Tax Acts provide that, in ascertaining the taxable income of a taxpayer from a business, there shall be deducted the expenses incurred during the year in the production of income from the business.

In the case of developers constructing properties for sale, the Revenue accepts, broadly speaking, that all of the developer's revenue expenses incurred in developing the property must be allowed against the revenue receipts in order to arrive at the developer's chargeable income. However, in the case of developers for investment, the Revenue takes the position that the business had not commenced while the property is still under development and hence, regards substantial incidental revenue expenses which are being incurred not deductible.

The issue for taxpayers developing property for investment, therefore, is whether it ought, in fact and law, be regarded as carrying on business before its property is ready for occupation.

Our view is that the business clearly commences when the expenditure on development commences. This is so where the property is being developed for sale; it must be equally so where the property is to be let out.

'When a business commences is a question of whether or not the taxpayer is committed to the income- producing activity.' (Goodman Fielder Wattie Ltd v Federal Commissioner of Taxation) In the distinction between preparing to carry on an income-producing activity or business, and actually carrying it on, the former refers to activities in the nature of feasibility study, exploration, research and development, and so on which are undertaken for the purpose of deciding whether or not to go into a particular area of business. (Esso Australia Resources Ltd v Federal Commissioner of Taxation) By contrast, once matters have proceeded beyond the stage of investigation, a taxpayer is, in our view, to be regarded as having commenced business activity.

In Federal Commissioner of Taxation v Brand, the taxpayer, who intended to invest in prawn farming, paid to the promoter of the venture $15,000 for a license to use the prawn ponds and facilities, which at the time, were under construction and $1,000 to stock the ponds. Unfortunately, before the ponds could be completed, the promoter company was placed in receivership and then ordered to be wound up. The taxpayer claimed a deduction of the RM16,000 expanded in the failed venture, which the Commissioner refused to allow.

The court, finding for the taxpayer, disagreed with the Commissioner's argument that the taxpayer' expenses had been incurred before the commencement of the business or income-producing activity.

In essence, the Revenue takes the much narrower view that "business" consists in the activity directly referable to producing chargeable income. Where the income in question is to comprise of rents, then according to this logic, the business comes into existence only when the property is ready to be rented out.

In Commissioner of Income-Tax, Gujarat I v Saurashtra Cement and Chemical Industries Ltd, the taxpayer company manufactured and sold cement. Its activities spanned three stages: quarrying limestone, turning it into cement and selling the cement. The court held that the company's business commenced when it started to quarry the limestone and not at the later times when it commenced the manufacturing process or when it commenced sales. The basis of the court's decision was that quarrying limestone, which was the activity that came first in point of time, was as much a part of the company's business as the manufacture and sale of cement.

Our view is that, as a matter of legal principle, if a company's objects are business objects and the company proceeds to carry out these objects, the company is to be treated as carrying on business. In Vallambrosa Rubber Co Ltd v Farmer, Lord Johnston said:

"I think it [i.e., whether a company is carrying on business] must be ascertained from the Memorandum of the Company, read in conjunction with the actual operation of the Company."

In order that the courts may draw the proper inferences from a company's objects, these, as a matter of good practice, ought not to be drafted so widely that it is impossible to discern the real object (s) for which the company if formed. For any taxpayer, some forethought in the form of proper documentation might go along way in avoiding costly and intractable difficulties later.

DIALOGUE WITH THE COMPLIANCE & PREVENTION DIVISION OF THE INLAND REVENUE BOARD (IRB)

We attached for your perusal the following documents:-

1. A summary of the issues raised under a Dialogue with the Compliance & Prevention Division of the Inland Revenue Board (IRB) and the Malasyian Institute of Taxation which was held on 26 May 2000.

2. A list of transaction "codes" for payment of taxes under Sistem Taksiran Sendiri (STS) and Sistem Taksiran Tahun Semasa (STSS).

   These transaction codes must be stipulated on each payment of taxes under STS and STTS as to ensure that the correct payments are debited to the right accounts.

Report on Proceedings of Dialogue with LHDN, Bahagian Pencegahan & Pematuhan On 26 May 2000 at 9.00 am At Bilik Mesyuarat, LHDN, Tingkat 16, Blok 11, Jalan Duta, Kuala Lumpur

PRESENT :

En. Lim Heng How
Timbalan Ketua Pengarah Pematuhan & Pencegahan

Puan Wan Noorsiah
Ketua Bahagian Penyiasatan

Encik Che Omar
Ketua Bahagian Audit

Pn. Ng Oi Leng
Ketua Unit STS

Encik Sivarajah Arasu : PKP (S)
Encil Shahmin : PKP (S)
Puan Selveranie : PKP (Teknikal)
Puan Noor Azian Hamid: PP (Audit)

Encik Lee Yat Kong : MIT
Pn. Phoon Sow Cheng : MIT
Mr Ong Lay Seong : MIT
Mr Looi Seng Fook : MIT
Mr Wong Seng Chong : MIT

En. Robin Noronha
Bahagian Secretariat, MIT

The Chairman, Encik Lim Heng How welcomed the representatives from the Malaysian Institute of Taxation (MIT) to a dialogue on tax audits and investigations under Sistem Taksiran Sendiri (STS). The Chairman then confined the issues to be deliberated in the dialogue, to Tax Audits and Tax Investigations.

The Chairman went on to assert that there will be no change on procedures/ policies of *tax investigations* under Sistem Taksiran Sendiri (STS).

The MIT representatives express their gratitude to the Chairman for agreeing to a dialogue on the tax audits/ investigation and express hope that these "dialogues" will be conducted on a regular basis, as to demonstrate to both taxpayers and Lembaga Hasil Dalam Negeri (LHDN) officers, that there is an avenue where objections and intregal points may be raised by both parties for deliberation.

The meeting then proceeded to discuss the various issues raised by the Malaysian Institute of Taxation.

1. Attitude of Both Taxpayer and Revenue under STS

There is a growing concern between both LHDN and MIT that, in certain circumstances of an investigation/ audit, the disposition and actions of both parties may be unjustified/ unreasonable at the time of the audit/investigation.

To this effect:-

i. The LHDN confirmed that it welcomes all constructive feedback and any reasonable complaints against its officers. The LHDN undertake to look into all such complaints and appropriate action will be taken.

ii. MIT will likewise, investigate and penalise any of its member who is found to have acted in an unreasonable or arrogant manner, or has not adhered to

the principals of the Tax Agents Code of Ethics.

This is to ensure that any "unreasonable" conduct by both MIT members and officer, will not be accepted nor tolerated, in the course an audit/investigation by the IRB.

This matter will be monitored closely by both parties.

2. Time frame For Returning Non-essential Documents

Generally under an investigation, the LHDN will obtain all relevant documents from the tax payer's premises. These documents will only be returned to the tax payer after the case has been settled or the investigations completed.

MIT propose that the LHDN should undertake to return all non-essential documents to the taxpayer within 6 months from date of commencement of the investigations. "Non-essential" documents would refer to documents which have no bearing on the settlement of the case or which have already been submitted to the review (i.e. signed audited accounts, tax computations, etc., or copies of accounts, records thereto, return forms or other related documents, the originals have already been submitted to the Revenue on a yearly compliance basis).

MIA/MIT is of the opinion that this will ensure that the financial processes (audited reports, etc.) of the company/individual is continued without significant hindrance from the investigation process.

The Chairman confirmed that there is an internal standing instruction that all non-essential documents as determined by the officers be returned to the taxpayers as soon as possible. There is also a "time-frame" for cases to be completed/settled.

However, the taxpayers and their agents must accept that it is impossible to determine whether a particular document is essential or not, without having reviewed the investigation case in totality.

3. Reasonable Under STS

The term "reasonableness" under STS is widely applied under field audits and investigations. On numerous occasions, officers of the LHDN have reassured the taxpayers/taxpreparers that the LHDN will be **reasonable** in the execution of their duties under STS.

MIA/MIT suggest that LHDN should issue some form of guidelines/clarifications be made on the term "reasonableness".

It cannot be denied that no government is able to legislate for all eventualities in future, however, on the other hand, mere "custom" and "past 52 years' experience" can never replace a properly codified guideline (e.g. what is/is not ethical/ professional behavior, complaints procedure, etc.

MIA/MIT is of the opinion that certain guidelines/clarifications on reasonableness should be enacted to allay the taxpayers' fears of possible abuse and harassment. To rely entirely on the arbitrary term of "reasonableness" would open the floodgates to unnecessary litigation and abuse by both officer and taxpayer.

LHDN is reluctant to codify the term "reasonableness" under a guideline, as the meaning of reasonableness will vary according to circumstances and the general meaning of reasonableness has been defined by relevant case law.

Nonetheless, certain specific issues were clarified by the Chairman.

Specifically mention were :-

i. Records
If the records of a taxpayer are properly kept, then the question of reasonableness will not arise.

ii. Assistance and Facilities
The criteria for reasonableness of facilities & assistance will depend on
a. the available facilities of the taxpayer
b. the "means" of the taxpayer

As long as the taxpayer has provided a reasonable place and assistance for the officer to execute his duties, the LHDN will not fault the taxpayer, unless, the place/ assistance provided is seen as a method to degrade, intimidate or impede the officer from performing his duties.

For example, if the taxpayer under audit/investigation has a "table fan", the officer should be extended the courtesy of a "table fan", if possible, etc. If a taxpayer's office does not have an air conditioner, LHDN does not expect the taxpayer to provide one for its officers.

It is a question of fact based on the circumstances.

Nevertheless, in the event there is a conflict on this issue of the facilities and assistance provided by the taxpayer, the matter should be referred to the HQ for review and action.

4. Transparency Under STS

The fundamental requirement of STS is "trust" between the taxpayer and the LHDN. The LHDN should change its mindset of being an "authoritative body" and initiate greater transparency of its policy decisions so as to ensure a smoother STS.

Taxpayers/Taxpreparers are concerned that they were unable to comply with LHDN's requirements due to a lack of awareness of LHDN's requirements under STS.

A more transparent system will induce greater cooperation by the general taxpayers and promote voluntary disclosure of noncompliance.

For instance, LHDN should :

i) release all guidelines related to compliance issues.

This will ensure that each taxpayer is aware and/or has complied with LHDN's position on the said matter.

ii) release practice guidelines on field audits and investigations.

This will ensure each party is aware of his rights and responsibilities in an investigation/field audit.

For instance, the practice guidelines could specify under a "field audit" that:

a) An appointment or a date will be given in advance of the "audit".
b) Audits will only be carried out between the hours of 8.30 a.m. to 4.30 p.m., unless warranted.
c) The Officer will endeavor to explain all matters to the taxpayer before commencing with the audit.

MIA/MIT are willing to exchange views on the "terms" to be included in the proposed practice guidelines.

Moreover, taxpreparers are concerned that they may be found to have indirectly contravene Section 114(1)A by virtue of failing to adhere to an undisclosed internal guideline, known only to LHDN. Guidelines are also requested on cases where this new section will be invoked.

The LHDN is in the midst of drafting a pamphlet on the "Code of Practice or Conduct" for LHDN officers and taxpayers.

It will include the general duties and obligations of both officer & taxpayer, and will generally include what a "taxpayer" and "officer" can expect under an audit process, i.e. 1 week notification in advance, etc.

A draft copy of the Code of Practice/Conduct will be given to the Institute for deliberation and comment.

The Chairman further clarified that this code (of practice/ conduct) is part of an internal audit practice manual, which embodies the duties and obligations of an authorised officer under an investigation/ audit. The Chairman assures the MIT that all pertinent rights and privileges of the common citizen has been embodied in the abovemention internal audit practice manual, but due to the nature of the practice manual, it cannot be distributed.

5. Tax Investigations

5.1 Procedures under a Tax Investigation

MIT proposed that some form of practice notes/guidelines be codified on "procedures" under a tax investigation. The procedural "practice notes/ guidelines" proposed will list the time frames, duties and obligations of both taxpayer and IO under an investigation, so as to be fair to both parties.

For instance, the "guidelines/ practice notes" could specify that after 2 weeks, from the date of the investigation, the taxpayer/taxprepayer may meet with the IO, to discuss the case and possibly retrieve any non-essential documents. Although it cannot be denied, that in the past, all IO's have been reasonable in the performance of their duties, nevertheless, a codified procedure will ensure certainty and avoid complications in future.

Firstly, the Chairman reiterated that it has always been the policy of LHDN to never restrict any access or duplication, of any document

seized by the IO under a tax investigation. Moreover, the LHDN has always embraced an "open door" policy, where a taxpayer/taxprepayer has always had the right to reasonable access of any officer under an investigation.

On the above matter, the Chairman is for the proposal that, a taxpayer/taxpreparer may meet with the IO, at any time after an investigation has started to discuss the case and where possible, retrieve non-essential documents.

Furthermore, the Chairman stressed that if any officer unreasonably refuses to meet with the taxpayer/ taxprepayer, the taxpayer has a right to seek redress on the matter.

5.2 List of documents under a tax investigation

During the investigation process, the taxpayer has a right to demand a summarized list of all documents taken under a tax investigation, furthermore this list may even be prepared by the taxpayer and acknowledged by the Investigating Officer at the time of seizure.

6. Cases under a tax audit

(i) There are written instructions (to all officers) that all tax audit cases by the LHDN will be preceded with "prior notice", unless exceptional cases are involved.

(ii) Tax audits will be conducted during the taxpayers operating hours. For instance, a "pub/ karoke" is expected to operate late hours and hence, the officers are also required to "audit" within that time frame.

(iii) Both Tax Audits and Tax Investigations are independent department units and are <u>not</u> administered/headed by the same senior officer.

(iv) There will not be any seizure of documents under a field audit unless there is evidence of fraud or willful evasion. The rational for non-seizure is to avoid audit cases from being bogged down with documentation for a long period.

(v) Audit cases should also have a specific timeframe for completion

7. Redress under Tax Investigation / Tax Audit

The Chairman stressed that if any taxpayer is dissatisfied with any unreasonable procedure or action, taken by any LHDN officer whether under a audit/investigation, the taxpayer has a right to seek redress to:-

a. The officer's superior, the Senior officer at the branch; and/or

b. The Branch Investigation/ Audit head; and/or

c. *The Investigation/Audit headquarters at Jalan Duta*, Kuala Lumpur

The Chairman welcomes feedback from the taxpayers/taxpreparers of the actions of the officers on the ground, and will not hesitate to investigate any reasonable complaint by taxpayers/ taxpreparers. On the other hand, the LHDN will not tolerate any action that will obstruct the duties of its officers.

Moreover, if the taxpayer/ taxpreparer is reluctant to come forward and disclose the problem, the taxpayer/taxpreparer may approach the MIT to raise the issue (in anonymity) in future dialogue/(s) with Bahagian Penyiasatan & Perisikan dan Bahagian Audit.

8 Work in Progress

The Chairman requested that as the taxpayer/taxpreparer expects the LHDN to be prompt and efficient in its replies, the Chairman hopes that the taxpayer/ taxpreparer will be similarly prompt in answering all queries raised by the Board.

This is to ensure a smoother flow of work for the officer in the execution of his duties.

9. Duration to maintain proper records

The Chairman stated that, although the Income Tax Act stipulates that records should maintained for a period of 6 years, if the LHDN has justifiable cause to believe the willful evasion and fraud is present beyond the 6 year period, the onus is now on the taxpayer to disporve (with documented evidence) that willful

evasion and fraud had not occurred in those periods in question.

10. Duration to maintain proper records

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11. Electronic Systems

MIT suggested that apart from merely training officers in the tax audit process under STS, LHDN should also train officers in auditing the various types of computerised systems, of which some have "data" stored in the digital form without any hard copy being maintained.

The Chairman replied that in most of the cases LHDN would likely request for "hard" copies of accounting documents.

Meeting was closed at 11.00 am

APPENDIX

Untuk memastikan semua bayaran ansuran cukai yang dibuat oleh pihak syarikat dan peniaga dapat dipadankan dengan tanggungan cukai yang sebenar, Lembaga Hasil Dalam Negeri meminta kerjasama pihak syarikat dan peniaga untuk menggunakan kod-kod transaksi di bawah setiap kali membuat bayaran:

SISTEM TAKSIR SENDIRI (Tahun Taksiran 2001)	**Cara Bayaran**	**No. Kod**
	Kaunter LHDN	86
	Melalui Pos	86
	Bank Bumiputra Commerce	96

SISTEM TAKSIR TAHUN SEMASA (Tahun Taksiran 2000)	**Cara Bayaran**	**No. Kod**
	Kaunter LHDN	84
	Melalui Pos	84
	Bank Bumiputra Commerce	94

	No. Kod
Bayaran untuk **Individu** melalui Bank Bumiputra Commerce	95

QUOTATION

"Everyone has talent.
What is rare is the courage to follow the talent to where it leads"

Erica Jong

ANNUAL DIALOGUE WITH THE INLAND REVNUE BOARD (IRB)

The Annual Dialogue between the Operations Division of the Inland Revenue Board (IRB) MIT and the Malaysian Institue of Accountants (MIA) as well as representatives of other professional bodies was held on 23 February 2000. The Authorities have also issued the revised filing programme for Year of Assessment 2000 per their letter dated 23 March 2000 which is attached under Appendix A.

Attached are a summary of the salient issues raised in the Dialogue, as well as under their revised filing programme.

Compliance Procedure for Year of Assessment 2000
(PRECEDING YEAR BASIS)

FILING PROGRAMME

1. Extension of Time for Filing Tax Return

For Year of Assessment 2000 (preceding year basis), income tax on most sources of income is waived. Thus filing of a tax return is mainly for statistical reasons and has no significant impact on the revenue collection. As the Year 2000 is also the introduction of the current year basis of assessment, both taxpayers and IRB are concentrating on familiarizing with the new compliance procedures. For companies with early year ends, some of the provisions for the self-assessment regime are also operative from the Year 2000. Therefore, the Year 2000 will be a very busy and confusing time for all concerned.

To alleviate the administrative workload of IRB and the taxpayers and to enhance a smooth transition, MIA/ MIT proposed that the extension of time for filing tax returns be allowed up to 30 August 2000 for companies and 31 July 2000 for others.

Based on the revised filing programme that was issued by the IRB on 23 March 2000 (a copy of which is attached under Appendix A), it was decided that the filing programme will be as follows:

A) Conditions

1. Application for extension of time to file return forms after 31 May 1999 must be made on or before **15 April 2000**.

2. No extension of time beyond **31 May 2000** will be allowed for the following cases:
   a) All partnership (**D**) cases;
   b) All salary (**SG**) cases;
   c) All cases where the accounting year ends on or earlier than **30 September 1999**;
   d) All cases which are not under the instalment payment scheme (**Section 107B**) in respect of Year of Assessment 2000 (current year) except for
      i) repayment/loss cases
      ii) exempt companies
      iii) cases where tax has been deducted under Section 107A

3. For **company** cases, application for extension of time will be staggered and allowed up to **31 August 2000**. The ratios for the extension of time is as follows :-
   (i) Extension until July 31
   - 70% of the total
   (ii) Extension until August 30
   - 30% of the total

4. For all other cases, application for extension of time will be allowed up to **31 July 2000** in the ratio of 50% for June and 50% for July.

5. No further extension of time will be allowed beyond the above dates (Paragraph 2, 3 and 4) **except** :
   a) where the companies are required by law to have the accounts approved by the relevant authorities.
   b) where the filing date could not be met due to genuine extenuating circumstances.

B) Procedures

6. One master programme listing cases (i.e. names and tax file numbers of taxpayers), and dates of filing must be submitted in **triplicate** for approval. **A clear statement must**

be made that all cases for application for extension of time have complied with the agreed conditions.

The list should indicate the payment status of each entity for the year of assessment 2000 (current year basis) as falling within one of the following categories :-

a. The company is under a Section 107B instalment scheme
b. Tax deducted at source under Section 107A
c. The company is a repayment/ loss case, exempt company or has made a written request to be placed under an instalment payment scheme or where the estimated tax liability is below RM500.00.

7. Separate lists, in numerical order of the tax file numbers, should be prepared for each category of cases and sent to the respective branches.

8. Any return form filed within the agreed extension of time must
   a) be complete and supported by audited/certified accounts, tax computation and all information as stipulated in the return form, and
   b) indicate on the front page above the taxpayer's address the following statement:
   " Lanjutan masa dibenarkan sehingga ....."

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

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

MIA/MIT also proposed that the filing of the extra information as required in Part M to Part P of Form C be extended to 30 September 2000 as allowed in the previous year. This will allow more time and flexibility in dealing with the work schedules of both tax agents and taxpayers.

IRB agreed to the proposal and required taxpayers or their agents to indicate at the top left-hand corner of the computer generated form the name of the company, (including its former name if there was a change of name), and the tax file reference number. Applications for extension of filing must be indicated on Part M to Part P of the Original Form C.

2. Form C

i) Filing of Part J to Part P using Computer Generated Return

In the previous year, IRB had allowed taxpayers to file the relevant pages using computer generated returns (in the same format). This is to enable taxpayers to adopt a more efficient method to comply with the law.

MIA/MIT proposed that the facility to allow Part J to Part P using computer generated returns be continued as a preliminary preparation towards full electronic filing. This facility will also enhance better compliance as taxpayers will be able to provide better quality of information more efficiently.

IRB agreed to continue with the practice. As for the request to allow for the whole Tax Return Form to be computer generated, IRB maintained that the original Return must be completed, signed and submitted.

ii) Business Code

Part A of Form C requires companies to fill in business codes. We understand that the business code is allocated by ROC based on the company's main business activity as indicated in the Memorandum of Association. The ROC does not inform the companies of their business code.

Companies often change their business activities, including the main business activity. Does that mean that the business codes have to be changed each time the companies venture into a different business activity?

In a letter dated 10 February 2000, IRB has dispensed with the completion of the Business Code. MIA/MIT appreciates the timely response of IRB and its pragmatic approach to resolve this issue.

iii) Part B

Item 1. Adjusted Income/Loss - Does it refer to the sum of all the adjusted business income or the adjusted

income from the main business activity? How do we indicate adjusted loss?

IRB stated that if there is more than one business, taxpayers should attach the tax computation and indicate in the tax return Form C "as per attached tax computation". The tax computation should correspond with the format and information requested in the Form C.

iv) Part G

For companies with an early financial year end, the total dividend paid or credited may not be known at the time of completing the statement.

In a recent dialogue with the Technical Division, it was indicated that a revised statement must be filed if there is any change subsequent to the submission of the Tax Return Form C.

Arising from the above, will IRB issue a prescribed Form for the purpose of revising the statement? When must the revised statement be filed?

The matter has been to be referred to the IRB Consultative Committee.

v) Part O

IRB confirmed the following:

Item G1 All Sources of Business Income mean all statutory business income excluding partnership income.

Item P1 Chargeable Income refers to income before waiver.

Intangible assets are neither fixed assets nor current assets. They should be disclosed as part of the total assets.

Preliminary expenses are sometimes capitalized and classified separately. It is acceptable to IRB to disclose them under item R5 as "other debtors".

3. Tax Allowance

As part of a remuneration package, some companies bear the individual income tax of their senior employees. As tax on employment income arising in the year 1999 is waived, no tax allowance is provided to the employees concerned for that year.

However, some IRB officers take the stand that tax allowance is deemed to have been provided to the employees for Year of Assessment 2000 (preceding year basis), and therefore, the affected employees are assessable to tax on the allowance.

The professional bodies were of the view that since no tax was paid for the employees concerned due to waiver of tax, no tax allowance has been provided to the employees.

IRB requested the professional bodies to identify the cases and they shall examine this issue.

4. Notice of Assessment

IRB informed that the Notice of Assessment will consist two pages. The first page will show the overall computation of tax and the tax liability after the waiver of tax. The second page shows the computation of income upon which tax is waived.

COLLECTION POLICY

1. Receipt of Notice of Assessment

It had been agreed in the previous year, that due to a change in practice to date the Notices of Assessment on the day they are prepared, penalty will only be imposed after 44 days from the date of the Notice of Assessment.

IRB confirmed that the practice will continue until further notice.

Compliance Procedure for Current Year Basis of Assessment

FILING PROGRAMME

1. **Extension of Time to File Tax Return**

   i) *MIA/MIT proposed that the deadline for filing tax return by all taxpayers, other than companies and individuals without business source of income, be granted automatically to 31 July 2001.*

   ii) In view of the large number of companies having 31 December and 30 June as their financial year end, *MIA/MIT suggested that IRB consider giving extension of time to these companies to file tax returns so that the compliance workload of tax agents and group of companies can be more evenly spread. Alternatively, it was suggested that IRB* exercise its administrative discretion by *granting a 3 months extension to the filing deadline to all taxpayers*, i.e. companies may file their tax returns within 9 months from the date following the end of the accounting period.

   The IRB indicated under the revised filing programme that an automatic 8 month extension of time will be granted for submissions by companies under the current year basis of assessment. However, no further extensions will be entertained by the authorities.

2. **Computation of Chargeable Income**

   Currently, non-business income is assessed on a calendar year basis except where a taxpayer has a business source of income, IRB may grant a concession to allow such income to be assessed on a financial year basis.

   Under the current year basis of assessment, taxpayers must file their tax returns within 6 months from the close of accounts. The following taxpayers may not be able to ascertain their chargeable income when filing their returns:

   i) Pure Investment holding companies having year end before July.

   ii) Companies participating in a partnership which has a year end much later than that of the company.

   During the recent dialogue with the Technical Division of IRB, it was indicated that IRB will allow a pure investment holding company to adopt its financial year as its basis period. This will solve the problem for pure investment holding companies and similar types of entities.

   In the case of a company participating in a partnership which has a year end much later than that of the company, MIA/MIT hoped that IRB could come out with a directive on an appropriate procedure to follow.

   The matter has been referred to the Consultative Committee.

COLLECTION POLICY

1. **Instalment Payments Scheme**

   As the deadline for filing a tax return is dependent on the year end of the company, will IRB still require a company to apply for an instalment payment scheme under section 107B? Will they be penalised if they do not apply for such instalment payments?

   There are companies which have not received Form CP 200 to date. On enquiry, companies were told to apply for it. Under Section 107B of the Income Tax Act 1967, it is the IRB that issues the Instalment Payment Scheme. MIA/MIT would like to know if this is a new practice.

   IRB advised that the company should apply for instalment payments. Otherwise, it may have to settle the tax liability within 30 days from the date of the Notice of Assessment.

   As regards the CP 200, all companies should have received the notices by now. Companies are requested to contact Collections Branch if they have not received the CP 200.

2. **Utilisation of Available Tax Credit**

   a) <u>RPGT Credit</u>
   A member informed that an application to utilise the RPGT

credit to set off against the income tax of the Company as per CP 200 for year of assessment 2000 was rejected on the grounds that RPGT Unit does not have sufficient funds. Taxpayers are forced to come out with additional funds when they already have a credit with IRB.

MIA/MIT is of the opinion that the different accounts and the availability of funds are internal matters of IRB and taxpayers should not be made to suffer.

b) Overpayment of Tax

Requests for refund on tax overpaid was disallowed by IRB. Instead IRB instructed that the amount be retained to offset tax per CP 200 estimated for year of assessment 2000.

MIA/MIT is of the opinion that it is the right of the taxpayers to decide how they should conduct their business and how they should utilise their tax credits. In the above case, the huge tax credit was held by IRB for 8 months and the taxpayer was denied the use of its funds to generate profits.

c) Section 107B Credit

Where a company has tax credit with IRB under Section 107B, can the credit be utilised to offset such credit against tax instalment payments under Section 107C?

IRB agreed that it is taxpayer's right to choose the manner tax payments should be made. IRB informed that so long as the credit is confirmed, taxpayers may request for a refund or set off against other tax liability administered by the IRB. Where a set off is requested, taxpayer must make a formal request before the due date of the said tax liability. Otherwise a late payment penalty will be imposed.

3. **Settlement of the Balance of Tax**

Form CP 200 (Notice of Instalment Payment) has indicated that the difference between the total instalments paid and the actual tax liability should be settled within the month after the last instalment or 30 days from the notice of assessment, whichever is the later. However, Notices of Revised Instalment Payments (Forms CP 201 and CP 202) do not include such a provision.

Does IRB intend to remove the facility when a taxpayer revises his estimated tax?

IRB informed that there will be no change in the practice. IRB will reexamine the wording of Form CP 201 and CP 202.

Compliance with Self-Assessment Regime
(Year of Assessment 2001)

FILING PROGRAMME

1. **Filing Dates**

   i) Extension of Time to File Tax Return

   MIA/MIT proposed that IRB consider giving extension of time to companies with 31 December and 30 June year end to file tax returns so that the workload of tax agents and group of companies can be more evenly spread. Alternatively, it is suggested that IRB exercise its administrative discretion by granting a 3 months extension to the filing deadline to all taxpayers, i.e. companies may file their tax returns within 9 months from the date following the close of the accounting period.

   ii) *MIA/MIT also proposed that the deadline for filing tax returns by all taxpayers, other than companies and individuals without business source of income, be extended automatically to 31 July 2002.*

   The IRB have agreed to a concession for an automatic 8 month extension of time for submissions by companies under the self assessment regime

2. **Due Date of Tax Payment/s**

   Where a company discovers some mistake/s in its tax computation after filing its tax return and submits a revised tax computation together with the balance of tax payable, will the company be penalised for late payment? This may happen in cases of technical adjustments which IRB may dispute. There seems to be no provision for the filing of amended assessments.

   IRB stated that there will be rulings issued to assist/ guide companies on completing the return and the current provision on error and mistake relief still applies for filing amended assessments. Penalty imposition depends on the gravity of error committed and each case will be considered on its own merits.

3. **Furnishing Estimate of Tax Payable (ETP) in the Prescribed Form**

   i) ***Prescribed Form CP 204***

   a) Basis of Estimation

   IRB was requested to confirm that the estimated tax payable is calculated based on the estimated chargeable income for the basis period and is thus not based on the income reported for the accounting period (which could differ from that of the basis period).

   IRB confirmed that the estimated tax is calculated based on the estimated chargeable income for the basis period.

   b) Signatory

   The form is required to be signed by either Directors or Secretary or Officer of equivalent position. Who is the "officer of equivalent position"? In some companies, it is the Financial Controller (FC) or Finance Manager (FM) who is in charge of the accounts. Can the FC or FM sign the Form CP204?

   IRB informed that the signatory of Form CP 204 refers to persons provided for in Section 75 of the Income Tax Act 1967.

   c) Estimated Tax Payable Lower than the Prescribed Limit

   A company may be making a loss in the year to come due to various reasons, for instance loss of franchise licence, disposal of some profitable businesses to pay off creditors, etc. It would be a great burden on the company to pay excessive tax when it needs cash most.

   Note 4 of Form CP 204 indicates that where estimated tax is lower than the tax payable for the year of assessment 1999,

then the Director General of Inland Revenue (DGIR) is empowered to determine the tax instalment scheme.

In the recent dialogue with the Technical Division of IRB, it was indicated that where a company expects to have a lower tax liability for the year of assessment 2001 compared to that of the year of assessment 1999, the company may, with the submission of Form CP 204, forward an application to the DGIR for an instalment scheme based on the projected tax liability. The DGIR may consider the application and issue a directive accordingly. The company may still revise the instalment scheme on the 6th month of the basis period and a penalty may be imposed on underestimation in excess of 30% of the actual tax liability.

Following from the above, what are the requirements and procedures for requesting such a directive from the DGIR? How long will IRB take to issue such a directive?

IRB informed that when submitting the Form CP 204, taxpayers are advised to attach a letter justifying a lower estimate. If it is accepted by the IRB, an Instalment Payments Scheme based on the lower estimate will be issued to the taxpayers.

d) Extension of Time for Filing

Where Form CP 204 has to be sent overseas for approval and signature and due to circumstances beyond the company's control do not receive the signed returns in time to meet the deadline of filing, will a request for an extension of time be granted?

IRB informed that taxpayers write in to apply for the extension. IRB will consider each case on its own merits.

e) Date of Commencement of Operations

For new companies, Form CP 204 must be filed within 3 months after the date of commencement of operations. It has not been defined what constitutes *commencement of operations.*

In a recent dialogue with IRB, it was clarified that the date of commencement of operations is the date the company derived or received income.

Following from the above, for interest income received on fixed deposits covering two basis periods, since it is only received in the second basis period, Form CP 204 should be filed 3 months after it has received the interest income in the second basis period.

MIA/MIT informed that some new cases were not issued with the C reference number so far. There are also cases where taxpayers have been filing tax returns for a few years but an income tax reference number has yet to be allocated. With the introduction of self-assessment, will IRB allocate the C reference number once a taxpayer registers a tax file?

The professional bodies hoped that IRB could speed up the indexation process. Otherwise, a taxpayer will be unable to provide the tax reference number as requested by the Form CP 204.

Puan Nik Esah informed that IRB requires certain particulars, for example employer number (i.e. E no.) and ROC number to register the file.

f) Section 107A Withholding Tax

Contract payments received by a non-resident contractor are subjected to Section 107A withholding tax. Under the preceding year basis of assessment,

the non-resident contractor may utilise Section 107A withholding tax deducted from contract payments received in the previous year to offset tax liability arising from the Notice of Instalment Payments this year.

IRB confirmed that the facility of using Section 107A to offset tax liability arising from Notice of Instalment Payments is still available under the current year basis of assessment.

Under the current year basis of assessment, a non-resident may not have received the relevant contract payments during the early part of the financial period and as such they have no Section 107A credit to offset against the Notice of Instalment Payments. In which case, they will have to pay the tax twice if a Notice of Instalment is issued to them and then obtain a refund later (probably one and half years or longer).

MIA/MIT suggested that for non-resident contractors, Notice of Instalment Payment be dispensed with. This would simplify the administrative procedures and resolve the issue of double payment of tax.

IRB informed that the non-resident contractors could appeal to the DGIR. IRB will consider this issue on a case by case basis.

g) Repayment/Loss Cases

IRB confirmed that all companies have to furnish Form CP 204, even if they are loss or repayment cases. For companies which have ceased operations, they should furnish a nil estimate and indicate that the company has ceased operations.

h) Penalty on Under-estimating and Late Filing

Where after the sixth month of the basis period, a company changes its financial year end resulting in a basis period of more than 12 months (or less than 12 months), the estimated tax payable for the basis period is thus changed. Will the company be penalised for underestimating the chargeable income?

In the recent dialogue with the Technical Division of IRB, it was indicated that the IRB is agreeable to allow investment holding companies and other similar types of entities (for example a closed-end fund company) to forward the estimated tax payable under the Self-Assessment System (by completing Form CP 204) in accordance with the financial year end of the company/entity.

However, in the case where a company participates in a partnership which has a year end later than that of itself, what should the company do to avoid the penalty of underestimate and income being imposed.

The matter was deliberated by the Consultative Committee and is currently under review by the IRB.

In view of the delay in issuing Form CP 204, *MIA/MIT requested if IRB could allow the filing of Form CP 204 to be made on or before 4 March 2000 without imposing any penalty on late filing.*

IRB informed that it will only allow till 29 February 2000.

For companies which close their accounts on 31 March 2001, they should be allowed to furnish the Form CP 204 on or before 31 March 2000.

IRB agreed to the proposal.

ii) ***Prescribed Form CP 200***

MIA/MIT noted that there has been a delay and confusion in the issuance of Notices of Instalment Payments (Form CP 200). As a result, taxpayers may not be able to arrange for payment of the relevant instalments on time.

MIA/MIT suggested that IRB waive any penalty in respect of late payments for the months of January 2000 to March 2000.

The Collections Branch of IRB will look into this matter.

iii) ***Revised Estimated Tax Payable***

MIA/MIT suggested that if a taxpayer submits a revised estimate, it is automatically approved and a revised instalment payments scheme will be issued.

IRB agreed with the proposal.

GENERAL ISSUES

Compliance Issues

1. Due to a change in practice, a Notice of Assessment now reaches the taxpayer some time after the date of issue. As a result, an extension of time to 44 days after the date of issue is granted for settlement of tax. On the same ground, *MIA/MIT request that a similar extension of time be allowed for appeal against the Notice of Assessment.*

   IRB informed that the extension of time for appeal is not granted. However, taxpayers may still invoke Section 100 to apply for extension of time to file an appeal.

2. It is suggested that for filing of Form E, an automatic extension of time to 30 April be granted to simplify the administrative procedures.

   IRB agreed to the proposal.

3. It appears that some assessment units are reluctant to issue clearance letters to cases under liquidation. As a result, the cases cannot be finalised for years.

   IRB suggested that a separate discussion be held with Cawangan Syarikat on this issue.

Collection Policy

Currently, except for STD payments, all other income tax payments and real property gains tax payments may be made through Bank Bumiputra Commerce Bhd or IRB Assessment Branches by cheques. STD is not allowed to be paid through Bank Bumiputra Commerce Bhd because of infrastructure problems. Some companies have made the payments to their own tax accounts, causing a lot of confusion. However, the IRB and the Bank are trying to resolve the problems. IRB has no intention to start a one stop payment centre for all tax payments, including service tax and sales tax because they come under different departments. There is also no intention to accept stamp duty payments to the Assessment Branches.

At the moment, IRB has no intention to extend the facility to other financial institutions due to cost factors. Currently Bank Bumiputra Commerce Bhd is providing the service to IRB free of charge.

IRB informed that all tax payments to the IRB Assessment Branches must be made in cheques and not in cash. The Assessment Branches will generally bank in the cheques the same day. No receipt will be issued by the IRB Assessment Branch. However, the bank-in slip will be given to the taxpayers and IRB will recognise the bank-in slip as a receipt.

The IRB agreed that the date the cheque is presented to the IRB Branches will be taken as the date of payment.

The Dialogue closed at 11.30 a.m. with a vote of thanks to the chairperson.

2. PROGRAM TAHUN TAKSIRAN 2000 (BERASASKAN TAHUN SEMASA) - SYARIKAT (C)

2.1 PENGELUARAN AM BORANG NYATA BAGI SYARIKAT - C

Mulai Tahun Taksiran 2000 (berasaskan tahun semasa - STTS), pengeluaran BN bagi syarikat (C) akan dikeluarkan secara berperingkat seperti berikut:-

Tarikh Pengeluaran Am	Tempoh Perakaunan Berakhir
i. 1 April 2000	31 Januari 2000, 28 Februari 2000 dan 31 Mac 2000
ii. 1 Julai 2000	30 April 2000, 31 Mei 2000 dan 30 Jun 2000
iii. 1 Oktober 2000	31 Julai 2000, 31 Ogos dan 30 September
iv. 1 Januari 2001	31 Oktober 2000, 30 November 2000 dan 31 Disember 2000

2.2 Borang Nyata (BN) bagi kes Syarikat (C) hendaklah dikemukakan dalam tempoh lapan bulan selepas tarikh penutupan akaun. Tiada lanjutan masa selepas tempoh tersebut akan dibenarkan.

2.3 BN yang dikemukakan selepas tempoh yang dibenarkan akan dianggap lewat dan penalti yang sesuai akan dikenakan bagi pengemukaan lewat.

3. PROGRAM PUNGUTAN TAHUN 2000

3.1 Dasar pungutan ialah mengutip cukai dalam tempoh yang ditetapkan serta melaksanakan skim Potongan Cukai Berjadual (PCB), skim bayaran ansuran bagi Sistem Taksiran Tahun Semasa (STTS) dan Sistem Taksir Sendiri (STS) di bawah Seksyen 107B dan Seksyen 107C Akta Cukai Pendapatan 1967. Skim bayaran ansuran bagi STTS dan STS seperti berikut hendaklah dipatuhi dengan sepenuhnya:-

i. Skim Bayaran Ansuran STTS

a. Bagi syarikat yang mempunyai tahun kewangan berakhir selain daripada 31 Disember, bayaran ansuran akan bermula dari bulan Januari 2000.

b. Bagi syarikat yang mempunyai tahun kewangan berakhir 31 Disember, bayaran ansuran akan bermula dari bulan Februari 2000.

c. Bayaran ansuran di bawah STTS adalah secara bulanan untuk tempoh 12 bulan. Notis bayaran ansuran STTS, iaitu CP200 (menggantikan borang CP38SA) akan dikeluarkan untuk 12 bulan berserta 12 slip pengiriman bayaran ansuran CP203.

d. Pindaan bagi amaun ansuran STTS hendaklah dibuat sebelum 15 April 2000. Susulan itu notis pindaan bayaran ansuran akan dikeluarkan melalui CP202.

e. Bagi pembayar cukai baru dan layak dikenakan cukai bati T/T 2000 (STTS) mereka hendaklah daftarkan fail dengan Cawangan Penaksiran jika belum mempunyai fail cukai pendapatan dan diberi pilihan berikut untuk membayar cukai pendapatan :-

- Memaklumkan anggaran cukai yang akan dikenakan kepada Cawangan Pungutan untuk pengeluaran notis bayaran CP200, atau
- Jika pembayar cukai tidak memilih skim bayaran ansuran di bawah Seksyen 107B, pembayar cukai harus diingatkan untuk menjelaskan cukai dalam tempoh 30 hari selepas notis taksiran dikeluarkan. Sekiranya lewat, penalti akan dikenakan dan tiada ansuran dipertimbangkan.

f. Skim bayaran ansuran bagi pembayar cukai untuk kes-kes OG,T,F,J dan CS akan bermula pada bulan Mac 2000 secara dwi-bulanan sebanyak 6 kali ansuran sehingga bulan Januari 2001.

ii. Skim Bayaran Ansuran STS (kes syarikat)

a. Bayaran bagi skim bayaran ansuran STS adalah berasaskan anggaran cukai yang dikemukakan melalui Borang yang ditetapkan, iaitu CP204. Bagi Tahun Taksiran 2001 anggaran cukai yang perlu dibayar hendaklah tidak kurang daripada cukai T/T 1999.

b. Bayaran di bawah skim ini akan bermula pada bulan kedua tempoh asas. Bilangan ansuran adalah mengikut bilangan bulan dalam sesuatu tempoh asas bagi tahun taksiran. Notis Bayaran Ansuran STS (CP205) akan dikeluarkan untuk 12 bulan atau mengikut bilangan bulan dalam tempoh asas.

c. Sekiranya berlaku pertindihan bayaran STTS dengan STS dalam tahun 2000, tempoh untuk menjelaskan cukai bagi T/T 2000 akan dilanjutkan ke tahun 2001 dengan menggandakan baki tempoh bayaran STTS yang bertindih ditambah 2 bulan selaras dengan tempoh maksimum yang boleh diberi kepada syarikat. Sekiranya pembayar cukai tidak berpuas hati dengan tempoh lanjutan yang diberikan, mereka boleh membuat rayuan kepada Cawangan Pungutan dan lanjutan masa tambahan dipertimbangkan atas merit masing-masing. Notis bayaran CP205 (T/T 2001 - STS) akan dikeluarkan dan disusuli dengan notis pindaan bayaran ansuran CP201(T/T 2000 - STTS).

d. Anggaran cukai bagi STS boleh dipinda pada bulan ke enam dalam tempoh asas dan notis pindaan bayaran ansuran dibuat melalui CP206.

e. Bagi syarikat yang baru beroperasi dan layak kena cukai bgi T/T 2001 di bawah STS, tindakan berikut perlu diambil :-

- Syarikat hendaklah mengemukakan anggaran cukai dalam tempoh tiga bulan dari tarikh perniagaan beroperasi (iaitu dari tarikh mula pendapatan diperolehi).

3.2 Apa-apa kredit yang terdapat dari tahun sebelumnya boleh ditolak dari ansuran yang perlu dibayar. Walau bagaimanapun, peraturan hendaklah terlebih dahulu dibuat dengan Cawangan Pungutan.

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

3.4 Akauntan dari ejen cukai dikehendaki menasihatkan pelanggan mereka mengenai keperluan membuat peruntukan yang mencukupi bagi bayaran cukai untuk mengelakkan penalti kerana lewat membayar.

4. PERINGATAN

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

4.2 Ejen Cukai perlu mematuhi Kod Etika Ejen Cukai.

4.3 Ejen Cukai hendaklah memaklumkan pelanggan mereka apabila membuat bayaran samada di kaunter Bumiputra Commerce Bank Berhad (BCBB) atau di kaunter bayaran Cawangan Pungutan bahawa slip pengiriman bayaran CP 203 (STTS) dan CP 207 (STS) perlulah disertakan bersama cek atau wang tunai dan pastikan bayaran yang dibuat adalah mengikut tahun taksiran yang dinyatakan dalam slip tersebut.

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

Tarikh : 22 Mac 2000
LHDN : 01/32/(S/193/21 Klt.11
LEMBAGA HASIL DALAM NEGERI

Dialogue between Operations Division of Lembaga Hasil Dalam Negeri and Malaysian Institute of Accountants & Malaysian Institute of Taxation

Date:
30 March 2000 at 3 p.m.

Venue:
Tingkat 15, Blok 11, Jalan Duta, 50592 Kuala Lumpur.

Present:
Puan Hasmah binti Abdullah PKP, Bhg. Operasi
(Chairperson)

Puan Nik Esah Nik Mahmood PPK, Cwg. Syarikat
(Chairman)

En. Harpal Singh Dhillon	- MIA
En. Quah Poh Keat	- MIT
En. Ong Lay Seong	- MACPA
Puan Tan Shook Kheng	- MACPA
En. Andrew Kok	- MAICSA
Puan Norhaiza Jemon	- MAICSA
En. Zulkefly Omar	- MATA

In attendance:
Mr Robin Noronha - MIA

Puan Hasmah welcomed the representatives from the accounting bodies and briefly explain the purpose of the meeting. LHDN wishes to clarify certain uncertainties arising from the revised extension of time filing programme released by the LHDN on 26 March 2000.

We attach with this letter an example of the application format required by the LHDN.

The meeting discussed the following issues:

1. **Deadline for submission of application for extension of time**
The Chairman has graciously agreed to allow, block applications for extension of time by approved tax agents, to be submitted on or before 30 April 2000.

2. **New cases yet to be registered with the LHDN**
LHDN has indicated that "new cases" which are yet to be registered with the LHDN, have the option to either :-
   i. registered the Company and apply for a CP200 or,
   ii. settle the entire tax liability upon receiving the Notice of Assessment

   For companies requesting registration, the LHDN will no longer require the submission of a sign audited accounts with the application for a C reference number.

3. **Objectives of the new requirements**
LHDN explained that the main purpose for requesting the information (i.e. the payment status of the Company) for the current year basis, in the application for extension of time for preceding year basis, is to ensure that each taxpayer has applied or is going to apply, to be placed under the CP200 instalment payment scheme, where applicable.

4. **Initial loss position, turn tax profit before year - end**
The LHDN has further clarified that in the event a Company had indicated a loss position (for current year basis) under the application for extension of time and subsequently realises that it is instead in a tax profit position, the Company must then apply to be placed under a CP200 instalment scheme under Section 107B.

   For instance, if "Company A"with a financial year - end December, had initially indicated a loss position under its application for extension of time and in June 2000 realises a tax profit, "Company A" is now required to immediately apply for a CP200 beginning from June until December.

5. **Format**
LHDN have requested that in the application for extension of time, the following statement be made :-

   "That these cases are either under a Section 107B instalment scheme, or has/will apply to be placed under a Section 107B instalment scheme, or the taxpayer has been advised to apply to be placed under a Section 107B instalment scheme if the taxpayer is liable in Year of Assessment 2000 (current year basis)".

   Point 1.3
   Kindly delete point 1.3 of the LHDN's revised filing programme as these conditions have already been stipulated under point 1.2.

   Point 1.2 (ii) a
   Kindly insert the sentence "(seperti di bawah isu 1.2 (ii) b)" after the words, "Satu senarai kes...", as *to avoid confusion in the* submission of a master list.

The meeting ended at 4 pm.

Report on Proceedings of Dialogue with Technical Division of IRB On 28 January 2000 at 9.00 am At Bilik Mesyuarat, LHDN, Tingkat 12, Blok 11, Jalan Duta, Kuala Lumpur

PRESENT:

En. Nujumudin bin Mydin (Pegerusi)
Timbalan Ketua Pengarah Teknikal & Perundangan

En. Lim Heng How
Timbalan Ketua Pengarah Pencegahan & Pematuhan

Encik Mohd Saian b. Hj. Ridzuan
PKP, Bhg. Teknikal

Pn. Norimah bt Senawi
PKP, Bhg. Operasi

Dr. Siti Mariam bt. Che Ayub
PKP, Bhg. Perancangan Korporat

Pn. Ng Oi Leng
PKP, Unit Sistem Taksiran Sendiri

Pn. Mazidah binti Ismail
PPK, Cwg. Pungutan

Pn. Nik Esah binti Nik Mahmood
PPK, Cwg. Syarikat

Cik Nurul Aim bt. Ahmad
PPK, Cwg. Penaksiran, Jalan Duta

En. Ng Yew Hoon
Unit Petroleum

Pn. Maridah bt. Ludi
Unit Duti Setem

Pn. Rozina bt. Sheikh Osman Merican
PP, Unit Perhubungan Awam

Pn. Halimah bt. Ismail
Setiausaha

Quah Poh Keat	: MIT
Tuan Hj. Abdul Hamid b. Mohd Hassan	: MIT
Dr. Veerinderjeet Singh	: MIT
En. Harpal Singh Dhillon	: MIA
Pn. Phoon Sow Cheng	: MIA
En. Lim Kok Seng	: MIA
En. Beh Tok Koay	: MACPA
En. Poon Yew Hoe	: MACPA
Cik Low Choi Kam	: MACPA
En. Kenneth Lim Tiong Beng	: MACPA
Pn. Tan Shook Kheng	: MACPA
En. Andrew Kok Keng Siong	: MAICSA
En. Tan Hock Kim	: MAICSA
Pn. Norhaizah binti Jemon	: MAICSA

Encik Nujumudin welcomed the representatives from the professional bodies and indicated that IRB understands the anxiety of the public on penal provisions introduced under the Income Tax [Amendment] (No. 2) Act 1999. He said that the Self-Assessment System is a new tax system and as much as IRB needs the full co-operation of the tax practitioners and taxpayers, he assured that IRB on its part will not be very strict in invoking the penal provisions in the early stages of the implementation of the Self-Assessment System. To alleviate the difficulties faced by the tax practitioners and taxpayers under the Self-Assessment System, a Consultative Working Committee will be set up to look into the problems that may arise. The meeting then proceeded to discuss the various issues raised.

Issues and Comments Arising from Self-Assessment Regime

1. **Filing Dates**

Section 77 of the Income Tax Act 1967 (the Principal Act) as amended requires every company to file their tax return within 6 months from the date following the close of the accounting period, which constitutes the basis period for the year of assessment.

Comments

As income from non-business sources is assessed on a calendar year basis, a company with pure investment income, such as an investment holding company and a company which has not yet commenced business but has received income from investment sources, etc. may not be able to determine its actual chargeable income when submitting its return for a year of assessment, if it closes its accounts on a date other than 31 December.

For example, an investment company having only derived one source of investment income, (i.e. dividend income) closes its accounts on 31 May 2001. By law, the company has to file its tax return for year of assessment 2001 by 31 November 2001. However at the time of submission, it is unable to determine its chargeable income since more dividends may be received by 31 December 2001.

Similarly, companies with early financial year ends may not be able to report the correct Section 108(6) credit balance in the Return Form C since dividends may be paid or credited after the financial year end

but before 31 December.

IRB informed that the Director General of Inland Revenue (DGIR) has no power to grant a concession allowing assessment of non-business income on a financial year basis. The matter has been discussed in the Consultative Working Committee and is currently under review.

As regard to the Statement of Dividends Paid or Credited, the Income Tax Act 1967 requires the Statement to be filed within 3 months after the beginning of a year of assessment. It was therefore advised that a company must submit a revised statement if dividends are paid or credited after the financial year end. The matter has been discussed in the Consultative Working Committee and is currently under review.

For companies under liquidation, only Form 75 is available every six months. The professional bodies sought clarification from IRB with regard to the filing deadline.

IRB proposed that this issue be discussed at the Consultative Working Committee. It was suggested that the liquidator's Form 75 be used in place of audited accounts.

MACPA also raised the issue that a claim for deduction of approved donations may be made in the basis year. Companies having year ends other than 31 December may not be able to claim deductions if the donations are made after the financial year end but within the calendar year.

IRB informed that a claim for deduction of donations based on a financial year basis will be considered in the Consultative Working Committee.

With a time period of 6 months after the close of the financial year, it is quite obvious that there will be situations where there will be non-compliance with the filing deadline. One only has to carry out a review of the timeliness of the filing of audited accounts with the Registrar of Companies (ROC) to see that the six months deadline is extremely tight.

A company has to finalise the accounts, get the statutory audit completed, hold an annual general meeting to adopt the accounts, file the accounts with the ROC and then prepare a tax computation/return and submit it to the IRB. How can a company which has not yet finalised its accounts and which has obtained an extension of time from the ROC to file in, say, nine months after the financial year end be expected to file a tax return (which has to be based on the audited accounts) within six months of the financial year end?

This problem is compounded by the fact that a significant number of companies have a 31 December year end and thus must file the tax return by the end of June the following year. For tax agents, this creates a tremendous burden in terms of time and staffing constraints. The Act does not even have a provision to allow for an extension of time. Even the ROC allows an extension of time to file accounts.

Finally, if tax instalments are being collected monthly, why is there an urgency to force the filing of tax returns within six months – will tax audits be carried out on a timely basis and will taxpayers know for sure that their tax position has been finalised within six months (or a year) of filing returns?

MIA/MIT suggested that the IRB consider extending the filing deadline to at least 8 months after the close of accounts.

The IRB have agreed to a concession for an 8 month extension of time for submissions by companies under the self assessment regime

Electronic Return

Currently, there are some taxpayers who wish to convert its Management Information System into electronic system. To what extent would IRB allow the records of transactions to be kept in electronic form?

IRB informed that as long as the primary records are kept in their original form and are accessible to the IRB officers on field audits, IRB will have no objection.

2. Provision of Reasonable Facilities and Assistance

Comments

Section 80(1A) of the Principal Act has not defined what is meant by providing the DGIR or an authorised officer all reasonable facilities and assistance for the exercise of his powers. The term *failure to provide reasonable facilities or assistance* may be too wide as well as highly

subjective and may depend on the perception of the authorised officer. In addition, small firms and individuals may be financially incapable of providing facilities required by the officers in the field without the intention to obstruct the officers in carrying out their duties.

Although the IRB has verbally assured that they would not be unreasonable, there must be a circular/guideline issued on this so as to provide certainty. This is particularly pertinent in view of the fact that tax agents are not governed by one national professional institute. In fact, the term should be defined in the Act. In Australia, it has been agreed that the term would refer to facilities that would be similarly provided to external auditors.

There is also a need for a code of conduct (to be made public) for IRB officers involved in tax audits so as to avoid any possible conflict or abuse of authority. In the absence of such a code of conduct agreed upon by the IRB, tax practitioners and taxpayers, a taxpayer may be at the mercy of an overzealous IRB officer.

MIA/MIT suggested that IRB with the consultation of professional bodies issue a guideline on what constitutes reasonable facilities and assistance and the code of conduct for field officers.

IRB informed that the facilities and assistance which they expect from the taxpayers are those that are provided to the external auditors. Currently, some officers are facing problems due to the non-cooperation from the taxpayers, such as difficulty in retrieving information, etc.

A Ruling on reasonable facilities and assistence will be issued.

3. <u>Deemed Assessment and Due Date of Tax Payment</u>

The new Section 90(1A) and 90(1B) provide that where a company has furnished a return under section 77 (1A) to the DG, the DG shall be deemed to have made the assessment on the same day. The Return shall be deemed to be a notice of assessment.

The new Section 103A further stipulates that tax payable under an assessment shall be due and payable on the due date whether or not that company appeals against the assessment. Act A1069 further defines **due date** as *the last day of the sixth month from the date following the close of* ***accounting period.***

Comments

It follows that a mistake in a return form is therefore automatically a mistake in the Notice of Assessment. As such, Section 131 relief will be available to the taxpayers. Will the taxpayer be subjected to a penalty for submitting an incorrect tax return?

It has been suggested that all taxpayers need to submit an appeal against their own assessment within thirty days to keep the avenue of appeal open. What if the company discovers some discrepancy in the tax computation which may not be due to an error or mistake and thereafter submits a revised tax computation together with the balance of tax payable. Can they still rely on the Section 131 relief? Must the company then pay a penalty for late payment? What if the underestimation is actually a technical adjustment which IRB disputed? There seems to be no provision for filing amended assessments.

IRB confirmed that the company has to pay late payment penalty. IRB may consider an application for remission of penalty on a case by case basis. Where the underestimation is due to technical adjustments, IRB will issue a Notice of Additional Assessments without imposing penalty. IRB assured that it will revise an assessment on application by the taxpayers based on Section 131 of the Income Tax Act, 1967.

4. <u>Furnishing Estimated Tax Payable (ETP) in Prescribed Form</u>

Act A1069 introduced a new Section 107C which provides that every company shall furnish an estimate of its tax payable in a prescribed form to the DGIR not later than 30 days *before* the beginning of the basis period for that year of assessment and where the actual tax payable exceeds the estimated tax payable by more than 30%, a penalty of 10% shall be imposed on the amount in excess of 30%. It further prescribes that the estimated tax payable for a year of assessment shall not be less than that of the immediately preceding year of assessment.

Comments

This requirement assumes that companies can forecast results with reasonable accuracy. In practice, this is often impossible. It is very difficult for a company to estimate with certainty its chargeable income for even the next six months. This is evident from the failure to meet the profit forecasts by companies listed in the KLSE. However, if the taxpayers are given the right to vary their estimates quarterly, then it will be a more satisfactory situation.

What is even more disturbing is that the estimate cannot be less than that of the preceding year of assessment. This seems to go against the very essence of self assessment where taxpayers are empowered to determine their tax liabilities.

In view that the Act has been gazetted, it is hoped that due cognizance of the following will be taken :-

i) that not all companies make profits all the time. Some sectors of the economy are subject to external factors in terms of prices and currency fluctuations. Even in a sector of significant growth, not all companies in the sector are *making profits.*

As such, MIT/MIA suggested

a) there must be a provision (administrative or otherwise) to allow a company to forward a nil or low estimate even though there was a higher tax liability in the preceding year of assessment.

b) a revision of the estimate should be allowed quarterly or at least twice a year (preferably within the first six months and the next six months of the financial year). This will allow companies to incorporate recent developments in their profit/loss situation.

ii) the need to forward estimated tax liability will increase tax compliance costs and as such, flexibility must exist in the system.

iii) it is inequitable to force a taxpayer to pay tax instalments for six months when the taxpayer can estimate that there is unlikely to be any tax payable for that year of assessment (due to the fact that there may be unabsorbed businesses losses, etc).

Practical Issues

i) Filing Date of Form CP 204

a) <u>Companies with pure investment income</u>

The basis period for pure investment holding companies and newly incorporated companies *with only investment* income follows the calendar year.

Please confirm that for the year of assessment 2001, all these companies are required to file the prescribed form on or before 1 December 2000, irrespective of their financial year end. If so, how does the instalment payment scheme operate?

The issue has been discussed at the Consultative Working Committee and is currently under review.

b) <u>Date of Commencement of Operations</u>

For new companies, Form CP 204 must be filed within 3 months after the date of commencement of operations. It has not been defined what constitutes *commencement of operations*? Does the term have the same meaning as commencement of business?

MIA/MIT would like to seek IRB's clarification on what constitutes commencement of operations.

IRB informed that the provision is intended to cover situations where a company has not commenced business but has received non-business income, such as interest, rental etc. It was clarified that where income is received or receivable, depending on each case, a company is deemed to have commenced operations. Where in a year of assessment, a company receives non-business income which relates to a

preceding basis period, for instance dividend *income, the company will* not be penalised for late filing if Form C.P. 204 is filed within 3 months after receipt of the income.

ii) Restriction on Quantum of ETP

Section 17 of Act 1069 specifically provides that for the year of assessment 2001, estimated tax payable shall not be lower than the amount of tax payable for year of assessment 1999.

A company may be making a loss in the year to come due to disposal of some profitable businesses to pay off creditors. It would be a great burden to the company to pay excessive tax when it needs cash most.

Some of our members have been advised by IRB officers to appeal to the DGIR for a lower estimate than that of year of assessment 1999 if they can demonstrate a reasonable basis. In which case, the DGIR may direct an instalment payment scheme according to the lower amount.

MIA/MIT note that in note 4 of the Prescribed Form 204, it is stated that the DGIR is given the power to issue the instalment payment where the estimate is lower than the assessment for year of assessment 1999. Similarly Section 107C (8) stipulates that the DGIR may direct any company to make payment by instalments on account of tax which is or may be payable by that company for a year of assessment at such times and in such amounts as the DGIR may direct.

MIA/MIT wish to clarify the extent to which IRB will exercise the power under Sub-Section (8)? Will IRB exercise the power under this subsection to relieve companies whose performance is below that of the preceding year of assessment? Under what conditions will the DGIR direct a notice of instalment payment according to a lower estimate and whether these taxpayers have the right to revise the amount as directed by the DGIR during the sixth month of their basis period?

***IRB explained that purpose of* the provision is to prevent companies from deferring tax payments in the first 6 months and to ensure a smooth cash flow for the government. IRB are concerned with the response from the taxpayers and has decided to take appropriate steps to alleviate the situation. As Income Tax [Amendment] (No. 2) Act 1999 (Act 1069) has been passed and gazetted on 31 December 1999, it is advised that the filing of the Estimated Tax Payable for Year of Assessment 2001 should follow the law, i.e. not lower than tax payable for year of assessment 1999.**

However, a company aggrieved by the provision may at any *time during the basis period* appeal to the DGIR for a directive on the payment scheme, stating the reason and basis for a lower estimate. The DGIR will consider the application and may issue a directive for a new instalment payment scheme based on the lower estimate. Taxpayers will still have the right to revise the estimate in the 6th month of the basis period, if the directive is issued before the 6th month of the basis period. Where the actual tax payable exceed the total payments as directed by DGIR by more than 30%, remission of penalty may be considered if the taxpayer can show that at the time of furnishing the estimate, the basis of estimation adopted is reasonable.

The appeal letter should be sent, preferably together with Form C.P. 204, to the processing unit of the Collections Branch.

iii) *Prescribed Form CP 204*

Signatory

The form is required to be signed either by Directors or Secretary or Officer of equivalent position. Who is the "officer of equivalent position"? Can Financial Controller of the Company sign the Form?

IRB informed that the provision of Section 75 of the Income Tax Act 1967 will apply.

The signatory is either the Director, the manager or other principal officer in Malaysia, the Secretary or any person exercising the functions of any of the persons mentioned.

Late Filing of Form

In view of the confusion and late receipt of Form C.P. 204, the professional bodies request the IRB not to impose penalty for late submission at least for the first few months.

IRB agreed to consider remission of penalty if there are valid grounds.

iv) *Repayment of Tax*

Since the law has imposed a minimum for estimated tax payable, companies expecting a lower performance in the current year would invariably be overpaying their tax. In extreme cases, the first 5 instalment payments may well exceed the revised estimated tax payable. On the other hand, there is no provision in the law when a repayment of tax would be made. MACPA enquired if the excess can be refunded before the the submission of the tax return. It suggested that a definitive date of repayment should be stated, say 30 days from the notice of overpayment or submission of tax return.

IRB will study if repayment within 3 months from the date of submission of the tax return is possible. The matter will be raised to the DGIR.

5. Liability of Advisers and People Assisting in Preparing Tax Return

The new Section 114(1A) provides that any person who assists in, or advises with respect to, the preparation of any return resulting in understatement of tax liability of another person shall, unless he satisfies the court that the assistance or advice was given with reasonable care, shall be guilty of an offence and shall on conviction, be liable to a fine .....or imprisonment.... or both.

General Comments

This Section imposes an onerous burden on tax practitioners. There could be instances where the companies did not provide adequate information or provided erroneous information to the tax agent who has no basis to verify the accuracy or authenticity of the information provided.

On the other hand, as the Self-Assessment System is just being introduced in the country, the operating structure is not yet fully established. We do not have a well established rulings system which taxpayers may revert to when there are doubts regarding the tax implications. There are still grey areas on which the IRB has not issued any guidelines or public rulings. The scope of the provision is too wide.

The Act does not define what is *reasonable care* and what is the standard of *reasonable care* required of the alleged wrongdoer. The presumption that the adviser is guilty unless he satisfies the court that the assistance or advice was given with reasonable care imposes an onerous duty on tax agents.

The amendment seems to suggest that if an adviser, be it a tax agent, a lawyer or an investment banker, proposes a valid tax-saving scheme that results in a lower tax liability, the adviser could be held to have committed an offence unless he or she can demonstrate that reasonable care has been exercised. In theory, if the IRB disagrees with a taxpayer's view that an expense is deductible, then there would have been an understatement of tax liability. However, IRB has verbally indicated that in practice the provision would only be applied in particular situations (after reviewing the circumstances).

In addition, it must be borne in mind that taxpayers are responsible for their tax returns. Tax agents are merely service providers. This relationship between a taxpayer and his tax adviser as well as the nature and accuracy of information provided to an adviser either in preparing a tax return or seeking professional advice should be duly considered. Tax advisers should not be penalised for accuracy of information over which they have no control and which, in a typical engagement contract, is not within his scope to verify.

In Canada, the Federal Government revised its stance on imposing civil penalties on third parties (such as professional accountants) involved in making false statements to the tax authority. The proposed amendments would have imposed new duties of care on accountants

involved in preparing income tax returns. The accounting bodies were concerned (and rightly so) that the proposed amendments may be used in situations where tax advisers did not know that anything untoward had happened. The draft legislation, in effect, would have led to tax professionals having to pre-audit information to protect themselves. The point to note is that an accountant's duty is to his client and not to the tax authority and as such, the accounting bodies managed to convince the Government that negligence does not belong in a tax statute. The Canadian Government has now suggested a "culpable conduct" standard which is more easily applied and understood. The test would refer to conduct that is tantamount to intentional acting, showing an indifference as to whether the tax law in complied with, or showing a wilful, reckless or wanton disregard of the law. In addition, the Government will be including a 'good-faith' reliance rule, confirming that a tax professional is not considered to have acted in circumstances amounting to culpable conduct by reason of having relied, in good faith, on information provided by the taxpayer.

MIA/MIT wish to stress that tax agents are the intermediaries between taxpayers and the IRB. They facilitate assessment and enhance compliance by providing taxpayers tax information required to comply with the revenue law and by assisting them in preparing relevant information and tax computations.

The Institutes believe that the original Section 114 (1) is wide enough to deter such activities. Most importantly, the original provision is specific in its objectives. It is aimed at any person who wilfully and with intent evades or assists any other person to evade tax. In comparison, the new provision does not take into account any wilful intention to evade tax.

The Institutes proposed that for the time being, some parameters be set and made public. At the very least, some administrative guidelines should be issued to provide certain parameters, so that all are aware of the situations when such a provision would apply. In addition, persons suspected to have contravened this provsion of the law, including taxpayers, tax advisers and accountants, should be given the opportunity to explain before legal proceedings are initiated.

IRB clarified that understatement means paying less than what is due under the law, for example, under declaration of revenue, overstatement of expenses, etc. It has been assured that the assistance provided by tax advisers to minimise tax in accordance with the law is not within the ambit of the provision. Pure oversight will also not be penalised. IRB agreed to issue circulars laying down the scope of the provision and the broad principles under which this provision will be invoked.

As regards to penalty, IRB will take into account the taxpayers' willingness to voluntarily amend an *incorrect tax return. The type of* offence and the penalty will also be made public. It also assured that persons suspected of contravening the law will be given an opportunity to explain before being taken to court.

6. Absence of Provisions on the Rulings Process

Comments

The Act does not contain any provisions on the rulings process, be it the issuance of public, private or advance rulings. Nevertheless, the IRB has drafted a few (public) rulings relating to determination of basis periods and the type of records to be maintained.

It is imperative that the rulings system and its operations be formalised. In order for the IRB to be bound by its rulings, there needs to be legislations to that effect. Further, there are no directives/ guidelines on how one can apply for a waiver or exemption from applying a particular ruling.

Issues arising from Tax Waiver

1. Restriction of Payments to Directors of Controlled Companies

Any payment made to a non-full time service director of a controlled company in excess of such payments made for the preceding year will not be allowed in ascertaining the adjusted loss of that company.

What about a company which has just commenced operations in the year 1999? There is no basis for comparison! In addition, the director may provide professional service to the company and charge

market rates for the services rendered. Will the deduction for professional charges be restricted?

IRB clarified that for a company which has just commenced operations in the year 1999, the restriction on payments to Directors does not apply. In the case of professional fees made to a director in respect of professional services rendered by him to the company, IRB will consider the restriction on a case by case basis.

2. DTA Tax Sparing Relief

For year of assessment 2000 (preceding year basis), income has been waived. Can the taxpayer enjoy the tax sparing relief on the waived income? This include shareholders receiving exempt dividend out of the exempt account created by the waived income.

IRB confirmed that Tax Sparing Relief under a DTA will not available.

3. Wording of Exempt Dividend

MAICSA requested IRB to issue a standard wording for declaring the exempt dividend paid out of income upon which income tax is waived under Section 8 of the Income Tax (Amendment) Act 1999 and credited to an exempt account under Section 12 of the same Act.

Issues Arising from Year of Assessment 2000 (Current Year Basis)

1. Settlement of the Balance of Tax

Note 4 of Form 200 (Notice of Instalment Payment) has indicated that the difference between the total instalments paid and the actual tax liability should be settled within the month after the last instalment or 30 days from the notice of assessment, whichever is the later. However, Notices of Revised Instalment Payments (Forms C.P. 201 and C.P. 202) do not include the provision.

Does IRB intend to remove the facility when a taxpayer revises its estimated tax?

It had been agreed in the previous year, that due to a change in practice to date the Notices of Assessment on the day they are prepared, penalty will be imposed after 44 days after the date of the Notice of Assessment.

Will the concession still apply in the case of Notices of Assessment issued after the last instalment for companies following C.P.200, C.P. 201 or C.P. 202?

The IRB will study the matter and inform the professional bodies.

2. Extended Instalment Payments

IRB has notified that it will issue Form C.P. 201 to allow companies with non December 31 year end to extend their instalment payments scheme. MACPA enquired whether *in cases where the C.P.201 cannot* be issued on time, taxpayers can make payment in accordance with the schedule for extenede instalment payments scheme as provided by IRB?

IRB confirmed that taxpayers may calculate their tax in accordance with the Schedule of Extended Instalment Payments Scheme and need not wait for the Form C.P. 201.

3. New Capital Allowance Rates

The National Budget for fiscal year 2000 proposed a review in annual rates of capital allowance.

MIA/MIT wish to clarify whether the proposal is applicable to the existing assets and if so, how will the provision apply. The Institutes suggest that all assets be pooled together. Balancing adjustments is made by deducting against the disposal proceeds with the relevant residual value from the pool.

IRB confirmed that the proposed new capital allowance rates will apply to the existing assets provided that the rate currently claimed on the asset is lower than the new rate. Where the current rate claimed on the asset is higher than the new rate, IRB will not take away the benefit enjoyed by the taxpayer and will allow the current rate to continue to apply.

Other Issues

1. Tax Investigation

a) With the amendment to Section 91(1), where a taxpayer is unable to submit capital statements for basis periods which are more than 6 years ago due to lack of documents, IRB should not issue additional notice of assessment. The taxpayer may just destroyed the records due to expensive storage costs.

IRB informed that generally it will not investigate beyond 6 years unless it found basis to do so. If a taxpayer decide to destroy his records exceeding 6 years, he has to borne the risks that if an investigation on him is initiated later and he has not documentary evidence to prove his case.

b) Where a taxpayer is investigated, it is suggested that on completion of the investigation IRB may issue a letter stating that investigation has been completed. This will give taxpayers a clear picture of their positions.

IRB will look into it.

2 **Balancing Allowance**

We understand that some IRB officers have recently deviated from past practice by imputing deemed sale proceeds on fixed asset written off. The deemed sale proceeds is taken to be the amount equal to the residual value brought forward of the fixed assets. Hence there will be no balancing allowance.

It must be noted that the capital allowance rate is assigned to a category of assets based on their useful life span as estimated by the IRB. Not all assets will have the same life span. Moreover, the useful life span of an asset depends very much on the extent and manner it is being utilised. It is therefore possible for an asset to have a shorter useful life span than normal due to heavy usage.

Further, an asset may become obsolete due to many reasons such as damage, change of operating/ production system, improvement of technology, change of business, etc. It is therefore not fair to penalise businesses for replacement of obsolete fixed assets. It is an irony that we encourage businesses to modernise or automate their operations by giving incentives such as reinvestment allowances on the one hand and penalise them for writing off obsolete assets on the other hand. The Institutes therefore urge the IRB to reconsider the treatment.

MIA/MIT would like to seek confirmation from IRB whether this is a new practice. The Institutes are of the opinion that assets are written off because they are either not suitable for use or are damaged. Denying taxpayers from claiming balancing allowance will increase operation costs and reduce the efficiency of the company.

IRB clarified that it is not the practice of the Board to impute deemed sale proceeds on assets written off except in cases where there are no details at all on the fixed asset so written off.

3 **Minimum Authorised Share Capital**

MAICSA proposed that IRB review the Income Tax (Deduction of Incorporation Expenses) Rules 1974 because even small companies have minimum authorised share capital exceeding RM25,000.

The meeting closed at 11.30 am.

QUOTATION

"VISION -
The farther backward you can look,
the farther forward you are likely to see"

Sir Winston Churchill

Application Form

CLAIM FOR DOUBLE DEDUCTION FOR PROMOTION OF EXPORT OF SERVICES UNDER INCOME TAX (DEDUCTIONS FOR PROMOTION OF EXPORT OF SERVICES) RULES 1999

Borang DD/ES (BT1/1999)

Income Tax Reference No:	C.....
Year of Assessment:	.....
Basis Period:	.....

Ketua Cawangan
Lembaga hasil Dalam Negeri,
Cawangan.....
.....
.....

Original Claim

Ketua Eksekutif/Ketua Pengarah Hasil Dalam Negeri,
Lembaga Hasil Dalam Negeri,
Unit 35, Bahagian Teknikal
Tingkat 14, Blok 11,
Jalan Duta,
50600 Kuala Lumpur

1 copy

CLAIM FOR DOUBLE DEDUCTION FOR PROMOTION OF EXPORT OF SERVICES UNDER INCOME TAX (DEDUCTIONS FOR PROMOTION OF EXPORT OF SERVICES) RULES 1999

This form is to be completed by the claimant company and must be submitted together with its annual return form.

Part A - Details of Company

1. Name of company : .....
2. Registered address of company : .....
   Tel. No. : .....
3. Date of incorporation and the Certificate of Incorporation number.
   .....
4. Residence Status (Tick (✓) where applicable).
   Resident in Malaysia Yes ( ) No ( )
5. Type of services provided
   .....
6. Type of services exported/will be exported
   .....
7. Export markets (if any).

   (i) Major existing markets — Exports value
   ....
   ....
   (ii) New/Potential markets
   ....
   ....

Part B - Details of expenses incurred.
Attach appendices if necessary.

	Type of Expenses	Cost Breakdown	Amount
1.	Export market research.	.....	.....
2.	Preparation of tenders for purpose of export of services.	.....	.....
		.....	.....
3.	Supply of technical information abroad.	.....	.....
		.....	.....
4.	(a) Fares in respect of travel overseas by a company representative being a travel necessarily undertaken for the promotion of export of services.	.....	.....
		.....	.....
		.....	.....
		.....	.....
		.....	.....
	(b) Accommodation and sustenance expenses overseas (subject to maximum RM200 per day for accommodation & RM100 per day for food).	.....	.....
		.....	.....
		.....	.....
		.....	.....
		.....	.....
		.....	.....
5.	Maintaining sales office overseas.	.....	.....
6.	Expenses incurred on publicity and advertisement in any media outside Malaysia.	.....	.....
		.....	.....

Part C - Declaration By The Applicant

I hereby

(i) declare that all particulars furnished in this form are true and correct

(ii) declare that the expenses claimed as contained in Part B are expenses qualified for double deduction for promotion of export of services.

(iii) declare that the original receipts and other documents relating to expenses for promotion of export of services claimed amounting to RM..... are properly kept.

(iv) give permission to the authorised officers of Inland Revenue Board at anytime to examine the original receipts and other documents relating to the amount claimed.

Director's Signature : .....

Director's Name : .....

Date : .....

Company Stamp : .....

Director - Refers to a member of the Board of Directors of the company.

INCOME TAX RULING NO. 7/2000

Providing Reasonable Facilities And Assistance

1.0 TAX LAW

This Ruling applies in respect of section 80 of the Income Tax Act, 1967.

2.0 THE APPLICATION OF THIS RULING

This Ruling considers:

2.1 what facilities and assistance a person should provide to the Director General or an authorized officer;

2.2 the consequences of failing to provide such facilities and assistance.

3.0 HOW THE TAX LAW APPLIES

3.1 A person should provide reasonable facilities and assistance to the Director General or an authorized officer when he exercises his powers of full and free access to lands, buildings and places and to all books and other documents, to search such lands, buildings and places or to copy or make extracts from any such books or documents without making any payment.

3.2 This Ruling gives general guidelines on the facilities and assistance that are to be provided to the Director General or an authorized officer.

3.3 Facilities and Assistance

3.3.1 Free and full access to lands, buildings and other places must be provided to the Director General or an authorized officer immediately upon such a request being made to the owner and/or the occupier. Any obstruction or hindrance to full and free access should be removed.

3.3.2 An explanation of the office system and the accounting system must be given if so required. The accounting manual, chart and code of accounts including computer and software manuals should be made available. Access should also be given to the physical and/or electronic records, documents and books of accounts.

3.3.3 Information should be given as to where the records are kept and assistance should be given in identifying and locating the documents, records and books of accounts requested by the Director General or an authorized officer.

3.3.4 Use of facilities such as copier, telephone or other communication equipment, lighting and power, office work space and furniture should be provided. Facilities should also be provided for copying of electronic records on to tapes, disks or diskettes.

3.4 The Consequences if Reasonable Facilities or Assistance Are Not Provided

Failure to provide reasonable facilities or assistance or both to the Director General or an authorized officer, in the exercise of his powers, is an offence under the Act. On conviction, the offender may be liable to a fine of RM1,000 up to RM10,000 or to imprisonment for a term of up to one year, or to both.

4.0 INTERPRETATION

For the purpose of this Ruling:

4.1 An "authorized officer" is a public officer or an employee of the Inland Revenue Board, Malaysia who is authorized, in writing, to exercise any function of the Director General under the Act.

4.2 "Electronic records, documents and books of accounts" include records, documents and books of accounts kept in any electronic medium.

4.3 "Occupier" includes a tenant/lessee or any person who has physical possession and/or control of the land, building or place, or part thereof, to which access is requested by the Director General or an authorized officer, at the time such a request is made.

4.4 "Owner" means the person who has possession or ownership, legal or beneficial, of the land, building, place, books, records or documents, or part thereof, to which access is requested by the Director General or an authorized officer.

4.5 "Person" includes a company, a co-operative, a partnership, a club, an association, a Hindu joint family, a trust, an estate under administration, an individual, and any representative, agent, family member, employee or servant of any of the foregoing.

(Date of Issue: 16/06/2000)

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 22 November 1999.

The Malaysian Royal Customs And Excise Department

Minutes of Meeting
Customs/Private Consultative Panel 2/99

CONTENTS OF MINUTES

A. CHAIRMAN'S OPENING REMARK

1.1 The Director-General of Customs, being the Chairman, expressed his gratitude that the Meeting of Customs/Private Sector Consultative Panel could be held for the second time in the year 1999. The Chairman wished all members and welcome a new panel member from Malaysian Knitting Manufacturers Association (MKMA). In addition, he congratulated Mr Tong Teng Fatt from FMFF on his appointment as Deputy Chairman for this meeting.

1.2 The Chairman recalled the days when the Customs/Private Sector Consultative Panel was set up in 1968 in Port Klang. He was the Secretary then.

1.3 Referring to the previous meeting, the Chairman listed the changes that have been carried out by the Department. He took the opportunity to thank the private sector for contributing constructive ideas in helping the Department to upgrade the quality of services and the collection of taxes.

1.4 Regarding the hot issue of Y2K, the Chairman said that the Department is prepared to face it. The Department had received the approved status from the Ministry of Energy, Telecommunications and Multimedia as well as from MAMPU regarding Y2K compliance.

1.5 Nevertheless, since nobody knows what is actually going to happen at the date of change from year 1999 to 2000, the Chairman said that the Department had prepared the Y2K contingency plans. He appealed to the private sector to remain calm if problems arises during that date and accept the manual mode of operation as contingency. The Chairman hoped that the private sector also have a contingency plan in facing Y2K phenomena.

1.6 The Chairman expressed the readiness of the Customs department in implementing the WTO Valuation. The Department had sent Customs officers to Australia but later realising that Australia does not really rely on import duties as a major source of national revenue and thus, the officers did not gain much knowledge during the training programme. As a result of this the Department will learn from the India's experiences in implementing the WTO Valuation. India and Malaysia shared similarities relying on import duties as a source of revenue to the nation.

1.7 The Chairman was apologetic to the panel saying that there will not be a briefing on the year 2000 Budget at this meeting. This is because, even though the budget was tabled, it was not passed yet. Nevertheless all regulations involve take into effect immediately (at the date the Budget was tabled) because it had been signed by the Minister.

1.8 In his closing remarks, the Chairman hoped that all present in the meeting will focus their attention with the spirit of co-operation and pray that this meeting will achieve success.

B. DEPUTY CHAIRMAN'S SPEECH

The meeting elects Mr Toon Teng Fatt from the Federation of Malaysia Freight Forwarders (FMFF), the private sector representative as Deputy Chairman.

2.1 Mr Toon greeted to all and thanked the Honourable Chairman Datuk Ahmad Padzli bin Mohyiddin, Deputy Director-Generals of Customs, Directors of Customs, senior officers of the Royal Customs and Excise Department, together with the representatives of the private sector for electing him as the Deputy Chairman of this meeting.

2.2 The Deputy Chairman insists that the private sector representatives are always invited to attend briefings with regards to current issues of the Department and also be included at the states level as practised by the State Director of Customs, Johor. This is important as to allow the associations in the private sector to inform their members as to what to be expected and for them to take the necessary planning/preparation.

2.3 The Deputy Chairman as of the opinion that the proposals forwarded to the Head Office has been reducing in number because many of the proposals, had been forwarded and resolved at the state level. Only proposals which involves Customs Department's policies are forwarded to the Customs Head Office. Nevertheless he still wished that the consultative panel meeting will still be continued.

2.4 In his closing remark, the Deputy Chairman once again thanked the Chairman, Deputy Director-Generals of Customs, Directors and Officers of the Department and hoped that this meeting will achieve positive results for mutual benefits.

C. CONFIRMING MINUTES OF THE CONSULTATIVE PANEL MEETING 1/1999

Proposer : Madam Lee Ah Yem
Seconder : Mr Walter Culas

D. CORRECTION TO MINUTES OF MEETING NO. 1/99

4.1 Page 25:

Change word "For Information" to "Action : Customs Division"

4.2 Page 34

Line six (6) from below:
Cancel word "MACPA and/"
Last line:
Cancel word: "MACPA/"

I. MATTERS ARISING

1 **Request the Department to consider Bumiputra participation from 51% in all categories to 30% in line with 30% Bumiputra allotment for Forwarding Agents.**

Situation:
A number of repetitive letters have been forwarded to Treasury but no decision have been made. The same matter had been raised at one of the dialogue session between entrepreneurs/clients with the Ministry of Entrepreneurial Development on 7th October 1999 and till today no decision had been received on the matter.

Action: Customs Division

2 **One Licence, Licensed Manufacturing Warehouse (LMW) for parent company and its branches irrespective of their locations.**

Situation:
The Customs Division said that the Department decision to implement "single licence" had been announced but have not received the list of interested LMW Companies from FMM.

FMM reported that the matter had been conveyed to its members and two (2) companies had shown interest to apply the "single licence". FMM had only recently sent the application to the Customs Division.

Action : Customs Division

Application for the extension of Scheme of Elected Release System (Skim Sistem Pelepasan Terpilih, SSPT) to the whole country.

Situation:
The Department agreed with the above application and had informed all the states Directors of Customs on this matter.

For Information

Minutes of the Consultative Panel Meeting prepared in two versions, Bahasa Malaysia and English.

Situation:
The Department had prepared the minutes of the Customs/Private Sector Consultative Panel Meeting no. 1/99 in two languages, Bahasa Malaysia and English.

However, certain quarters in the private sector have yet to fully use Bahasa Malaysia (or at least in two versions - Bahasa Malaysia and English) in their correspondence letters with the Department. There are also those going to the extent of translating their letters' headings from Bahasa Malaysia to English which resulted in confusion with the Department.

The Chairman hoped this matter does not recur and asked those involved to follow the Federation of Malaysia Freight Forwarders (FMFF) as an example which had sent proposals to the Customs/ Private Sector Consultative Panel Meeting 2/1999 in to versions - Bahasa Malaysia and English.

For Information

5. **A written guidelines on Customs Deterrent Examination Procedure in order to avoid impersonation by irresponsible people.**

Situation:
The Department had released a media statement on 13th October 1999 on what is to be done if the person that is reprimanded wishes to authenticate that the officer concerned is actually a Customs officer. The concerned statement was printed in Utusan Malaysia and Berita Harian on 14th October 1999. AFAM (the proposer) was also informed on this matter.

For Information

6 **Application and Customs licence renewal (item 5:10 Forwarding Agent application form)**

Situation:
Amendments on the details of the application (item 5:10 Forwarding Agent application form) was made on 8th June 1999.

For Information

7. **Appointment and approval of Customs agent at KLIA, Sepang**

Situation:
State Director of Customs, Federal Territory had subordinated authority to the Senior Assistant Director of Customs, at KLIA to approve the appointment of Forwarding Agents. The announcement was carried out through a letter dated 25th May 1999.

AFA informed that their members do not face anymore difficulties on this matter.

For Information

8. **Payment of duties can be made at designated responsible centres.**

Situation:
This matter will be taken into consideration when upgrading the SMK System Phase II is made. Co-ordination will be made between Revenue Accounting Division and Management Information System Division.

FMFF reported that since Westport had experienced rapid development, members no longer faced problems when registering forms and making payment on taxes at the same designated responsible centre.

Action : Customs Division

9. **Issue on Management Services which are taxable**

Situation:
Internal Taxes Division reported that the Department has yet to receive feedback from the private sector on this matter.

MICCI informed that this issue is still at the discussion stage before a working paper is prepared and it will be sent to the Customs Department very soon.

Action : MICCI

II. MATTERS DISCUSSED

- **DISCUSSION ON PROPOSALS**

Before discussing the proposals forwarded by the private sector, the Chairman informed that only those proposals which were received within the stipulated time frame will be discussed at this meeting. For proposals which were received late, actions will still be taken administratively even though the proposals concerned were not discussed at this meeting.

1. **SES collection on the value of rubber export material under the Malaysia Rubber Board (Incorporated) Act 1996 since 1st August 1999.**

Proposal from FMFF (Federation of Malaysian Freight Forwarders)

Key Elements of Discussion

FMFF raised the above issue because since exporters are to pay SES on rubber goods for exports, and there were cases where the exporters were late in forwarding export documents or late in making payment (late submission). This would result in the goods cannot be loaded on to the ship as scheduled; which would also cause the ship to leave the port late because port clearance could not be issued until all merchandise duties are collected or merchandise information is adequate.

Owing to this, FMFF recommended the department to conduct a study to revamp the SES collection procedure. For example, the SES collection is directly undertaken by the related government agencies and or to pay monthly (for instance, like the collection of sales tax).

FMFF also requests the Departments' co-operation to recommend the concerned party to determine minimal payment (example RM5.00) to collect SES payment for exported rubber goods through Johor Causeway/Second Link. This is because there are cases where the SES duties were only a few cents but the time taken to process the documents and payment collection took a long time and it complicates the exporters.

Decision

The Department will discuss with Malaysia Rubber Board (MRB) to identify a better mechanism for the collection of SES as raised in the proposal.

Action : Customs Division

2. **Application for Customs bonded truck to be extended to approved Customs' Agents.**

Proposal from the FMFF (Federation of Malaysian Freight Forwarders)

Key Elements of Discussion

Currently, approval for Customs bonded truck is provided only to merchandise owners and vehicle/ lorry or to those with "A" permit.

FMFF suggested that the approval is also extended to approved Customs' agents. This is because at the moment a great number of Customs' agents especially in Johor Bahru are not "A" permit holders because their lorries weigh less than 5 tonnes and does not qualify to get "A" permit (from Road Transport Department (JPJ)).

Decision

The Department agreed to approve the application for "bonded truck" to Customs' agents on condition that the said lorry is the agent's registered owned.

Action : Customs Division

3. **Requesting the approving facilities "break seal and replace seal" be delegated to the state level.**

Proposal from FMFF (Federation of Malaysian Freight Forwarders)

The above facilities were provided for mixed consignment for various shippers to load on to the same bonded trucks and need not use different bonded trucks.

Decision

The Customs Division informed that according to existing procedures, all related approval on bonded trucks only require the approval from the State's Director of Customs.

Action : For Information

III. OTHER MATTERS

Issue on "Bonded Warehouse" and Forwarding Agents

Key Elements of Discussion

ACCIM representative raised the issue on "bonded warehouse", where for instance, Pulau Pinang Customs do not recognise "bonded warehouse" as forwarding agent. *As a result they had not allowed* "bonded warehouse" to carry out the duties of the forwarding agent.

Other private sector representatives have reported that this situation does not arise in Port Klang and Johor Bahru because "bonded warehouse" is regarded as forwarding agent.

Decision

The Department will prepare a standard guideline on the above matter.

Action : Customs Division

IV. CHAIRMAN'S CLOSING SPEECH

The Honourable Chairman thanked all those present for their active participation and gave their opinions in this meeting. He hoped members would *forgive him should there be any mistake* and wronged for not being able to satisfy all parties. He once again assured that all the proposals which were not discussed because it reached late, will be dealt with administratively.

The Chairman then invited the Deputy Chairman to deliver his closing remarks.

Deputy Chairman also thanked all those present in this fruitful meeting and appreciate the Department's positive attitude in overcoming the problems. He hoped to meet again at the next meeting which could be held at a more comfortable venue. He later returned the meeting to the Chairman to end the meeting.

As a reply to the suggestion made by the Deputy Chairman, Datuk Chairman suggested that the next host be appointed rotationally between the Department and the private sector. Lastly, the Chairman wished thank you *and safe return to their respective places* and announced that the panel will meet again in the middle of next year, that is after the retabling of the year 2000 Budget.

Meeting adjourned at 11.30 a.m.

LEGISLATIVE UPDATES

The following is a discussion of some of the Ministerial orders that were recently gazetted:

Operating Expenditure on Information Technology

The Income Tax (Deduction for Information Technology Related Expenditure) Rules 2000 take effect from the year of assessment 2000 (current year basis). For the purposes of ascertaining the adjusted income of a person from his business for the basis period for a year of assessment, a deduction is allowed in respect of any information technology- related expenditure incurred by him in that basis period for that business.

In these Rules, "information technology-related expenditure" means any operating expenditure on the use of information technology for the improvement of management or production processes.

These Rules shall not apply to -

(a) any expenditure allowable under Sections 33(1)(a), 33(1)(b) or 33(1)(c) of the Income Tax Act, 1967 (hereafter referred to as the Act); and

(a) qualifying plant expenditure which has been granted the initial and annual allowances under the Income Tax (Qualifying Plant Allowances) (Computers and Information Technology Equipment) Rules 1998 and the Income Tax (Qualifying Plant Allowances) (Cost of Provision of Computer Software) Rules 1999.

Double Deduction on Freight Shipping Charges

The Income Tax (Deduction for Freight Charges from Sabah or Sarawak to Peninsular Malaysia) Rules 2000 take effect from the year of assessment 2000 (current year basis). For the purposes of ascertaining the adjusted income of a person from his business for the basis period for a year of assessment, there shall be allowed, in addition to any deduction allowable under Section 33 of the Act, a further deduction equal to the amount of any freight charges incurred in that basis period.

In these Rules, "freight charges" means ship freight charges incurred by manufacturers for the shipment of their manufactured goods from Sabah or Sarawak to any port in Peninsular Malaysia.

Capital Allowances on Qualifying Plant Expenditure

The Income Tax (Qualifying Plant Annual Allowances) Rules 2000 shall have effect from the year of assessment 2000 (current year basis).

Annual allowances on qualifying plant expenditure on the following assets shall be calculated at the respective rates set out below:

Class of Asset	Rate
Motor vehicles, heavy machinery	20%
Plant and machinery	14%
Others *	10%

* For example, furniture and fittings, office equipment

Where an asset has been allowed an annual allowance at a higher rate in accordance with the Income Tax (Qualifying Plant Annual Allowances) Rules 1968, the annual allowance for that asset shall be calculated at that higher rate.

Expenditure on assets or parts of assets with a life span not exceeding two years shall be allowed on replacement basis.

Exemption from income tax on interest income

Under the Income Tax (Exemption) (No.5) Order 2000, the Minister exempts a banking institution from the payment of income tax on the adjusted income in respect of interest derived from loans, or profits derived from financing, granted within the period 1 January 2000 and 31 December 2000 (the relevant period) in excess of eight per cent annual growth.

This Order came into operation on 1 January 2000. A "banking institution" means a commercial bank, a finance company or a merchant bank licensed under the Banking and Financial Institutions Act 1989 or an Islamic bank licensed under the Islamic Banking Act 1983.

For the purpose of this Order, the banking institution shall obtain a letter from Bank Negara Malaysia certifying -

(a) that the banking institution has achieved at least ten per cent annual growth for the relevant period; and

(b) the amount of interest or profits which is in excess of the eight per cent annual growth referred to above.

Mergers of Insurance Companies and Stockbroking Firms

The stamp duty and real property gains

exemptions which have been granted to banks and insurance companies for merger exercises, are also granted to stockbroking companies via the following exemption orders:

Stamp duty

Pursuant to the Stamp Duty (Exemption) (No.5) Order 2000, all instruments executed on or between 30 October 1999 and 31 December 2000 pursuant to a scheme of merger of stockbroking companies which is approved by the Securities Commission are exempt from stamp duty.

Real Property Gains Tax

The Real Property Gains Tax (Exemption) (No.2) Order 2000 is deemed to have come into operation on 30 October 1999. Under this Order, the Minister exempts a member company from the payment of real property gains tax in respect of any chargeable gain accruing on the disposal of a chargeable asset to another member company pursuant to a merger arrangement completed between 30 October 1999 and 31 December 2000. A "member company" has the meaning assigned to it under the Securities Industry Act 1983 (Act 280).

The existing stamp duty and real property gains tax exemptions in respect of insurance companies have been extended to 30 September, 2000 via the Stamp Duty (Exemption) (No. 35) Order 1999 and Real Property Gains Tax (Exemption) (No.7) Order 1999.

Corporate Debt Restructuring

All instruments executed pursuant to a corporate debt restructuring scheme completed between 30 October 1999 and 31 December 2000 under the supervision of the Corporate Debt Restructuring Committee, the Central Bank of Malaysia, or under Pengurusan Danaharta Nasional Berhad are exempted from stamp duty pursuant to the Stamp Duty (Exemption) (No. 7) Order 2000.

Further, all corporate debt restructuring expenditure incurred in a basis period for a year of assessment is allowed as a deduction for income tax purposes pursuant to the Income Tax (Deduction for Corporate Debt Restructuring Expenditure) Rules 2000. These Rules are deemed to have come into operation on 30 October 1999.

In these Rules, "corporate debt restructuring expenditure" means any expenditure incurred in respect of a corporate debt restructuring scheme completed between 30 October 1999 and 31 December 2000 under the supervision of the Corporate Debt Restructuring Committee of the Central Bank of Malaysia or under Pengurusan Danaharta Nasional Berhad.

These Rules shall not apply to any expenditure allowable under Sections 33(1)(a), 33(1)(b) or 33(1)(c) of the Act.

Asset Securitisation

Instruments used in the transfer of assets for the purposes of asset securitisation will be exempt from stamp duty and real property gains tax effective from 30 October, 1999 to 31 December, 2000. These exemptions are effected via the Stamp Duty (Exemption) (No. 6) Order 2000 and the Real Property Gains Tax (Exemption) Order 2000.

Securities borrowing and Lending Transaction

An instrument of transfer of securities listed on the Malaysian Exchange for Securities Dealing & Automated Quotation (MESDAQ) executed in favour of a borrower or lender and an instrument of transfer of collateral in respect of a securities borrowing and lending transaction made under a Securities Borrowing and Lending Agreement are exempted from stamp duty pursuant to the Stamp Duty (Exemption) (No.12) Order 2000. This Order is deemed to have come into operation on 30 April 1999.

Notwithstanding this, an instrument of transfer of securities listed on MESDAQ in favour of a lender is not exempted unless the lender was the beneficial owner or the authorised nominee of the securities at the time of their transfer to the borrower.

For the purposes of this Order, "lender" and "borrower" mean persons who are permitted by the Securities Commission to engage as lenders or borrowers, as the case may be, in securities borrowing and lending transactions under a Securities Borrowing and Lending Agreement which has been approved by that Commission.

Unit Trusts

Unit trusts sponsored by the Federal and State Governments are entitled to income tax exemption on all income for the years of assessment 2000 and 2001 (current year basis) via the Income Tax (Exemption) (No. 3) Order 2000.

Islamic Banking

With effect from 30 October, 1999, the following instruments relating to Islamic banking are exempted from stamp duty:

(a) All instruments of Al-Ijarah Head Lease Agreement of immovable property executed between a customer and a financier pursuant to a scheme of Al-Ijarah Term Financing Facility [Stamp Duty (Exemption) (No. 8) Order 2000]; and

(a) All instruments of the Asset Sale Agreement or the Asset Purchase Agreement executed between a customer and a bank made under the principles of the Syariah Law for the purpose of renewing any Islamic overdraft financing facility, if the

instruments for the Islamic overdraft financing facility had been duly stamped [Stamp Duty Exemption (No. 9) Order 2000].

Tourism

Under the respective orders as specified below, a company resident in Malaysia which is licensed under the Tourism Industry Act 1992 to carry on a tour operating business is exempted from the payment of tax in respect of the statutory income derived from the following business(s):

- Business of operating domestic tour packages involving at least 1,200 local tourists per year (Income Tax (Exemption) (No. 6) Order 2000)
- Business of operating group inclusive tours involving at least 500 inbound tourists per year (Income Tax (Exemption) (No. 7) Order 2000)

The exemption is for the years of assessment 2000 and 2001 (current year basis).

Labuan

Some of the tax incentives in respect of Labuan have been gazetted and are as set out as follows:

- Dividends received by a domestic company from an offshore company

  The Minister exempts the shareholders of a domestic company from the payment of income tax on dividends received from that company which are paid out of the dividends received from an offshore company (i.e. second tier exempt dividends) via the Income Tax (Exemption) (No. 10) Order 2000. This Order shall have effect for the year of assessment 2000 in respect of the basis period ending in the year 2000 and subsequent years of assessment.

  For the purpose of this Order "domestic company" has the meaning assigned to it in the Offshore Companies Act 1990 and "offshore company" has the meaning assigned to it in the Labuan Offshore Business Activity Tax Act 1990.

- Exemption for non-citizen individuals employed in a managerial capacity in an offshore company/Labuan Trust Company

  Under the Income Tax (Exemption) (No. 11) Order 2000, the Minister exempts a non-citizen individual from the payment of income tax on 50% of gross income derived by that individual from exercising an employment in Labuan, in a managerial capacity in an offshore company. The Order shall have effect for the year of assessment 2000 in respect of the basis period ending in the year 2000 until the year of assessment 2004 (inclusive of years of assessment 2000 and 2004).

  Under the Income Tax (Exemption) (No. 13) Order 2000, a non-citizen individual is exempted from the payment of income tax on 50% of gross income derived by that individual from exercising an employment in Labuan, in a managerial capacity in a trust company. The above Order shall be deemed to have come into operation from the year of assessment 1998 and shall have effect until the year of assessment 2001 (inclusive of years of assessment 1998 and 2001).

- Abatement of 65% of the statutory income of trust companies

  Pursuant to the Income Tax (Exemption) (No. 12) Order 2000 a trust company is exempted from the payment of income tax on 65% of the statutory income from a source consisting of the provision of qualifying professional service (legal, accounting, financial or secretarial service) rendered in Labuan by that company to an offshore company.

  The above Order shall have effect for the year of assessment 2000 in respect of the basis period ending in the year 2000 until the year of assessment 2004 (inclusive of years of assessment 2000 and 2004).

- Waiver of stamp duty for the transfer of shares and preparation of the memorandum and articles of association

  Under the Stamp Duty (Exemption) Order 2000 the instruments set out below are exempted from stamp duty.

  (a) All instruments which are executed by an offshore company in connection with an offshore business activity.

  (a) All Memorandum and Articles of Association of an offshore company.

  (a) All instruments of transfer of shares in an offshore company.

A Practical Guide to:
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(Mc-Graw Hill, 2000)

By Jeyapalan Kasipillai PhD, MBA, FTII, FCIS

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TAX CONSIDERATIONS INVOLVING
Electronic Commerce

By
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The sudden surge in the use of electronic commerce has facilitated the communication and exchange of information at an unprecedented level. Although the brisk development of e-commerce is more apparent in developed countries, Malaysia is not far behind.

This paper examines how electronic commerce would have an impact on the Malaysian income tax system. Since e-commerce would be an important 'trade route' in this millennium, tax administrators need to be concerned of the possible loss of revenue due to competition among countries. Electronic forms of money would provide opportunities and even loopholes for tax evasion. Tax authorities worldwide, therefore, will have to realise that traditional tax rules may have to be modified or adjusted to take account of borderless commerce.

Finally, a preliminary survey conducted by the authors in the northern region of West Malaysia shows that most consumers and retailers are aware of the use of the Internet for the purposes of commerce. Nearly 60 per cent of the consumers, however, expressed their concern regarding Internet security issues such as possible fraud, security infraction, counterfeiting and privacy issues.

BACKGROUND

The sudden emergence of the Internet[1] has facilitated the communication and exchange of information at an unprecedented level. The term Internet can be traced from the phrase 'Interconnected Networks'. This term (Internet) is, therefore, meant to imply a web of different computer networks that use fixed rules to send and receive information (McKeown and Watson, 1997). Electronic commerce (E-commerce), on the contrary, is any transaction involving the exchange of goods and services between two or more parties using technological tools and techniques.

Of course, the use of the Internet as a new communication technology, renders exciting scope for enterprises to enhance trade via e-commerce and for purchasing agents to access goods and services at minimum cost all over the world. Managers and entrepreneurs, particularly in developed countries, are increasingly asked about the legal and tax implications of e-commerce.

According to recent data released by the World Trade Organisation (WTO), 51 percent of global trade was transacted through facsimile and telephone while 17 per cent was conducted through the Internet and the balance by other means. The WTO has predicted Internet trade will further expand to 42 per cent by the year 2000, while business communication through facsimile and telephone will contract to 32 per cent. The WTO further estimated that global revenues from Internet commerce could be US$200 billion a year by the turn of the century and grow briskly after that. By the year 2005, one billion people are expected to be on-line *(NST, 1998)*.

In the UK, it is estimated that British shoppers would have by the end of this year spent about £500 million (RM3.2 billion) over the Internet. By the end of 2005, this figure would have shot up to £22 billion (RM140.8 billion) *(Chartered Secretary, 1999)*. One significant impact of the development of e-commerce is a shift in the conventional manner businesses are conducted both in the domestic and international arena by a greater use of information technology. Examples of common forms of e-commerce include computer software companies selling software; mail order companies and wholesalers; electronic research databases selling information to users; on-line sale of services such as travel, legal, medical needs and Internet casinos.

The Internet was originally perfected in the mid-1960s by the US Defence Department for the main aim of linking several radio and satellite networks. The satellite network also connected together universities and high-technology defence entrepreneurs. During the mid-1980s, the National Science Foundation constructed a couple of supercomputer centres to assist in the study of technological communications. The outcome of this intense research resulted in the development of a network system which linked several regional networks in the US. By the mid-1990s, the US Government encouraged several

[1] The words 'Internet trade' and 'electronic commerce' are used inter-changeably.

commercial concerns to take over the responsibility of running the Internet and the connecting network backbone. Presently, various network backbones located in Asia-Pacific, Europe, the US and elsewhere around the world are linked together, constituting what we today refer to as the Internet (Abraham and Doernberg, 1997).

This paper is organised as follows. After providing a background to the emergence of the Internet, Section 2 explains some of the concepts and definitions used in this paper. Section 3 examines the tax and legal issues relating to e-commerce. Some recent developments in industrialised countries such as Australia, the UK and the US are covered in this section. Section 4 examines the current developments in Malaysia pertaining to e-commerce, growth of the Multimedia Super Corridor and tax implications on cyber income. The findings of a survey carried out by the authors are reported in Section 5. This survey sought the level of understanding among firms and individuals regarding the practical side of the use of e-commerce. The final section provides some concluding remarks on the potential development of e-commerce in Malaysia.

CONCEPTS AND DEFINITIONS

The Internet is a global information system that is linked together using Internet protocol address. It is a worldwide system between unrelated operators. The Internet can be regarded as part of an Information Highway, which consists of thousands of interconnected logical networks linking millions of computers around the world together through gateways connecting organisations in Asia, Europe, the US and other countries. The two main methods for transporting data across a network are circuit and packet switching. The circuit switching is commonly used to transmit voice while packet switching is meant to transmit data. The Internet is, in fact, a packet switching network. The Transmission Control Protocol/Internet Protocol (TCP/IP) is responsible for splitting a message from the sending computer into packets, numbering and transmitting the packets and subsequently putting them together in the correct sequence at the receiving computer.

The process of determining the path a message will take from the sending to the receiving computer is referred to as 'routing'. It is the responsibility of the IP part of TCP/IP for ascertaining the best route through the network. Messages, however, can be sent from one computer to another only when every server on the Internet is uniquely addressable. The Internet Network Information Centre (InterNIC) manages the assignment of unique IP addresses so that TCP/IP networks in any part of the world can communicate with each other. An IP address is a unique 32-bit number consisting of four groups of decimal numbers in the range of 0 to 255. For example, the IP address for Universiti Utara Malaysia is 161.142.40.29.

A single important application of the Internet is the World Wide Web, often designated as WEB. The WEB is a navigational device, which permits the user to browse through and locate information that is presented in multimedia form available on storage devices known as servers. These servers are physically located within computers. The term used to describe electronic information moving about the WEB is 'bits'. The technology which permits data to be transformed into bits is called digitisation. Digitisation of data is the means of transforming information into a sequence of numbers. The transformed data can be images, music, speech or written words. After the information is transformed into bits, it is condensed into parcels of data and transmitted at enormous speed over telephone network lines to and from computers and servers located all over the world.

TAX AND LEGAL ISSUES

Tax authorities are expected to arm themselves with this new-found information technology and perhaps allow them to exchange information with their clients (taxpayers) in a punctual manner. Client services too can be further improved through an advanced electronic communication mechanism.

On the other hand, taxpayers too can trade in a borderless world and discover new opportunities to legitimately escape the payment of tax. New issues would then emerge. Are tax authorities prepared for a tax-free environment and if so, to what extent? Current tax laws and regulations, prevailing all over the world, are definitely inadequate to cope with the rapidly evolving manner in which businesses are carried out, particularly via e-commerce.

Most countries have yet to enact new legislations to tax transactions carried out via e-commerce. It is generally perceived that revenue authorities will have to tackle new problems in assessing income arising from transactions in a borderless economy. Several emerging economies would rather wait and learn from new developments and experiences from other advanced countries before taking any definite steps to tax cyber income.

It was agreed at the conference of the member countries of Organisation of Economic Co-operation and

Development (OECD) that the taxation of goods and services in cyber space should be equal to the taxation of similar physical transactions (OECD, 1998). 27 of the 29 member OECD countries use some form of Value Added Tax (VAT) which averages about 30 per cent of tax revenues in the OECD area. These countries are concerned that the Internet provides opportunities to evade this tax. Vendors are able to avoid the VAT if they do not have a physical presence in the country where they are selling their goods and services. The problem that the tax authorities have with existing VAT or sales tax systems is that it is almost impossible to identify the venue of the (Internet) seller.

Some of the tax and legal issues faced by the developed countries such as Australia, the UK and the US are examined below.

Australia

The government introduced the Electronic Transactions Bill 1999 as part of its strategic framework for the development of the information economy and in particular the use in commerce of electronic communications in Australia. The revenue authorities plan to tax consumers, not businesses, on the goods and services sold on the Internet. The tax would be automatically deducted when consumers use their credit cards, or new electronic smart cards, to order products from businesses operating Internet web sites. Taxing the consumer rather than the vendor seems the only solution to the problem in that it is almost impossible to identify the venue of the Internet seller *(Australian Accountant, 1998)*. The technology of the Internet would be used to collect more, not less tax than present systems by using computer software set with individual tax rates for goods and services bought on the Internet. When consumers use their credit cards or smart cards to pay for their purchases, the appropriate tax will be deducted automatically and sent to the appropriate tax authority.

United Kingdom

In the UK, the Electronic Commerce Bill was introduced in November 1998. Once the bill is enacted, it will give digital signatures[2] legal force and will create a voluntary licensing system for trusted third parties which offer signature and encryption services. Digital signatures are forgery resistant computer codes which are used to prove someone's identity (Singleton, 1999). The UK Electronic Commerce Draft Directive has identified five issues relating to the development of e-commerce. These issues relate to :

- Commercial communications
- Establishment of information service providers
- Liability of intermediaries
- On-line finalisation of contracts
- Implementation

The first issue covers the meaning of 'commercial communication' and makes it subject to specific transparency requirements to enhance consumer confidence trading. In this respect, commercial communications by electronic mail must be easily identifiable. The second issue relates to definition of the place of establishment in line with the principles of the European Union (EU) Treaty and the Court of Justice. A contract at a distance is recognised as a service provided without the parties being simultaneously present. The third covers the liability of intermediaries. It has been proposed to allow a mere conduit exemption for those who are simply intermediaries transmitting information provided by third parties. The fourth area will require member states to amend national law and to ascertain the moment of the conclusion of a contract. Finally, the fifth issue relates to the implementation and enforcement of a contract in an electronic environment.

United States

As in other developed countries, the US government too has vigorously promoted the use of e-commerce, but has urged countries all over the world to adopt a cautious and neutral tax policy towards trade in cyberspace. It is estimated that Web-based shopping revenues have increased from US$407.3 million in 1996 to US$1.1 billion in 1997 and will reach US$4.5 billion in the year 2000 (Maddox and Blankenhorn, 1998). These figures indicate an increasing number of companies have adopted e-commerce to sell their products on-line, thereby reaching millions of consumers via the Internet.

The Clinton administration has urged other countries to co-operate with the US to make the Internet a global free trade zone. In 1997, the Internet Tax Freedom Act (ITFA) was introduced in the US Congress. If passed into law, the ITFA could exempt Internet-related businesses from state and local taxation. The individual states of the US have had varying reactions to the Act. Those who are likely to benefit from Internet related commerce have obviously welcomed it, while others are concerned that the federal government is limiting their ability to tax their residents.

[2] A digital signature is an electronic signature that can be used by a person to authenticate the identity of the sender of a message. It is created and verified by means of cryptography, the branch of applied mathematics that concerns itself with transforming messages into seemingly unintelligible forms and back again.

CURRENT DEVELOPMENTS IN MALAYSIA

Although the development of e-commerce is particularly significant in advanced countries such as Australia, the UK and the US, Malaysia is not far behind. There is a nationwide effort in Malaysia towards an electronic environment, with the government actively involved in the business of e-commerce within its own systems (Zurina, 1998).

Since e-commerce has created a borderless business world, laws and regulations have to be adopted and be applicable in a world without boundaries. During the Asia-Pacific Economic Corporation (APEC) Business summit held on 12-18 November 1998 in Kuala Lumpur, the Malaysian government announced that it would award a certification authority license to a private company to provide a digital certification system. Digital certification ensures the security of transactions over the Internet and identification of parties involved in the transactions. Furthermore, the development of e-commerce would expand the markets for businesses, as potential consumers around the globe would be accessible through the Internet. Competition would also be intensified, as consumers would also have more choice, as they would not have to restrict themselves to local vendors. An essential ingredient to the growth of e-commerce is a computer network system that is capable of satisfying the requirements of entrepreneurs. Companies need to have an information technology (IT) infrastructure system that is able to cope with the increasing demands of e-commerce. Available data indicate that Malaysian companies having one to 499 employees contributed approximately 47 per cent of the personal computer market locally. In numbers, this accounted for about 200,000 units in 1997 and 240,000 by the end of 1998.

THE BASIS OF MALAYSIAN TAXATION

The imposition of income tax in Malaysia depends as much on the establishment of sources and residence as on whether income has been derived, and if so, when and by whom. From an income tax compliance perspective, the question of who derives the income can be ascertained by tracing who owns the investment which generates the income. However, in cases involving transactions via e-commerce, ascertaining who derives specific sales income will be problematic if a history of transactions is not kept. Furthermore, transactions may be made off-shore, making it difficult to enforce third-party information reporting.

The basis year for a year of assessment is the calendar year immediately preceding that year of assessment. Consequently, a basis year is always the 12 months to 31 December. Nevertheless, the Act recognises that business organisations may have accounting year-ends which do not end on 31 December and hence allows the accounting year to be the basis period for income derived from a business source. In contrast, the tax year in Australia runs from 1 July to 30 June whereas in the UK, the year of assessment begins on 6 April.

Scope of Charge

The basis of taxation is the derived scope the income of an individual is only assessed if it is derived in Malaysia or received in Malaysia from abroad. However, only the income of a non-resident that is accrued in or derived from Malaysia is subject to tax. Foreign income received in Malaysia by resident companies is, however, excluded from the scope of taxation. The exception to this rule is when a resident person carries on banking, insurance or air/sea transport operations. In such cases, the resident person carrying on such operations is assessable to tax on worldwide income even though the income is not received in Malaysia.

Significance of Residence Status

The residence status of individuals is determined under Sec. 7 ITA. In general, residence is determined by the number of days an individual is present in Malaysia, that is a quantitative test. This quantitative test determines whether an individual is :

- exempted from remittances of income from abroad; and
- entitled to personal reliefs.

Individual residents are granted personal reliefs and exemptions, including RM5,000 self-relief (RM8,000 w.e.f. Y/A 2000, current year basis), RM3,000 wife relief (if wife is not assessed separately) and child relief of RM800 for each unmarried child not exceeding 18 years of age. A relief on the employee provident fund contribution and life insurance premium up to RM5,000 is also provided for an individual taxpayer.

Classes of Income

Income is categorised into various classes such as business, employment, interest, rent, discount, premium, pension, annuities, royalties and other gains. The classification, however, does not exhaust all the possible sources of income since there is a catch-all category (Sec. 4(f) ITA) which includes all the incomes not elsewhere classified. In the case of other income, it should be noted that income should have the

characteristics of one or more of the specific classes of income in order for it to be considered under the catch-all category and subjected to tax.

Exemptions

Tax exemption is provided on a range of income including salaries paid to royal families, allowances to members of parliament, compensation for loss of employment due to ill-health and emoluments of any member of the armed forces of a Commonwealth country.

Retirement gratuities are wholly exempt if the retirement :

- is due to ill health; or
- takes place after the age of 55 or on reaching the compulsory age of retirement from employment and in either case, the employment must be for a period of at least 10 years with the same employer.

Certain interest and dividend incomes are exempt from tax. Finally, employment income of a non-resident individual from the exercise of employment in Malaysia for a period, or periods, which do not exceed 60 days in a calendar year, is also exempt.

OPPORTUNITIES TO EVADE

Transactions making use of unaccounted forms of electronic cash provide opportunities for income tax non-compliance. Levels of income tax compliance would depend on the opportunity to evade and the likelihood of detecting taxpayers omitted income. Under Internet payment systems, the temptation to dishonesty becomes harder to resist as there is little likelihood of the taxpayer's deceit being traced (Reed, 1996).

Multimedia Super Corridor

On 1 August 1996, Malaysia's Prime Minister, YAB Dato Seri Dr. Mahathir Mohamad announced the creation of a new urban zone designed specifically to enhance and develop a world-class multimedia industry and provide all necessary services to that industry. A new government entity, the Multimedia Development Corporation (MDC) was set up to promote, implement, co-ordinate and manage the Multimedia Super Corridor (MSC).[3] The MSC was introduced as a catalyst for the development of the latest information-based industries and is an area developed to encourage mutual enrichment of companies using modern technologies in a borderless world (MDC, 1997). The establishment of the MSC[4] will enable Malaysia to leapfrog into the Information Age. MSC-status companies incorporated in Malaysia can be wholly-owned by both local and foreign legal entities. As at mid-May 2000, a total of 326 companies have received MSC-status, out of which 192 companies are 100 per cent owned by Malaysians.

The Malaysian Government has provided several incentives to encourage the growth of multimedia companies (Kasipillai, 1998). For instance, companies that are granted MSC-status are eligible for a package of financial and non-financial incentives. Financial incentives include zero income tax for a maximum period of ten years or a 100 per cent investment tax allowance on new investments made in MSC designated zones. Non-financial incentives include unrestricted employment of foreign knowledge workers, freedom to source capital globally and freedom of ownership.

[3] Companies approved by the Multimedia Development Corporation (MDC) will be granted Multimedia Super Corridor (MSC) status.

[4] The Multimedia Development Corporation envisions a 20-year time-frame for the full implementation and execution of the MSC.

Research and Development (R&D) Grants for Local Enterprises

Under the Seventh Malaysian Plan, the Malaysian Government allocated an initial sum of RM200 million or 20 per cent of the Plan's R&D budget to the MDC (http://www.mdc.com.my). This sum is to be distributed as 'seed capital'[5] for small and medium enterprises in the MSC that are at least 51 per cent Malaysian-owned. Companies have to apply with the MDC, if they want to benefit from these R&D grants.

Legislative Support

The Malaysian government has legislated the necessary laws to provide support to the MSC. In this respect, several pieces of multi-specific legislation have been passed in Parliament and they include :

- The Digital Signature Act 1997 which governs electronic signatures.
- The Computer Crimes Act 1997 which outlaws the fraudulent use of computers and unauthorised access to and modification of the contents of computers.
- The Electronic Government Act 1997 which regulates communication within the public sector. This Act also enhances communication between the public and private sectors.
- The Multimedia Convergence Act 1997 which streamlines communication, information and broadcasting services.
- The Telemedicine Act 1997 allows for the promotion of medical services.

[5] 'Seed Capital' is funding for business which have not commenced operation but have complete prototypes. These business are striving to acquire their first share by penetrating into the market.

- The Intellectual Property Protection Act 1998 which protects copyright laws.

Although the above legislations were prompted by the establishment of the MSC, it is of general application throughout Malaysia. Moreover, the Electronic Government Act provides a mechanism for business and the community to voluntarily choose electronic communications when dealing with government agencies. These legislations will facilitate the development of electronic commerce in Malaysia by removing a number of existing legal obstacles to the use of electronic communications.

SURVEY QUESTIONNAIRE

An exploratory survey was carried out by the authors (Kasipillai & Razak, 1998) to seek an understanding of the practical side of the use of e-commerce in Malaysia. The survey was confined to the northern region of Peninsular Malaysia and covered three states, namely, Penang, Kedah and Perlis. Since two main groups of respondents were identified, two sets of questionnaires were designed. The first set of questionnaires was sent to firms, while the second set of questionnaires was sent to individuals. A total of 240 questionnaires were sent to randomly selected respondents. Approximately two-thirds of the respondents targeted were individuals while the remainder were firms. Both the questionnaires contained two broad sections. The first section gathered information about the respondents' background, while the second section sought information on the attitude and extent of use regarding Internet services.

Survey Findings

The findings of the survey suggested that most consumers and retailers are aware of the use of the Internet for purposes of commerce. However, only four firms surveyed (eight per cent) marketed their products using the Internet. Two of these firms (four per cent) were from the services sector, while the other two firms were from the manufacturing sector. Except for one firm, all the other firms were in operation between two to eight years. A single firm was in operation for over 30 years, suggesting that new firms are more prepared to use the Internet to market their products compared to traditionally established firms.

The questionnaire also solicited information on the possible reasons for firms not using the Internet to market their products. Some of the respondents provided more than one reason for not using Internet services. Generally, the possible reasons provided by the respondents could be summarised into four groupings :

- One-third (33 per cent) of the respondents indicated that they did not set up the network facilities to transact via e-commerce.
- 24 per cent of the respondents who were tied-up with services such as legal, secretarial and accountancy work do not require Internet facilities. To reiterate the views of the respondents, such services do not entail the use of the Internet.
- 26 per cent of the firms do not have trained personnel to manage Internet transactions.
- 17 per cent of respondents were not aware of the existence of e-commerce.

Furthermore, the survey conducted suggested that several firms are experimenting, but most still see the Internet as nothing more than a supplementary way to provide access through the corporate local area network.

As for individual respondents, merely 15 per cent (12 respondents) experienced using Internet services. The overall findings of the survey indicated that the Malaysian public find it insecure to finalise a deal, preferring face-to-face contact between purchasers and vendors. Retailers worry about recovery of amounts due, while consumers fear that they may not receive the goods after having paid through credit cards. Such apprehensions may, however, change in the years ahead when Malaysians are exposed to a greater use of electronic media. Although several new legislations have been introduced during the last two years primarily to provide support to MSC, the deficiencies that exist in the present legislations in both protecting consumers and sellers is a major drawback for the growth of e-commerce in Malaysia. Every effort should, therefore, be made to overcome these deficiencies to foster greater development in e-commerce.

CONCLUDING REMARKS

The use of the Internet as an alternative way of transacting commercial deals provides new opportunities for businesses to increase their trade through e-commerce. Consumers too would be able to access goods and services at minimal cost worldwide.

Current tax laws and regulations, however, are not able to keep pace with the sudden change in the manner businesses are transacted via Internet. It would also be extremely difficult for the revenue authorities, acting independently of each other, to succeed in handling compliance issues that arise from e-commerce. There is a

pressing need for tax authorities worldwide to collaborate in developing standards, exchanging data and developing a uniform tax policy. One other issue is allocation of taxing rights on income arising from e-commerce among the countries concerned.

Tax administrators and policy-makers, however, have now begun to review existing tax legislations to ascertain whether they are able to cope with new approaches to carry out businesses. Recent developments suggest some moves by governments to introduce new legislations to smoothen the manner of trading on the Internet.

For example, in the UK, the Electronic Commerce Bill was introduced to formulate rules for commercial transactions via cyber commerce. In Australia, the taxation office has released a report on tax and the Internet.

This report is meant to guide the business community and taxpayers in trading on the Internet while preserving the nations' tax base *(Australian Accountant, 1997)*. The Malaysian government too has legislated several multi-specific legislations to provide support to the Multimedia Super Corridor. More changes to tax law provisions are expected to be introduced to cope with the anticipated growth of e-commerce.

1 The words 'Internet trade' and 'electronic commerce' are used interchangeably.

2 A digital signature is an electronic signature that can be used by a person to authenticate the identity of the sender of a message. It is created and verified by means of cryptography, the branch of applied mathematics that concerns itself with transforming messages into seemingly unintelligible forms and back again.

3 Companies approved by the Multimedia Development Corporation (MDC) will be granted Multimedia Super Corridor (MSC) status.

4 The Multimedia Development Corporation envisions a 20-year time-frame for the full implementation and execution of the MSC.

5 'Seed capital' is funding for businesses which have not commenced operation but have complete prototypes. These businesses are striving to acquire their first share by penetrating into the market.

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Capitalised Interest Tax Deductible - Secan Ltd

The Hong Kong Court of Appeal recently held that a taxpayer can claim a deduction of interest that had been capitalised for book purposes.

The decision, Secan Limited v Commissioner of Inland Revenue (CACV 20/1999, dated 16 February, 2000), reaffirms the independence tax accounting in relation to financial accounting under Hong Kong law, at least regarding the deductibility of interest.

Accounting Treatment

In its accounts, the company added its interest expense to the cost of the property's development during the years in which no sales were made. The adjustment enabled the company to avoid reporting losses in those years that would have otherwise resulted if the company expensed the interest on a current basis in the profit and loss account.

Tax Treatment

For tax purposes, the company claimed the interest expense as a current deduction in the years it was selling property. The benefit to the taxpayer was in the timing. It was able to use its loss carry forward to offset future profits in the years when its properties sold, resulting in a deferral of tax.

Revenue

The Commissioner disallowed the deductions and maintained that the taxpayer was required to treat expense the same for tax and book purposes. The Commissioner relying on Johnson v Britannia Airways Ltd (1994) STC 763, contended that a taxpayer's choice of the book accounting method should determine its treatment for tax purposes.

Applicable Law

Section 16 of Hong Kong's Inland Revenue Ordinance provides for an interest deduction if certain conditions are met. The taxpayer's interest expense satisfied all of the statutory conditions.

However, the Commissioner argued that the charge to tax in Section 14 of the Ordinance is on "assessable profits" and that relevant case law requires assessable profits to be calculated in accordance with ordinary accounting principles.

Court's Decision

The Court of Appeal made short shrift of the Commissioner's arguments.

The Court considered the relevant accounting rules and determined that the taxpayer had the option for financial accounting purposes of deducting the interest currently and capitalising it by adding it to the cost of property under development. The Court also concluded that Britannia Airways did not have the effect that the Commissioner claimed.

The Court held that the Revenue cannot force a taxpayer to adopt a different method for tax purposes and that a taxpayer's choice should govern tax purposes. The Court also ruled that the Commissioner could not rely on Britannia Airways to disallow the taxpayer's current interest deduction.

Not only are the current deductions proper under the accounting rules, the Court held, but they are also proper - even required - under tax rules.

Remarks

The decision reaffirms the primacy of the provisions of the Inland Revenue Ordinance in determining assessable profits for tax purposes. Though it may be more convenient for the government to assess taxes based on the taxpayer's financial statements, the law allows deductions to be claimed more rapidly for tax purposes, and the Commissioner must allow those deductions.

Indian Supreme Court Settles Hotel and Theatre Building Tax Controversy

India's Supreme Court, in Commissioner of Income Tax v Anand Theatres Etc., held that for depreciation purposes, a building used for conducting the business of a cinema or a hotel is regarded as a building, not a plant. In the case, the assessee was not allowed to treat the premises as a plant to claim depreciation at a higher annual rate of 15%. In the Indian Income Tax Rules 1962, the general, annual rate of depreciation for buildings is 5%.

The assessee treated the building as a plant and argued that the building was a tool of the trade for conducting the business of hoteliering and was therefore a plant. The Supreme Court rejected that contention and held that the building used for the aforementioned purposes is not an apparatus or adjunct for running such a business. The Court maintained that the building used is just a shelter for conducting the business of running a cinema, hotel or business. The Court established that a cinema or hotel could be run in a premise adapted for that purpose, which may or may not be specially designed. One would also not satisfy the functional test to have a

building declared as a plant.

The following functional test would determine whether a particular asset is a plant or a building: To qualify as a plant, the apparatus must be specifically installed; a building must be erected. The Supreme Court laid down the golden rule of interpretation that a court should place a particular item into its closest, most similar category, rather than stretch it into a remote category.

Self Assessment

An Australian taxi operator has been unable to convince the Australian Federal Court that the business income returned by him was substantially correct and that amended assessments issued by the Australian Tax Office should be overturned.

The taxi driver challenged the amended assessments in reliance on a "blue cash book" which he said correctly recorded all his business income in the relevant years. He admitted that the blue cash book had been prepared specially for the purposes of the audit.

However, he argued that the entries were based on a "white book" which he kept on top of his refrigerator. Apparently he entered this up each weekend. All the takings from his shift work including the payments from other drivers who rented his taxi were supposedly entered here. He alleged that the returns were in fact based upon the white book.

The Court held that the difficulty for the taxi driver was that there remained discrepancies between the total business income returned and the total takings recorded. Indeed the Court commented that if returns were based on the takings records (the white book) or cash books made up from them (the blue book), the differences were inexplicable.

Malaysian Pension Taxable in Australia

The Federal Court has confirmed that Article 18(2) of the Australia/Malaysia double tax agreement should be interpreted to mean that the Malaysian government service pensions are taxable in Australia.

The taxpayer was an Australian resident who received a Malaysian civil service pension as a consequence of his previous employment with the Malaysian government. At issue was the interpretation of Article 18(2), which provides that any pension paid by a Contracting State or local authority to any individual in respect to services rendered shall be taxable in that State.

The Court upheld the ATT decision in Chong v FC of T 98 ATC 2069 that the proper construction of Article 18(2) is that a pension paid by Malaysia is taxable in Australia. Article 18(2) does not provide that Malaysia alone is to have the power to tax government pensions; nor does it limit Australia from so doing.

An Invitation To Write!

E-njoy writing?

E-ver discuss current tax issues or the developments in e-commerce over a glass of teh tarik?

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Articles are subject to a review procedure and the editor reserves the right to make amendments which may be appropriate prior to publication. If the article is published, payment would be made depending on the quality and length.

For additional information, please contact Mr Robin Norohna at 03-22745055 or e-mail Robin@mia.org.my

Institute Holds 8th AGM

Malaysian Institute Of Taxation

For the first time, the Institute held its annual general meeting at a venue outside the Institute's premises. A total of xx members gathered at the Legend Hotel, Kuala Lumpur on 6 May 2000 for the 8th AGM of the Institute.

The President, En Ahmad Mustapha Ghazali, in his annual address, stated that the membership of the Institute had increased by an average of 20% per annum from the date the Institute began registration of members in 1991. The President stressed the importance of admitting every tax practitioners in the country into MIT in order for the Institute to be truly a national taxation body representing all tax practitioners.

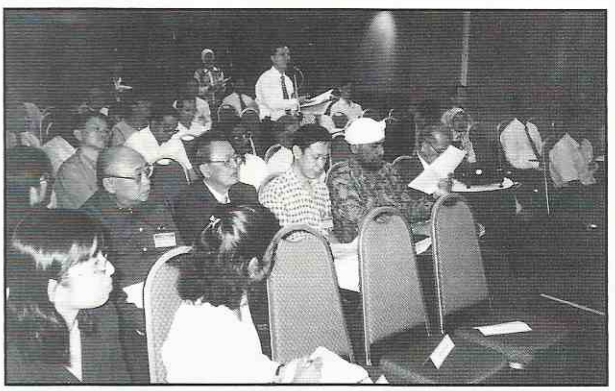
On the future of the Institute, he said, "... the Institute's plans include setting up of a separate infrastructure such as its own secretariat whereby more technical staff could be employed to serve the needs of members."

The President also urged members to participate in dialogues and forums organised by the Institute as practitioners' problems could be communicated to the Institute and this can in turn be raised to the relevant authorities.

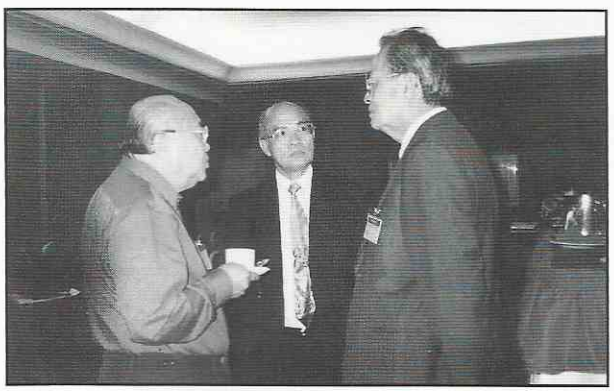
During this meeting, members witnessed the retirement and reappointment of the eight MIA appointees, namely, En Ahmad Mustapha Ghazali, Mr Chow Kee Kan, Mr Chuah Soon Guan, Mr Harpal Singh Dhillon, Mr Lee Yat Kong, Mr Quah Poh Keat, Ms Teh Siew Lin and Mr Tony Seah Cheoh Wah.

As there was no nominations to Council, seven retiring elected representatives were

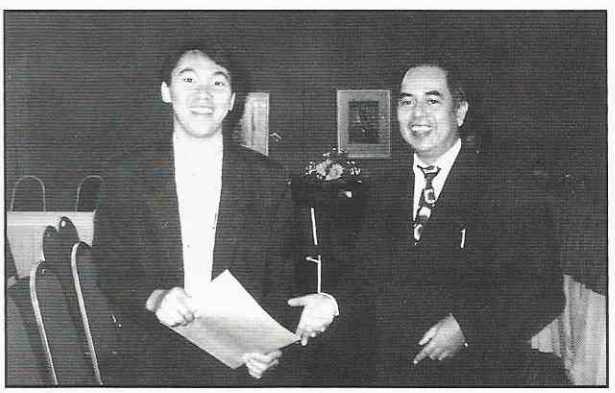
President, En Ahmad Mustapha Ghazali (centre) delivering his speech. On his left is Mr. Michael Loh and Tn. Hj. Abdul Hamid. On his right is Mr. Chuah Soon Guan and Mr. Quah Poh Keat.



A member posing a question to the Chairman.



Council members, Tn. Hj. Abdul Hamid (centre) and Me. Lee Yat Kong (right) exchanging views with a fellow member.



President, En Ahmad Mustapha introduces a new member.

duly re-elected to the Council, namely, Dr Ahmad Faisal Zakaria, En Atarek Kamil Ibrahim, Tn Hj Abdul Hamid bin Mohd Hassan, Dr Jeyapalan Kasipillai, Mr Michael Loh Pooh Kee, Mr SM Thanneermalai and Dr Veerinderjeet Singh.

The President informed that the late En Hamzah HM Saman, a Council Member of the Institute had passed away on 7 December 1999. The late En Hamzah was a member in the First Council of the Institute. He had served in the Council for the last eight years and held the portfolios of Vice President and Chairman of the Membership Affairs Committee. The President thanked the late En Hamzah for his contribution and much valued experience, from which the Institute benefited greatly.

During the AGM, members of the Institute approved 5 resolutions to amend the Institute's Memorandum and Articles of Association. The resolutions were to provide for the introduction of a provisional membership category. The provisional membership category is created to cater for registered students of the MIT who have yet to meet the working experience requirement in order to be eligible to be members of the Institute.

To highlight recent activities and developments in the Institute, a ten minutes multimedia presentation was shown to members.

Towards the end of the AGM, a Certificate Presentation Ceremony was held. Newly admitted Associate members of the Institute received their certificates from the President.

5TH GRADUATION & CERTIFICATE PRESENTATION CEREMONY

A Graduation and Certificate Presentation Ceremony was held at Shangri-La Hotel, Kuala Lumpur on 23 May 2000. As in the previous years, this Ceremony was held to present awards and certificates to students who had excelled in the MIT professional examinations held in December 1999. Close to 100 guests were present to witness the ceremony which included family members and employers of the graduates and students who were there to show their support.

En. Nujumudin bin Mydin, the Deputy Director-General of IRB, second from left posing with the students. Also in the photos are President, Ahmad Mustapha Ghazali (left), Dr. Veerinderjeet Singh, Chairman of Examinations Committee (second from right) and Mr. Michael Loh, Deputy President (right)

En Nujumudin bin Mydin, the Deputy Director-General of Inland Revenue represented the CEO/Director-General of Inland Revenue, Y Bhg Dato' Najirah Tassaduk Khan as the Guest-of-Honour. En Nujumudin stated that the Government acknowledged the shortage of tax practitioners in Malaysia especially with the recent implementation of the self-assessment system. He added that since there was an urgent need to produce more qualified tax practitioners to meet the increasing demand, it was therefore appropriate that the Institute had taken a proactive and effective approach to provide formal education in taxation. He further hoped

that the Institute, over time, would search for mechanisms and approaches as well as develop appropriate strategies so that the MIT examination would be recognised and accepted by the neighbouring countries. This, he believed, would contribute greatly towards the Government's aspirations of making Malaysia as the regional centre of educational excellence.

President, En. Ahmad Mustapha Ghazali (far right) engaging in a conversation with, IRB Deputy Director-General, En. Nujumudin bin Mydin (second from right) whilst, Council Member Mr. Venkiteswaran Sankar (far left) and former Advisor to the MIT Council, Tan Sri Lim Leong Seng looks on (second from left).

MIT President, En Ahmad Mustapha Ghazali announced the introduction of a new category of membership, namely, Provisional Membership for MIT graduates who had yet to obtain the prerequisite practical experience for Associate membership. The category would be introduced effective 1 January 2001. The guests were informed that the Institute had to date registered 480 students, out of which, 23 have graduated.

A piece of good news announced by the President was that the Government would be recognising the MIT qualification for purposes of applying for a tax agent licence under Section 153(3) of the Income Tax Act, 1967. MIT graduates would therefore be eligible to apply for a tax agent license once they have obtained their Associate membership and have attained a certain number of years of practical experience.

The Chairman of the Examinations Committee, Dr Veerinderjeet Singh in his speech stated that the objective of the professional examinations of the Institute was to produce more qualified tax professionals and to provide opportunities for persons who are in the tax profession to earn a professional qualification which would provide scope for advancement in their respective organisations.

Dr Veerinderjeet also expressed his gratitude to the Inland Revenue Board as well as the Royal Customs and Excise Department for their assistance in providing examiners for the taxation papers.

Subsequent to this, En Nujumudin presented awards and certificates to the graduates and prize winners. During this ceremony, membership certificates were also presented to newly admitted Fellow members.

Prize winners posing with their medallions.

En. Nujumudin bin Mydin presenting a certificate to a recently elevated fellow member of the Institute.

The following persons have been admitted as associate members of the Institute as at 11 April 2000.

Name	Membership No.
NICHOLAS ANTHONY CRIST	1681
CHIENG YOU LANG	1682
WAN NAWANG BIN ENDOT	1683
GREGORY LUI POH SEK	1684
CHAN WAI LING	1685
THINAGARAN A/L SINNADURAI	1686
SEAH CHEONG WEI	1687
CHIA KEN SENG	1688
FONG SWEE HOCK	1689
GERALD KONG SZE LIN	1690
FUNG MANG WAI	1691
NORDIN BIN EMBAM	1692
HII NGUOK KIEW	1693
YAP LI HUEI	1694
LIANG KEE NGOH	1695
MAHANRA RAO A/L GONDYAH	1696
LEE CHEE KHIONG	1697
CHIN TUNG LEONG	1698
CHONG TAI SAN	1699
HONG LAN MEI	1700
CHEAH WING FART	1701
BOEY WEI CHIEN	1702
ABDUL KHUDUS BIN MOHD NAAIM	1703
PETER ANTHONY A/L P AMBU	1704
S. SIVALINGAM A/L P. SELVADURAI	1705
DILIP MANHARLAL GATHANI	1706
LAI MING LING	1707

MEMBERSHIP STATUS OF MIT AS AT 11 APRIL 2000

Honorory Fellows	7
Fellows Members*	439
Associate Members*	1239
	1678

*** Fellow and Associate Members**

Public Accountants of MIA	1004
Registered Accountants of MIA	213
Licensed Accountants of MIA	10
Advanced Course Exam of IRD	131
Advocates & Solicitors	7
Approved Tax Agents	128
MIT Graduates	7
Others	178
	1678

The following persons have been admitted as fellow members of the Institute as at 11 April 2000.

Name	Membership No.
TAN SWEE GEOK	662
YAP PIAN SEEN	673
ANITA DHAWAN A/P TILAK RAJ DHAWAN	679
KRISNAN @ RAMAKRISHNAN A/L SUBRAMANIAM	681
CHANG HONG SEONG	682
GOH CHOOI EAM	689
TAN SWEE HUAT	695
LIANG AH MOOI @ LEONG CHIK YUAN	702
LOW SWOO ENG	706
SI KIANG SENG	707
LAU PHUI CHING	711
HII KHING SIEW	712
KRISHNAN A/L RAMASAMY	716
TAN JIT MING @ TAN JIT KEN	720
TAN LEONG TECK	721
LIM CHONG WEE	728
YONG SWEE CHEONG	735
TAN BOON JIN	741
LEW PEK HING	743
ONG TIANG LOCK	744
LIM JOHN @ LIM WAN SHOW	754
NG LAN KHENG	757
WONG NYOK HAR	758
CHAI MOI KIM	760
YEANG HOONG ON	764
HO KOK LOON	766
SIA TIONG GUAN	769
ARUNASALAM A/L MUTHUSAMY	770
WONG LAI FAEN	772
TUANG SEE MOY	776
EDWARD JONG JEE-SHEE	777
RUTHRANESAN A/L GURUSAMY	780
LIM BENG HIN	783
LOO SWEE JO	785
DIONG TAI PEW	789
LEOW MING FONG @ LEOW MIN FONG	795
LOW CHONG CHUAN	798
LEONG MEI HOON	806
NAGARAJAN S/O THAMBIAH	812
GOH KWEE KENG	815
ONG KHENG SWEE	817
SOO YUIT WENG	818
WONG WAI BUN	822
S. SIVALINGAM A/L P. SELVADURAI	1705

MIT Professional Examination

Calendar For Year 2000

January 1	Annual Subscription for 2000 payable.
February 18	Release of the 1999 Examination results. Students will be notified by post. No telephone enquiries will be entertained.
March 31	Last date for payment of annual subscription fee for Year 2000 *without penalty* (RM50).
April 30	Last date for payment of annual subscription for Year 2000 *with penalty* (RM100).
April 30	Question & Answer Booklets available for Sale.
September 1	Closing date of registration of new students who wish to sit for the December 2000 examination sitting.
September 15	Examination Entry Forms will be posted to all registered students.
October 15	Closing date for submission of Examination Entry Forms. Students have to return the Examination Entry Form together with the relevant payments to the Examination Department.
November 30	Despatch of Examination Notification Letter.
3rd Week of December	MIT Examination.

N O T I C E

TO ALL REGISTERED STUDENTS OF THE INSTITUTE

December 2000 Professional Examination - Taxation I to Taxation V papers

We wish to remind candidates sitting in any of the above Taxation papers that they are expected to have knowledge of any changes to the relevant legislation. No questions on new legislation will be set until at least six months have lapsed since the last day of the month in which the Royal Assent was given to the new legislation. In this respect, the 2000 Budget changes proposed in the Budget Speech presented on 25 February 2000 via the Finance Bill 2000 will not be examined as the relevant Act had been gazetted on or before June 2000.

In the December 2000 examination session, computational questions will be set for the year of assessment 2000 (current year basis). However, a number of orders were gazetted in February and March 20000 and these would be examinable. A summary of these orders appear in page 32 of this journal.

Candidates are also required to be familiar with the provisions relating to the 1999 tax waiver as well as the provisions relating to self-assessment as oulined in the Income Tax Act (Amendment) (No.2) Act, 1999.

Guidance Notes for each paper will be given to candidates in the later part of the year.

PROFESSIONAL EXAMINATIONS

Of the Malaysian Institute of Taxation

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 examination in December 1995. To-date, the MIT has successfully conducted five examinations. The professional examinations also seek to overcome the present shortage o qualified tax practitioners in the country.

Examination Structure

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

Foundation Level

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

Intermediate Level

- Taxation II
- Taxation III
- Company & Business law

Final Level

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

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 submitted with the necessary documents to the Sectariat.

Entrance Requirements

(a) Minimum 17 years old.
- At least 17 years old
- At least two principal level passes of the HSC/STPM examination (excluding Kertas Am/Pengajian Am) or 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 MIT to supersede minimum requirements in (a)

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

Exemption

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

Exemption Fees

Foundation	RM50.00	per subject
Intermediate	RM60.00	per subject
Final	RM70.00	per subject

Examination Fees

Foundation	RM50.00	per subject
Intermediate	RM60.00	per subject
Final	RM70.00	per subject

Dates to Remember for 2000 Examination

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

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

December
Examination.

For further enquiries, please contact the Secretariat at Dewan Akauntan, 2 Jalan Tun Sambanthan 3, Brickfields, 50470 Kuala Lumpur.
(Tel: 03-2274 5055, Fax: 03-2274 1783)

PILOT PAPERS , DECEMBER 1995, 1996 , 1997, 1998 & 1999 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	
1999 EXAMINATIONS BOOKLETS	RM6.00		RM7.00		RM 11.00	
1998 EXAMINATIONS BOOKLETS	RM6.00		RM7.00		RM11.00	
1997 EXAMINATIONS BOOKLETS	RM6.00		RM7.00		RM11.00	
1995 EXAMINATIONS BOOKLETS	RM6.00		RM7.00		RM 5.50	
PILOT PAPERS BOOKLETS	RM6.00		RM7.00		RM11.00	

NON-MIT REGISTERED STUDENTS & NON-MIT MEMBERS

YEAR	COST PER LEVEL					
	Level I/Foundation		Level II/Intermediate		Level III/Final	
1999 EXAMINATIONS BOOKLETS	RM8.00		RM9.00		RM13.00	
1998 EXAMINATIONS BOOKLETS	RM8.00		RM9.00		RM13.00	
1997 EXAMINATIONS BOOKLETS	RM8.00		RM9.00		RM13.00	
1996 EXAMINATIONS BOOKLETS	RM8.00		RM9.00		RM13.00	
1995 EXAMINATIONS BOOKLETS	RM8.00		RM9.00		RM 7.50	
PILOT PAPERS BOOKLETS	RM8.00		RM9.00		RM13.00	

Please tick box(es) to indicate your order.

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

Student's Signature: _____ Date: _____

CHANGE OF PARTICULARS

Name _____

Membership No: _____

Postal Address: _____

_____

_____

I.C No: _____

H/p No: ( ) _____

PRACTISING AS/PLACE OF EMPLOYMENT

Name of Firm _____

Position _____

Address: _____

_____

_____

Tel. ( ) _____

Fax ( ) _____

E-mail Address:

1. Latest Tax Agent No.* _____
2. Latest Audit LIcence No.* _____
3. Advanced Course Examination and Date Certificate Issued: _____

RESIDENTAIL ADDRESS

Address: _____

_____

_____

Tel: ( ) _____

_____

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

NOTE

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

MALAYSIAN INSTITUTE OF TAXATION (225750 T)
Level 4, Dewan Akauntan
No. 2, Jalan Tun Sambanthan 3
50470 Kuala Lumpur
Tel No. (03) 2274 5055
Fax No. (03) 2274 1783

TAX NASIONAL SUBSCRIPTION FORM 2000

Post this form to
MALAYSIAN INSTITUTE OF TAXATION
Dewan Akauntan
No. 2 Jalan Tun Sambanthan 3
Brickfields, 50470 Kuala Lumpur
Malaysia
Telephone : 03-22745055
Facsimile : 03-22741783

2000 SUBSCRIPTION RATES		
	RATES	
	PER ISSUE	PER ANNUM
Non MIT member	RM 30.50	RM 92.00
MIAmember/Student*	RM 15.50	RM 62.00
Overseas	US$17.00	US$52.00

The above prices are inclusive of postage.

Please Use Capital Letters

Mr/Mrs/Miss _____

Designation _____ *MIA/Student No. _____

Address _____

_____

MALAYSIAN INSTITUTE OF TAXATION
225750-T

_____ Postcode _____

Tel No. _____ Fax No. _____

I enclose a cheque/money order/bankdraft No. _____ payable to the Malaysian Institute of Taxation for

RM/US$ _____ for _____ copy/copies or _____ year/years' subscription of Tax Nasional.

Note: *For overseas subscription, payment is accepted by bank draft only.*
**MIA members/Students must state their membership/student number in order to enjoy the MIA member/Student rate. Students should also enclose a photocopy of their student card.*

Important Disclaimer

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

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Malaysian Institute of Taxation

How to become a member of the Malaysian Institute of Taxation

Benefits and Privileges of Membership
The Principal benefits to be derived from membership are:

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

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

Associate Membership

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

Fellow Membership

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

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

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

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

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

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

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

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