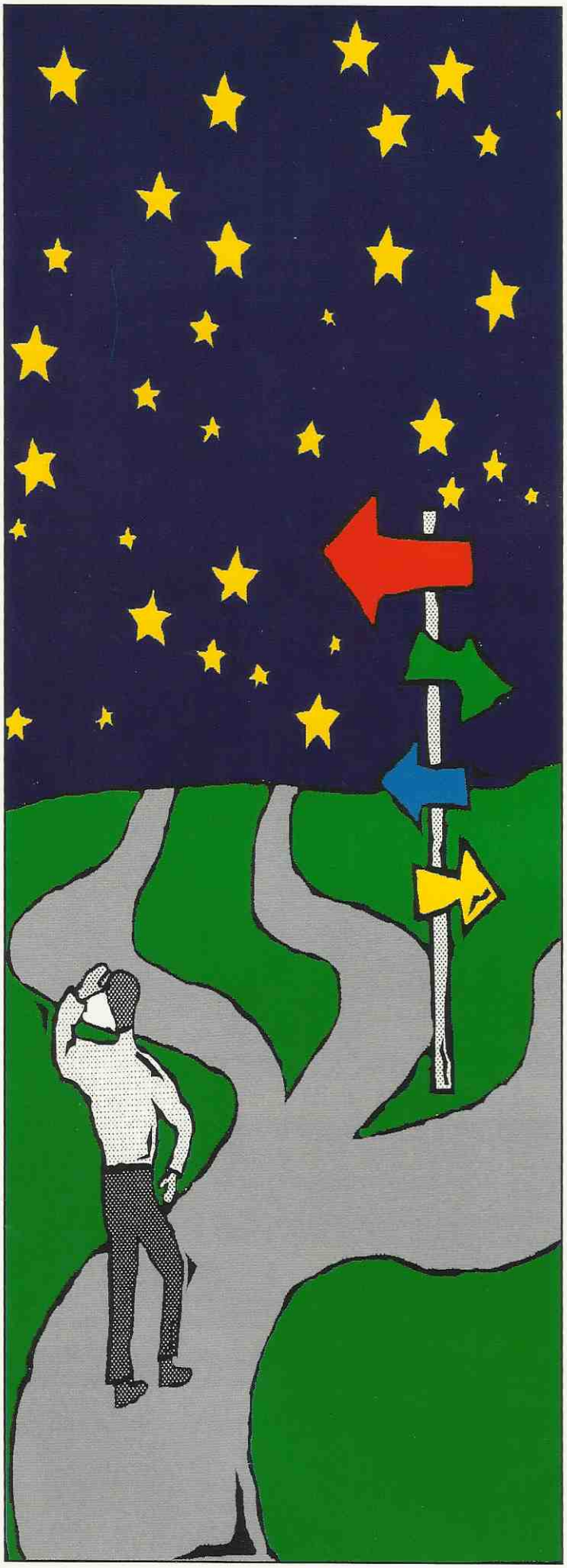

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Malaysian Institute of Taxation

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1. To provide an organisation for persons interested in or concerned with taxation matters in Malaysia.
2. To advance the status and interest of the taxation profession and to work in close co-operation with the Malaysian Institute of Accountants (MIA)
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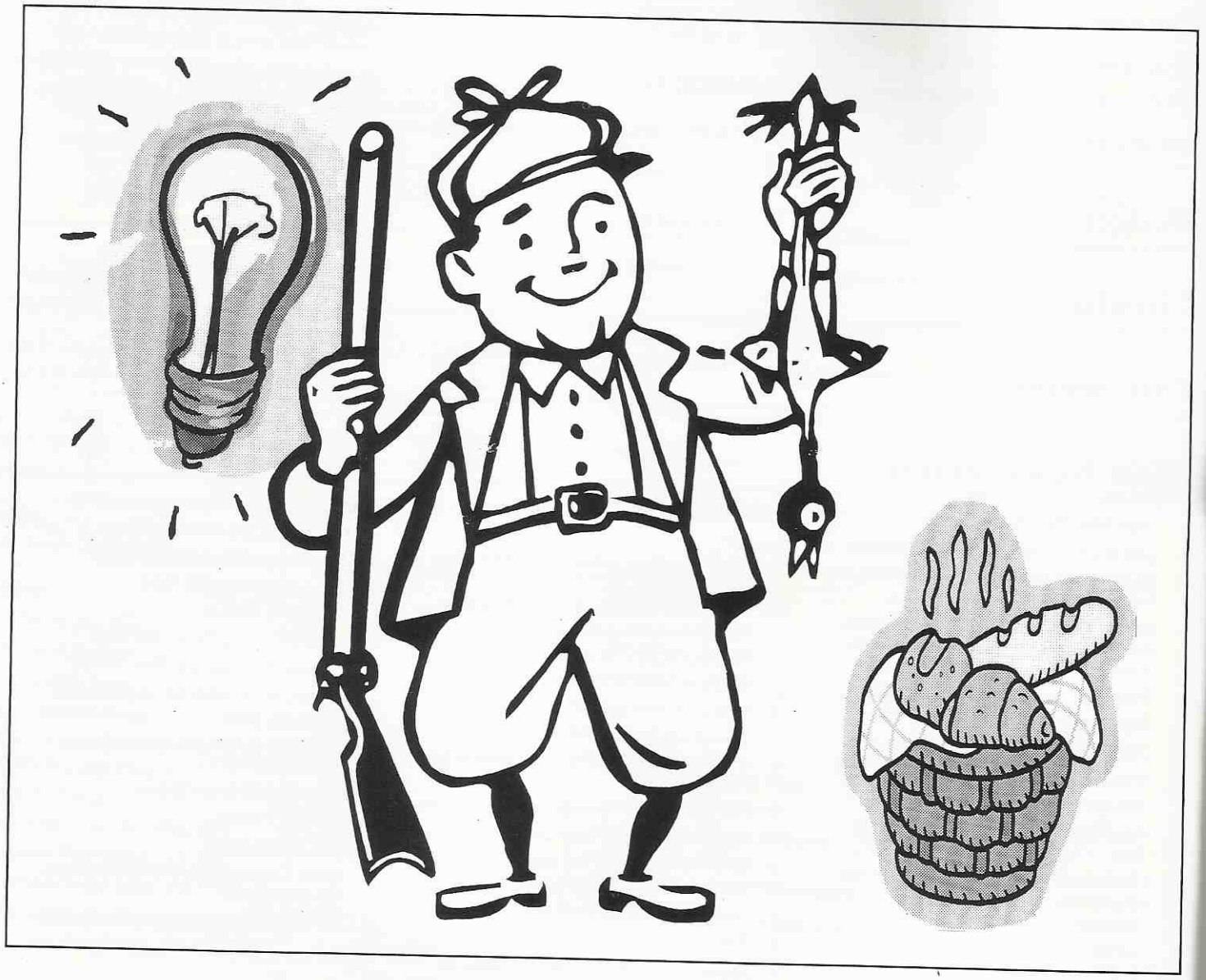
# Contents

# just what is meant by incurred

*Prepared by*
*Mildred Lopez*



This is the perennial question that must be answered to be entitled to a deduction under Section 33(1) of the Income Tax Act.

The word "incurred" has been defined in various court cases to mean not only 'paid' but also 'payable' or 'becoming payable'. The word 'payable' has a dictionary meaning of 'which may be paid'.

And the question of "incurred" was again raised in the recent case of EC (MALAYSIA) SDN BHD (PKR 674).

The Company had a retirement and resignation plan for the benefit of its employees in accordance with the provisions of the National Employees Benefit Manual (the Manual). The objective was to provide benefits upon retirement, resignation or termination of employment. The benefits for termination will only apply in respect of termination other than for cause.

For the years of assessment 1986 to 1991, the Company had set aside a sum of RM881, 270 for vested benefits and charged this amount in its accounts. The said amount was claimed as a deduction under section 33 (1) of the Income Tax Act.

The claim was disallowed by the Revenue. The case was taken before the Special Commissioners, which ruled in favour of the Revenue. The Company appealed to the High Court, which upheld the decision of the Special Commissioners.

The High Court considered the 4 components of section 33(1) namely

1. outgoing and expenses
2. wholly and exclusively
3. incurred during that period

and

4. in the production of income

In this the case of Southern Railway of Peru ltd. V Owen (Owens's case) was referred to. Here Romer J stated,

*The right to receive, or the liability to pay, trade debts, or debts analogous thereto, fails to be computed for tax purposes in the year in which the liability to pay or the right to receive (as the case maybe) arose, and notwithstanding that the date for actual payment of the money is outside the year.*

In the same case, Jenkins L.J. sitting as judge in the Court of Appeal suggested two conditions, which must be satisfied before a liability may be deducted. He said:

*The principle ..... justifying the deduction is, I think, only applicable as far as liabilities are concerned where both the following conditions are satisfied, namely, (i) the liability must be certain, not contingent; and (ii) the benefit, in respect of which the liability is incurred, must be exclusively referable to the year in which it is sought to debit the liability as an expense; or in other words where, as in the present case, the benefit consists of services, the liability must be an obligation incurred in that year in respect of services rendered during that year.*

Another statement from Romer J as a member of the Panel of the court of Appeal was relied upon. He stated as follows:

*It may be reasonable commercial practice for the directors to deduct the sum for the purpose of arriving at net profit for distribution among the shareholders but that is not the point: the point is whether they are entitled to deduct it as against the Crown for the purpose of arriving at the profit on which they are liable to be taxed and in my opinion they are not, for the sums, being neither payable at once nor certainly payable in the future cannot rightly be regarded as part of a definite price which the Company has to pay for the services of the hypothetical servant during the year of deduction or, indeed, during any particular year.*

The Company contended based on the Hong Kong case of *Commissioner of Inland Revenue v Lo & Lo (1984) STC 306* where a provision for retirement benefits was held to be expense incurred and a deduction was given.

This contention was rejected on the grounds that Hong Kong's Inland Revenue Ordinance was not akin to Section 33(1) of the Malaysian Income Tax act 1967. Essentially the Hong Kong law provides for "any period" while Section 33(1) specially states "during that period". The Hong Kong ordinance has apparently wide connotations as compared to the very restrictive Section 33(1) which provided as follows:

*Subject to this Act, the adjusted income of a person from a source for the basis period for a year of assessment shall be an amount ascertained by deducting from the gross income of that person from that source for that period all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source including....*

It was view of the court that the liability is prospective or contingent until the employee retires or becomes entitled to the retirement benefits under the terms of the

Manual. Until such time the Company was under no liability to pay. And by virtue of the Manual the right which will arise and the exact amount due as retirement or resignation depends primarily on: -

**a.** the final monthly basic salary and

**b.** the years of accredited service at the time of such retirement or resignation

As such any figure however detailed it's computation can only be provisional in nature until retirement, death or termination of services of the relevant employees. Further, it would be difficult to ascertain exactly how the amount for termination of employees for cause was ascertained.

Here again with reference to Owen's case, Upjohn J, the High Court judge, stated as follows:

..... *deferred payments must be brought into account of Income Tax purposes at the time when they become payable upon the death or retirement of any given employee and not before.*

The view here was that until the trigger event of retirement, death or termination, the amounts are mere provisions and not incurred to warrant a deduction under section 33(1).

In the Australian case of Nilsen Development Laboratories Pty. Ltd. & Ors v Federal Commissioner of Taxation (1981) ATC 4031, it was held that the taxpayer in claiming a deduction under Section 51(1) of the Australian Income Tax Act in its return for the income year ended 30th June 1974, in respect of a provision in its financial accounts representing an estimate of what it would be bound to pay the employees if they had been on leave during the year of income, was not entitled to the deduction.

On appeal, the Australian Full High court held that:

No deduction under Section 51(1) in respect of annual or long service leave of any amount can properly be claimed by an employee bound an award or industrial agreement substantially in terms of the present awards until the employee takes the leave (or events occur such as death, termination of employment in certain circumstances, by reason of which the employer is bound to make the payment). Then, and only then for the first time, there is a present liability to pay money and then, there is an outgoing which is deductible under the provisions of Section 51 (1).

Section 51(1) of the Australian Income Tax is akin to Section 33(1) of the Malaysian Income Tax Act.

The decision in the Exxon Chemicals case brings to mind the decision in the case of New Zealand Flex Investment Ltd v FC of T (1938) 61 CLR 179, where Dixon J commented that "incurred":-

..... *does not mean only defrayed, discharged or borne, but rather it includes encountered, run into, or fallen upon. It is unsafe to attempt exhaustive definitions of a conception intended to have such a various or multifarious application, but it does not include a loss or expenditure which is no more than impending, threatened, or expected.*

**Q U O T E**

Even the Woodpecker owes his success to the fact that he uses his head and keeps pecking away until he finishes the job he starts.

**- Coleman Cox -**

# Ordinary Commercial Practice and the Elements of Commercial Accounting - Myth or Mystery

*Prepared by*
*Mildred Lopez*

The seesaw relationship of law and accountancy practice as determinants of trading profits for tax purpose has been a challenging one. This can bee seen again in the decision of the case of *Gallagher V Jones* in the United Kingdom. In the decision of the Court of Appeal in *Gallagher V Jones*, a case concerning the time at which rental payments under finance leases should be allowed for tax purposes. The concern of the Inland Revenue following the decision of Harman J at first instance suggests it may consider that a satisfactory equilibrium has been reached now that the Court of Appeal has overturned that decision. It has been stated in a leading company law journal that 'the decision Of the Court of Appeal must be welcomed by all businessmen as giving certainty and simplicity". It will be argued, to the contrary, that the decision or the Court or Appeal railed to consider important issues and policy considerations and has left taxpayers and the tax authorities alike in a situation of great, and growing, uncertainty. At a time of unprecedented activity in the area of accounting policy and practice formation, tax law has been left to trail along behind accounting developments as best it can, with little or no specific thought being given to the impact this will have on taxpayers and revenue authorities alike.

The initial hearing of the two related appeals, *Gallagher v Jones* and *Threlfall v Jones* took place before the Special Commissioners in July 1991. The sums at stake were relatively small, although no doubt the failure to allow the losses claimed was shattering to these small business owners who, presumably, had acted on the basis that they would be available. The dismissal of the appeals by the Commissioners was overturned by Harman J at first instance in January 1993. At this stage, the appeal was expedited and heard by the Court of Appeal in May of the same year.

The taxpayers and their advisers, cannot but have been taken aback at this unusual haste. Modest though this case was in itself, Harman's decision was seen as threatening the Inland Revenue's treatment of finance lease rental payments, with much wider financial repercussions. In April 1991, no doubt apprised of the taxpayers' intention to go before the Special Commissioners, the Inland Revenue had published a statement SP3/91, purporting to follow commercial accounting practice under the accruals concept, or the relevant statement of standard accounting practice (SSAP 21) Accounting for leases and hire purchase contracts) where it was applied. Although this SP purported to apply only to leases entered into after the date of the statement, it was seriously undermined by the first instance decision. In addition, the ratio of the decision of Harman J potentially had even broader implications. The speed with which the appeal moved in these circumstances was impressive.

Now that the Inland Revenue has achieved the result it wanted, or thinks it wanted, it appears that this important case will go no further. In the circumstances, the taxpayers cannot be expected to fund a House of Lords hearing on their own and there is no mechanism for funding the determination of such issues publicly, despite their importance to the development of tax law. There has been no great outcry from the leasing industry since in many cases treatment under the combination of SSAP 21 and the Statement of Practice is advantageous to lessees. In this way, tax law is made.

## Case Discussed

Both *Gallagher V Jones* and *Threlfall V Jones* concerned unincorporated businesses owned by individual taxpayers. (Since the facts of the two cases were materially identical they are both referred to as *Gallagher v Jones*).

The taxpayers hired narrow-boats short term to their customers. They entered into long-term agreements under which they themselves hired the boats from a lessor finance company. The lease agreement used as an example in the courts provided for a primary period of 24 months and a secondary period of 21 years. During the primary period the agreement required an initial payment of £14,562.81 at the date of the agreement followed by 17 monthly payments each of £2,080.33. during the secondary period the rental was £5 per year: the total of £105 for this secondary period was invoiced and paid on the last day of the primary period.

Had the taxpayers purchased the boats outright they would have been allowed only allowances under the capital allowances regime. One purpose of front loaded leases of this type was clearly to increase the tax deduction available to the lessee at the early stages of the lease. However, no more than was actually paid was to be claimed and an analysis of the legal consequences of the documentation would show that legal title to the boats remained with the lessor.

The taxpayer's accounts showed leasing charges of £75,004 for the period from 29 December 1989 - 30 April 1990 (the relevant period). The inspector of taxes argued that the payments due under the lease should be spread evenly over the primary period and in which case the charge in the relevant period should be £31,251.5. However expert evidence given by Mr. Miller, accountancy adviser to the Board of Inland Revenue stipulated that the charge should only be £4,514 for the relevant period. This he purported was in accordance with SSAP 21.

It is not entirely clear that the Court of Appeal appreciated the distinction between the inspector's figures and those of Mr. Miller, although Sir Christopher Slade did stress that he recognised that it was possible that SSAP 21 might not represent the only form in which the accounts could have been properly presented. In the absence of expert accountancy evidence to the contrary, it was accepted that Mr. Miller's submission that the accounts actually prepared by the taxpayers gave a completely misleading picture of the trading results.

Instead of refuting the argument of Mr. Miller with a discussion on the analysis of SSAP 21, Counsel for the taxpayers simply argued that the 'earnings' basis of accounting required that all liabilities should be brought into account in the period in which they accrued and that this has been established as a matter of law in the *Vallambrosa Rubber* case.

This strategy offered no middle path and no accounting evidence and so the debate was taken to the Chancery Division where it was asserted that accounts prepared in accordance with correct principles of commercial accountancy were not conclusive of the basis of tax computations. This indicated that the taxpayer's accounts did not satisfy the principles of commercial accountancy because they did not follow SSAP 21. The result was the placing of a 'principle of tax law' without any obvious source in direct opposition to a sophisticated and more recent SSAP formulated by experts with much care.

Harman J was of the opinion that Lord Reid, in the case of Duple Motor Bodies had provided guidance that was to be applied in all cases. This was as follows;

*It has long been established that you are entitled to include in expenditure for the year all business expenses..., whether or not they can be attributed to the production of goods in that year.*

## How should profits of a trade be computed

Until Gallagher v Jones, it was the view that it should be computed based on normal commercial principles in accordance with established legal concepts. In *Gresham Life Assurance Society V Styles* (1892 A.C. 309,it was stated that profits must be understood in its natural and proper sense- in a sense which no commercial man could misunderstand.

In the much quoted *Odeon Associated Theatres V Jones*, on the procedure to be followed in computing profits, Pennycuick suggested that one must start with accountancy practice and then ask whether any rule of law contradicts this. The alternative is to start from the law and then turn to accountancy. Both these approaches recognise a role for legal principles, although giving them different weighting.

The major hurdle here is simply in determining what are 'normal commercial practices' and in deciding, what, if any 'established legal concepts' are of relevance. Then of course there is Lord Reid's 'cardinal principle' that profits shall not be taxed until realised. On analysis, it appears that these cardinal principles originated in accountancy practice but have become legal principles established by the courts based on judicial understanding of accounting practice at a point in time.

In *Gallagher V Jones*, it is apparent that the court was of the opinion that modern accountancy practice should prevail. The problem is that there is a failure here to recognise the fluidity within the framework of an accounting standard. The notion that there is some absolute test of 'true profits' is also misleading. Profit is a subjective concept. The aptness of a rule for determining profits must depend on the purposes for which profit is being defined. As one accountant put it, 'profit' and 'value' are abstractions.

In accountancy, there is the reference to 'true and fair view. What exactly does this mean has the subject of several tax cases. In Owen V Southern Railways of Peru Ltd, Lord Radcliff cast doubt on the relevance of the term 'true and fair view' for tax purposes. He stated that:

*It is not possible completely to equate the balance shown by a company's profit and loss account with the balance of profit arising from the trade for the year...I think that one is bound to say that references to an auditor's duty under the Companies Act take us into a field that is not exactly the same as that in which the annual profits of trade should be ascertained for the purposes of Income Tax.*

It may be that undue emphasis was placed in Gallagher v Jones on the need to show a 'true and fair' view and that this in turn led to too much weight being placed on compliance with SSAP 21. Reliance on Statements of Standard Accounting practice seems set to increase in view of the developments occurring in the area of standard setting. This is a process, which should not be allowed to continue unchecked in the context of taxation. It is imperative that tax policy be considered in formulating accounting standards.

## What does SSAP 21 seek to provide

SSAP 21 requires that a finance lease, a lease which transfers substantially all the risks and rewards of ownership of an asset to a lessee even though legal title does not pass, should be capitalised by the lessee, that is accounted for as the purchase of rights to the use and enjoyment of the asset with simultaneous recognition of the obligation to make future payments. Until this requirement was imposed, this form of leasing was a means of keeping finance transactions off the balance sheet. Now this means of concealment is not available. The balance sheet shows an asset and associated obligation. SSAP 21 was one or the first accounting standards to take a substance over form approach.

The reason for classifying the lease as an acquisition of an asset was to provide users of financial statements a clear picture of the financial position of the business. The philosophy underlying SSAP 21, and increasingly all accounting standards, is that the main focus of financial reporting is on the balance sheet, with the profit and loss account reflecting changes in assets and liabilities.

In SSAP 21 the balance sheet considerations drive the profit and loss account. The rentals payable are apportioned between the finance charge and a reduction of the outstanding obligation for future amounts payable. In other words a proportion of the rentals under the lease is treated as a capital repayment. The finance charge is allocated to accounting periods during the lease term so as to produce a constant periodic rate of charge on the remaining balance of the obligation for each accounting period. The asset is depreciated over the shorter of the lease term and its useful life. This method of allocation or costs is based on assumptions about interest rates and estimates of the useful economic life of the assets in question. It does not produce a unique apportionment of cost for any given lease.

This treatment of the leasing transaction is simply inconsistent with a tax system, which takes the lease at face value, giving capital allowances to the lessor and treating the rentals as revenue payments. In

its statement of Practice (SP3/91) the Inland Revenue accepts that the rentals remain in law revenue payments. If deviation from the accounting treatment is accepted to this extent it somewhat illogical then to attempt to apply the remaining part of a standard which is attempting to rewrite the entire transaction.

### What Happened to the issues on form and substance

The increasing weight given to accounting standards for company law purposes appears to be influencing the courts to follow them in tax cases also and to give less weight to legal principles.

However, not only was discussion of alternative accounting practices and of legal principles swept away by the wholesale acceptance of the SSAP in Gallagher: there was also no examination of the proper legal analysis of the transactions in question. Despite references to the 'true facts" there was no emphasis put on the facts in this case. The Anaconda case was distinguished on the basis that there the method supported by accounting practice did not accord with the facts but it was simply. assumed that SSAP 21 did accord with the facts in this case, notwithstanding that it recharacterises the transaction completely. Nolan L J cited the Southern Railway of Peru case to the effect that legal analysis is not conclusive, but he did not feel it was irrelevant. Had the SSAP been opened up for greater examination by the evidence presented, the Court might well have felt less easy about distinguishing Anaconda and holding that there was no question of inconsistency here between SSAP 21 and the 'true facts.

Thus, the Court did not to heed arguments that they should be governed by a legal analysis of the facts. And the factual analysis of accountants, based on 'economic substance', which then opened the way to an application of the relevant standard, was accepted. This is despite the usual reluctance of the courts to substitute 'economic substance' for 'legal substance' and the fact that interpretation of contracts is normally considered to be entirely the province of the courts, even in tax cases as can noted in Peter Merchant Ltd. V Stedeford (30 TC 496) where it was stated:

*In taking note of accountancy evidence the courts will disregard any such evidence, which is based upon an incorrect interpretation of law*

The availability of a formal standard, which has gone through strict processes before acceptance, is an attractive route for judges who, understandably, feel poorly qualified to enter into a detailed discussion of accounting principles. As Nolan LJ put it in the present case, "If we reject the statements or approved accountancy practice on which the Crown relies then where are we to look for the criterion?" However, there is no reason for judges to feel inhibited about considering the proper analysis of facts and legal documents, which they are qualified to do. Such examination would assist the courts in their evaluation of the accounting evidence and might also lead to more comprehensive accounting evidence being brought as to the suitability of an SSAP in any given case.

### In conclusion

If the courts are not equipped with the information they need to subject accounting standards to scrutiny for suitability in a tax context, or if they are not willing to become involved in such scrutiny, legislation on the definition of profits will be needed as accounting standards become more complex and balance sheet oriented. The danger may be that we may have legislation in cases where the result is unacceptable to the Inland Revenue but not necessarily elsewhere. Ultimately, this will lead to undesirable pressure on the accounting bodies to avoid introducing changes that will be disadvantageous from a tax point of view. This would then be a possible detraction from the objective of providing the best possible information.. Much is likely to depend on the quality of the accounting evidence and we can expect to see come complex accounting discussions before the Commissioners once taxpayers and their advisers appreciate just how important it is in these cases to guide the courts through an examination of the implications of accounting standards rather than allowing them to be accepted as the final word for tax purposes.

# are malaysian taxpayers' prepared for the self assessment system?

By

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Abstract

Currently, Malaysia adopts an Official Assessment System (OAS) whereby taxpayers are assessed by the tax authorities based on the tax returns filed by them. The Malaysian Government would be introducing a Self Assessment System (SAS) in stages commencing 2001. This new strategy will require taxpayers to take more responsibility for getting their tax returns correct, since the information which they furnish in their returns will be accepted at face value by the Inland Revenue Board (IRB). The IRB, however, will audit some taxpayers at random, and if they are found to have given inaccurate information on their returns, they will be subject to a penalty.

This survey focuses on the SAS that will be introduced in Malaysia. The findings of the survey reports on taxpayers' understanding, attitude and preparedness towards the proposed self assessment system in Malaysia. The findings of the survey also reports on the problems faced by taxpayers under the existing official assessment tax system and seeks to ascertain taxpayers' perception towards the introduction of the new assessment system. Finally, the results would provide some input on the preparatory measures to be undertaken by the IRB to educate taxpayers in complying with the new assessment system.

## 1. Background

The world of tax management has changed and continues to shift with increasing vigour and there is now an increased requirement to meet specified deadlines-demands upon revenue systems to produce and update tax information and emphasis by Revenue upon specific disclosures in the computation. Tax administrators are also grappling to deal with increasing number of delinquent taxpayers. Malaysia is not far behind in facing such problems.

Malaysia has been adopting the official assessment system (OAS) since 1947 and under such a system, taxpayers are assessed by the revenue authorities based on the tax returns filed by them. From 2001, the Inland Revenue Board (IRB) would be implementing a self assessment income tax system in stages as follows:

| Group | Year of Implementation |
|---|---|
| Companies | 2001 |
| Business, partnerships and cooperatives | 2003 |
| Salaried individuals | 2004 |

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The move towards a self-assessment system (SAS) generally reflects a re-thinking by Malaysian policy makers of ways to overcome current problems facing tax administrators (Kasipillai, 1998). Under a self assessment tax system, the IRB will accept information contained in a tax return as the basis for computing tax liability. Such a move would expedite the processing of tax returns considerably. To safeguard the assessment system against abuse, the IRB will audit some taxpayers at random, and if they are found to have given inaccurate information on their returns, they will be subject to a varying penalty, depending on the nature of the offence. A significant feature of SAS is the reduced time lag between lodgement of tax returns and the finalisation of a case.

Several tax administrations in both developed and developing countries have adopted the self assessment system. These countries include, Sri Lanka (1972), Pakistan (1979), Indonesia (1984), Australia (1986-87), New Zealand (1988), and more recently, United Kingdom (1996-97). As for the United Kingdom, the first self assessment tax forms were issued in April 1997 (Certified Accountant, 1997). However, self assessment will only apply to companies for accounting periods ending on or after 1 July 1999.

This paper is organised as follows. After providing the background to the self assessment tax system, Section 2 briefly provides some concepts and definitions peculiar to tax assessment systems. Section 3 reviews the official assessment system in Malaysia and critically evaluates the weaknesses of the tax system. The significance of the study is elaborated in this section. The survey procedure adopted in this study is presented in Section 4. This section also covers the sample characteristics and reports on the survey findings. The final section (Section 5) provides some concluding remarks by suggesting key factors that can be taken into account by IRB in implementing the self assessment tax system.

## 2. Assessment System: Concepts and Definitions

A significant aspect of the self assessment system is the underlying premise that taxpayers are expected to comply with their obligations under the tax law. The concept of taxpayers protecting themselves by making full and correct disclosure in lodging their returns is no longer possible, rather taxpayers are expected to determine the taxable income, compute the tax payable and submit their returns to the Revenue authorities.

Key terms used in this paper are detailed below:

**Self assessment**
It is an assessment procedure based on the assumption that information given by the taxpayer is accurate and does not need to be checked by the tax authorities.

**Self assessment system**
Under this tax system, taxpayers are required to take more responsibility for getting their tax returns correct, since the information they give on their returns will be accepted at face value by the IRB.

**Official assessment system**
Taxpayers are assessed by the tax authorities based on the tax returns filed by them.

**Tax Law**
The present survey confines it's study to income tax law.

## 3. Official Assessment System In Malaysia

The current Official Assessment System (OAS) could be described as a 'mass production' system taking tax administration almost entirely out of the hands of most taxpayers. Under the OAS, it is assumed that taxpayers do not possess the necessary knowledge to compute their tax payable.

Past IRB experience suggest that the rate of non-submission of returns is in the region of 20-25 percent of the total returns issued (Rahim, 1997)[1]. Where a person who is chargeable to tax but has not submitted his or her return, the Director General of Inland Revenue (DGIR) may to the best of his

judgement determine the person's chargeable income and make an assessment accordingly. The taxpayer may, however, object to the assessment in writing within 30 days from the date of service of the notice of assessment.

### ✦ Collection procedures

The payment of tax is administered by the Collection Branch located centrally in the Federal Territory. The tax liability stated on the notice of assessment is due for payment within 30 days from the date of issue, notwithstanding any objection lodged. If no payment is made within the 30-day period, a penalty on late payment will be imposed.

There is, of course, ample room for widening the withholding tax system to include resident persons in evasion-prone industries such as the construction and service sectors[2].

### ✦ Mission Statement and Operational Objectives

The Inland Revenue Board's Mission Statement is: "To collect taxes for the nation at minimum cost, to improve compliance and to institute effective enforcement through prevailing legal procedures". The Mission Statement is further complemented with IRB's three-fold Operational Objectives[3] viz:

- to assess and collect the correct amount of revenue as provided under the law in the most effective manner and at a minimum cost;
- to instill public confidence in the fairness and integrity of the tax system; and
- to encourage voluntary compliance.

Tax compliance studies has mainly referred to the empirical findings of the extent of tax non-compliance in advanced countries [Reinganum & Wilde 1985) and (Long & Swingen (1990)]. Their findings have some pertinent implications for tax policy-makers in a developing country like Malaysia. For example, Price (1992), revealed in his paper that there is a strong positive correlation between the perception of fairness and respondent's tax knowledge with the level of tax compliance. He suggested that the level of compliance can be increased by improving taxpayers perception of fairness and by improving their tax knowledge through formal education or tax publicity. Other studies too have indicated that there would be higher levels of commitment to compliance with tax laws by taxpayers once they perceive: (i) favourable attitudes toward the government, (ii) fairness of the tax system and (iii) fairness of their treatment by the tax administrators [Roth *et al.* (1989), p.124].

Judging from the mission statement and operational objectives of the IRB, the following question can be posed: Is the existing tax system effective and fair and does it encourage voluntary compliance? Increased voluntary compliance can only be achieved if taxpayers perceive the tax system to be equitable (Bar *et al.*, 1977). If voluntary compliance is to be encouraged among taxpayers, the SAS should be introduced in Malaysia as in the case of other advanced and developing countries in the world. Several studies have indicated that a SAS will improve efficiency and productivity of the tax administrative system (Bar *et al.*, 1977; Sandford & Wallschutzky, 1994; Sandford, 1994; James, 1996).

The main weaknesses of the OAS system include low compliance level and inadequate enforcement strategies.

### ✦ Low compliance level

In recent years, the Malaysian Inland Revenue Board is experiencing several constraints in its effort to improve voluntary tax compliance among its taxpayers (Kasipillai, 1996). Voluntary tax compliance constitute the following:

- submitting a tax return when legally obliged to do so;
- disclosing all taxable income on the return;
- making a proper claim for deductions on the tax return; and
- settling the assessed taxes by due date.

The actual extent of non-compliance in Malaysia is difficult to estimate but available IRB statistics provide some clues as to the magnitude of the problem. In a small minority of cases, the taxpayer is investigated. Investigation takes place only on a selective basis. Recoveries of additional tax (inclusive of penalties) in 1996 amounted to some 0.03 percent

of total income tax collected. The number of investigation cases finalised in 1996 was 514 compared with 504 in 1995, reflecting an increase of two percent. However, real recoveries (inclusive of penalties), rose from RM185.6 million in 1995 to RM250.2 million in 1996, that is, an increase of 34.8 percent.

In 1997, a total of 2.6 million tax returns were issued by IRB but merely 1.8 million tax returns were submitted. Therefore, the compliance rate in respect of returns submitted in 1997 was 69.2 percent. However, the non-compliance rate could perhaps be higher as there would possibly be duplication of files, taxpayers may have passed away or businesses might have ceased.

### ✦ Inadequate enforcement strategies

The effectiveness and efficiency of any assessment system would normally depend on the intensity of enforcement activities instituted by tax authorities on truant taxpayers. The current OAS, however, is inhibited by IRB's inability to scrutinise all returns in a desired manner due to staff shortage. Between the years 1992 to 1997, the IRB had vacancies ranging *from 550 to 702 posts of varying levels (Annual* Reports, 1992 to 1997). The current system is preoccupied with the issue of notice of assessments, leaving minimal staff for post-assessment enforcement activities. Moreover, a considerable portion of returns (around 20 percent) were not submitted on time or not submitted at all, resulting in provisional assessments raised by the Revenue. Such an exercise greatly aggravates and places enormous demands on the tax appeal system that utilises vast Revenue resources which could be better employed in encountering tax evasion. Although penalties are imposed, no interest is payable to IRB for delay in settlement of tax liabilities by delinquent taxpayers.

### Significance of the Study

This is the first time a survey of this nature is carried out since the government announced in October 1998 the staggered implementation of SAS in Malaysia. The findings of the study would be useful for the Malaysian tax policy makers as it will highlight the respondents perception of both the official and self assessment systems and critically evaluate the measures that are needed for the smooth implementation of a new assessment era.

## 4. The Survey

The survey approach involved administration of a questionnaire on the self assessment system to a sample of Malaysian taxpayers. The overall objective of the survey is to ascertain whether the taxpayers are prepared for a SAS. This section outlines the survey procedures, sample characteristics and the questionnaire.

### ✦ Survey Procedure

The questionnaires were mailed to individual taxpayers located in the northern region of West Malaysia, that is, those confined to the states of Kedah Darul Aman, Perlis Indra Kayangan and Pulau Pinang between March and June 1999. *Initially, the questionnaire was* pre-tested on a group of 20 staff (including lecturers and administrative personnel) attached to Universiti Utara Malaysia with a view of refining the questions. After improving the questions so that it is easily understood by the layman, the questionnaire was mailed to 900 residents. *The questionnaire was* prepared both in the English language and *Bahasa Malaysia*. The taxpayers had a choice of responding in either language. Of the total questionnaires that were mailed, 153 were completed and returned, providing a response rate of 17 percent. Six of the questionnaires were rejected due to insufficient data, leaving a total of 147 usable responses.

### ✦ The Questionnaire

The questionnaire is divided into four sections (referred to as **Sections A to D**). Section A ("**demographic information**") contained questions relating to the socio-economic characteristics of *respondents-included* age, race, current employment, annual income, occupational status and academic/ professional qualification.

Section B had three parts (referred to as part I, II & III). Part I probed into the extent of taxpayers' understanding of the present official assessment system while part II investigated into taxpayers' preparedness

towards implementation of SAS. Part III determined respondents' perception towards the IRB. Section C investigated into the factors that contribute to the ambiguity of Malaysian income tax laws. Finally, Section D elicited from the respondents approaches IRB could use to improve tax compliance.

In Section A, some of the questions required a tick for the correct answer and a couple of the others required a simple Yes/No response. In Sections B to D, a likert scale was used for most of the queries and the respondents had to tick the appropriate column. The responses derived from the questionnaires were coded and entered into an Excel spreadsheet. Thereafter, summary statistics were produced and analysis of data was carried out using the SPS statistical package.

### ✦ Sample Characteristics

A summary of the characteristics of respondents are reported in Table 1. It must be admitted that the characteristics of the sample suggest that it is not wholly representative of the population as a whole, but is likely to be broadly representative of Malaysian taxpayers in several aspects. The selection process of the sample relied on the local telephone directory covering the northern region of West Malaysia. As mentioned earlier, the three states located in this region are: Kedah Darul Aman, Perlis Indra Kayangan and Pulau Pinang. The choice of sample based on the local telephone directory would have excluded low income people who are not likely to have telephones. Although, this may be true, their exclusion is justified as they would not in the first place have lodged a tax return with IRB. Income earned by the low-income group is normally below the taxable threshold.

A summary of sample characteristics suggest that about 64 percent of the respondents are 40 years or below and another 13 percent are between 40 and 50 years of age. The retirement age for civil servants and most employees in the private sector is 55 and pension income of these personnel is wholly exempted from income tax. The ethnic mix in the sample does not vary too much from that of the population as a whole. The ethnic mix of the population as a whole is: Malays (46 %), Chinese (35 %), Indians (9%) and 'others' (10 %) (Year Book of Statistics, 1997).

Although the sample generally appears to be somewhat representative of the Malaysian tax-paying public, its gender composition may not reflect the population as a whole. It may be possible that the response rate among female taxpayers is higher to that of males. Under the Malaysian income tax law, married taxpayers submit a single return in the husband's name. The responses from the questionnaire did not ask which of the married partners completed the return. As regards employment, the respondents appear to be evenly balanced between private and government sector employment. Only four percent of the respondents are engaged in their own business.

Other indicators suggest that an average taxpayer earns between RM32,000 to RM42,000 per annum; a relatively high proportion (50 percent) are gainfully employed in managerial or professional positions and over seventy percent of them are married.

Table 1
Summary of Sample Characteristics

| | Percent |
|---|---|
| **Age** | |
| Under 30 yrs | 40.8 |
| 31-40 yrs | 43.6 |
| 41-50 yrs | 12.9 |
| 51-60 yrs | 2.7 |
| | 100.0 |
| **Ethnic Composition** | |
| Malay | 53.7 |
| Chinese | 35.4 |
| Indian | 9.5 |
| Others | 1.4 |
| | 100.0 |
| **Gender** | |
| Male | 44.9 |
| Female | 55.1 |
| | 100.0 |
| **Current Employment** | |
| Private Sector | 45.9 |
| Government sector | 47.9 |
| Own business | 4.1 |
| Others | 2.1 |
| | 100.00 |

| | |
|---|---|
| **Annual Income** | |
| Under RM24,000 | 55.8 |
| RM24,001 - RM48,000 | 36.1 |
| RM48,001 - RM72,000 | 6.1 |
| RM72,001 - RM120,000 | 2.0 |
| | 100.0 |
| **Marital Status** | |
| Single | 29.3 |
| Married | 70.7 |
| | 100.0 |
| **Occupational Status** | |
| Managerial, executive | 22.1 |
| Professional | 33.8 |
| Engineering , technical | 4.8 |
| Administrative | 25.5 |
| Self employed | 5.5 |
| Combination of wages/self employed | 8.3 |
| | 100.0 |
| **Qualification** | |
| Completed secondary education | 33.7 |
| Certificate | 8.3 |
| Diploma | 22.8 |
| Bachelor | 26.9 |
| Master | 8.3 |
| | 100.0 |

## Survey Findings

The survey findings presented in this section are in terms of the types of questions answered in Sections B to D of the questionnaire.

### ✦ Understanding of the Current Official Assessment System

Under the OAS, 64 percent of the respondents were of the view that a lot of tax evasion goes undetected and unpunished (See Table 2). Merely 10.8 percent disagreed with such a view.

Table 2
Perception Towards Tax Evasion

| Degree of Perception | Percent |
|---|---|
| Disagree | 10.8 |
| Neutral | 25.2 |
| Agree | 64.0 |
| Total | 100.0 |

Thirty percent of the respondents favoured the existing official assessment system while about 14 percent preferred a more convenient assessment system (See Table 3). However, 56 percent were neutral, suggesting that they are not sure how the new tax assessment system would be advantageous to them.

Table 3
Convenience of OAS

| Degree of Response | Percent |
|---|---|
| Agree | 30.0 |
| Disagree | 13.5 |
| Neutral | 56.5 |
| | 100.0 |

### ✦ Preparedness towards Self Assessment System

Nearly fifty-eight percent of the respondents indicated their ability to compute their own taxes. The balance had to rely on others to determine their tax liability (See Table 4). As mentioned earlier, under SAS, they are to ascertain the taxable income, determine the tax payable and submit the returns to IRB. The findings of the survey also suggested that more than half (54.2 percent) of the respondents were in favour of SAS while the balance were comfortable with the existing system

Table 4
Ability to Compute Tax Liability

| Tax Computation | Percent |
|---|---|
| Yes | 57.1 |
| No | 42.9 |
| Total | 100.0 |

Given a choice, 35 percent of the respondents were of the view that SAS will be more fair compared to the existing OAS (See Table 5).

Table 5
Choice of SAS over OAS

| (General perception of fairness among respondents) Degree of Choice (Perception) | Percentage of respondent |
|---|---|
| Strongly disagree | 2.8 |
| Disagree | 11.1 |
| Neutral | 45.1 |
| Agree | 34.7 |
| Strongly agree | 6.3 |
| Total | 100.0 |

Table 6 presents the findings of respondent's perception regarding IRB's confidentiality of taxpayer's information. Fifty-six percent of the respondents agreed that IRB is strictly confidential while less than nine percent thought otherwise. The balance of the respondents were neutral in their views.

Table 6
Perception Towards IRB
(Strictly Confidential)

| Degree of Perception | Percent |
|---|---|
| Disagree | 8.8 |
| Neutral | 35.4 |
| Agree | 55.8 |
| Total | 100.0 |

### ✦ Ambiquity of Income Tax Law

Sixty-four percent of the respondents mentioned that the income tax law is ambiguous. These respondents also observed frequent changes in the tax law (See Table 7).

The successful implementation of a new tax system such as SAS will invariably depend upon the sincerity of the majority of the tax-paying public. At the same time, Revenue authorities too have long recognised that levels of tax compliance are intrinsically linked with both the perceived fairness of a tax system and a taxpayer's perceived probability of detection if he or she decides to evade. Moreover, taxpayers' perceptions of the fairness of a tax system coupled with the probability of them evading part of their taxable income may in turn be affected by the complexity of tax laws. Therefore, in introducing SAS in Malaysia, simplification of tax laws should be on the policy agenda, as in other parts of the world.

Table 7
Ambiguity of Income Tax Law
(Frequent changes to income tax law)

| Degree of Ambiguity | Percent |
|---|---|
| Disagree | 6.9 |
| Neutral | 29.3 |
| Agree | 64.0 |
| Total | 100.0 |

Thirty-eight percent of female respondents perceived that there were frequent changes in tax laws compared to 26 percent among the males (See Table 8).

Table 8
Frequent changes in Tax Law
(By Gender)

| Degree of Response | Percent | |
|---|---|---|
| | Male | Female |
| Disagree | 4.0 | 2.7 |
| Neutral | 15.0 | 14.3 |
| Agree | 25.9 | 38.1 |
| Sub-Total | 44.9 | 55.1 |
| Total | 100.0 | |

### ✦ Improving Tax Compliance

Nearly all respondents (97 percent), irrespective of race, were in favour of receiving more tax instructions from the IRB (See Table 9). The findings of the survey suggest that IRB should prepare a "Tax Guide" and enclose them with the annual tax formsurn so as to assist taxpayers' complete the returns. A "Tax Guide" is similar to a "Tax Pack" that is currently published by several tax administrations such as the Australian Tax Office, Inland Revenue Service of New Zealand and the Inland Revenue Board of the United Kingdom. The "Tax Pack" is a book that would assist

taxpayers to fill tax returns quickly and accurately, particularly if the tax affairs are straight forward. This book, to be prepared by IRB could be issued without a charge to all existing and potential taxpayers. A Tax Guide could assist individuals to compute their taxable income, work-out deductions, determine personnel reliefs and outline nature of rebates that are available to minimize one's tax liability.

Table 9
Free Publication of Tax Instructions By Race

| Race | Disagree | Agree | Total |
|---|---|---|---|
| Malay | 1.4 | 53.0 | 54.4 |
| Chinese | 2.1 | 33.3 | 35.4 |
| Indian | 0.0 | 8.8 | 8.8 |
| Others | 0.0 | 1.4 | 1.4 |
| | 3.5 | 96.5 | 100.0 |

Table 10 presents the findings on ways of improving tax compliance among taxpayers. Several of them sought for toll-free services, free publications of tax literature and wanted assistance from service counters operated by IRB. Services via the internet were also preferred by 16 percent of the respondents.

Table 10
Improving Tax Compliance

| Nature of Service | Number of Responses | Percentage of responses |
|---|---|---|
| Toll-free services | 102 | 18.8 |
| Free publications | 96 | 17.6 |
| Service counter | 96 | 17.6 |
| Internet services | 90 | 16.5 |
| Simplified tax returns | 84 | 15.4 |
| Mobile unit operations | 76 | 14.1 |
| Total | 544 | 100.0 |

## 6. Concluding Remark

The principal aim of a self assessment mechanism is to introduce a fairer and simpler tax system that would result in greater compliance levels with minimal cost to both the government and the tax-paying public. Lowering compliance cost will only be possible if the assessment programme is made simple by IRB. Existing income tax laws should, therefore, be simplified prior to the implementation of a new assessment system.

A concurrent move is to amend the tax legislation so as to provide more powers to the DGIR to audit taxpayers' files and to impose penalties where taxable income is not fully reported or unwarranted expenses are made in the annual return. The imposition of stiffer penalties are based on the belief that delinquent taxpayers who do not furnish their Returns or do not settle their taxes within the stipulated period must not be allowed to gain advantage over those taxpayers who are truly compliant. It is, therefore, possible that IRB's new powers under a self assessment system will be more far-reaching than they have previously been.

The idea of promoting a SAS is to expedite the rate of collection revenue and simultaneously lower the cost of administering the tax system. The new system is introduced with a view of increasing voluntary compliance among the tax-paying public. It is generally believed that under SAS, there would be an increased tax burden due to higher compliance cost on most taxpayers. In this regard, it may be the honest but ignorant taxpayer who may innocently fall foul of a newly introduced self assessment system and whose compliance costs are particularly expected to rise. Whether this increase in taxpayers' compliance cost will be off-set by a fairer and efficient compliance programme remains to be seen.

The respondents in the survey generally perceive that the new assessment system would usher well for them in terms of being able to compute their 'final' taxes without too much of correspondence with IRB. The findings of the survey suggest that educating the taxpayers should be the primary focus of policy makers so that compliance level can be gradually enhaced. The combined effect of the changes that are to be introduced to the Malaysian tax system could make the period of transition from OAS to SAS very challenging to the taxpaying public, tax agents and Inland Revenue Board alike.

A final step in preparing for a self assessment system is towards a more systematic audit progamme and the deployment of IRB personnel currently involved in routine assessment work to more enforcement activities. The staggered implementation of SAS over a four year period would enable Malaysian taxpayers to take steps in preparing for the new assessment system. In the meantime, tax agents will play a significant role in the new millenium as a fair number of taxpayers would rely on them to file their returns.

FOOTNOTES

1. Encik Rahim Abdullah is the Director of National Tax Academy, Malaysia located at Bangi.

2. Currently, resident individuals who receive interest income from various deposit-taking institutions such as banks and finance companies are subject to withholding tax. It must be borne in mind that individual taxpayers are subject to withholding tax on their interest income (excluding exempt income).

3. According to the IRD Malaysia Corporate Plan (1993-1997), the Revenue Department's commitment pledge is as follows:
- execute the duties efficiently, effectively and with quality;
- provide prompt and courteous service to the public;
- be trustworthy, honest, responsible and positive; and
- strive to enhance the image of the Department.
*(Corporate Plan 1993-97, p.2)*

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**Q U O T E**

You never know a line is crooked unless you have a straight one put next to it.

**Socrates**

MEMORANDUM TO THE MINISTER OF FINANCE
ON
THE NATIONAL BUDGET FOR THE YEAR 2000

# towards sustaining recovery and reinvigorating economic growth as well as strengthening economic resilience and competitiveness

## A Fiscal Perspective

## Preamble

The "virtual IMF' policy adopted in 1998 in response to the Region's financial turmoil and its consequential credit squeeze have caused great financial distress and pain to the country in general and the business sector in particular. If that policy had continued, almost all Malaysian businesses would have been technically bankrupt.

For our recovery to be solid and sustainable and to avoid the weaknesses of the past, it would take time. The trickle-down effect on the real economy would necessarily be longer, even though the capital markets of the region while seemingly recovering at a remarkable pace, may still be considered fragile.

Therefore, Government through the NEAC and other related agencies, has a vital role to play in nurturing our economic recovery and implementing measures that would ensure that our recovery is on firmer ground and sustainable over the long term. The steps taken by the NEAC have been successful in not only containing the earlier damage but also enable the recovery process to gain momentum. This is highly commendable, although much more needs to be done to promote, motivate and encourage our economy to move forward.

The MIT and MIA , as professional bodies would like to propose the following fiscal measures which may be of assistance to the country's recovery process:

## 1. Sustaining Recovery

To avoid shrinking demand and rising corporate failures, the government responded by easing monetary policy and adopted a more expansionary fiscal policy to jump-start our economy. This has revived the production capacity of the Malaysian companies and maintain the vitality of the national economy.

The National Economic Action Council or NEAC was set up to provide the economic solution and bring the economy back on track. It must be commended on its efforts in restoring economic recovery and preventing the situation from deteriorating. This has strengthened our economic fundamentals.

### 1.1 Impediments for Restructuring

One of the key measures formulated by the NEAC in the National Economic Recovery Plan (NERP) is the reform of financial and corporate sectors. An effective way is to encourage rationalisation of operations and reconstruction of companies in the private sectors,

particularly the financial services and the construction sectors.

While the strategic conglomerates and banking institutions may obtain assistance from Danaharta, Danamodal and Corporate Debt Restructuring Committee (CDRC) to resolve their credit problems, there is no emphasis on the restructuring exercise. In fact, companies trying to restructure and rationalise their activities are faced with significant impediments that prevent successful implementation of these restructuring exercise. The Malaysian Institute of Taxation (MIT) and the Malaysian Institute of Accountants (MIA) would like to propose the following fiscal measures to assist the government in realising its objective.

## A. Stamp Duty Reforms

Currently, ad valorem stamp duty charged in respect of transfer of corporate property made either

a. in connection with a scheme for reconstruction or an amalgamation or an amalgamation of any company; or

b. between "associated companies" may be relieved under sections 15 & 15A of The Stamp Act 1949.

The relief provisions include stringent conditions with regard to the composition of the transfer consideration, holding period for the consideration shares issued and with regard to the relationship between the transferor-transferee companies. A restructuring scheme requiring adjustments to the ownership structure "in compliance with Government policy on capital participation in industry" may not succeed in meeting those specified conditions and thus not entitled to the relief.

**We propose that Sections 15 and 15A be appropriately amended so that the relief is also available to a transfer of corporate property between associated companies.**

## B. Real Property Gains Tax (RPGT)

Similarly, transfer of property or shares in real property companies under a scheme of reorganisation, reconstruction or amalgamation can only be relieved from RPGT if *prior approval of the DGIR* had been obtained and

a. the transfer is between companies in the same group to bring about greater efficiency in operation for a consideration consisting substantially of shares in the company, or

b. the transfer is to implement any scheme directly connected with any transfer or distribution of ownership of an asset in Malaysia to a Malaysian resident company which is being restructured under such a scheme in compliance with government policy on capital participation in industry.

Provided that the DGIR may withdraw the approval within 3 years if

i. it appears to him that the transfer was made wholly or partly for some other purpose other than the above, or

ii. in the case of (a) above, the transferee ceases to be in the same group of companies as the transferor, or

iii. the transferee ceases to be resident in Malaysia

Under the current economic situation, companies are restructuring to reduce their risks exposure and to improve chances of viability. Thus, it may not fulfil the conditions indicated above. In addition, prior approval may take some time and time is of essence in business decisions. Further there is uncertainty whether the DGIR will withdraw the approval.

**We propose that where property was transferred in a scheme of reorganisation, reconstruction or amalgamation, which has resulted in improvement of the viability of the group of companies, real property gains tax on the transfer of property should be exempt or deemed no gain no loss situation and no prior approval of Director General is required.**

## C. Income Tax

Currently, where an asset is disposed of in consequence of a scheme of reconstruction or amalgamation of companies, future capital allowances claim of the asset will "flow through" from the transferor to the

transferee. However, if restructuring exercise involves transfer of business and assets or winding up of a company, the unabsorbed business losses and unabsorbed capital allowances are not allowed to be transferred from transferor to transferee, nor among group companies. This has resulted in substantial loss of benefit to group companies making the restructuring not cost effective.

Similarly, where a company has to be wound up in a restructuring exercise, it may lose its Section 108 credit balance if it does not have enough cash to distribute sufficient dividend to deplete the credit balance.

**We propose that the unabsorbed business losses and unabsorbed capital allowances together with the Section 108 credit balance be allowed to be transferred from the transferor to the transferee, or among group companies under a restructuring exercise.**

### D. Reinvestment Allowance

Currently, when a company transfers its business to another company during a restructuring exercise, the re-investment allowance enjoyed by the former in respect of qualifying capital expenditure incurred on assets may be withdrawn if the transfer of assets occurred within 2 years after its acquisition.

**We therefore propose that provision should be made to allow transfer within group companies under a restructuring exercise without any clawback on the re-investment allowance.**

## 1.2 Tax Reforms to Alleviate Hardship

In line with the objective of enhancing recovery, the MIA/MIT would like to suggest the following tax reforms to alleviate the burden of the taxpayers during this crisis period so as to enhance recovery and sustain demand:

### A. Time-barred Assessments

With effect from 1.1.1999, the power of the Inland Revenue Board (IRB) to issue or revise an assessment is reduced from 12 years to 6 years. The IRB has issued many assessments before the deadline, i.e. on 31 December 1998. Many of such assessments were issued as a protective measure due to the lack of information or due to controversial technical issues. Under the current system, tax has to be settled notwithstanding any appeals. This has caused hardship to many taxpayers, particularly in the current credit squeeze environment.

Currently, the Director General of Inland Revenue (DGIR) has no power to issue a standover on any assessment issued. In many instances, the additional assessments is a substantial burden to the taxpayers. Although the Collections Branch of the IRB has been accommodating in granting instalment payment of tax, the taxpayers are still unable to pay the additional tax raised. Thus, penalties are imposed for late payment.

**We therefore propose that where assessments were raised due to a lack of information or on controversial technical issues, a standover of tax should be given where appropriate. In addition, the DGIR should be empowered to grant a standover of tax in appropriate situations.**

### B. Sales and Service Taxes on Bad Debts

Presently, vendors of taxable goods and services are required by legislation to shoulder the burden of sales and service taxes in respect of sale of goods or services irrespective of whether the payments have been collected. This has caused undue burden to the taxpayers as in a time of credit squeeze, payments are slow if not actually bad.

**We propose that the relevant Acts be amended to allow taxable persons to claim bad debts in computing sales tax payable i.e. net-off sales and service taxes which have been paid on bad debts against those collected and due to be remitted**

within the taxable period. Further, the concession to granted professional firms to pay service tax only upon receipt of payment from clients be restored.

### C. Exemption For Compensation of Loss of Employment

During this financial crisis, many companies have down sized their operations and as a result staff had to be released. Paragraph 15(1) (b) of Schedule 6 to the Income Tax Act 1967 provides that payment by employer in respect of compensation for loss of employment shall be exempt in the hands of employee up to an amount as ascertained by multiplying the sum RM4,000 by the number of completed years of service with that employer. The Institutes believe that it is time to review the exemption limit.

The provision was introduced in 1986. At that time, a person with only employment income of RM6,300 annually would not have to pay tax. Since then there has been a significant long period of economic growth and consequently the costs of living had increased tremendously. Currently, the threshold for staying outside the tax net is RM12,900, bearing in mind that personal relief has not been reviewed since 1980. Therefore it is timely that the threshold for exemption should be revised.

**In line with the government policy to continue with the equitable and socio-economic agenda in helping the poor, the MIA/MIT propose that the exemption under paragraph 15(1) (b) of Schedule 6 to the Income Tax Act 1967 be increased from RM4,000 to RM12,000.**

### D. Shares Buyback

Share buyback is a measure introduced to provide listed companies whose market price fell below its fair value due to the financial crisis a means to protect their interests. In 1998, Companies Act 1965 has been further amended to allow a company which has purchased its own shares to either cancel the relevant share capital or to distribute the shares as share dividends to its shareholders.

#### a. Distribution of Treasury Shares

Where a company distributes the treasury shares (its own shares) to its shareholders, concern arises as to whether the distribution constitutes a distribution of dividends in specie and therefore have to comply with the requirements of Section 108 of the Income Tax Act 1967.

**MIA/MIT propose that the distribution should be treated like a distribution of bonus share and not to be regarded as dividend subject to section 108 requirement.**

#### b. Sale of Treasury Shares

Where there is a sale of treasury shares, concern arises as to whether the gain on disposal is subject to income tax. It is submitted that the gains on disposal of treasury shares is equivalent to share premium received in a new issue of shares. The gain on disposal should be treated as capital gains and credited to a share premium account.

**MIA/MIT therefore submit that the gain/loss on disposals of treasury shares should be considered as capital and not subject to income tax.**

## 2. Reinvigorating Growth

In the past 12 months, we witness the fall of Base Lending Rate from a high of 12.27% ( June 1998) to 7.25% (June 1999) and a rise in KLSE Composite Index from 455.6 (June 1998) to 811 (June 1999). These are positive signs that our economy has bottomed out. We are now in the next stage of economic recovery, i.e. stimulating growth. An expansionary fiscal policy is to be adopted.

### 2.1 Strengthening Construction Sectors

The hardest hit sectors during the Region's financial turmoil are the financial and construction sectors. The establishment of Danaharta, Danamodal and Corporate

Debts Restructuring Committee (CDRC) have gradually restored the market confidence in our financial sector. Economic indicators have started to show positive trends. Nevertheless the construction sector is still struggling. We propose the following to further stimulate recovery and growth:

### A. Mortgage Interest on Properties Newly Acquired

The credit squeeze has resulted in high interest costs for the developers and unavailability of funds for the purchasers. Thus, resulting in a glut in the property market. With the government successfully lowering the interest rates and improving the lending, the demand has improved.

To reinvigorate the construction industry and encourage individuals to purchase properties, thereby strengthening the construction industry, the MIA/MIT would like to propose the following measure:

**We suggest that the mortgage interest incurred by a resident individual on one of the properties newly acquired be allowed for deductions against income of that individual.**

### B. Recognition of Income

Housing developers are assessed on the estimated profit recognised using percentage completion method. Developers have to pay tax based on "projected profit" which may not be reflective of the performance.

**We suggest that completion method be allowed for housing projects which do not stretch for more than 3 years. In addition, each phase of a development should be considered as one project.**

## II.2 Attract Foreign Investment

To revitalise our economy, we require more investments, be it from foreign investors or from local investors.

Our country has enough incentive to attract foreign investors. What we need may be to ensure that investors are assured of their positions. In this respect, MIA/MIT would like to recommend the following measures and reforms:

### A. Discouraging Retrospective Actions

While we must uphold our sovereignty to impose our local law, it would be unfair to investors if new measures, rules or legislation are introduced retrospectively. This is because they were not aware of those new measures, rules and legislation at the point when they first made their investment decisions.

**To enhance investors confidence, the Institutes suggest that any new measures, rules and legislation in future should be implemented prospectively rather than retrospectively.**

### B. Tax Reforms for Appeal Procedure

Appeal system regulates the procedure of disposing of grievances of taxpayers. Currently, the tax appeal process is costly and may drag for a long time.

To improve the effectiveness and efficiency of our appeal system, the MIA/MIT recommend that

a. Income Tax and Real Property Gains Tax Regime

i. **that the appeal procedures be streamlined as** follow:

Upon service of Notice of Assessment, taxpayers must appeal within 30 days to DGIR stating the grounds of appeal. The appeal should be reviewed and replied by the DGIR within 60 days after the receipt of the appeal stating the grounds of rejection. Otherwise, the notice of assessment will become void.

ii. **that an independent person with suitable qualifications and experience be appointed to arbitrate preliminary disputes between IRB and taxpayers.** Taxpayers aggrieved by the rejection of

DGIR may further appeal to the Adjudicators within 30 days after being notified of the rejection. The Adjudicators must decide the case within 6 month after submission of appeal.

iii. that either party may appeal directly to the Special Commissioners within 30 days after receiving the Adjudicators decision. Alternatively, notice of assessment issued by IRB becomes void 6 months after the submission of Form Q by the taxpayers unless IRB has forwarded the appeal to the Special Commissioners.

iv. that once Form Q is filed, no civil actions under Section 103 and 106 of the Income Tax Acts shall be instituted or proceeded until settlement of the appeal has been reached. However, to prevent abuse of the appeal procedure and cancel any financial advantage of late payment of tax, interest should be charged on tax underpaid calculated from the original date of notice of assessment.

v. that written judgement of Special Commissioners be made available to the public without identifying the taxpayers' identity.

b. Sales Tax and Service Tax Regime

i. that the appeal for sales and service tax be subject to judicial review.

Currently, a taxable person may appeal to the Director General of Customs and Excise (DGCE) disputing on the Sales and Service taxes levied. He may further appeal to the Minister within 30 days of being notified of the decision of DGCE. The decision of the Minister shall be final and not subject to review in any court.

### C. Time Lag of Legislation

We noted that the government is quite responsive to current economic change. However, in certain instances, legislation of a number of incentives announced during previous budgets were not available until several years later.

The Institutes propose that this be improved.

## 2.3 Promote the development of Small and Medium-Sized Industries (SMI)

SMI is not only the backbone of our manufacturing sector but also by itself constitutes a significant component of our national economy. In the recent years, the government has been promoting the growth of SMI. The strength and resilience of SMI has prevented the collapse of our economy and is crucial to the recovery of our economy.

The MIA/MIT recommend that the following measures be taken to assist in revitalising our SMI.

### A. Consultancy Incentive for SMI

SMI generally lack expertise due to their limited resources. Currently, SMIDEC and SIRIM are providing some consultancy to the SMIs. Providing incentive on consultancy expenses incurred will not only improve the efficiency and competitiveness of SMIs but also promote our educational industry.

We suggest that double deductions be granted to SMI on consultancy fees paid to a local consultant in respect of services rendered to improve productivity and to enhance management and operational efficiency, including technical, information technology, marketing and financial efficiency.

### B. Reduced Rates of Income Tax imposed on SMIs

SMI are usually run by the owners full time. As they are small, the financial resources are limited. As a result, tax appears to be a significant outflow to their businesses. A cut in the tax will certainly elevate their financial position. This together with the benefit of assistance from the government which SMIs enjoy may also help to improve tax compliance and hence revenue collection in that taxpayers may be more willing to come forward and declare their income.

We suggest that the SMIs be taxed at a reduced income tax rate.

## C. Reforms of Indirect Taxation

### a. Import of Spare Parts

Some of the plant and machinery imported are duty free but the levy on their spare parts are high. As a result, it is very costly to repair the machinery. In addition, some companies use those spare parts to assemble their end products. As a result, their end products are too expensive to compete with the imported ones.

We suggest that the DGCM review the rates of custom and excise duties together with sales tax to ensure that spare parts are taxed at the same rate or lower when compared with the finished products.

### b. Increase Threshold for Sales Tax

To improve the competitiveness of small industries and reduce their cost of operations, we propose that the turnover threshold for sales tax be increased to RM500,000.

# 2.4 Stimulating Export

As the economy crisis has also hit our purchasers, many of our purchasers may reduce their imports due to the impact of the slow down in economy, with the exception of United States. It is therefore important if we can explore new markets through various channels. We also need to improve our competitiveness both in terms of product quality and pricing.

## A. Explore new markets

In order to promote our product to new markets, private sectors must co-ordinate with the government, not only in participating or organising trade missions and trade fairs but also in looking for new markets and improving marketing strategy. In this respect, we suggest that the authority extend their efforts in exploring new export markets for promoted goods to services, including marketing and advertising services.

# 2.5 Increase Expenditure

To reinvigorate our economy under the current condition, the government has adopted an expansionary budget. Public expenditure is increased to give a thrust to our economy. Financing this policy will be a burden to the government. Thus efficient revenue collection is very important to the government to finance the budget.

In this respect, MIA/MIT suggest that the following may be done to improve revenue collection.

## A. Introduction of Consumption Tax in place of current Sales and Service Tax

In the long run, the government should consider introducing Consumption Tax to widen the tax base. The introduction of Consumption Tax could result in a one-off inflation thereby increasing cost of business operations and higher costs of living.

On the other hand, Consumption Tax will encourage savings and at the same time check unnecessary or compulsive consumption.

Any introduction of Consumption Tax should also be accompanied by the reduction in personal and corporate tax as well as other indirect taxes.

## B. Reduction of Personal Tax Burden

In the IT age, intellectual property will become an important trade commodity and it is comparatively easier for individuals to accumulate wealth. In the developed countries, individuals leave their home countries due to high personal tax burden. To attract potential investors and skilled labour, the government must in the long run reduce the tax rates and increase the tax bands on chargeable income of individuals.

In addition, low income tax rates for individuals means

increased disposable income. Once the market aggregate demand is developed, it will provide the impetus to economic growth.

**Therefore, we suggest that the introduction of Consumption Tax must be accompanied with simultaneous reduction of income tax rates, customs and excise duties. In addition, the Consumption Tax rate should be as low as possible, say about 3%.** This will ease the inflationary pressure.

### C. Interest on Underpayment and Overpayment of Tax

Currently, if taxpayers are not paying their taxes, penalty of (10% + 5%) will be imposed irrespective of the overdue period. The system does not incorporate the mechanism to encourage rectification of late payment. It does not distinguish a good taxpayer who tries to pay once he discovers his mistake, from a persistent delinquent taxpayer. In fact, once late payment has occurred, the system encourages a taxpayer to pay as late as possible since the penalty does not increase with time. Similarly, the IRB should pay interest if refunds for overpayment of tax is not made on time.

**We therefore suggest that interest be charged on tax overpaid/underpaid at market rate in place of penalty system.**

## 2.6 Supplementary Measures to Reinvigorate Financial Sectors

### A. Health and medical benefits for SOCSO contributors

In view of the ageing trend of our population and the low payout by SOCSO, **we propose that the coverage provided by SOCSO should be extended to include medical benefits.** This will ease the burden of the poor once our medical care system is corporatised.

# 3. Strengthening Economic Resilience

Malaysia is a small country and therefore our resources are not comparable to Big Economies like the United States and Japan. To improve our economic resilience, we must be efficiency oriented. In addition, we have to fully realise the potential of our resources and develop our expertise and market niche. Weak local service industry has led to the current account deficit in our National Budget. In this context, we suggest the following:

## 3.1 Developing Strategic Industries

### A. Shipping Industry

Malaysian has been promoting the local shipping industries for many years with little results. This is partly because shipping is a capital intensive industry. We need foreign investment to participate in the industry. Currently the incentive for shipping industry is quite restrictive. It is very difficult for a foreigner to incur a huge capital without at the same time having full control over the company's affairs. It is suggested that the incentive be extended to foreigners.

It may be feasible to differentiate between Malaysian Waters and International Waters. **We propose that foreign controlled shipping companies solely for the transportation of cargo and passengers in international waters may qualify for tax exemption on income derived from transportation of cargo or passengers by sea and income derived from letting out of ship on voyage or time charter.**

In addition, the definition of 'Malaysian ship' may needs to be reviewed. Currently, cruise is not considered a ship. Tour companies will therefore register their cruise in other countries such as Singapore.

## B. Information Technology Industry

a. Incentive for Developing IT Infrastructure

To obtain an edge in the IT industry, Government may consider providing customised incentives to residents for developing E-Commerce infrastructure.

**We suggest that royalty and licence fee received by residents from information technology may be taxed as reduced rate or exempt from income tax. In addition, Paragraph 32 of Schedule 6 to the Income Tax Act 1967 should be amended to include exemption on income from royalty.**

b. Promoting MSC

**We suggest that the pioneer profit of MSC companies be exempted at the adjusted income stage and costs of software be allowed to claim Investment Tax Allowance.**

## C. Education Industry

Due to limited places in the local higher institutions of learning, a significant number of Malaysians continue their studies overseas. This has contributed to substantial outflow of funds. In view of the high student population density in the surrounding countries and the comparative low cost of living in Malaysia, Malaysia should develop the potential as being a regional educational centre. This would not only reduce outflow of funds but also increase inflow of funds. In this context, we suggest that

a. Double Deductions on Professional Training

Currently costs incurred by companies and firms for sending their staff to participate in approved training courses, whether conducted in-house or externally, are allowed to claim for grants from the Human Resource Development Fund. This policy should be further strengthened to promote our education industry and also improve the quality of our human resource supply and thus enhance our competitiveness.

**We suggest that the scope of approved training courses be extended to accounting, taxation, law, and other technical services, and not restricted to scientific, technological or vocational courses only. In addition, professional bodies should be recognised as approved training institutions.**

b. Deduction of Course Fees for Individuals

To promote a learning society, we suggest that the government allow fees incurred by individuals for acquiring and updating any skills and knowledge as deductions against their income. This also complements the Institutes' suggestion made in (i) above

**We suggest that professional development courses organised by professional bodies for their members be recognised as approved training courses and the course fees and other expenses incurred by individuals be allowed to deduct against their income.**

c. Personal Relief for Educational Insurance

Currently, education and medical insurance premiums are allowed deduction under Section 49(1B) up to a maximum of RM2,000 annually. To promote a learning society, relief for educational insurance premium should be enhanced. This will ensure our younger generation will have the means for better education and thus improve our economic competitive power. It can also help to develop the education industry in the long run and generate skilled labour as well as promote the insurance industry.

**We suggest that deduction for educational insurance premium be increased to RM5,000 per annum.**

# 4. Enhance Competitiveness

To improve our competitiveness in quality, pricing and marketing strategy, we have to improve our efficiency in every aspect.

## 4.1 To Promote Malaysia's International Offshore Financial Centre

Netherlands has adopted a strategy called participation exemption to attract international funds to use Netherlands as a offshore financial centre. In brief, tax relief or exemption is accorded to dividend distribution made by a resident company to its holding company, provided the latter holds a requisite percentage of the former's equity for a minimum period as may be determined by the authority.

We suggest that Malaysia adopt a similar approach.

## 4.2 Bonus Restriction

Staff need to be motivated for their efforts. The original intention of introducing the provision to control spending so as to keep inflation rate low no longer exists. In fact, many employers are already curtailing excessive bonuses in the face of economic stringency.

We suggest that bonus restriction be removed to improve efficiency.

## 4.3 Group Relief

Many countries treat group companies as an entity for tax purposes. As such group relief is recognised. Currently, our group relief is very restricted and available to specific agricultural sectors.

We proposed that Malaysia adopt the same approach.

## 4.4 Service Tax on Management Services

It is the government policy to enhance efficiency and competitiveness of Malaysian export in the global economy. Firms and companies are encouraged to specialise and reduce costs. Incentives and assistance are given to firms and companies to restructure for greater efficiency and hence competitiveness. It contradicts the objective of all these economic policies to levy service tax on companies which centralise their management services and activities so as to achieve greater efficiency.

We suggest that the service tax levied on intra-group management services be removed or exempted to enhance efficiency.

# 5. Other Reforms

## 5.1 Simplification of Capital Allowance Computation

To simplify the claiming of capital allowance and reduce the cost and time to both taxpayers and IRB, we suggest that the depreciation of qualifying assets provided by the taxpayers be accepted as capital allowance claimed. In addition, qualifying assets costing RM1,000 or below be allowed to be written off immediately.

## 5.2 Increase of Qualifying Expenditure for Motor Vehicles

At present, qualifying expenditure of motor vehicle is restricted to RM50,000 if it is not licensed for commercial transportation of goods or passengers. The restriction was last reviewed in 1991. Since then, cost of motor vehicles has gone up significantly. To promote local motor vehicles industry, we suggest that the restriction on qualifying expenditure in respect of motor vehicle under paragraph 2(2) of Schedule 3 to the Income Tax Act 1967 be increased from RM50,000 to RM100,000.

CLARIFICATION ON COMPLETION OF FORM C

Subsequent to our circular on Guidelines On Filing Form C 1999, the Institute had sought clarification on the Guidelines for Completion of Form C from the Operations Division and Investigation Unit of the Inland Revenue Board (IRB). On 27 July 1999, a meeting was held between the Operations Division of IRB and the Institute together with the Malaysian Institute of Accountants on the draft Form C for the Year of Assessment 2000. During the meeting, further clarifications were made. Attached for your reference, is a summary of all the clarifications made further to circular on Guidelines On Filing Form C 1999.

# clarifications on completion of form C for year of assessment 1999

## Extension of Time to Submit Information on Part N to Part R

Taxpayers may apply for extension of time to submit information on part N to Part R of the Form C at the time of filing by indicating the expected date of submission on the relevant pages of the Form C. No extension of time will be granted beyond 30 September 1999. Any submission later than the extended date will be treated as late submission of the whole return Form C and penalty will be imposed.

Taxpayers are reminded that the extension is only applicable to Part N to Part R of the Return Form C. They still have to follow the initial filing programme accordingly. Failure to do so will result in penalty being imposed.

## Penalty on Inaccurate Information

Following the appeal by the Institute, the IRB has clarified that penalty will be imposed on cases where inaccurate information was furnished intentionally. *(Penalti boleh dikenakan sekiranya maklumat-maklumat yang tidak tepat dikemukakan dengan sengaja).*

## General

The guiding principle for filling up the return form is to follow the accounting presentation. Where the accounts do not have the items requested, indicate nil or not applicable. For Singapore companies filing Malaysian Tax Returns purely for Malaysian Dividends received, they may indicate nil or not applicable for information requested on Part K to Part R of the Form. There is no exemption from IRB's requirement.

## Part N

IRB has clarified that the equity information requested would be equity holdings as **at the end of basis period**. Companies listed on the Kuala Lumpur Stock Exchange, branches of foreign corporations and Permanent Establishments in Malaysia are exempted from disclosing the information.

IRB agreed that for item 502 and 503 where foreign shareholders are more than one, they can be disclosed by way of **attachment** to the return form C.

## Part P

IRB informed that information required for **A1 to D1** and **R1 to R15** would be basically figures extracted from accounts and for **E1 to Q2** the figures would be principally from **tax computation**. The IRB confirmed that the form has been designed for tax audit purposes and is not following the format of tax computation. Hence the figures requested are not self-balancing. Some of the figures would not tie up with the accounts. All information requested should be

completed. If it is not applicable or not available, indicate zero, not applicable or not available.

## Business Income

This is a heading and is not required to be completed.

A1-A3 relates to the primary business of a company. It is recognized that the business with the highest turnover may not necessarily be the primary business of the company. Where there are two or more major businesses in a company, the one with the highest turnover would be regarded as the primary business and disclosed accordingly.

### *A1. Sales/turnover*

This refers to the sales/turnover of the primary business of the company. For companies having no actual sales or turnover such as insurance companies, the gross revenue as per profit and loss account would be taken as sales or turnover.

For pure investment holding companies, there is no business income and therefore should be indicated as not applicable.

### *A2. Cost of Sales*

Where there would be no cost of sales, please indicate not applicable or zero.

### *B1. Other Business Income*

This refers to all gross incomes from business sources other than primary business source, including rental income of a company which is considered as business income pursuant to the IRB guideline.

## Expenses

This is a heading and is not required to be completed.

C1 to C6 relates to other expenses other than cost of sales. Where an expense or part thereof was disclosed as cost of sales, they should be excluded in the disclosure. Information should be disclosed in accordance with the presentation in the accounts.

### *C1. Interest*

This would be the sum of all types of interest on borrowings including bank borrowing interest, commitment fees, interest on advances, etc. but exclude leasing charges and hire-purchase interest and late payment interest. However, if all these interests are grouped in one interest account in the financial statement, it should be reported as per account.

### *C2. Professional, Technical, Management and Legal Fees*

IRB advised that the amount should follow the presentation in the account. Where the professional, technical, management and legal fees have already been included in the cost of sales, then they should not be disclosed here. Similarly, if tax fee is classified as professional fee in the account, then it should be disclosed. If it is disclosed as a separate item as tax fee, then it should not be disclosed. IRB confirmed that audit fees would not be included since it is always separately disclosed in the account.

### *C3. Contract Payments*

This would consist of all contract payments. However, IRB has clarified that if the presentation in the accounts does not contain such items, it should be stated as zero. It was confirmed that where the contract payments form part of the cost of sales, then it should be disclosed as part of the cost of sale and not contract payment.

### *C4. Salary and Wages*

This would include bonuses, allowances, leave pay, overtimes, etc. Where part of the salary costs were included in the cost of sales, that part of the salary costs should not be disclosed here.

### *C6. Other Expenses*

This would be the balancing figure between total expenses and the disclosed expenses.

## Total Expenses

This refers to the sum of C1 to C6. It should tie up with the detailed profit and loss account.

### *D1. Net Profit or Loss*

This is as per the audited accounts. Loss should be indicated by brackets.

*E1. Non-Taxable Income*

This could be extracted from the tax computation. It would include unrealised gains, capital gains, non-taxable portion of extraordinary income/gains, etc., but excludes exempt income.

## Adjustments

This is a heading and does not require completion.

*F1. Non-Allowable Expenses*

This would be the sum of all non-allowable expenses and adjustments from business sources, including adjustments for provisions of expenses and realisation of provision for expenses, adjustments for capital/revenue expenditure wrongly expensed off/capitalised in the accounts, etc. It does not include non-permitted expenses of an investment holding company.

*F2. Schedules 2 & 3 Allowances*

This would be the total claims for basis year capital allowances, balancing allowances and unabsorbed allowances brought forward less balancing charges, if any, in respect of all business sources. Where the balancing charges exceed the total allowances, the result must be indicated in brackets to show negative. (It would give misleading results if one business source has net balancing charge and the other business source have huge unabsorbed capital allowances)

*F4. Other Incentives and Allowances*

This refers to incentives which are allowed to set off against adjusted income such as Industrial Adjustment Allowance, Deductions for Pre-Commencement of Business Training Expenses and Incorporation Expenses, etc.

*H1. Other Incentives and Allowances*

This refers to incentives which are claimed against statutory income. It represents the incentives such as Pioneer Income, Investment Tax Allowance, Reinvestment Allowance, etc. actually utilised.

*J1. Share of Profit or Loss From Partnership*

This can be extracted from audited accounts. Loss should be indicated in brackets.

*K5. Total Losses Brought Forward*

This refers to the amount brought forward before absorbtion by current year business income.

## Other Incomes

This is a heading and does not require to be filled in.

L1 to L3 are incomes after attributable direct expenses before tax at source. For pure *investment holding companies*, dividends, rental and other investment incomes should be disclosed here.

*L1. Net Dividends*

This refers to gross dividend less attributable expenses, such as interest costs, etc. It excludes exempt dividends. *Net dividends* does **not** mean gross dividends less tax deducted.

*L2. Net Interest, Discounts*

Similarly, this refers to gross interest and discount less attributable expenses. It excludes exempt interest.

*L3 Net Rents, Royalties and Premium*

This is also rents, royalties and premiums after deducting attributable expenses. It excludes exempt royalties.

*L4. Other Income*

This includes taxable portion of extraordinary income/gains and other gains falling under Section 4(f) of the Income Tax Act 1967.

*M1. Aggregate Income*

This can be extracted from the tax computation.

## Losses and Deductions

This is a heading and is not required to be filled in.

*N1. Basis Year Loss*

This refers to total adjusted losses including basis year share of partnership loss, before set off against any other income.

*N5. Permitted Expenses*

This is applicable to venture capital companies, investment holding companies and closed-end fund

companies.

*Q1. Tax Payable*
This is as per the tax computation.

*Q2. Tax Repayment*
This refers to refund arising from Section 110 set off as per the tax computation.

## Financial Statistics

This is a heading and is not required to be filled in.

R1 to R15 can be extracted from the **Balance Sheet**. Where the accounts do not show these items, please indicate nil or not applicable. For **R2 to R7**, the amounts stated should be net of provisions, unless the balance sheet has shown otherwise. Inter-companies balances may be reflected in the accounts as trade debtors/other debtors (**R4/R5**) or trade creditors/other creditors (**R9/R10**) depending on the classification in the balance sheet.

*R1 Fixed Assets*
It was pointed out that some fixed assets may have been revalued a long time ago and the cost of these assets may not be readily available. The IRB agreed that the value disclosed should be at the original cost of all fixed assets, and in the absence of which, at latest valuation before any depreciation charges. It is **not** net book value.

*R3. Investments*
Indicate the cost of investments less any diminution in share value, but does not include any inter-companies balances.

*R5. Other Debtors*
This represents the total amount owing by all debtors other than amount owing by trade debtors and directors, and includes inter-companies debit balances which are not related to trade transactions.

*R7. Current Assets*
This is per Balance Sheet disclosure.

## Total Assets

This is as per disclosure in the Balance Sheet.

*R8. Borrowings*
Borrowing includes all borrowings including inter-company borrowings excluding leasing and hire-purchase creditors. It has been pointed out that the information may not be an item which has been separately disclosed in the account. Instead, it may be included in other creditors or aggregate with trade creditors. It was clarified by IRB that in such cases it should be reported as per audited accounts.

*R 10. Other Creditors*
This is the sum of amount owing to all creditors other than amount owing to trade creditors and directors and includes inter-companies credit balances which are not trade related.

*R12. Current Liabilities*
This is as per Balance Sheet disclosure.

## Total Liabilities

This is as per Balance Sheet disclosure.

*R14. Profit and Loss Appropriation Account*
This is as per the accounts.

*R15. Reserves Account*
All reserves, including revaluation reserves, are included in this item but exclude any provisions already disclosed above. Where it has been indicated in the accounts that Reserves include undistributed retained profits, then that part of the undistributed retained profits should be disclosed in R14.

## PART Q

Since there is no guideline issued on the definition of **related companies**, IRB agreed that related companies shall have the meaning as defined under Section 6 of the Companies Act 1965 which states that

*"Where a corporation*

a. *is the holding company of another corporation; or*
b. *is a subsidiary of another corporation; or*
c. *is a subsidiary of the holding company of another corporation*

*that first-mentioned corporation and that other corporation shall ..... be deemed to be related to each other."*

### *Q1. Gross Payments to Non-Residents*

It was agreed that this would represent actual payments on which withholding tax is due or has been accrued in the basis year accounts but would exclude provisions.

## *Related Party Transaction*

This is a heading and does not require any information.

### *Q3 Total Sales to Related Companies in Malaysia*

### *Q4. Total Sales to Related Companies outside Malaysia*

### *Q5. Total Purchase from Related Companies in Malaysia*

### *Q6. Total Purchase from Related Companies outside Malaysia*

The above include sales/purchase of goods and services. IRB has stressed that they would require an analysis of the above.

### *Q7. Total Other Payments to Related Companies in Malaysia*

### *Q8. Total Other Payments to Related Companies outside Malaysia*

The above refers to all payments, including balance sheet items and profit and loss items but excludes payments reported in Q1 to Q6. IRB clarified that gross payments before set off should be shown. Thus repayment of loans will have to disclosed.

### *Q9. Loans from Related Companies in Malaysia*

### *Q10. Loans from Related Companies outside Malaysia*

The above are borrowings from related companies as at the end of the financial year. JRB has clarified that payments on behalf by related companies are **not loans** and therefore should not be included in here.

## PART R

IRB confirmed that accounting period is required instead of basis period and where there is no gross profit, taxpayers may indicate nil or not applicable. IRB has stressed that this part should be completed according to the accounting period.

Where on commencement of business or change of accounting year end, a basis period may crossover two accounting periods, or an accounting period may stretch over two basis periods. The accounting period ended in the preceding year should be reported in current year of assessment, i.e. accounts for the period ended in 1998 should be reported in year of assessment 1999.

Where there is no accounts ended in a particular year, the accounts ended in the subsequent year should be reported. For instance, the normal accounting period of a company ended at 31 December 1996 and change its accounting year end from 31 March 1998 onwards. In the column for year of assessment 1997, the accounts for year ended 31 December 1996 were reported. In the year of assessment 1998, 15-months account ended at 31 March 1998 should be reported. In the year of assessment 1999, the same 15-months account ended 31 March 1998 should be reported.

Where there are two sets of accounts ended during a particular year, the combined accounts needs to be reported in the following year of assessment. Thus if a company changes its financial year end from 31 March 1997 to 31 December 1997, then in year of assessment 1998, both accounts ended at 31 March 1997 and 31 December 1997 must be reported.

# Is Partnership Trading Done on a Commercial Basis

DELIAN ENTERPRISES
Vs
H.M. INSPECTOR OF TAXES (DAVID RICHARD ELLIS

## The issue

Whether trade is being carried on on commercial basis and with a view to the realisation of profits in the trade and the availability of losses under the Income and Corporation Taxes Act 1988 sections 380 and 384.

Delian Enterprises ('the Partnership') appealed through Ian William Kinnear, one of the partners, against the refusal by H M Inspector of Taxes to allow relief covering the years 1990/91 to 1996/97 inclusive pursuant to section 380 Income and Corporation Taxes Act 1988.

The partnership consisted of William Kinnear and his wife Delia Marjorie Kinnear. The Partnership trades as saw doctors offering the service of sharpening saws and other cutting instruments to the general public.

It is not in dispute that the Partnership is engaged in trading but that the Inspector contends that relief for the losses claimed is denied pursuant to section 384 Income and Corporation Taxes Act 1988, which provides as follows, where relevant

....."a loss including any amount in respect of capital allowances which, by virtue of section 383, is to be treated as a loss shall not be available for relief under section 380 unless it is shown that, for the year of assessment in which the losses claims to have been sustained, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade....."

## The Facts

The Partnership between Ian William Kinnear and his wife Delia Majorie was established in April 1990. Prior to the establishment of the Partnership Mr. Kinnear had traded on his own account as a saw doctor from 1981

In 1976 Mr. Kinnear suffered a heart attack at the age of 28. He consequently lost his employment and after convalescence was advised by his doctors not to take demanding work. He was unable to find suitable employment and although he took his former employers to an Employment Tribunal hearing and was successful, he received only a nominal compensation. At the time of his attack his wife, although a qualified school teacher, was not in employment. In order to provide some family income she returned to work as a school teacher initially as a supply teacher.

Mr Kinnear is now aged 61 years and his wife is age 63 years. She has retired from school teaching and is in receipt of a pension. Mr Kinnear described himself as 'not a poor man'. He has some savings and a small portfolio of stocks and shares.

As Mr Kinnear found that he was unable to obtain suitable employment following his coronary, he decided to work for himself, setting himself up as a saw doctor for it was vital for him to earn income to supplement his wife's salary. He possessed a small workshop and initially purchased three electrically powered machine tools with the aid of a loan from his bank, which be repaid within a period of five months. He was reluctant to borrow against his assets in view of his medical history and wished not to saddle his wife with large debts in the event of her becoming a widow. He did not wish to expand to become a large business and was very concerned to avoid any possibility of receivership or bankruptcy.

A short time after his commencement he purchased a Tungsten Carbide tooth grinder and in the early 80s he bought two more machines which he described as high speed steel saw grinders. In the 1982 -1983 period he offered the service of sharpening guillotines to his customers. In the late 80s he bought a small lathe, an arc welder and a mig welder. Throughout he had to purchase hand tools, to replace worn tools and to maintain those which he used.

He spent a considerable time driving around seeking

business but kept his business local to the Dunstable district where he lived. He never refused local offers of business but for the reasons stated above did not accept business from customers at distance.

He made small profits until 1986-87 but from that time onwards until recently he has traded both as an individual and as the Partnership at a loss. From the mid 80s onwards until recently his business has been affected badly by the national recession. Many of his customers have gone bankrupt and he has suffered severely from bad debts.

He has a telephone answering machine and his wife takes messages for him when he is not available.

In 1996 and in 1998 he was hospitalised for operations and on each occasion was unable to work for a period of approximately six months. During the early 1990s he suffered severe depression and was treated by a psychiatrist.

The Partnership has achieved a small profit in the year to 30th April 1998 and is on course to make a larger profit for the year which will end on 30 April 1999.

### Arguments by taxpayer

The taxpayer submitted that the business was not profitable because of his ill health. Additionally it also reflected the general economic conditions that prevailed at the time. Further his business involved sharpening saws mostly allied to the building trade/double glazing industries. The advent of plastic materials particularly in the latter had not helped his trade. He however maintained that he was entitled to the losses.

### Arguments by Revenue

The Revenue contended that the business was not being run on a commercial basis and with a view to the realization of profits on the following factors:

1. The continued losses covering the period 1987 to 1997

2. The belief that the taxpayer continued trading through the Partnership mainly for the obtaining of tax losses to give relief against his liability for tax on his other income.

3. The very low hourly charge made by the taxpayer

### The Court's Decision

The Special Commissioner's found that when the taxpayer set up as a saw doctor he intended to produce income because he had lost his job, that he was unable to obtain another job and that he needed to supplement his wife's earnings as a supply teacher . He did not embark upon a hobby to occupy his time.

He had traveled around his local district seeking business and had purchased a variety of machine tools and hand tools. Further, he had until 1896-1987 made a profit. Since the mid 1980's he had suffered owing to the national recession as many other business had. He had also been in hospital on two occasions in more recent times and has yet shown that his business had begun to make a profit.

Accordingly the Special Commissioners held that the business had been trading on a commercial basis with a view to the realization of profits and the tax payer was entitled to relief on the losses.

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## Does Interest Constitute A Charge On Income

MINK AND OTHERS
Vs
H M INSPECTOR OF TAXES

### The issue

Was the interest payable a charge on income as defined in section 338(2) by virtue of being payable on an advance from a bank carrying on a bona fide banking business in the United Kingdom as mentioned in section 338(3)(b).

If the answer to this issue is "yes", the taxpayer is entitled to a deduction from its profits in respect of interest accruing, regardless of whether or not it was actually paid.

If the answer is "no', is the taxpayer entitled (pursuant to section 338(3)(a) ) to a deduction from its profits in as and when the interest was actually paid. The answer to this question depends upon whether the interest actually paid was 'yearly interest'.

## The Facts

Gerbil and a syndicate of UK banks entered into a joint venture agreement and incorporated a foreign company to develop foreign property. A syndicate of foreign banks made a loan to the foreign company. Both Gerbil and the UK banks guaranteed the loan. The foreign company agreed to indemnify the UK banks against their liabilities under the guarantee. Gerbil covenanted to indemnify the UK banks regarding their prospective liabilities under the guarantee, and guaranteed the foreign company's performance of its promise to indemnify the UK banks.

The foreign company defaulted on its loan obligations. The foreign banks renegotiated the loan. The joint venture was cancelled. Gerbil was released from its guarantee obligations. The foreign banks extended their loan facilities. One of the UK banks paid the sum of GBP 8,510,701 to the foreign banks under the guarantee. In consideration of the payment by the UK bank, Gerbil agreed to repay the UK banks the sum of GBP 8,510,701 with interest at 10.75 percent per annum.

In 1973 a subsidiary of Gerbil entered entered into another foreign property development with another UK bank. The syndicate of foreign banks called the guarantee of this development project. The UK bank made a payment on Gerbil's indebtedness to the foreign banks, and Gerbil became indebted to the UK bank in the amount of GBP 872,359.

The UK syndicate of banks and the other UK bank debited Gerbil in their books with amounts representing the aggregate indebtedness of GBP8,510,701, and thereafter charged and debited interest.

Hamster bank took an assignment of Gerbil's debts from the syndicate of UK banks and the other UK bank, paying a fraction of their face value. Hamster bank continued to charge interest making provision for the interest considered not to be immediately recoverable.

## Argument by taxpayer

Gerbil claimed that it was entitled to treat the interest it owed on the debt to Hamster Bank as a charge on income within section 338, Income and Corporation Taxes Act 1988.

## Arguments by Revenue

The Revenue contended that the transactions which took place did not constitute advances for the purposes of section 338.The UK syndicate in paying under the new agreement was paying its creditor, not making an advance to Gerbil and that remains the case whether the debt to the new agreement was an old one which arose originally or a new one arising from the latter reorganization.

## The court

The court held that interest on a debt does not constitute a charge on income when the debt arises from a reorganization and there is no advance from the lender to the taxpayer

# short news section

## Legal Fee - Tax Deductible

The Canadian Court has held that a lime production company was entitled to deduct legal fees incurred to defend a lawsuit on the basis that the expense was incurred to gain or produce income from a business or property.

Continental Lime Ltd was the successor by amalgamation of two other companies i.e. SB Canada and SB Holdings.

Candou corporation, which owned 17% of the shares in SB Canada went bankrupt. The shares were pledged to the Bank of Montreal and were sold to SB Holdings for $6 million. SB Holding subsequently sold the shares for substantially more money.

Med Finance, which claimed to be a creditor of Candou, alleged that the bank sale was made at a substantial undervalue and sued Continental (as the successor company).

Although costs were awarded to Continental as it won the case, it was unable to fully collect the legal fees from Med Finance. It deducted the uncollected attorney's fees in it's tax returns, which the Revenue disallowed but was allowed by the Canadian Court.

This case has persuasive effect in Malaysia.

## Cost of Leave Passage - Not Deductible

The Malaysian Special Commissioners of income tax have disallowed the cost of leave passage to a controlled company.

The appeal related to cost of leave passage provided to two directors under a service agreement which was disallowed by the Special Commissioners on the basis that they were bound by an earlier decision of the High Court in Saledy Sdn. Bhd. (Saledy)

In the oral judgement delivered on 30th July 1999, the Special Commissioners appear to have accepted the taxpayer's contention that the expenditure in question satisfied the requirements for deduction under section 33(1) and was also not prohibited from deduction under section 39(1). Issue arose prior to the introduction of section 39(l) (m) which disallowed cost of leave passage provided to employees as from the year of assessment 1989. In spite of the taxpayer distinguishing the facts in the appeal with that of Saledy's case, the Special Commissioners stated that they were bound by the decision in the latter case following the doctrine of precedent. Under the doctrine of precedent, a lower court is bound by an earlier decision of a higher court .

In Saledy's case, the cost of leave passage provided to a medical consultant cum director was disallowed on the grounds that the leave passage was utilised by the consultant and his immediate family members for private and vocational purposes and hence nor incurred in the production of income under section 33(l) read together with section 39(1)(b).

The High Court seems to have overlooked the fact that the test for deduction should be determined from the standpoint of the employer. As the cost of leave passage constituted part of the remuneration package of the consultant [section 13(1) (b)], it should be given a deduction similar to other items in the remuneration package e.g. salaries, bonus and cost of medical benefits provided for the consultant and immediate family members.

## New Protocol To Malaysian & Australia Tax Treaty

Australia and Malaysia have signed a protocol to amend the income tax treats~ between the two Countries.

The protocol reflects the current trend to give up the right to tax Section 4A Income in exchange for tax sparing articles so as to encourage further investments into Malaysia.

### Business Profits Article

An important change relates to the application of the business profits article to fees for services, including consultancy services.

Australia has argued in the past that the business profits article applies to professional and similar consultancy fees, and Malaysia has now agreed to this position under the protocol.

As a result, fees for services will be taxable in the country in which the services are utilized only if the sex-vices are actually furnished in that country and the service provider has a fixed presence in that country for more than three months within any 12month period.

Unless this condition is satisfied, the country of residence will enjoy exclusive taxing rights over fee income.

### Tax Sparing

Another feature of the protocol is the extension of Australia's tax sparing relief.

Under the 1981 treaty, Australia agreed to tax sparing regarding tax forgone under particular concessions named in the treaty or other concessions agreed to in a future exchange of letters.

An exchange of letters extending tax-sparing relief for Malaysian tax forgone under nominated development incentive programs until June 30 1987, is expected to be signed soon.

The protocol will extend the concessions a further five years, until June 30, 1992.

Australian companies are generally exempted from tax on foreign dividends received with effect from 1 July 1989. The tax sparing relief provisions would appear to be effective only up to that date.

### Article 13 - Taxing Rights Over Land

The third important change introduced by the protocol is the extension of article 13. which allocates taxing rights over profits from the alienation of land to the jurisdiction in which the land is located.

The article will be extended to land rich companies and trusts whose value is principally attributable to land.

### Effective Dates

Different measures in the protocol will apply from different dates.

The tax sparing provisions will apply after July 1st 1985, or July 1st 1987, depending on the nature of the development incentives.

The protocol will apply in Australia to fees for technical services for tax years commencing on or after July 1, 1993.

All other measures in the protocol will have effect in Australia for tax years beginning on or after July 1 in the calendar year following that in which the protocol enters into force.

## Income Tax (Qualifying Plant Allowances) (Cost of Provision Computer Software) Rules 1999

The above mentioned rules were gazetted on 1st July 1999 under PU(A) 272 which are effective for year of assessment 1999 and subsequent years of assessment.

### Qualifying Expenditure

The definition of qualifying plant expenditure has been defined to mean capital expenditure incurred on the cost of provision of computer software, either the software system or software package.

### Initial Allowances - 20%

The rate of initial allowance is fixed at 20% of qualifying expenditure.

### Annual Allowances - 40%

Annual allowances are fixed at 40% per annum of qualifying expenditure. Effectively software can be written off over two years.

To claim the same rates above for year of assessment 1996 to 1998 on computer software, it is possible to argue that under the word "provision of computers' in paragraph 2 of the Income Tax (Qualifying Plant Allowances) (Computer and Information Technology Equipment) Rules 1998 under PU(A) 187 of 1998, the word should include hardware and software in the general meaning of the word in the absence of specific definition.

The IRB stand is only in respect of hardware. However if the Taxpayer is prepared to go to Court, he will have a fighting chance.

## Treaty Between Taiwan & Malaysia

The income tax treaty of 23 July 1995 between the Taipei Economic and Cultural Office( TECO) in Malaysia and the Malaysian Friendship and Trade Centre (MFTC) in Taipei entered into force on 17 March 1999. According to Article 27 of the treaty, it will become effective on 1st January 2000. The treaty was concluded in the Bahasa Malaysia, Chinese and English language. The English text prevails in the event of a dispute regarding the interpretation and application of the treaty. The treaty applies to persons who are residents of the "area represented by the MFTC in Taipei and "the area represented by the TECO in Malaysia'.

### Dividends

Under the treaty, dividends paid by a company resident in the MFTC to a resident of the TECO are exempt from withholding tax (Malaysia has an imputation system).

Dividends paid by a company resident in the TECO to a resident of the MFTC are subject to withholding tax at a maximum rate of 12.5% .

### Interest

The withholding tax rate for interest is 10%, with an exemption for interest arising in the MFTC paid on a loan or other indebtedness which is an approved loan as defined in Article 2(1) of the Income Tax Act 1967.

### Royalties & Technical Fee

Withholding tax of 10% on royalties and 7.3% on technical fees.

Both the TECO and the MFTC use the credit method to avoid double taxation - The treaty contains tax sparing provisions in respect of both countries.

It should be noted that the US does not have a treaty with Taiwan. US Investments into Taiwan via Malaysia will no doubt be a consideration in future.

## Offshore Gaming Allowable

In an interesting case which has implications to E Commerce, the UK High Court has held that the transmission of data from computer to computer by a modem, and the broadcasting of data alongside a television, signal, do not constitute the distribution of documents within the meaning of Betting and Gaming Duties Act (The Act).

The VCI an Offshore Company carried on an offshore credit betting business and wished to extend its business to UK residents. VCI proposed to do this by advertising on Teletext, a broadcast data service. Teletext's signal is transmitted alongside a terrestrial television signal in the UK. VCI would pay Teletext a fee to broadcast VCI's data on 'pages' on the Teletext service. Members of the public with appropriate equipped' television sets would be able to request VCI's pages. They could then read on their television screens VCI's advertisement containing details as to odds quoted, telephone numbers for placing bets, etc.

The data would be transmitted electronically (by modem or leased line) from VCI's computer in Gilbraltar to Teletexts computer in the UK, where it would be stored. Teletext would edit the data as appropriate and distribute it, again electronically, to various transmission stations from which encoded television signal would be broadcasted. VCI sought a declaration from the Court that such advertising would not constitute a criminal offence.

The Act imposes betting duty on bets made with a bookmaker who is within UK. It also makes it a criminal offence, regarding bets with a bookmaker outside the UK., to knowingly issue, circulate or distribute in Great Britain any advertisement or other document inviting or otherwise relating to the making of such bets.

## OECD Model For Partnerships

The OECD has published the long awaited report on the application of the OECD model tax convention to partnerships.

## Wrong Assessment Not An Agreement

The UK Court of Appeal has held there was no agreement within the meaning of the Taxes Management Act, when the Inland Revenue issued

an erroneous amended notice of assessment in favour of a taxpayer.

## Tonnage Tax

The UK Treasury has released a report on the ramifications of a Tonnage Tax, a fiscal program that would offer new tax breaks to the UK shipping industry to allow it to become more competitive.

What is the tonnage tax? It is a corporation tax with benefits for shipping companies that allows them to operate with little or no taxation. Norway and Netherlands already have tonnage taxes in place and those tax laws are bolstering the Norwegian and Dutch shipping industries.

Government policy in the UK already has tax benefit provisions for the shipping industry. However, no tonnage tax has ever been introduced. The serious and continuing decline in the UK shipping industry has made additional measures favouring the industry appear essential, and a tonnage tax may be far easier to use than current corporate rules.

## Mutuality Principle Goes To Malaysian Court

The Bar Council goes to the Special Commissioners of Income Tax on the issue of muntuality, arguing that they are not subject to income tax.

The mutuality principle proceeds on a two fold basis:

- "a man is not the source of his own income"
- "when a number of individuals agree to contribute funds for a common purpose... and stipulate that their contributions, so far 'as not required for that purpose, shall be repaid to them, I cannot conceive why they should be regarded traders, or why contributions returned to then, should be regarded as profits" as per Lord Watson in New York Life Insurance Co.

Where the principle applies it will produce the result that neither the surplus accruing to the association itself nor any member's share in it is income.

The scope and application of the mutuality principle are well illustrated by cases concerning clubs. These voluntary association of persons agree to maintain certain facilities for their common personal benefits and not for profit. The expenses are met by member's contributions of an amount estimated to be sufficient to cover outgoings.

## DTA With Myamnar

A new double tax relief order with Myanmar has been gazetted

Under Article 13 technical fees derived from one state is taxable in the other state subject to a maximum of 10% of the gross amount of the fee.

The term technical fees means payments of any kind to any person, other than an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

## A Malaysian Insurance Case Which Has Industry Effect, Goes to Special Commissioners of Income Tax

In recent years the insurance industry has incurred significant tax liabilities on a range of issues where the tax treatment is in dispute.

Historically these issues have included

- the issue of riders
- agency compensation
- capital allowances claim on fixed assets used by insurance agents
- foreign source income of a Malaysian life fund of a non-resident insurer
- profit from realisation of investments and section 140
- management expenses

One of the insurers involved is to have their case heard by the Special Commissioner of Income Tax in late September. It is an important case and developments will be closely followed by the insurance industry.

Since 1986, the insurance industry has

been undergoing a number of tax changes. This case relates to a number of the ongoing issues.

## Internet Taxation - Bit Tax & US Sovereigntv Issue

Expressing the sense of US Congress in opposition to "bit tax' on Internet data proposed in the Human Development Report 1999 published by the United Nations Development Programme.

✦ Whereas the Internet has rapidly become a highly valued tool for millions of people in the United States and across the world and promises to become an ever-greater benefit to mankind;

✦ Whereas the Internet has spurred entirely new industries dominated by the United States and has become critical to the continued growth of the economy

✦ Whereas emerging telecommunications technologies promise to extend the benefits of the Internet to ever-growing and far-flung populations;

✦ Whereas the internet should remain tax free;

✦ Whereas any global tax collected by the United Nations would present a threat to the sovereignty of the United States and would violate the United Stares Constitution;

✦ Whereas Americans are by Far the greatest users of the Internet and would thus be disproportionately affected by any global internet tax;

✦ Whereas the most effective and just way to spread technology and wealth is through the operation of a free market;

✦ Whereas the rapidly increasing sophistication and decreasing cost of telecommunications and computing products and services should not be disturbed; and

✦ Whereas the United Nations Development Programme's Human Development Report 1999 proposed that a so called "bit tax' be levied on all data sent through the internet

Resolved by the House of Representatives (the Senate concurring) that Congress urges the Administration to protect the United States sovereignty by aggressively opposing the global "bit tax" proposed in the Human Development Report 1999 published by the United Nations Development Programme.

## No Tax & No Treaty Benefit

India's Authority for Advance Rulings (AAR) has held that the benefits of the India-Oman Income tax treaty are not available to individuals residing in Oman, reasoning that they are not entitled to these benefits because no taxes are payable by them in Oman.

The AAR has taken this stance before with the India-U.A.E. treaty.

It is expressed that "If a taxpayer pays tax or is liable to pay tax under the laws in force in one country alone, he cannot claim any relief from a non-existent burden of double taxation under the DTA's"

Advance rulings are binding only on the transaction at issue and only to the applicant and the tax authorities. However because these rulings do have a persuasive value on tax assessments, they have created some uneasiness among non-resident Indians who have, thus far, enjoyed full benefits of the income tax treaties involved.

## Retrenchment Benefits & 1999 Waiver Year

Income received for basis period ended in 1999 is waived from income tax except for taxable dividend income and employment income of non-citizen individuals or non-resident individuals who commence or cease employment in the year 1999.

The IRB has confirmed that where employment income receivable upon retrenchment or retirement is not liable to tax, such income is not to be included in the calculation of the monthly schedular tax deduction (STD).

This includes retrenchment benefits and compensation paid upon loss of employment for any retrenchment exercise or cessation of employment which takes place in 1999.

It has been confirmed by the IRB that

employers who have complied with the STD rules and remitted the relevant amount due to the IRB can how release the payment to the employees

They need not withhold sums of money or await clearance letters from the IRB in case of retrenchment or cessation of employment which takes place in 1999.

## Decentralisation Collections Branch of the IRS

The decentralisation of the Collections Branch has commenced for Peninsular Malaysia.

The Collections Branch at Petaling Jaya and Shah Alam, offices of IRB has commenced operations. Taxpayers whose assessment files are located at the Petaling Jaya and Shah Alam Branches may contact these branches regarding collections matters.

However, all payments must still be made at the Payment Counter, Government Complex, Jalan Duta, Kuala Lumpur or any Bank Bumiputra Malaysia Berhad branch.

The Collections Units at both Petaling Jaya and Shah Alam branches do not receive payment.

## Repayment of National Higher Education Fund Scholarship Loan to IRB

Repayment of scholarship loans granted by the National Higher Education Fund can now be made to the Collections Branch of the Inland Revenue Board in Jalan Duta

## The Significance of Intangible Property Rights in Transfer Pricing

The US regulations and the OECD guidelines recognise intangible property rights in evaluating transfer prices.

However the controversy still persists over the significance that should be ascribed to intangible property rights when a licensee or distributor makes signifcant contributions to an intangible's economic value.

The economic ownership standard advocated by some would assign tax ownership of intangible value to marketing affiliates that do not possess any legal rights resembling ownership of that intangible value.

General tax law principles, as applied in cases examining the economic substance of intangible property transactions show that disregard of legal ownership rights in such circumstances is not a sound basis.

Legal ownership rights play an important role in how a transaction is to be classified under general tax law principles.

The conclusion drawn from these general tax law principles is consistent with actual arms-length experience and with the economic principles underlying the arms-length standard.

Intangible property rights generally offer the legal owner of the intangible property a number of alternatives for exploiting the intangible property which would represent a bargaining advantage in any negotiation with an unrelated license or distributor.

## What Is A Source Of Income

The High Court has confirmed the decision of the Special Commissioners of Income Tax in the Pernas Securities Case, and has held that:

On the true and proper construction of Section 33(1) and for the purpose or Section 4(c) of the Income Tax Act 1967 each investment does not constitute a separate source of income; and

Pursuant to that as dividend is the only source of income of the company it is erroneous for the Revenue to apportion the interest payable on the loan between investments that produce dividends and those that do not produce dividends.

This principle was further reinforced in the case of UMFM by the Malaysian Special Commissioners who allowed the taxpayers appeal. There was no further appeal in this case to the High Court. The Special Commissioners held:

".....all counters of shares relating to this appeal, whether income producing or
non-income producing, are a single source of income and accordingly all interest incurred on borrowing used to acquire the said shares are to be allowed as deduction under section 33(1) of the Income Tax Act 1967."

In Merrifield, the UK General Commissioners held that interest from two
securities should he assessed as income from the same source. On appeal, the High Court upheld the decision.

In the Forestal Land Case the UK House of Lords held that the dividends should be treated as rising from one source of income only.

In PV Muhamed Ghouse the Indian Court held that interest on borrowings used to purchase shares in a company is deductible as an expense notwithstanding that the shares did not produce any income because, if the assessee had earned income by way of dividend from these shares, the interest payment would have been a proper charge on that income.

In Dr. Fida Hussain G Abbasi the Indian Court held that all that is required was that the expenditure should be incurred solely for the purpose of earning income or making profits or gains, and that it was not required that it should be fruitful.

The Malaysian Special Commissioners have further stated that in section 4 of the Income Tax Act by itself or read together with section 26 of the Act would seem that the words "all gross income from that source..." and "shall be taken to be gross income of the relevant person" as section 26 points to the dividends being assessed in globo and not the dividend from each investment separately.

In the Case Stated in MSB the Malaysian Special Commissioners said that:

"Accordingly we find that all counters of shares to this appeal whether income producing or non income producing are a single source of income, under section 4(c) of the Act"

"Based on the same principle as in respect of dividend income, we find that the case laws discussed above apply equally for interest income"

"Section 4(c) provides for ' dividend, interest or discounts' to be grouped under one category. In as much as dividends from all counters of shares, whether income producing or otherwise, are classified as a single source of income, so should all interest income be treated as a single source of income whether the loans are income producing or non-income producing."

The Revenue relied a great deal on the decision of the Federal Court in River Estates. The Special Commissioner have held that the issue in River Estates was in respect of business i.e. whether the Appellant in the case was carrying on a single business or several businesses. Therefore the case does not apply to the issue before them. The issue before them was section, 4(c) and not section 4(a) of the Act, in view of the fact that the Appellant is an investment holding company.

The dispute continues until such time as the IRB wins or changes the law. The case of MSB is to be watched as it is expected to go all the way. Till then the law is that dividend, interest or other non business income is a single source and not a multiple source.

## WTO & US Foreign Sales Corporation

A World Trade Organisation (WTO) dispute panel has briefly delayed the issuance of its final report on a complaint raised by the European Union that the foreign sales corporation (FSC) provisions of US domestic tax law constitutes an unfair export subsidy.

## E Commerce - OECD's Responses to Tax Problems

The key issues for revenue authorities are:

- to review existing taxation arrangements including concepts of source, residency, permanent

establishment and place of supply, in the light of electronic commerce and to modify the existing arrangements or develop fair alternatives, if required;

✦ to ensure that electronic commerce technolotgies including electronic payment systems, are not used to undermine the ability of revenue authorities to properly administer tax law

✦ to provide a clear and equitable taxation environment For businesses engaged in both physical .and electronic commerce; and

✦ to examine how these new technologies can be exploited to provide better service to tax payers.

Work is underway at OECD to explore these issues and reach agreement on policies to address them.

## Flat 10% Levy Replaces Two Tier System

The exchange control levy system introduced on 15 February 1999 for funds that came in on or after 15th February 1999 was subject to a two tier levy systerm: -

✦ 30% on profits made and repatriated within one year; and

✦ 10% on profits repatriated after one year

With effect from 21st September 1999 a flat 10% levy on repatriation, of profits on portfolio investments replaces the above levy system

This move, while reducing the rate of levy will also make the levy system more efficient to administer.

The change facilitates the merger of the Normal External Account and the Special External Account into one account.

To facilitate the merger of accounts, foreign funds that were brought in between 1 September 1998 to 14 February 1999 will be deemed as funds that have been brought into the country since 1 September 1998 and will not be subject to any levy on the principal amount.

There is no longer any levy on the principal amount.

All profits from funds brought in on or after 15 February 1999 are therefore subject to a levy of 10%.

## RPGT-Stamp Duty Value Discounted

The taxpayer had sold his agricultural land planted with oil palm and rubber and filed in a real property gains tax return showing a disposal price of RM 1.8 million

The taxpayer which was a company signed a sale and purchase agreement for RM1.8 million

The stamp duty valuation came to RM4.6 million.

The taxpayer filed an appeal stating that the value was nor fair and reasonable and it did not reflect the market value of the land. As such the real property gains tax assessment was excessive.

The Revenue contended before the Special Commissioner of income tax that the marker value of the land at RM4.6 million was a fair and reasonable value.

The case was settled under section 102 of the Income Tax Act.

The parties came to the agreement that the market value of the land be reduced from RM4.6 million to RM4.3 million.

It has been the practice of the Revenue to rely on the stamp duty value. Such value can be discounted as evidenced in this case.

## WTO Panel Issues Final Report Condemning US. FSC Regime

The World Trade Organisation (WTO) has confirmed that its dispute pane has issued a final report condemning the U.S. foreign sales corporation (FSC) tax regime as an illegal export subsidy, calling for the statutory scheme to be abolished by October 1, 2000.

The Geneva based WTO has now acknowledged through a September 20 press release that the recently complete final report upholds the findings of the panel's preliminary report on FSCs released in late July.

U.S. Trade Ambassador Charlene Barshefsky had previously criticised the WTO panel's interim report for "systematically disregarding the history of this issue, the applicable WTO legal rule concerning income tax measures, and the facts of record before it."

The Office of the U.S. Trade representative has not yet released any public comment on this latest report and U.S. officials have thus far refrained from indicating whether they will appeal the report's conclusions although such a manoeuvre seems likely.

The United States will have 60 days from circulation of the report to decide whether to appeal.

## User-friendly Tax Forms next year

It was reported in a daily that taxpayers would receive less wordy and easier to understand forms for declaration of their income. The forms would also have new section for self-assessment of income. The new B form will only be in Bahasa Malaysia but detailed guidelines in English will be provided.

## Property as long-term investment

In the Hong Kong case 142, Inland Revenue Board of Review, the taxpayer had acquired and sold two properties within a period of one and a half years. He claimed that the profits were capital gains while the Commissioner of Taxes assessed the profits to profits tax. The Board of Review found that the taxpayer intended to sell these properties at a profit and therefore the profits derived was assessable to profits tax.

This case also underlies the similar treatment adopted by the Malaysian authorities. Assets acquired for a short period of time, together with other badges of trade, will trigger the revenue to consider whether an adventure in the nature of trade has indeed occurred.

In the Malaysian case of PU Sdn Bhd V Ketua Pengarah JHDN (1995) 2 MSTC 2229, the taxpayer bought and sold shares in batches within a short period of 25 months. Borrowed funds to commence activity of the share acquisition and sales in addition suggested an intention to trade. Therefore the shares were regarded as stock in trade and gains assessable to income tax. The principle in Wisdom V Chamberlin 45 TC 92 was referred to that assets held for short term period will often be the subject of an adventure in the nature of trade.

## Deposits for club membership taxed as Income

In the case of PR Pte. Ltd V The Comptroller of Income tax that came before the Board of Review, fees paid by new members to a Club were classified as deposits (85%) and entrance fees (15%). Though the deposits were refundable the Revenue treated them as income and assessed them to tax.

This case highlights the tax problem facing clubs which offer recreational facilities In general these clubs collect entrance fees prior to the construction of facilities. These fees, which are usually substantial, represent taxable income and at the time when such fees are received there would be little deductible expense to offset the fees. The construction cost of the facilities would in addition not be deductible as it would be capital in nature.

The end result is that the club would be subject to tax on a substantial portion of the entrance fees received in the initial year of operations whilst not being able to benefit from the construction costs of facilities.

## Labuan - The Only Malaysian IOFC

Bank Negara has unveiled its blueprint lot the next important stage of development of the Labuan International Offshore Financial Center (IOFC).

At the end of the day, Labuan is expected to become reputable, well regulated, vibrant and a premier center.

At the 4th Labuan Annual Lecture Series 1959 held in Labuan on 6 October 1999, the Governor of Bank Negara Malaysia announced, among others the following:

- Ringgit Loan Market

Giving offshore banks limited access to the ringgit loan market. The move would provide companies, especially

those under restructuring with an additional avenue of financing whilst providing some business opportunities to offshore banks.

✦ Top 200 Banks

Lifting the restriction on eligibility of participation by offshore banks an Labuan, previously limited to just the top 200 banks in the world. Banks can now be considered, if they have sound track record, are accorded with a good credit rating by acceptable rating agencies, are supervised by a relevant regulatory body and conform to generally accepted standards of international banking practices.

✦ LIFE

Launching of a virtual global exchange known as the Labuan International Financial Exchange, targeted in March 2000. The 24-hour exchange, which will provide listing and trading facilities for financial and non-financial products, will be developed and wholly owned by the KLSE.

✦ Global Islamic Money Markets

The development of a global network of Islamic money market to cater to the needs of financial institutions worldwide seeking global financing.

The Islamic money market will be the US dollar based and will facilitate liquidity management 24 hours.

Under the concept of a liquidity management house, participants will provide the necessary standby credit lines to facilitate liquidity in the international money market.

This will play the role of last resort and liquidity manager globally. It will appoint agents in selected financial centers to serve a particular region and time zone.

✦ World Wide Web

Investing in a gateway the World Wide Web in which offshore players will connect players with nodes provided to facilitate innovations and interfacing with customers.

✦ Trust Companies

The 65% tax rebate given to trust companies which expires in year 2000 has now been extended for another five years to year or assessment 2004.

✦ Non Resident Citizen Manager

50% of income of non resident (citizen) manager working for a Labuan trust company will be exempted from tax for the year of assessment 1998 to 2001.

✦ Expatriates

50% tax rebate given to expatriates is also extended for another five years.

✦ Civil Servants

50% of the housing and regional allowances given to residents working in the Government sector and offshore companies in Labuan will be exempted from tax for the year of assessment 1998 to 2001:

✦ Second Tier Dividends

The "second tier" dividends paid by an offshore company to a domestic company will be exempted from tax.

✦ Stamp Duty

The stamp duty for the transfer of shares and preparation and filing of Memorandum & Articles by offshore companies will be waived.

## Regrossing The Payment - Fees or Tax?

A controversy is brewing on whether, when regrossing is done, the regressed amount is a tax or a fee.

This happens, when the tax portion of the payment is to be paid for, by the payer and not the payee.

In practice the full regrossed amount has been claimed as part of fee.

Should the regrossed portion of the total payment be a payment in lieu of income tax, there is no deduction in computing adjusted income.

The General Rule:

✦ To enjoy a tax deduction the expense must he incurred wholly and exclusively in the production of income.

✦ It depends on the type of tax. Those in connection with the operations of the business are deductible in computing adjusted taxable income.

✦ Examples of these taxes are sales tax, property tax, customs duties and levies

✦ The non deductible taxes are income tax, stamp duty on transfer of property.

✦ Income tax is not incurred in the production of income from that source but is an appropriation of profits.

We will have to wait for the Court to decide, whether the regrossed amount is a tax or a fee. An Australian case has indicated that the income tax is part of the fee.

## Tax Deductions In January 2000

All employers are required to commence deducting the Schedular Tax Deduction payments for all employees with effect from January 2000.

Employees who were on a current year basis, need not have income tax deducted from their employment Income in 1999.

## Self Assessment Bill 1999

The Self Assessment Bill is expected to be tabled any time now before the National Budget 2000, which is expected to be announced on 29th October 1999.

## Alternative Dispute Resolution

Arbitration has long been used as a means of resolving commercial disputes, but has not been widely used in the tax area.

This situation may change, as a result of growing international interest in alternative dispute resolution (ADR) techniques.

An International Fiscal Association panel considered on October 13 the various:
*techniques that might be used to resolve tax disputes after an audit, especially international disputes, through use of ADR procedures.*

Among the procedures considered were:

✦ those proposed by the U.S. Internal Revenue Service in 1998

✦ the arbitration provisions currently included in 34 income tax treaties entered into by 28 countries; and

✦ the EU arbitration convention and its May 25 1999 protocol.

Non tax dispute-resolution procedures were also scrutinized by the panel, including the procedures used by the World Trade Organization to resolve disputes among trading partners. Lessons for tax arbitration can be taken from commercial arbitration procedures, the panel concluded.

## Sincere Leasing Case - Not Final

The Court of Appeal has stated that the Case Stated need to be forwarded to all parties for agreement before it can be sent to the High Court.

This effectively reinforces that position as stated by Chief Justice SS Gill in the case of E.

As of late, the Special Commissioners have not been forwarding the Case Stated to all parties, before forwarding it to the High Court. This has aggrieved some parities that their case has not been properly stated.

The Special Commissioner are the final authority on Fact. Appeal can only be made on points of Law to the higher courts.

The next effect is that the decision in the above case is not final until the case is properly restated.

It will now take longer for Cases to be stated for the opinion of the High Court.

## Ultimate In Anonymity- New Identity

The islands of the eastern Caribbean are aggressively trying to expand their offshore financial industries by making it even easier for investors to keep their business secret, and U.S. and other law enforcement agencies are taking note, the Washington Post says.

Several islands are promoting the ultimate in anonymity. They will sell citizenship along with the right to a new name on a new passport.

## China

There have been several recent changes in PRC business and taxation regulations which may have significant impact on businesses in that country . It covers the following:

- ✦ Tax Registration Renewals
- ✦ New Import Control Procedures on Processing Factories
- ✦ Encouraging Export of Goods from China
- ✦ Encouraging the Development and Transfer of Advanced Technology
- ✦ Opening up Previously Restricted Industries in preparation for entry into the WTO
- ✦ Financial Support to Foreign Investment Enterprises
- ✦ Tax On Bank Deposit Interest

## Section 114 Income Tax (Amendment) (No.2) Bill 1999

The concept of 'reasonable care' introduced by Section 114 of the Income Tax (Amendment) (No.2) Bill 1999 provides as follows:

*"Any person who assists in, or advises with respect to, the preparation of any return where the return results in an understatement of the liability for tax of another person shall, unless he satisfies the court that the assistance or advice was given with reasonable care be guilty of an offence and shall, on conviction, be liable to a fine of not less than two thousand ringgit and not more than twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both.*

1. ***Meaning of 'reasonable care'***

The word 'reasonable care' is not clarified in the above Bill. Until such time when the IRB provides the clarification, let us refer to Australian legislation for guidance.

In Australia, the reasonable care test requires a taxpayer to exercise the care that a reasonable ordinary person would exercise in the circumstances of the taxpayer to fulfill the taxpayer's tax obligations. The test looks to whether an ordinary person, in all the circumstances of the taxpayer, would have foreseen as a reasonable probability or likelihood the prospect that the act or failure to act would result in a shortfall. The test does not depend on the actual intentions of the taxpayer.

This test is an objective one although it takes into account subjective factors. This means the test would be to compare the guilty taxpayer with an ordinary man who would be 'clothed' with the same knowledge the taxpayer has and to see if he, the ordinary man would react in the same way as the guilty taxpayer had.

2. ***Imposition of penalty***

The Australian legislation places the penalty on the taxpayer for failure to act with reasonable care where a tax shortfall occurs.

The Malaysian legislation however proposes to penalise any person who assists in or advises in the preparation of any such return. Potentially "any person" includes directors, finance controllers, auditors, company secretaries and even authorised officers of the IRB who issues an erroneous ruling that has been followed by the company and tax agents or tax advisors.

Albeit wider in scope, it is hoped that the penalties would reasonably be dependent on the extent of culpability of the person who failed to act with reasonable care.

Generally, the standard of reasonable care applying to a registered tax agent who holds himself or herself out to be a competent professional, would be far higher than that applying to an ordinary taxpayer. Taxpayers may discharge their duty of reasonable care by using advice from tax advisors, even if such advice is wrong.

It is also to be noted that the amount of the tax understated is irrelevant. It need not be a material understatement for the penalties to be applied.

3. ***Recovery of penalty***

In Australia, where the taxpayer has suffered a penalty, he can seek to recover from the tax agent where the latter had failed to exercise reasonable care which resulted in the taxpayer being penalised.

In the Malaysian context however, there is no similar section available in the proposed legislation to a taxpayer where the IRB penalises him for understatement of tax. Notwithstanding this the taxpayer can still take an action in order to seek damages from persons who have contributed to the understatement of tax.

*4. Points to ponder*

It will be interesting to note how the new tax return will be designed

✦ In the present tax return form, an authorised signatory of the company (eg. Director), signs under the heading 'Signature Of Person Making The Return'.

✦ Will there be a statutory declaration by persons preparing the return to declare that reasonable care has been exercised?

✦ Will there be an exception for persons who assist in lodging the return without being involved in its preparation (i.e. lodgment agent)?

## Electronic Commerce & Permanent Establishment (PE)

The OECD has come up with a draft proposal on the status of PEs.

In order to determine whether a PE exists, a distinction must be made between computer equipment on the one hand and data and software on the other. Only computer equipment may constitute a fixed place of business.

Data and software cannot be a fixed place of business as they do not involve the presence of facilities such as premises, machinery or equipment.

**Example**

A web site cannot in itself constitute a fixed place of business as tangible property is not involved. The use of Server Farms will be very useful in avoiding a PE status. As there is no PE there is no exposure to income tax, where a tax treaty exists.

Where company A carries on its business through a web site located on a server operated by company B, company A should not be deemed to have a PE in the state where the server is located because the server cannot be considered as being at its disposal.

*Equipment*

Equipment used for e-commerce may be considered to be a fixed place of business, even where no personnel are physically present in the place where the equipment is located.

Equipment used for e-commerce entails the presence of a PE only if it may be considered to be fixed within the meaning of Article 5(1) of the Model Convention. Whilst the location is important, the function is also very important under Article 5(3).

*Internet Service Providers*

Internet service providers and businesses hosting the web site of other enterprises on their servers generally cannot be considered as being agency PEs of the latter enterprises. However this could be the case in 'very unusual circumstances.' They cannot he considered to be either dependent agents as they do not have the authority to conclude contracts in the name of the other enterprises, or independent agents as they act in the ordinary course of their business.

It must be noted that many of the Malaysian Tax Agreements are modeled on the OECD model.

## Commerce in Outer Space

In addition to Electronic Commerce, a new frontier is opening up. That is outer space. Currently the lots available for satellite locations are almost taken up. Malaysia has two slots to its credit.

The first of a series of articles discussing :whether a targeted tax incentive can be an effective means of encouraging space-related commerce. These articles can be found in ''The Journal of International Tax.'

## Transfer Pricing

Transfer Pricing will be an important issue when self assessment regime is introduced in Malaysia in the year of assessment 2001.

New guidelines have been issued by the following authorities as to the treatment of transfer pricing in overseas countries. These guidelines

are only persuasive in nature.

✦ Final Guidelines On Transfer Pricing Rules by the Canadian Revenue

✦ Guidelines on Advance Pricing Agreements by the French Revenue.

In addition to the above many other developed countries have transfer pricing rules and guidelines.

*Compaq Computer's Case*

The Tax Court of United States has upheld the transfer pricing and the use of the comparable uncontrolled price (CUP) method in Compaq Computer Corporation's case. The Compaq case involved the sale of printed circuit assemblies (PCAs) by Compaq's Singapore manufacturing subsidiary to its US parent company.

The Tax Court found that the price paid by Compaq US to Compaq Asia for the PCAs was comparable, after adjustments for the differences in the physical property and the circumstances of the sales, to the price paid for the PCAs by Compaq US to unrelated subcontractors. The PCAs in the controlled and uncontrolled transactions were found to be sufficiently identical to permit the use of the CUP method. The IRS argued that the price for the PCAs should be determined using a profits based fourth method, but the Tax Court rejected this approach.

## Self Assessment

Companies with a 31st January year end enters self assessment on 1st February 2000.

The estimate of tax payable can only be changed once in August 2000.

There are penalties for under-estimation of tax liability.

## Video Conferencing Directors Meeting - Tax Implications

The place of residence of a company effects the country that has taxing rights over its income and the basis on which that income is taxed.

Although Malaysia's scope of charge is territorial some developed countries have a world scope basis of taxation. If the company is tax resident in these countries, then the company can be taxed on a world scope basis. Tax treaties do provide for a basis of residence status in dual residence situations.

A company is usually tax resident where its central control and management is. This is a question of fact. The place where the highest level of key business decisions are taken is a crucial factor. This is usually the place where the Board of Directors meet.

Technological advances have made it possible for central management and control to be exercised in more than one country. Businesses may increasingly have a presence in many different locations. The Board of Directors and other key managers may hold virtual rather than physical meetings.

This can be done by Video conferencing or other electronic media. This can lead to double taxation, especially in countries where we do not have, tax treaties.

## Tax Deductions For Employees In 2000

Employers are required to commence the deduction of income tax from their employees remuneration, commencing January 2000.

**Q U O T E**

The battle for control and leadership of the world has always been waged most effectively at the idea level. An idea, whether right or wrong, that captures the minds of a nation's youth will soon work its way into every area of society, especially in our multimedia age. Ideas determine consequences.

**The American Covenant**

# EXAMINATION TECHNIQUE

This article is to assist students in improving their techniques in tackling the coming examinations in December 1999. The examination techniques listed below is very general and applies to all papers. However, some examples are selected from specific paper(s).

## 1. Use your Time Productively

a. Do not spend the first minute or two writing down the question, either paraphrasing it or, as some students do, simply repeating it. There are absolutely no marks to be gained here.

b. Do not spend time underlining words, phrases or sentences which you think are of special importance. The Examiner will be carefully reading your script, and does not need any extra guidance to the main points in your answer.

c. Do not use liquid paper, Tippex, etc. to erase any mistakes. Applying the liquid, and then waiting for it to dry, is far too time-consuming to be worthwhile. Just put a line through anything you don't want to be considered by the Examiner.

d. Do not spend time repeating part of an answer. Some students, especially if they are particularly pleased with something they have just written in an essay type answer, will proceed to simply paraphrase this answer in the next paragraph, repeating the content and adding no further information or comment. No extra marks are given for this effort.

e. Do not waste time adding explanations to computations if the question does not expressly require these explanations. For example, in taxation examinations, students often write wordy explanations of why an item may be deductible/assessable for tax purposes. Unless the question specifically asks for such explanation, no marks can be awarded here; they are only awarded for the computation. Valuable time is therefore lost.

## 2. Answer the Question

Some students think that writing down everything they know on a certain topic is a substitute for a careful consideration of a response. Well, it is not. Remember, it is what the Examiner wants which is important, not what you want to write. Put yourself in the Examiner's shoes, and consider how he/she will award marks for the answer.

a. Read the question carefully. Then read it again. Grasp the key words in the question. (In the second reading, it is often a good idea to underline the important words, especially the verb(s) of the sentence explaining the question requirement).

b. Read the question from top to bottom (not just the first part). This will avoid the possibility of you providing a (partial) answer to part (b) in part (a), thus wasting time in the first part of the question and then later having to repeat yourself. It is also quite often the case that a consideration of what is required in part (b) will give an extra insight into what is specifically required in part (a).

c. Analyse the requirements of the question to ensure that you answer all parts. For example, the question was to name two forms of voluntary winding up of a company and how they are initiated or commenced. Students were required to state specifically how it was initiated or commenced but wrote, instead, on the process of winding up and how it was carried out. Some students also wasted time by writing and discussing on court winding up, whereas the question only referred to voluntary winding up.

d. Comply with what the Examiner requires, no matter how trivial you view the requirement.

e. Answer the question directly, and succinctly. As mentioned above, do not waste time putting down everything you know about the topic without thinking

whether it is required. If the question is of the case study or problem solving variety, try and avoid making general statements without reference to the case or without putting your comments in context.

## 3. Plan Your Answer

After reading carefully through the question, you should spend a minute or two planning your answer, especially in the case of essay questions. Your plan should be on a rough sheet of paper (some students use the examination paper itself) and consist of a brief outline of your answer (a list of sub-headings is probably enough). Planning in this way has the benefits of arranging the logical flow of your arguments and avoiding inconsistencies, illogical conclusions and contradictions in your answer.

## 4. Use Appropriate English

Examiners have stressed on several occasions that students will not be graded directly on the finer points of their English, such as grammatical correctness. However, you need to get your message across in a clear, unambiguous way. It is surprisingly easy to produce sentences which have a double meaning, leaving the Examiner confused. Examiners will not necessarily give you the benefit of the doubt if your prose is confusing or ambiguous. The best way to avoid this is to use a simple style. Avoid flowery, over-complicated English. A simple style has the attraction of getting to the point speedily and in addition is considered appropriate as it is good modern business style.

## 5. Remember to Time Yourself

The Examiners reported that a common mistake amongst students is to spend too much time on one question, leaving too little time to make a serious attempt at the others. Remember, if you make a reasonable attempt at all questions, then your chances of passing the examination are considerably better than if you do not make an effort at all at a question, or even some parts of a question.

Also, giving yourself time for all questions is important since marks are, as a rule, easier to accumulate at an early stage in each answer; in general, the longer you spend on a question, the more difficult it becomes to earn an additional mark. So give yourself enough time to have at least a fair chance at earning some comparatively easy marks in each question.

A good idea is to allocate time for (part of) a question based on marks allocated to it (in a three-hour, 100 mark examination, the allocation would be 1.8 minutes per mark) as a rough guideline. Perform a quick calculation at the beginning of the question and mark the time on your watch. Do not constrain yourself too much by this guideline, but be aware that by straying over your time on one question you are putting yourself at a disadvantage for the remaining questions.

## 6. Show your workings

In computation questions, you should clearly show your workings. If you do not (and this is a common criticism amongst Examiners), and the final answer is incorrect, the Examiners can give you no credit whatsoever for your effort.

## 7. Support your Statements/ Conclusions

Justify any statements you make or conclusions you reach. Statements made must be supported either by evidence (often given in the text of question) or by referring to theory. Too often, students will give an answer without showing any reasons or justification; this is unlikely to impress the Examiner.

The above are the most important recommendations made by the Examiners, and reflect the current deficiencies which are readily apparent in MIT students' examination scripts. By making appropriate changes to their technique in the examination room, students will find that they can considerably enhance their chances of examination success.

*GOOD LUCK IN THE DECEMBER 1999 EXAMINATION SESSION!!*

# MIT Professional Examinations December 1999

# GUIDANCE NOTES

Students sitting for the examinations in December 1999 are strongly advised to read the following Guidance Notes, which give guidance on:

- Examinable legislation
- Examinable documents in the Financial Accounting papers
- Tax rates and allowances, tables and formulae given in the exam; and
- Format and approach for each paper

## Examinable Legislation

Questions involving knowledge of legislation will be based on Malaysian legislation and students are expected to have knowledge of recent changes in legislation. However, no questions on the new legislation will be set until at least 6 months have lapsed since the last day of the month in which Royal Assent was given to the new legislation.

## Examinable Documents

For the taxation papers, the latest Finance Act which will be examined at the December 1999 session is the Finance (No. 2) Act 1998 (Act 591). The Income Tax (Amendment) Act 1999 relating to the waiver year and the current year basis of assessment will not be examined. With regard to prospective legislation when, for example, provisions included in the Finance Act will only take effect at some date in the future, such legislation will not normally be examined until such time as it actually takes effect.

In the Financial Accounting I & II papers, the following accounting standards are examinable:

1. International Accounting Standards approved by the Malaysian Institute of Accountants; and

2. Malaysian Accounting Standards issued by the Malaysian Institute of Accountants.

## Tax rates and allowances

Where relevant, the personal income tax rates for resident individuals will be included in the examination paper.

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*Title of paper* : **Taxation I**

*Format* : The paper consists of six compulsory questions.

*Special exclusion* : None.

*Other information* : Students are reminded that all workings must be shown in answering examination questions. You are also reminded to read articles published in the Tax Nasional, the Institute's journal.

*Title of paper* : **Economics and Business Statistics**

*Format* : The paper consists of **TWO SECTIONS**: Section A - Economics and Section B - Business Statistics. Section A contains four questions and Section B contains three questions. Students are to **ANSWER FIVE** questions; two from each section and one from either section. Each question carries equal marks.

*Special exclusion* : The following topics are excluded for this exam:

- Economics : Factors market,
  Basic economic systems,
  Economic growth,
  Banks and financial institutions.
- Business Statistics : Expectation: application to decision problems,
  Regression and Correlation.

*Other information* : Relevant diagrams/formulae attached to the answers will be awarded marks. Students are also encouraged to quote suitable examples and statistical data on various economic issues relevant to their answers.

For the statistics section, a list of formulae will be supplied. The formulae covers the following areas:

A. Sample statistics
B. Regression and Correlation
C. Standard errors and test statistic

*Title of paper* : **Financial Accounting I**

*Format* : The paper consists of four compulsory questions.

*Special exclusion* : None.

*Other information* : Awareness of International Accounting Standards relevant to the syllabus is expected. Detailed provisions of these standards will not be examined. Awareness of the provisions in the Companies Act, 1965 is required but details of the Act is not examinable. All relevant workings must be shown in answering the examination questions. Marks will be awarded for such workings.

*Title of paper* : **Taxation II**

*Tax Rates and Allowances* : Where relevant, the personal income tax rates for resident individuals and rates of capital allowances will be included in the examination paper.

*Format* : The paper consists of five compulsory questions.

*Special exclusion* : None.

*Other information* : Students are encouraged to show all workings.

*Title of paper* : **Taxation III**

*Tax rates and Allowances* : Where relevant, details of income tax rates and capital allowance rates will be included in the examination paper.

*Format* : The paper consists of five compulsory questions.

*Special exclusion* : Petroleum income tax.

*Other information* : Students are reminded that all workings must be shown in answering examination questions. You are also encouraged to read articles published in the Tax Nasional.

*Title of paper* : **Company and Business Law**

*Format* : Section A will contain questions on Company Law and Section B on Business Law.

Students are required to answer:

| | | |
|---|---|---|
| a. | From Section A: **Two** (out of four) | 40 |
| b. | From Section B: **Two** (out of five) | 40 |
| c. | **One** question from **either** Section A or B | 20 |

*Special exclusion* : None.

*Other information* : Questions involving knowledge of legislation will be based on Malaysian legislation, Malaysian case law as well as English cases. Students are advised to be familiar with the following:

a. For Company Law: Companies Act 1965 (Revised 1973).
b. For Business Law: Contracts Act 1950 (Revised 1974), the Sale of Goods Act 1957 (Revised 1989), the Hire-Purchase Act 1967 (Revised 1978) and Bankruptcy Act 1967.

*Title of paper* : **Financial Accounting II**

*Format* : The paper consists of four compulsory questions.

*Special exclusion* : None.

*Scope* :

- Preparation of Financial Statements for a single company as well as for a group of companies, and in compliance with the relevant provisions of the Companies Act and relevant Accounting Standards;
- Understanding and interpretation of Financial Statements;
- Accounting treatment and understanding of transactions pertaining to equity of companies; and
- Accounting treatment and understanding of transactions carried out by different unit/branch of an enterprise.

*Other information* : Students are reminded that all workings must be shown.

*Title of paper* : **Taxation IV**

*Format* : The paper consists of six questions and students are required to answer five.

*Special exclusion* : None.

*Other information* : Students are reminded that all answers must be supported with relevant case law, if any. You are also reminded to read:

- Tax Nasional
- Malaysian and Singapore Tax Cases (by CCH)

*Title of paper* : **Taxation V**

*Format* : The examination paper consists of five compulsory questions.

*Special exclusion* : None.

| | | |
|---|---|---|
| *Other information* | : | Students are reminded that all workings must be shown in answering examination questions. Students are also reminded to read the Tax Nasional and be aware of topics such as self assessment, transfer pricing, tax systems and reforms and other current developments. |
| *Title of paper* | : | **Business and Financial Management** |
| *Format* | : | The examination paper consists of six questions. There will be two questions on business management and four questions on financial management. Students are required to answer any five questions out of six questions set. Each question carries 20 marks. |
| *Special exclusion* | : | Topics on advanced business and financial theories will not be set. |
| *Other information* | : | All existing regulatory provisions and legislation governing business and financial management are examinable. These include regulations concerning business management, capital and financial markets, and financial systems in Malaysia. Any new legislation will not be set until 6 months have lapsed since the last day of the month in which it actually takes effect. In all cases, legislation and regulatory provisions will not be examined as a separate question by itself. They will most probably be incorporated as part of the question. For example, a question on project appraisal may require knowledge of current tax rate and capital allowances. Similarly, a question on investments may require knowledge of the stock exchange regulations and listing requirements. Students should, however, concentrate on the principles of business and financial management which are discussed in the prescribed texts and reading materials of the Institute. Application of the principles in the Malaysian context is normally required in the examination questions. Students are reminded that answers should be presented clearly to show the application of the principles applied. Wherever applicable, relevant workings should be prepared separately from the answers and submitted together with the answers. |

## ANNOUNCEMENT OF REVISION OF EXAMINATION FEES

We wish to inform that the Council of the Institute had revised the MIT examination fees effective from the December 1999 examination as follows:

| | EXAMINATION FEES | |
|---|---|---|
| | CURRENT | EFFECTIVE DECEMBER 1999 SITTING |
| Foundation Level | RM40 | RM50 |
| Intermediate Level | RM50 | RM60 |
| Final Level | RM60 | RM70 |

# Update On Matters Concerning MIT Professional Examinations:

## 1. Tax Agent's Licence under the Income Tax Act 1967

Following various submissions by the Institute, the Ministry of Finance has agreed to recognise the MIT qualification as being one of the qualifications recognised for purposes of being eligible to apply for a tax agent's licence under Section 153(3) of the Income Tax Act, 1967. However, the conditions stipulated by the Ministry are as follows:

1.1 Applicants must obtain principal level passes in at least two subjects of the STPM examination in order to take the MIT examinations, and other than passing the MIT examinations, they have to possess at least 10 years of working experience; and

1.2 Applicants who are graduates and have passed the MIT examinations must possess at least 5 years of working experience before becoming a member of MIT.

The Institute will be clarifying some of the matters with the Ministry soon.

## 2. Matured Students Category

Students in this category are to take note of the development stated in (1) above. For the time being, the Institute will no longer be processing applications in this category. Existing students can continue with the MIT examinations as the MIT qualification is recognised within the tax profession.

The Institute will continue to pursue further discussions with the relevant authorities from time to time to enhance the recognition of the MIT qualification.

For further enquiries, please contact Ms Tam Kam Peng, Head of Examinations Department.

**TIME TABLE FOR THE MIT EXAMINATION FROM 13 - 17 DECEMBER 1999**

| Time | 13 - 12 - 1999 (Monday) | 14 - 12 - 1999 (Tuesday) | 15 - 12 - 1999 (Wednesday) | 16 - 12 - 1999 (Thursday) | 17 - 12 - 1999 (Friday) |
|---|---|---|---|---|---|
| 9.00am - 12.15pm* | Taxation I | Business & Financial Management | Financial Accounting II | Economics & Business Statistics | Financial Accounting I |
| 2.00pm - 5.15pm * | Company & Business Law | Taxation II | Taxation III | Taxation IV | Taxation V |

*Including 15 minutes reading time.

# MIT Professional Examination

## CALENDAR FOR 1999

| | |
|---|---|
| *January 1* | Annual Subscription for 1999 payable. |
| *February 14* | Release of the 1998 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 1999 without penalty (RM50). |
| *April 30* | Last date for payment of annual subscription for 1999 with penalty (RM100). Students who fail to pay will be transferred to the inactive file. |
| *May 31* | Question & Answer Booklets available for distribution. |
| *September 1* | Closing date of registration of new students who wish to sit for the December 1999 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, before 15 October 1999. |
| *November 30* | Despatch of Examination Notification Letter. |
| *December* (dates to be confirmed) | MIT Examination. |

# PILOT PAPERS , DECEMBER 1995, 1996 , 1997 & 1998 EXAMINATIONS QUESTIONS AND ANSWERS BOOKLET ORDER FORM

To:

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

Full Name Mr/Mrs/Miss/Ms: _____

Address: _____

_____ Student Reg. No: _____

## *MIT REGISTERED STUDENTS & MIT MEMBERS*

| YEAR | COST PER LEVEL | | |
|---|---|---|---|
| | Level I/Foundation | Level II/Intermediate | Level III/Final |
| 1998 EXAMINATIONS BOOKLETS | RM5.00 | RM6.00 | RM 11.00 |
| 1997 EXAMINATIONS BOOKLETS | RM5.00 | RM6.00 | RM11.00 |
| 1996 EXAMINATIONS BOOKLETS | RM5.00 | RM6.00 | RM11.00 |
| 1995 EXAMINATIONS BOOKLETS | RM5.00 | RM6.00 | RM 5.50 |
| PILOT PAPERS BOOKLETS | RM5.00 | RM6.00 | RM11.00 |

## *NON-MIT REGISTERED STUDENTS & NON-MIT MEMBERS*

| YEAR | COST PER LEVEL | | |
|---|---|---|---|
| | Level I/Foundation | Level II/Intermediate | Level III/Final |
| 1998 EXAMINATIONS BOOKLETS | RM7.00 | RM8.00 | RM13.00 |
| 1997 EXAMINATIONS BOOKLETS | RM7.00 | RM8.00 | RM13.00 |
| 1996 EXAMINATIONS BOOKLETS | RM7.00 | RM8.00 | RM13.00 |
| 1995 EXAMINATIONS BOOKLETS | RM7.00 | RM8.00 | RM 7.50 |
| PILOT PAPERS BOOKLETS | RM7.00 | RM8.00 | RM13.00 |

***Please tick box(es) to indicate your order.***

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

Student's Signature: _____ Date: _____

**The following persons have been admitted as associate members of the Institute as at 27 July 1999.**

| Name | Membership No. |
|---|---|
| TAN TAI BIAN | 1603 |
| NG THIAM SEN | 1604 |
| YONG KING SUNG | 1605 |
| HO SHUI FAH @ JOHN HO | 1606 |
| MOHMAD SAKARNOR BIN DERIS | 1607 |
| RAJASWARI A/P K RASIAH | 1608 |
| LEE WEI FONG | 1609 |
| CHIN KIM YEE | 1610 |
| CHEW THEAM HOCK | 1611 |
| WONG SOW WI | 1612 |
| NGU KET UNG | 1613 |
| QUEK JIM KEN @ QUEK JIN KIN | 1614 |
| RICHARD LEE TEIK BENG | 1615 |
| LIM CHING SZE | 1616 |
| BOON CHOONG KONG | 1617 |
| KUAN POH WAH | 1618 |
| KOH YIK LING | 1619 |
| PHANG KA LIANG | 1620 |
| LEE YON CHONG | 1621 |

**The following persons have been admitted as fellow members of the Institute as at 27 July 1999.**

| Name | Membership No. |
|---|---|
| CHONG THIAN POH | 589 |
| KIRPAL SINGH | 623 |
| HENG JEE SUAN | 655 |
| CHONG YUE CHOY | 657 |
| LIM MENG SEE | 663 |

**MEMBERSHIP STATUS OF MIT AS AT 27 JULY 1999**

| | |
|---|---|
| Honorory Fellows | 7 |
| Fellows Members* | 392 |
| Associate Members* | 1203 |
| | 1595 |
| *** Fellow and Associate Members** | |
| Public Accountants of MIA | 938 |
| Registered Accountants of MIA | 200 |
| Licensed Accountants of MIA | 15 |
| Advanced Course Exam of IRD | 125 |
| Advocates & Solicitors | 7 |
| Approved Tax Agents | 126 |
| MIT Graduates | 7 |
| Others | 177 |
| | 1595 |

# CHANGE OF PARTICULARS

Name _____

Membership No: _____

Postal Address: _____

_____

_____

I.C No: _____

H/p No: ( ) _____

**PRACTISING AS/PLACE OF EMPLOYMENT**

Name of Firm _____

Position _____

Address: _____

_____

_____

Tel. ( ) _____

Fax ( ) _____

E-mail Address:

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

**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 1999

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

**1999 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 _____

_____

_____ 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.*

## CONTRIBUTION OF ARTICLES

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

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

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

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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.