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QUARTERLY - SEPTEMBER 1993

MEMO TO FINANCE MINISTER

BUDGET 1994

Malaysian Institute Of Taxation

C O N T E N T S

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Special Commissioner's Decission

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

The objectives of the Institute are, inter alia:

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

OFFICE & ADDRESS

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THE ESTABLISHMENT OF AOTCA

The Asia-Oceania Tax Consultants' Association (AOTCA) was inaugurated on January 1, 1993. Originally established as part of the commemoratative activities in 1992 by the Japan Federation of Certified Public Tax Accountant's Association (JFCPTA) to mark the fiftieth anniversary of the certified public tax accountant system in Japan. AOTCA was then realized through the approval of ten organizations of professional tax specialist in the Asia-Oceania region.

AOTCA objectives are to establish a professional network regarding tax matters and deepen friendship and goodwill among its member organization and their individual members. The associations aims to conduct research and investigations on tax systems, administrations and tax consultants systems, exchange information gathered from various international organization. In order to reach its objectives AOTCA are promoting the exchange of knowledge and expertise in tax accounting work. In addition AOTCA will hold international conference for tax consultant and release research finding to the benefit of its members.

On its first organizational meeting on November 6, 1993 held at new Otani Hotel in Tokyo ten organization had participated. The Malaysian Institute of Taxation was represented by its President, En. Ahmad Mustapha Ghazali and former Deputy President, Mr Teh Kok Leong. At the meeting it was resolved that Mr. Teruaki Kataoka, the Chairman of JFCPTA be the first President of AOTCA. Following are the list of elected persons to hold office of AOTCA;

MEMORANDUM TO THE Minister of Finance

Mr Harpal S. Dhillon (MIT Council member and Editor of Tax National) with the Honourable Minister of Finance Y. B Dato' Seri Anwar Ibrahim and Mr Neoh Chin Wah (MIA Council member) at the 1994 Budget diologue.

OVERVIEW

The Malaysian Economy is expected to continue to perform in 1993, growing at a forecast rate of 8 per cent, the sixth consecutive year of growth since 1988. The strong performance in 1992 of 8.5 per cent growth in real gross domestic product is attributable to mainly sustained domestic aggregate demand and a favourable export performance. The manufacturing, construction and services sectors are expected to continue to be the major contributors to growth in 1993.

As the economy continues to expand strongly, some pressures have developed within the economy in the form of price increases, tight labour markets (leading to upward pressure on wages) as well as continued strains on the infrastructure.

The Malaysian Institute of Accountants (MIA) and the Malaysian Institute of Taxation (MIT) share with the Government the concern and the need to manage the domestic aggregate as well addressing constraints within the economy arising from labour shortage and infrastructural bottlenecks.

PROPOSAL

MIA/MIT believes that some of the problems can be addressed through a prudent fiscal policy focusing on the need to sustain growth and at the same time containing inflationary pressures. MIA/MIT are also aware that the world economy is expected to continue to recover at a moderate pace in 1993, and although there are signs of improvements in the industrial countries, the expansion continues to be slow and uneven. Such slow recovery will invariably affect Malaysia with its open economy. It is anticipated that the main contributor to growth will again be the manufacturing sector while other sectors continue to grow at a slower pace compared to 1992, also foresee that education as an export service can be a new growth sector for the country.

MIA/MIT would therefore like to submit the following proposals to the Government which MIA/MIT believe will address the challenges faced by the Government. The proposals are:-

- Introduction of Sales and Service Tax (SST) and a case for Reduction of Corporate and Individual Tax Rates.
- Promotion of education as an export service.
- Incentive for Offshore Investments.
- Increase in the allowable deduction for tax purposes on contributions to EPF.
- Increase in personal relief for contribution to EPF and approved funds.
- Incentive for plant and machinery used for disposal of sewage and industrial effluents.
- Group Tax Relief.
- Administrative Delay in Gazetting Legislation.

The detailed papers on some of the proposals are attached by way of appendices to this Memorandum. The members of the Technical Committee of the MIA/MIT are prepared and will be glad to discus the implications of the proposals contained in the papers with Treasury Officials, whenever necessary. Meanwhile, the salient points of the various proposals and their impli-

cations to the economy are summarised below.

SUMMARY.

Paper 1:
Introduction of Sales and Service Tax (SST) and a Case for Reduction of Corporate and Individual Tax Rates

As the sixth Malaysian Plan is half way in its implementation, development programmes have to be implemented within an acceptable budgetary deficit and prudent borrowing levels. Under current budgetary objectives, the real focus is on fiscal management towards strengtherning revenue should not be at the expense of making Malaysian manufactured products less competitive, bearing in mind that the major contributor to growth will be the manufacturing sector.

As has been announced by the 1993 Budget Proposals, the Sales Tax and Service Tax will be expanded into a full value added tax called Sales and Service Tax (SST). The scope of the SST and the rate of tax have not been announced but any introduction of a value added tax being a consumption tax will add to the costs of the final consumer products. The paper has estimated that at a rate of 6 per cent, the expected revenue will be RM5.35 billion based on a consumption expenditure of RM89.24 billion (all based on 1991 figures). After netting Sales Tax and Service Tax, the net increase in revenue would be RM2.46 billion. This increase in revenue can easily absorb a proposed reduction of corporate and individual rates to a maximum of 25 per cent, after taking into account the savings from the proposed abolishment of export incentives.

The proposed reduction in corporate and individual rates will:-

i) preserve the competitive edge of Malaysian exports in the wake of export incentives:
ii) attract foreign investors to Malaysia in view of the competitive corporate tax rates;
iii) compensate individuals for the high cost of their "shopping baskets".

The introduction of SST will:-

i) rationalise the Sales Tax and Service Tax:;
ii) make exports more competitive if zero rated;
iii) improve documentation/accounting records and indirectly assist in the collection and assessment of direct taxes;
iv) reduce "leakages" in the revenue system;
v) encourage savings as SST is a tax on consumption.

Overall, the proposal will sustain economic growth and also check inflation in that SST will not tax on savings but on consumption.

PROMOTION OF EDUCATION

BUDGET 1994

The recent announcement by the Government to promote education, especially tertiary education as an export service is a move in the right direction. Malaysia has, over the years, built up a comprehensive educational system and this should be fully exploited by both the Government and the private sectors. The availability of a core of academician and professional people fluent in both the national language and the English language has placed Malaysia in a unique position to tap the education market. This will be an invisible export of services and not only will it bring in foreign exchange, it may even save Malaysia the foreign exchange spent on educating its students abroad.

It also follows that if foreign students are attracted to attend secondary and tertiary education in Malaysia, parents to attend their children's graduation, this works out to be a visit of two persons for every child receiving education in Malaysia. The "spin off" of promoting education is tourist arrivals in Malaysia will increase, resulting in growth in the tourist industry and the construction industry as well. MIA/MIT envisage that if education as an export service is encouraged, there will be an increase in the construction of new buildings to house educational establishments as well as hotels and tourism projects. The multiple effect has not been quantified but is believed to be substantial.

As an initial, MIA/MIT would propose that the Government gives the idea a push by treating educational buildings as industrial buildings and offering an industrial building allowance of 10 per cent for initial and an annual allowance of 6 per cent as well as import duty and sales tax exemption on all equipment (eg. laboratory equipment), used in an educational establishment. In addition, MIA/MIT also proposes that all industrial buildings be given an annual allowance of 6 per cent also in place of current 2 per cent which is not reflective of the economic use of the buildings.

Paper 11:
Incentive for offshore investments

As early as 1991, an announcement was made that the Government would encourage "reverse investment" by providing incentives in the form of an exemption of 50 per cent of income earned overseas and remitted back to Malaysia. Since then, apart from an announcement in 1992 by MITI of a committee to formulate guidelines, no further action has been taken by the Government to gazette the exemption order.

The absence of the exemption order has created uncertainty among the business community and their professional advisers. There is concern as to what would happen should there be a loss in the overseas investment.

The paper also contained proposals to make the incentives more attractive so that "reverse investment" can be further encourage to move ahead. Apart from exemption of income remitted, there should be provisions for losses incurred in overseas investment to be set-off against other business income. Where there is insufficiency of business income, this loss will be carried forward for future usage. Likewise, a loss in the sale of the business or investment should also be considered for deduction.

The objective of the proposal is to sustain economic growth through overseas investment.

Paper III:
Increase in the deductible rates for EPF and approved pension/provident funds contributions and deduction for personal relief for contributions to such funds

A recent measure taken by the Government to increase the gross national savings rate was to increase the contributions of both the employer and the employee to the Employees Provident Fund (EPF) by 1 per cent. However, the additional contribution is not matched by an increased in the allowable deduction for income tax purposes. The paper seeks to propose an increase in the maximum allowable deduction of 15 per cent of the employee's remuneration for contribution to the EPF and other approved funds to 20 per cent of the employees' remuneration. Without a corresponding increase in the allowable deduction, this will discourage corporations to set up their own provident/pension funds as the margin allowable for deduction, after the compulsory deduction to EPF of 12 per cent, has now been reduced to 3 per cent.

On the same reasoning, the personal relief available for contribution to EPF and approved funds to an individual taxpayer should also be increased from RM3,500 to RM5,000. The increase in personal relief too will compensate for the increase in prices of the individual's shopping basket once SST is introduced.

The objective of the above proposal is to encourage the national savings to achieve the target of 36 per cent of Gross National Product by 1995.

Paper IV:
Incentive for plant and machinery used for disposal of sewage and industries effluents and group tax relief

Presently, tax incentives are available for companies producing toxic and hazardous waste to encourage them to set up their own storage, treatment and disposal facilities. The incentives is in the form of special capital allowance rate and import duty exemption on importation of such equipment.

As the incentive is only restricted to toxic and hazardous waste disposal, the paper seeks to expand the incentive to companies which have incurred capital expenditure on plant and machinery used in disposing sewage and industrial effluents. Waste disposal of

SST

WHEN IS IT EXPECTED ?

sewage and industrial effluents is part of the manufacturing process and incentives should be given either by way of an accelerated capital allowance of 20 per cent for initial and 40 per cent for annual allowance or by way of reinvestment allowance being part of the expansion and modernisation of its manufacturing activities.

GROUP TAX RELIEF

Another area of concern is the allowance of loss incurred by the company within a group to be allowed against profits earned by other companies within the same group. This could encourage investment by foreign investors. Group relief can by restricted to companies which satisfy the threshold equity ownership of at least 75 per cent. Further, in most cases, the loss in allowing group relief is a timing loss of tax collection rather than an actual loss of revenue.

The main objectives of this paper are-

i) to encourage companies to invest in plant and machinery that will contribute to environmental well being of the country; and
ii) sustain economic growth through incentives of companies.

Administrative delay in gazetting legislation

Paper ii also pointed out some concern in the delay in incorporating into law some of the Budget Proposals announced over the course of the last two years. Such delays again cause uncertainty, for the country because incentives given by the Government are not being translated into positive action basically because businessmen are still awaiting to know fully the implications of the legislative changes before embarking on any proposals. It is proposed that amendments to Legislation or Orders should be tabled immediately once an announcement has been made.

CONCLUSION

MIA/MIT has endeavored to propose fiscal changes that will achieve the objective of sustaining economic growth and checking inflationary pressures. They are important objectives in the light of the present international economic outlook. The fragile recovery of major industrial countries pose a risk to the revitalising of the world economy. The inconclusive Uruguary Round of Multilateral Trade Negotiations, the threatened return to protectionist trade practices and formation of trade blocks / groupings are measures that will impede economic growth and worldtrade. The increasing demand for funds by the Commonwealth independent States and Eastern Europe would certainly challenge the development of developing economies, including Malaysia's.

It is imperative that fiscal policies be mapped out which will accelerate the engines of growth of the Malaysian private sector.

MIA/MIT is pleased to be able to assist and contribute towards this objective.

Malaysian Institute Of Taxation

TAXATION BY THE YEAR 2020!

by
Mr Yong Poh Chye

INTRODUCTION

Malaysia's sustained growth, which saw real GDP expenditure by 8.5% in 1992 was impressive against the backdrop of the developed nation's economic woes of sluggish growth and unemployment.

Basking in the knowledge of its success in obtaining its fifth consecutive year of growth in excess of 8%, Malaysia is on a sure footing as it embarks on the new year 1993 looking well abled to achieve the distant vision of a caring, united and fully industrialized nation in three decades.

The Malaysian tax system will also change tremendously by the year 2020.

CORPORATE TAX

Corporate tax rate may go down from 34% in 1993 to say 25% in 2020. The imputation system of taxation may be replaced with advanced corporation taxation. Transfer Pricing Rules and Group Relief may be introduced by then.

By reducing the corporate tax rate, the Government has removed a financial constraint, thus enabling the companies to upgrade and expand their production facilities, increase research and development activities and move into higher technology production processes and automation to enhance their competitiveness and increase their self reliance. This should place them in a better position to insulate against the cyclical nature of business, weathering external shocks and movement in the exchange rates.

However, the Government may try to introduce an Equalization tax on profits distributed more than 5 years after they have earned as seen in France or a Tax on an Approved Net Worth as seen in Germany.

INCENTIVES

By the year 2020, all other incentives except pioneer status, investment tax allowance and reinvestment allowance will be abolished.

At the same time, attractive incentives will be given for overall investment. Labuan may be like Bermuda or Bahamas where there will be at least 200 banks operating. It will be a developed IOFC by then. Who knows, the Government may also make Langkawi as another IOFC!

PERSONAL TAX

Personal tax rate may also be reduced from a maximum rate of 34% (today) to 25% in 2020. More personal reliefs will be given. Interest payments for housing loan can be tax deductible by then. The number of tax rate groups will be reduced from 9 to 7, and the amount of chargeable income in each tax bracket will be much higher!

There will be more taxpayers as compared to the present 6% of the population today!

INCOME TAX ADMINISTRATION

Taxation may be based on the current year basis as against the preceding year basis. Withholding Tax will be extended to cover employment, income commission and other capital gains.

Self assessment may be introduced by then and more tax staff will be employed to do tax audit and tax investigation.

Tax returns can be found everywhere - Post offices, banks, community centres, and even offices of tax agents. Tax payments can be made via GIRO system, the banks, finance companies, post offices and credit card companies.

The period allowed for back duty will be shortened from 12 years to 7 years.

Interest will be paid by the Government if repayment is not received within 30 days from the date of submission.

However, if any one is caught for tax evasion, one will be greatly looked down upon and may be even imprisoned or do some community services.

SALES AND SERVICE TAX

Sales tax and service tax will be replaced by Sales and Service Tax. It will undoubtedly be a positive move towards enhancement of national productivity and comparative advantage while unconstantly addressing the problems of inflation. A tax on spending rather than on income or corporate earnings should enhance productivity, entrepreneurship and deligence as companies can see that their additional efforts can be channelled into expanding their operations.

On an individual level, SST should induce a greater propensity to save as consumers deliberate more closely, the opportunity cost of their purchases.

CONCLUSION

The monetary and fiscal policies set by the Government today in 1993 are now concommitantly consistent to achieve the goals of a developed nation status. National prestige can be deservedly accorded to the country where Malaysia can proudly stand along side the developed nations with the knowledge that it has much to offer in terms of financial assistance, technological innovation and technical know how.

DOUBLE TAXATION AGREEMENTS

COMMON STRUCTURES & IMPORTANCE TO BUSINESS

by
Mr Teh Kok Leong

WHAT IS A DOUBLE TAXATION AGREEMENT (D.T.A)

A D.T.A. is an agreement usually signed by two countries to:

I) alleviate either wholly or partially the burden of double taxation of income by two separate tax regimes;

ii) prevent fiscal evasion.

While more attention is paid to the first objective of a D.T.A. as indicated above, the second objective has also grown in importance because of the surging presence of multinational companies. These companies which operate in many and various countries do have advantages and opportunities in arranging their affairs to seek more benefits taxwise. It is nothing sinister as it is logical for a taxpayer to obtain best advantage where opportunities present themselves. The existence of a D.T.A. may by itself open up avenues for avoidance of tax. They very presence of it may prompt companies to shift operations or use conduit or base establishments to obtain benefits of exemption or reduced rates bestowed by a D.T.A. This is commonly known as "treaty-shopping". Not all treaty-shopping borders on fiscal evasion. There is nothing wrong for a company wishing to extend its operations into a region with a multiple choice of setting up a branch or subsidiary in a few countries to investigate and decide through which particular one it wants to operate or set up. However if the company of branch set up is not a substantive one, i.e. is only a "dummy" then there's every probability of tax evasion.

So while an Agreement is drawn up to avoid or reduce double taxation, it is also used to prevent fiscal evasion through the establishment of certain administrative procedures. On the other hand the presence of a D.T.A. also tempts or opens up some avenues for treaty-shopping.

How Does Double Taxation (D.T.) arise?

There are 3 main causes leading to D.T. They are:-

i) Different Tax Regimes have different interpretations of "Residence" and different scope

While some countries (Malaysia being a good example) determine the "residence" status of a taxpayer by making reference to the period of physical presence many others look at the intention of a taxpayer. This intention is translated into the maintenance of an habitual abode. As long as a taxpayer still has ties within a country he may still be considered a resident. In most instances, countries tax their residents on world-wide income. Even if the income arising or earned abroad is not remitted, it will still be subject to tax.

Some countries go even further and subject their citizens to tax on world-wide irrespective of residence status.

Because of these differences in the scope of taxation and the different rules of residence, income arising in and taxed in a host country may still be taxed in another.

This may explain why the rules on Residence or Fiscal Domicile in a D.T.A. are so important that one whole Article is devoted to it.

ii) Taxpayer resides in one country but derives income from another country

Company 'A' may be resident in country X but derives dividends paid by a company in country 'Y'. It is very common nowadays to find companies operating abroad through subsidiaries or joint ventures. Because of their shareholdings in their overseas ventures they may receive dividends which may be taxed in the country in which their subsidiary is operating and may be subject to tax in their home country or country of residence.

iii) Difference in Tax Rules leading to apportioning of income resulting in part of the income being taxed in two countries

This situation may arise when dealing with associated companies. One good example is "transfer-pricing" which invariably is indulged in by most multinational companies. The tax laws of a country may have an in-built mechanism to check this type of practice. In applying these

rules the country's tax administration may decide to adjust the pricing such that its own company will make more profits. Such an adjustment will mean that a portion of income will be doubly taxed, unless there is specific relief.

Sometimes deeming provisions built into the tax laws of certain countries will result in certain receipts being considered as income by two countries.

COMMON STRUCTURE OF A D.T.A.

Although strict formatting is not normally done in practice, a D.T.A. can be divided into 6 parts as follows:-

i) Scope

ii) Definition

iii) Rules for taxing the various types of income or Allocation of Tax Jurisdiction.

iv) Elimination of Double Taxation

v) Administration Provisions

vi) Entry into Force and Termination

In some cases, there is a PROTOCAL added which usually spells out certain safeguards or clarifies certain points which are too cumbersome to be incorporated in the Agreement proper. A good example of this is to be seen in most of the earlier D.T.A.'s signed by Malaysia. There is a clause explaining the special treatment of dividends declared by a company resident in Singapore to be dividends of Malaysia. By now most of such dividends would have been declared and this explains why the clause is not included in later agreements. Another good example is the insertion of a clause bestowing "most favourable nation" status on a reciprocal basis. During negotiations, one party might ask for full exemption for shipping profits which the other party is very reluctant to grant. To protect its interests the former might request for the insertion of a clause which effectively states that should the latter subsequently grant such exemption to another country, then the exemption should automatically extended to the first party.

As indicated above, the first part of a D.T.A. spells out its scope, e.g. scope in terms of coverage of taxpayers and in terms of taxes. A D.T.A. usually covers residents of one of both contracting states.

However the anxiety or desire of a country to protect its nationals is evident in the formulation of the Article on Non-Discrimination. That Article makes reference to "citizens" or "nationals". In terms of taxes, an Agreement usually covers taxes on income and capital gains though in some instances the taxation of capital is covered. In the Malaysia context the taxes covered are Income Tax, Supplementary I.T. (Development Tax), Excess Profit Tax and Petroleum I.T. We have not signed and Agreement covering Real Property Gains Tax. In fact, there in no provision in both the respective Acts empowering the Director-General or the government to enter into such agreements. An agreement also allows for subsequent additions of taxes of a substantially similar character. This is a very practical approach to obviate the necessity of having to negotiate or renegotiate when a new tax is added in one of the contracting states. There is also the provision for each Contracting State to apprise the other of substantial changes to its tax laws.

The next group of Articles is very important. Usually there are three Articles defining the terms used in an Agreement. In the OECD and U.N. Models, it is Article 3 which defines among others important terms like "enterprise", "person" and "international traffic". The Article also indicate the geographical limits of each contracting state in addition to identifying the "competent authority" in each. Because of the difference in tax legislation, Article 4 provides the rules for "tie-breaking" in case a taxpayer is treated as resident by the domestic laws of both contracting states. The maintenance of a "permanent home", "centre of vital interest" or an "habitual abode" is a deciding consideration. Where the tie-breakers prove ineffective the two states will have to confer with each other to break the deadlock. In cases of companies and bodies of persons, the criterion adopted is "place of effective management and control". In some instances, the citizenship of an individual and the place of incorporation of a company are considered.

Article 5 of the OECD Model deals with a "Permanent Establishment" (P.E.). This concept of a P.E. is all important as the presence of one will allow an enterprise to be taxed in a contracting state on its profits derived therein. This explain why the Article is verbose and long.

A P.E. is defined as a "fixed place of business" at the state of the Article. Examples of a P.E. are then enumerated. While emphasis is given to a physical presence in the form of a building or site, examples of physical presence not qualifying as a P.E. are also given. As a rule a physical presence not to sell but to only buy and carry out activities of an auxiliary or preparatory character does not give rise to the existence of a P.E. On the other hand the use of agents who are not independent or the carrying out of supervisory activities over a period of time (usually 6 months) may signify a P.E. existence.

The Article on P.E. has been most beseiged by argument between the developed and developing countries. The commentaries on the U.N. Model Convention will bear testimony to this. Because of the expansion of trade and improvements in communications, the industrialised countries have been seeking more and more markets. At the same time more sophisticated activities like the assembling of nuclear plants also make for more complex trade arrangements. All these have led to developing countries clamouring for a larger share of taxation of profits made out of them. Their grievances have won some sympathy among the more enlightened members of U.N. Hence some significant difference appear in parallel articles in the OECD and U.N. drafts. A study of these will provide an insight into the differing perspectives and will prove interesting.

The next part or group of articles deals with the taxation of the various types of income. Of necessity this is the biggest group and is also the most important for the Articles will determine which taxing authority can exercise its rights and whether that type of income is to be taxed at a reduced rate or even exempted.

In the case of business or trading income or profits, these will not be sub-

ject to tax in the other state unless the enterprise carries on business therein through a P.E. In other words an enterprise of a state can sell its goods in another state without being subjected to tax therein unless it has done it through a fixed or substantive presence. As such income is usually of some significance, it is now quite clear why the P.E. Article is given so much emphasis. This Article has also been the subject of arguments between the industrialised and developing countries. It is understandable that the former want to narrow down the definition of a P.E. while the latter want to broaden the scope of the Article. In some D.T.A.'s signed by the developing countries, the principle of "force of attraction" has been imposed. Using this principle the tax authorities of the developing country are subjecting a foreign enterprise to tax even if profits of identical goods sold by independent agents once the foreign enterprise has a P.E. in the State. Although this appears to be unreasonable, the States subscribing to this principle maintain that the presence of a P.E. has a direct influence on the sales made by the agents. The more acceptable principle is to only tax profits attributable to the P.E.

The same Article also provides the machinery for allocating the profits and expenses. It stresses on the arm's length principle meaning that the P.E. and the Head Office should be treated as independent enterprises trading with one another.

While business profits are subjected to tax in full, there are certain types of income which are taxed at reduced rates for reasons such as the encouragement of transfer of technology or the attraction of investment. The three main types of income subjected to reduced rates are dividends, interest and royalties. Where the last-named is concerned encouragement also comes in the form of exemption. The concept of "approved industrial royalties" was bandied about for some time. Where the source or host country is concerned, if the patent or knowhow offered contributes towards the economic development of the country the royalties will the exempt from tax. To many it will be a small sacrifice. Malaysia used to subscribe to this concept. The last few D.T.A.'s Malaysia has signed seem to indicate that this is not so any more. In the case of royalties and interest the reduced rate is usually pegged at 15% in Malaysia's D.T.A.'s. And it will only apply if the recipient is the beneficial owner and is also subject to tax in the country of residence. The stipulation of beneficial ownership is to counter any avoidance of tax by the use of intermediaries. In negotiating the Article on Interest Malaysia invariably grants exemption on "approved" loans. Malaysia will also request for tax-sparing credit on this score. Where dividends are concerned, the tax is usually reduced on a 2-tier basis. Dividends paid to a company with a minimum shareholding of 25% is taxed at the nominal rate of 5% while other dividends are taxed at 15%. In the case of Malaysia, because we are on the imputation system, the reduced rates will not apply at all. In actual fact Malaysia does not impose any tax on the dividends which is additional to the tax on the profits out of which the dividends are paid. This statement holds true with the non-resident tax rate fixed at 34% which equals the income tax rate on companies.

In all three Articles on Dividends, Interest and Royalties, there are provisions to treat such income as part of Business Profits if the recipient has in the state a P.E. with which the debt claim or respective income effectively connected. There is also the necessary clause to prevent overpayment of interest or royalties in cases - where the payer and recipient are connected persons.

An Articles of interest to conglomerates and governments concerns Shipping and Air Transport. Usually the contracting parties will agree to reciprocal exemption but in some earlier treaties Malaysia only agreed to a sharing of the tax on profits on 50/50 basis. Some recent treaties also indicate that Malaysia in not keen on giving full exemption to shiping profit. It must be pointed out that any exemption granted is only in respect of income arising from international traffic. This is defined to include any trip which is not operated solely between points in a contracting state. Naturally in the course of the trip a shipping or airline enterprise of one contracting state must pick up or dislodge passengers or goods in the other. Only then will an income source be established and a tax concern arise.

As for income from Immovable Property, this is to be taxed in the source country i.e. where the income arises.

Income from "Independent Personal Services" is not subject to tax unless it arises in a Contracting State and the income can be attributed to a fixed base. This concept of a "fixed base" which can be equated to a P.E. where business is carried on) is used in the OECD and U.N. Models but Malaysia does not accept it readily. The first occasions Malaysia accepted the fixed base concept was when Malaysia renegotiated her treaty with U.K. 'Independent Personal Services" includes professional services provided by professional people exercising their professions and not in employment. Professionals in employment will be covered by the Article on "Dependent Personal Services". This Article usually reserves the right to tax income from employment to the country of residence as long as the employee is not present in the other country for longer than 182 days and the income is not paid by a resident of the other country or is not claimed as a deduction.

There are also some Articles on taxation of income which are not so significant. The salaries and wages of employees aboard ships or aircraft in international traffic may be taxed in the state where effective management of the enterprise is located. In the same vein directors' fees are also taxed in the state where the paying company is resident. On the other hand income of public entertainers and athletes from their personal activities may be taxed in the state where they are performed. Usually there is also the provision of exemption in instances where the performers are sponsored by the government. This is considered necessary to encourage an exchange of ideas and culture. Non-government pensioners are taxable only in the state where the pensioners are resident. On the other hand, government pensions and government salaries are taxed in the contracting state which pays them (country of source) unless the payments are related to any trading activity carried out. In some Agreements a special Ar-

ticles is drafted to state categorically that income earned by the government of each contracting state in the other state will be exempt from tax unless the income rises from trading or business activities. The term "government" is normally defined to include in the case of Malaysia the various state government, local authorities, Bank Negara and other public or statutory bodies mutually agreed upon by both contracting bodies. In many Agreements the exemption is only bestowed on interest and not on other income. There are also Articles covering Students and Teachers. In the Articles covering student whilst it is spelt out that a student will not be taxed on scholarships and money which is remitted from outside that contracting state, there is also a provision to tax income earned by them which exceeds a minimum amount. This threshold is different in each Agreement. While among developing countries there is more sympathy for students, the developed countries tend to adopt a more intransigent stand.

In the case of Teachers, because of the necessity to offer some incentive it is normal to exempt income earned by them if they come on invitation and their period of employment does not exceed two years.

Last but not least there are two Articles which deal with Exemption of Diplomats and Consular Staff and Other Income. The exemption bestowed on Diplomats only applied to their official emoluments and is given on a reciprocal basis and subject to international rules. If their spouses or they themselves derive other income in the contracting state to which they are sent, they may still be liable to tax on such other income. The Article on "Other Income" is a sweep-up provisions. Under the OECD Model treaty income not covered by any other Articles in the Agreement will be subjected to tax in the country of residence of the taxpayer but Malaysia does not accept this principle.

One Article which is of great significance as an anti-avoidance measure has to be highlighted and this is the Article on "Associated Enterprises". The Article stipulated that where an enterprise in one state controls an enterprise in the other state or if both enterprises are under a common control, their profits may be adjusted to include amounts which would have accrued to them if they had traded as independent enterprises. The 1977 OECD Model in respect of this Article is not as far-reaching as the 1963 model which has not provided for mutual adjustment and agreement between competent authorities.

One Article which stands by itself if that on the "Elimination of Double Taxation". This is the most significant Articles as it spells out the method by and the extent to which a contracting state is willing to forego or share the tax.

We have seen as we went along how contracting states have in respect of certain types of income sacrificed their right to tax as in the case of income from air-transport. In many instances, the sacrifice has been made by reducing the tax rate e.g. interest and dividends. But now we must look at the elimination of double tax in respect of those items of income which are still subject to double tax including those subject to reduced rate.

Although there are three main methods employed in reducing or eliminating double taxation we will confine ourselves to the following two:-

i) Exemption with or without progression; and

ii) Granting of tax credit (both full and ordinary credit).

(The third method employed is by deducting the foreign tax in computing taxable or assessable or chargeable income. This method is not so popular as its efficacy is more limited).

Countries using the exempting method will exclude items of income in computing the tax liability of their resident if such items are also subject to tax in the source country. This of course has the direct effect of reducing the resident's liability to tax. Where the country imposes tax using scale rates, this method can lead to some bias. This explains why the method of exemption with progression is employed in some instances. Under this method, the exempt items of income are included when computing the liability to tax. The eventual tax will then be determined by prorating. If you look at the OECD Model Tax Convention, there is a paragraph 2 which covers special items like Interest, Dividends and Royalties to be adopted by countries using the exemption method. As such items of income are usually subjected to a reduced tax rate by the source country, exemption by the country of residence will lead to a bias - taxpayers receiving identical types of income arising in the residence country will be more heavily taxed. It is definitely not in the best interest of a country to allow this situation to prevail as it may lead to disinvestment. Hence the income is taxed and credit is given i.e. the credit method of eliminating double taxation is employed.

Countries using the credit method to eliminate double taxation will include items of income which may be taxed by them when computing the tax liability of their resident taxpayer. After determining the tax liable which is the domestic tax, they will then set off the foreign tax paid. Where countries give full credit, the whole foreign tax is given as a credit. Countries giving ordinary credit will compare the foreign tax paid with the domestic tax pertaining to that item of income by way of apportionment. The lower amount if granted as Double Tax Credit.

It has to be emphasised that it is the country of residence which grants the credit.

The next group of articles deals with certain administrative issues arising out of the foregoing Articles of the Agreement. Some are drafted to ensure the smooth-running of the Agreement while others are included to protect nationals from being more harshly treated.

There is the usual Article on "Non-Discrimination" which provides that nationals (individuals and legal entities) of a contracting state shall not be subjected to any tax or requirements which are more burdensome than those applying to nationals of the other state in the same circumstances. This rule is extended "mutatis mutandis" to stateless persons, to tax on a permanent establishment which an enterprise of one state has in another state, and to

enterprises of one state owned by residents of the other state. In one sense, this Article goes beyond the personal scope enunciated in the "Preamble" and Article 1. The non-discrimination extends to cover basis of charge, rate of tax method of assessment and the formalities related to the taxation e.g. submission of return forms, etc. But there is no obligation on the part of a contracting state to grant reliefs based on residence status and other personal circumstances to non-residents who are nationals of the other contracting state is such reliefs are not accorded to her own nationals who are not resident. There is also no discrimination if a contracting state bestows certain tax privileges on its public and state agencies as long as these are done as a matter of state policy and not out of a discriminatory practice. Of interest to note is the reference to "citizens" and not " nationals" in many of Malaysia's D.T.A's.

There is also an Article which allows the resident of one State to appeal to the State where he is resident when he considers that the actions of either State have resulted for him in taxation which is not in accordance with the Agreement. He may lodge his appeal with the competent authority. If that competent authority cannot resolve the position by itself, it must strive to come to mutual agreement with the competent authority of the other State. There is an obligation which is binding on each competent authority. The obligation also extends to problems not dealt with in the Agreement. Under such circumstances they are authorised to communicate with each other directly without having to refer the matter to or inform the taxpayer. This procedure will come in very useful where adjustments are made to the allocation of income or expense in the case of associated enterprises. In the 1977 OECD model, the Article on "Associated Enterprises" specifically refers to the question of adjustments made unilaterally. There is now an obligation for the other contracting state to review and reopen assessment affected by such adjustments. Whatever it is the necessity to consult each other is spelt out.

The ability of the competent authorities to exchange information is also provided for in a specific Article. They are to exchange information necessary to carry out the various provisions of the Agreement. Such information exchanged will be treated with the strictest confidence and cannot be disclosed even in court other than for tax purposes. This is one Article which can be made use of to combat fiscal evasion. However the Article specifically covers information which has become available to tax authority in the normal course of its administration. Neither is its ticket to fish information to the detriment of public policy.

The Article on "Territorial Extension" has no widespread application and is not of any significance where Malaysia is concerned. We have no colonies, protectorates or disputed territory. However since an Agreement is bilateral at least, the Article is included at the request of the other signatory and with our consent. However its significance is further eroded in some instances because while defining each contracting State, the geographical and juridical boundaries may be assimilated.

The final two Articles deal with "Entry into Force" and "Termination". Although they appear to be straightforward, some difficulty is invariably encountered because of differences in basis used and terminology. The problem is more pronounced when there is also the question of withholding tax. In many instances the coming into force is made retrospective due to the long process of signing and ratification. In the case of Malaysia the process has been simplified. Normally a D.T.A. will goon forever unless notice of termination is served by one of the parties. It is also provided that all Agreements should be in force for a minimum number of years.

Before concluding, it is necessary for me to also cover some ground on a special Article which is of some significance to Malaysia. The special Article is entitled "Limitation of Relief". It is of importance because unlike most of the OECD countries, we only assess non-Malaysian income on a remittance basis other than in the case of some financial institutions and some shipping and air-transport companies. Income which is earned by or which accrues to a resident from outside the country will only be brought to charge if it is remitted. A non-resident is only assessed on income derived from or accruing in Malaysia. Since only the amount remitted is subject to tax, the relief to be given has to be proportionate. The question of timing is also to be considered. The income earned may not be remitted till several years later. Then relief, which was not given must be given now subject to any time limitation.

News

IRISH PLANT

Two recent decisions of the High Court in Ireland suggest that the boundaries of what is machinery and plant may be expanding further

1. **Petrol Station Canopies**
   Purpose-built petrol station canopies, which were capable of being unbolted and removed, were items of plant.

   Case: S O' Culachain v McMullan Brothers (The decision is under appeal to the Supreme Court)

2. **Steel Racecourse stand**
   A steel racecourse stand for spectators was held to be a plant.

   (O'Grady v Roscommon Race Committee)

BRITISH PLANT

3. **Planteria**
   Glasshouse providing environment in which plants from nurseries would remain in good condition until sold was held not to be plant

   (Gary v Seymours Garden Centre (Horiculture)

Malaysian Institute Of Taxation

IMPACT AND DEVELOPMENT OF TAX INVESTIGATION AND ANTI-TAX AVOIDANCE PROVISION

by
Mr Lee Yat Kong

In the administration of an Income Tax Act of any country, the chief administrator (or Director General in Malaysia) has the duty and responsibility of ensuring collection of not only just the tax but also the correct tax in accordance with the provisions of the Act. Enforcement therefore is an integral part of the work of any tax administrator. The Malaysian Tax Administration is no exception and to assist the Director General to carry out his functions he is, inter-alia, empowered under:

- Section 77 to call for a return, and
- Section 78 to require specific returns and/or additional information to be furnished.

These powers are exercised as a matter of routine and the return or information furnished enables the D. G. to check and determine whether or not a particular return requires further verification or investigation.

WHY INVESTIGATE

(i) The main reason why an investigation is taken up is the tax return itself. Before submitting a return, therefore, it is advisable to ensure the accuracy of what is declared by asking the following questions:-

(a) Does the return show the true or correct income of the person concerned? Some businessmen like to shift the responsibility of submitting correct returns to the accountant (or tax agent) by saying that they do not know accounts and the accountant is better able to judge. The correct position of course is that a businessman knows his business best.

(b) Are there unsatisfactory features in the accounts?

Features like:

- consistently poor performance, compared to similar businesses locally or nationwide.
- unusual changes in the pattern of debtors, creditors, stock, cash and bank balances
- expenditure and other items in round figures
- accounts obviously prepared by non-professionals
- accountants' or auditors' reservations in their reports
- frequent changes of accountants without good reason

These features are indications of an incorrect return which would invite closer scrutiny. The result may well be that the poor taxpayer would become very much poorer by having to pay back taxes plus penalties imposed in terms of the penal sections of the Act.

In his statement to the press on 5 April, 1993, the D.G. announced that RM85.18 million has been collected in the first 3 months of this year and that the Department has uncovered various methods of evasion like lowering the value of stock, inflating purchases and expenses, etc. This clearly proves the vigilance and efficiency of the Department in the combating tax evasion and is undoubtedly a timely warning that it is cheaper to declare one's true income and pay the correct tax due.

(ii) Omission or under declaration of income may also be exposed by:

- assets accretion in excess of known income
- paying for acquisition of assets in cash
- information vide the media
- local knowledge of the business or person
- other features.

METHODS OF INVESTIGATION

The IRD has from time to time made public announcements on how they would deploy their enforcement manpower to combat tax evasion in the following manner.

(i) Unit Bergerak or UBG

Which goes out regularly, even outside office hours, to ferret out those who are taxable but who have not filed Tax Returns so far.

(ii) Field Audit Teams

These people also go out regularly to check on the records of registered taxpayers to see whether or not they maintain proper records.

(iii) Special Research Officers

Special officers do research in the modus operandi of various trades and the normal results that can be achieved in each type of business. They are empowered to enter any premises, without warrant, (under Section 80) to search and seize, if necessary, any documents or records relating to the tax liability of a person. You can say that they are likely to go through everything to determine whether or not tax has been evaded.

The above mentioned teams would undoubtedly assist the IRD to identify new taxpayers and uncover tax evasion.

There is of course the Investigation Section whose officers are trained and experienced to carry out full investigations on any person suspected of tax evasion. The results of their operations as announced by the DGIR (mentioned earlier) are clear proof of their effectiveness.

OFFENCES AND PENALTIES

The penal sections of the Income Tax Act, 1967, are:-

(i) Section 112

(1) Any person who makes default in furnishing a return in accordance with section 77(1) or in giving a notice in accordance ..... shall, if he does so without reasonable excuse, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) In any prosecution under subsection (1) the burden of proving that a return has been made or a notice given shall be upon the accused person.

(3) Where in relation to a year of assessment a person makes default in furnishing a return in accordance with section 77(1) or in giving a notice in accordance with section 77(2) or (3) and no prosecution under subsection (1) has been instituted in relation to that default -

(a) the Director General may require that person to pay a penalty equal to treble the amount of the tax which, before any set-off, repayment or relief under this Act, is payable for that year; and

(b) if that person pays that penalty (or, where the penalty is abated or remitted under section 124(3), so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

(ii) Section 113

(1) Any person who -

(a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of himself or another person; or

(b) gives any incorrect information in relation to any matter affecting his own chargeability to tax or the chargeability to tax of any other person,

shall, unless he satisfies the court that the incorrect return or incorrect information was made or given in good faith, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit and shall pay a special penalty of double the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct.

(2) Where a person -

(a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of himself or another person; or

(b) gives any incorrect information in relation to any matter affecting his own chargeability to tax or the chargeability to tax of any other person,

then, if no prosecution under subsection (1) has been instituted in respect of the incorrect return or incorrect information, the Director General may require that person to pay a penalty equal to the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct; and, if that person pays that penalty (or, where the penalty is abated or remitted under section 124 (3), so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).

(iii) Section 114

(1) Any person who wilfully and with intent to evade or assist any other person to evade tax-

(a) omits from a return made under this Act any income which should be included;

(b) makes a false statement or entry in a return made under this Act;

(c) gives a false answer (orally or in writing) to a question asked or request for information made in pursuance of this Act;

(d) prepares or maintains or authorizes the preparation or maintenance of false books of account or other false records;

(e) falsifies or authorizes the falsification of books of account or other records; or

(f) makes use or authorizes the use of any fraud, art or contrivance,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three years or to both, and shall pay a special penalty of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence had not been detected.

(2) Where in any proceedings under this section it is proved that a false statement or false entry (whether by omission or otherwise) has been made in a return furnished under this Act by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed until the contrary is proved to have made that false statement or entry with intent to evade tax.

Of the three penal sections, section 114 applies to the more serious cases of tax evasion which may be described as "the use of deception, dishonest concealment and other illegal means to escape liability to tax".

SETTLEMENT

In most cases, this would be the final stage in an income tax investigation. Before any case comes to this stage, however, the following series of events would have taken place:-

(i) A surprise visit by a team of investigation officers to both the business premises and the residence of the taxpayer concerned.

(ii) The IRD officers would have taken possession of the taxpayer's accounting and other records for scrutiny.

(iii) A Statement of Personal Assets and Liabilities (or Capital Statements) would have been completed by the taxpayer together with a Statement of Private and Personal Expenditure and a Statement of Income Declared/or Funds Available.

(iv) A series of interviews would have been held to discuss or clarify various aspects of the case.

After completing the investigation by going through the full procedure and satisfying themselves that nothing further need be done, the investigation officer would issue a computation of income understated or omitted which would be the basis of negotiation and final settlement of liability.

Negotiation or settlement in an investigation case normally covers three areas, viz:-

- Recognition by IRD of certain 'facts' which may or may not be substantiated by evidence
- Quantum of penalty
- Payment by instalments and period covered.

ANTI-AVOIDANCE PROVISIONS

Section 140 of the Income Tax Act 1967 empowers the Director General (DGIR) to vary any transaction "where he has reason to believe that it has the direct or indirect effect of"-

(i) altering the incidence of tax which is payable or suffered by or which would otherwise have been payable or suffered by any person

(ii) relieving any person from any liability which has arisen or which would otherwise have arisen to pay tax or to make a return

(iii) evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on any person by this Act; or

(iv) hindering or preventing the operation of this Act in any respect."

The provisions of Section 140 are obviously designed to counter tax avoidance. The question is whether or not such discretionary power is subject to any restrains or regulation either by statute or the courts of law. There are in fact certain restraints on the Director General in the exercise of this discretionary power, as follows:-

(v) Section 140 provides General Directions only

The general directions which the Director General must consider before he can vary or disregard a transaction are:-

- motive
- whether or not the transaction is an ordinary trading or business transaction
- does the transaction secure merely a fiscal advantage
- does the seller have 'control' over the purchaser

(vi) Appeals

Aggrieved taxpayers have the right to appeal against an assessment raised under Section 140 from the Special Commissioners right up to the Supreme Court.

(vii) Judicial Review

This recourse is available to dissatisfied taxpayers where the Courts may consider scrutinising the exercise of each wide discretionary powers, as in the case of Givis Pty, Ltd. v. Federal Commissioner of Taxation (1969) 119 C.L.R. 365 at p. 374 where Barwick C. J. Said:

"(A) Although ... the discretion is wide and though being really legislative in nature (and though) what is relevant to its formation may range over an extremely wide spectrum of fact and consideration, the Court can determine whether or not the opinion was formed arbitrarily or fancifully or upon facts or considerations which could not be regarded as relevant even to such a question as the unreasonableness of applying a taxing provision to a particular taxpayer in respect of the income of a particular year."

THE TAX IMPLICATION ON TRANSFERS OF PROPERTIES & ASSETS

"Our land rightly belongs to those who came before and those who will come after us. It is not ours to dispose of freely."

Mencius.

by
Dr A. Subramaniam

"Properties and assets" is a very wide term and would include, inter alia, land, shares, goodwill, stock in trade and intangibles. Land dominates commercial transactions and all other assets either arise from it flow from it .....

This paper considers the following transactions:

a. transfers of assets in view of restructuring to meet listing requirements;

b. assets transferred between companies;

c. assets transferred between a "group of companies"

d. assets transferred from abroad to Malaysia;

e. assets transferred between associated companies;

f. assets transferred due to amalgamations of companies;

g. transfers of assets from a branch of a foreign company in Malaysia to a locally incorporated company and

h. assets transferred from a capital account to a current Account within a company.

SALES AND SERVICE TAX-SST IMPACT

The possible impact of Sales and Service Tax (SST) upon the above transactions under I must also be addressed.

SST, is an indirect tax, that is, it is a tax on consumer spending of goods and services. SST would be levied on the expenditure of a person - the consumer. Thus, if a purchaser of an item is a business, the tax is repaid to the business upon the business (trader) submitting periodic SST returns. It would be the ultimate consumer who pays SST.

SST would be levied at multiple stages of production and distribution of goods and services. A "trader" registered under a SST system must charge SST on his sales of goods and services - this is termed as the "output tax". The same "trader" would have purchased goods and services and such purchasers are charged to SST - this is termed as the "input tax".

A trader must account or pay to the Royal Customs & Excise Department (Customs) for the output tax but the trader is entitled to recover the input tax. This is achieved in two ways. Firstly, by deducting the input tax from the output tax and only paying the net to the Customs. In such a system, all input tax is recovered and the SST is ultimately paid by the consumer.

SST would likely to replace the present sales and service tax. This would mean that transactions subject to the current sales and service tax would continue. Stamp Duties, Real Properties Gains Tax, and income Tax would still be applicable. However, it is possible to withdraw Real Property Gains Tax and merge it with SST.

"WHEN THE WORKMAN WISHES TO DO A GOOD JOB, HE MUST FIRST SHARPEN HIS TOOLS"

Confucius

The Acts and provision considered in this paper are as follows:

Income Tax Act, 1967 -

(i) Section 2, definition of "business"

(ii) Section 24(2)(a), stock withdrawn for own use

(iii) Section 4(a), gains or profits from a business.

Real Property Gains Tax Act, 1976, in particular the following provisions:

(i) Section 2, meaning of "gains" "land" and "shares"

(ii) Paragraphs, 17(1)(a), (b) and 34A of Schedule 2.

Stamp Duty Act, 1949 -

(i) Section 12A, date of market value for stamp duty purposes, First Schedule.

(ii) Items: 22, 32(a) of The First Schedule.

TRANSFERS OF LANDS

"If an urn lacks the characteristics of an urn, how can we call it an urn?"

Confucius

Ever since Real Property Gains Tax was introduced, there have been competing arguments as to whether a transfer/sale of land is in the course of a business (including adventure in the nature of a trade) and therefore subject to income tax, or is a sale a disposal of a capital asset, and, therefore, subject to Real Property Gains Tax.

The implications are obvious - the tax rates differ - income tax for corporations is at 34% while Real Property Gains Tax is on scale rates as in the appendix to this paper.

In answering the question as to whether a sale of land is subject to income tax or Real Property Gains Tax the following questions must be addressed:

(i) Is the company trading in land?

(ii) Or in the alternative can the transaction be caught as "an adventure in the nature of trade?"

(iii) If the answer to the above questions is "yes" then the sale would be subject to income tax.

Each case must be evaluated on its own merits. However, certain cases can be used as guidelines.

In Director General of Inland Revenue v Khoo Ewe Aik Realty Sdn Bhd. (1190)2 MLJ 415 a company's right to change its intention was acknowledged. In brief the facts were:

"Khoo Ewe Aik (deceased) and his wife (also deceased) were landed proprietors in Penang and Khoo Ewe Aik owned the subject land. During their life time they formed and incorporated a family investment company. The company was empowered, inter alia, under the memorandum of association to engage in land investment, land development and improvement or to purchase and sell land so purchased or land which constituted an investment. The company accepted the transfer of several landed properties from Khoo Ewe Aik and his wife. The company was subsequently authorised to transfer the shares of Khoo Ewe Aik and his wife to his children and grandchildren. In 1977, the company had submitted a layout plan for the construction of housing units but this was later abandoned. There was no application for the subdivision of the subject land. It appeared that from 1977 to 1979 the company intended to become a housing developer selling luxury holiday bungalows but from 1980 the company again changes its intention from being that of a housing developer to that of an investor. Subsequently, the company sold the subject land. The company was assessed to income tax on the sale of the land.

The tests in Lee Ming v Jones, 15TC 333 were cited in this case as follows:

i. the existence of an organisation,

ii. activities which lead to the maturing of the asset to be sold,

iii. the existence of special skill, opportunities in connection with the article dealth with,

iv. the fact that the nature of the asset itself should lend itself to commercial transactions.

Gunn Chit Tuan SCJ restated the principle that an appellate Court could not upset the finding of facts by the Commissioners. His Lordship went on to say that the conditions in Lee Ming v Jones (Supra) were not fullfilled.

Thus, upon facts as above it would be Real Property Gains Tax that would be applicable and not income tax.

"Adventure in the nature of "trade" would mean:

a contemplation at the outset to develop the land for sale, that is, there was a profit seeking motive right at the beginning to develop the land for purposes of sale. But such a contemplation can be changed to one of investment as illustrated by the above cited case.

The Hong Kong case of Waylee Investment Ltd. v the Commissioner of Inland Revenue 1991 CLJ 211 is instructive of the circumstance when a capital realisation has taken place as opposed to an "income" realisation.

The facts in this case were:

i. taxpayer company (Waylee) was a subsidiary of Hong Kong & Shanghai Banking Corp.

ii. it held shares in a company called HIL.

iii. the shares were shown under "fixed assets - Investment" in the group consolidated accounts.

iv. in the taxpayer's accounts the shares were shown as "Non current assets".

v. the shares were disposed at a profit.

Lord Bridge of Harwich held that:

a. HSBC never intended that the HIL shares should be held as HSBC circulating assets available to meet depositors demands.

b. profit arose on sale of a capital assets,

c. the disposal was not a normal banking transaction.

Waylee is an important case to show that it is possible for a bank to hold an investment on a capital account. Besides its important in that direction, the case emphasises the importance of the accounting treatment accorded to a transaction; not that the accounting treatment determines the legal effect but that it supports the case advanced, that is, it was held on an investment account.

TRANSFER - CAPITAL ACCOUNTS TO CURRENT ACCOUNT.

Where land is transferred from the Capital Account to the trading account, it must be at the market value at the date of transfer, and where it is from the trading account to the Capital Account or where it is taken for the own use, the land must be valued at market value.

The cases of LCW (1975) 1 ML and YL Realty Sdn Bhd MATR 1989 refer.

The LCW case: Section 35, Income Tax Act, 1967.

In "L.C.W., the facts were as follows:-

In 1953 the taxpayer bought a piece of land which was acquired by the Government in exchange for another piece of land. when the land was purchased the intention of the taxpayer was to construct flats for the purpose of renting them out as an investment. He had no intention of developing the land for sale or to construct flats thereon for sale. In 1963 plans for construction of buildings on the land were approved. By September 1966 two twelve storey blocks containing 24 flats were completed. In 1965 the taxpayer changed his intention for renting out the flats to selling them. By 30th June, 1967, 19 of the 24 flats were sold. The taxpayer's business affairs were conducted through U. Commercial House.

The issue, inter alia, in this case was the "cost" to the business of transferring the asset from the capital account to the trading account. Lee Hun Hoe C. J. Decided that "cost" meant "market value" to the business at the time of transfer and not the original cost. Thus, his Lordship held:

"The proviso to section 53(3)(a)(i) refers to "its cost price to the relevant person". Account must be taken of section 35(1). "Relevant person" seems to indicate a person in relation to his business. The cost price referred to by

the proviso would mean the cost to the business of that person, that is to say, the value of the land at the time of appropriation in 1963. The true value to the business is the market value in 1963 and not the original value in 1953. The proviso is a condification of accepted accounting principles in business or commerce. Any computation of profits which is contrary to accepted principles must be regarded as unreasonable. When (the) respondent converted his capital assets into stock-in-trade and started dealing in them the taxable profit on the sales must be determined by deduction from the sale proceeds the market value of the assets at the date of conversation into stock-in-trade since that is the cost to his business and not the original cost to him.

The case of YL Realty: Section 24(2), Income Tax Act, 1967.

The taxpayer company was engaged in housing development and the taxpayer transferred a certain property from its land and development expenditure account to its fixed assets account. The Revenue treated the transfer as a withdrawal of stock-in-trade for the taxpayers own use and/or a withdrawal for no consideration. The Revenue adopted the market value of the property at the time of its withdrawal as a gross income of the taxpayer pursuant to section 24(2) of the Income Tax Act 1967. The taxpayer appealed.

The question for determination was whether the stock-in-trade in the housing development business of the taxpayer was withdrawn for its own use and/or withdrawn for no consideration within the meaning of section 24(2).

The taxpayer argued that for section 24(2) to apply the property had to be for the personal occupation of the taxpayer. Since the property was treated as an investment and rented out it was not caught by section 24(2)(a).

The Revenue contended that when the taxpayer transferred the property it amounted to withdrawing its stock-in-trade from the market for its own use or for no consideration within the meaning of section 24(2).

The appeal was dismissed on the following ground:

In the relevant period the stock-in-trade in the housing development business of the taxpayer was withdrawn for its own use and/or withdrawn without any consideration being received therefore within the meaning of section 24(2) of the Income Tax Act, 1967.

Transfer of land - greater efficiency and NEP (New Economic Policy) and controlled companies: Real Property Gains Tax.

Transfer of land between two companies in the same group of companies can be exempted from Real Property Gains Tax if the following conditions are met:

(i) approval of the Director General must be sought prior to the transfer,

(ii) the consideration must be shares or substantially of shares (75% test),

(iii) the transferee company must be resident in Malaysia.

In must be proved that the transfer must be for greater efficiency.

Transfer of land between companies to meet Government requirements for the capital participation in industry are exempt on the following conditions -

(i) prior approval must be sought from the Director General for the transfer;

(ii) the transfer is part of a scheme of reorganisation, reconstruction or amalgamation, where the scheme of reorganisation, reconstruction or amalgamation is connected with a transfer of ownership of an asset to a company resident in Malaysia in compliance with Government policy on capital participation in industry;

(iii) the recipient company must be restricted;

(iv) the transferee company must be restricted; and

(v) the consideration can be in cash or otherwise.

TRANSFER OF SHARES: REAL PROPERTY GAINS TAX.

Controlled Companies

Transfers of land by an individual or wife or both or with a connected person to a controlled company controlled by him (them) are also exempt. The consideration for the transfer must be in shares or substantially of shares. Partners in a partnership are connected persons but an allotment to non-connected persons would deny any exemption. (See case S. C. case No 19 (1982) 12. MTJ 56; also see page 39353, Malaysian Tax Reporter, Vol. 2 CCH Publication). Subsequent transfers of the shares would attract tax.

SHARES IN REAL PROPERTY COMPANIES (RPC)

Paragraph 34A, Real Property Gains Tax Act, 1976 is wholly addressed to the disposal of shares in a Real Property Company (RPC). There is no capital gains tax on disposal of shares on the open stock market. However, what paragraph 34A aims is to bring within ambit disposal of shares in well defined situations, particularly where the shares disposed are in land based companies. In other words paragraph 34A addresses the issues of selling shares instead of land and thereby "escaping" tax. That loophole is not possible with paragraph 34A.

The mechanics of paragraph 34A is well explained in the Malaysian Tax Reporter, Volume 3, Pg - 39,443 et seq.

Examples shall be dealt in my talk.

Comprehensive guidelines have been issued by the Inland Revenue Department in respect of paragraph 34A. As these guidelines are readily available they are not reproduced here.

STAMP DUTY

The transfers/sales of assets also attracts stamp duties and must not be forgotten in transactions. Stamp duties can either be "fixed duties" or ad valorem duties Transfers of land attract ad valorem duties. Under the First Schedule, item 329a) the following rates apply:

(i) 1% on the first $100,000

(ii) 2% on any amount in excess of $100,000 but not exceeding $500,000

(iii) 3% on any amount in excess of $500,000 but not exceeding $2,000,000;

(iv) 4% on any amount in excess of $2,000,000.

The value to be taken is determined under section 12A as "in the case of a transfer implementing a sale under a duly stamped agreement of sale and purchase, the date of execution of that agreement."

Some important exemptions are embodied in the Stamp Act, 1949 in Section 15 and 15A.

Section 15, the more difficult section, is best left to the imagination of those who want to come under its provisions, which the more you read the less you would understand. 15A is a more reasoned section and can be profitably used in groups of companies under reorganisation. Basically, section 15A would allow transfer of assets between companies which are "associated" meaning 90% owned, without any levy of Stamp Duty. The parameters of 15A are as follows.

(1) The exemption only applies to instruments falling under item 32(1) or (b). The instrument must be brought for adjudication purposes under Section 36. The instrument will be considered duly stamped only if: (i) it is stamped with duty or (ii) it is certified on the instrument that it is adjudicated and exempt under section 15A.

(2) The instrument must be shown to the satisfaction of the Collector that it effect is to transfer a beneficial interest in property from one company with limited liability to another such company. The said two companies must be associated companies. This means one is the beneficial owner of not less than 90% of the issued share capital of the other or a third (such) company is the beneficial owner of not less than 90% of the issued share capital of each of the two companies.

(3) The ownership of 90% is either directly or indirectly or through another company or partly through another company or partly through another company or companies. The Sixth Schedule applies for ownership test.

(4) The conditions for exemption are:

(a) the consideration or part consideration must not be from a third party i.e. one who is not associated - the 90% test.

(b) the beneficial interest should not have been previously transferred, directly or indirectly by a third party, that is, one who is not associated.

(c) the two associated parties should not cease to be associated.

In brief the above sets out in outline the effect of Section 15A. The Courts in Malaysia have not had opportunity to consider the Section as yet. But in the United Kingdom, the comparative section has been considered in a number of leading cases.

SALE OF GOODWILL

Sale of goodwill (by way of an instrument) would also attract ad valorem duties. Agreement for the use of a trademark patent etc. come under an exemption under Item 22.

TRANSFERS OF ASSETS - CAPITAL ALLOWANCES

The Income Tax Act, 1967 provides for circumstances where assets are brought into a business either from non-business Sources, or from a tax exempt period to a non-tax exempt period or from a business from outside Malaysia.

The relevant provisions are in Schedule 3, paragraphs 2A, B and C and may be summarised as follows:

Para. 2A, Schedule 3:
Non-Business to Business

"Where plant and machinery was in use for non-business purposes and that plant and machinery is transferred to the business, then the market value on the date of transfer shall be taken as the qualifying expenditure (paragraph 2A, Schedule 3).

Para. 2B, Schedule 3:
The Exempt Period to Non-tax exempt period.

Assets used in a tax exempt period are taken over at market value or net book value, whichever is lower, on the day the tax exemption ceases.

2C - ASSETS USED IN A BUSINESS OUTSIDE MALAYSIA & BROUGHT IN.

Assets used in a business outside Malaysia and brought into a business in Malaysia are taken in at the market value or the net book value, whichever is lower, on the day the P&M was brought into Malaysia.

SCHEDULE 5

SECTION 4 AND 7 (4)

PART I

Rates of Tax
Except where Part II is applicable, the following rates of tax shall apply

Category of disposal	Rate of tax
Disposal within two years after the date of acquisition of the chargeable asset	20 per cent
Disposal in the third year after the date of acquisition of the chargeable asset	15 per cent
Disposal in the fourth year after the date of acquisition of the chargeable asset	10 per cent
Disposal in the fifth year after the date of acquisition of the chargeable asset	5 per cent
Disposal in the sixth year after the date of acquisition of the chargeable asset or thereafter	nil

PART II

In the case where the disposer is a company, the following rates of tax shall apply:

Category of disposal	Rate of tax
Disposal within two years after the date of acquisition of the chargeable asset	20 per cent
Disposal in the third year after the date of acquisition of the chargeable asset	15 per cent
Disposal in the fourth year after the date of acquisition of the chargeable asset	10 per cent
Disposal in the fifth year after the date of acquisition of the chargeable asset or thereafter	5 per cent

Valuation

RPGT - OF LAND

DI HADAPAN PESURUHJAYA KHAS CUKAI PENDAPATAN DI KUALA LUMPUR

RAYUAN P.K.R. NO. 539

KTF

LWN.

KETUA PENGARAH HASIL DALAM NEGERI

FACTS

The taxpayer was assessed to Real Property Gains Tax for the year of assessment 1981 on the gain from the sale of three lots of land. To determine the disposal price, the Revenue adopted a value of RM75,000 per acre as being as fair and reasonable reflection of the market value. The taxpayer appealed against the assessment on the ground that the value adopted by the Revenue was too high. According to the sale and purchase agreement the sale price of the land was RM327,500 i.e. RM40,000 per acre.

ARGUMENTS

Both the taxpayer and the Revenue used the same valuation i.e. reference to the sale price of comparable lots adjusted for appreciation to account for differences in the dates of sale and a further adjustment for accessibility, infrastructure, utilities, physical condition of the land and development potential. The Revenue used the sale prices of comparable lots sold during the same period and adjusted them downwards by 10-15% for factors such as accessibility, infrastructure etc. The taxpayer used the sale price of a different comparable lot and adjusted it downwards by 40%. He cited the judgement in Pentadbiran Tanah Daerah, Petaling v Glenmarie Estate Ltd, (19920 1 CLJ 360 (Supreme Court) in which a downward adjustment of 35% was made for unfavourable factors.

Held

That the sale price of a comparable lots sold during the same period and which was adopted by the Revenue was the best comparable price available. However, a downward adjustment of 25% of that price was fair and reasonable and therefore, the notice of assessment should be reduced accordingly.

ALASAN KEPUTUSAN

Soal yang hendak ditentukan oleh Pesuruhjaya-pesuruhjaya Khas Cukai Pendapatan dalam kes ini ialah samada nilai tanah-tanah sabjek iaitu Lot 599 seluas 4.062 ekar, Lot 600 seluas 2.218 ekar dan Lot 602 seluas 1.906 ekar, kesemuanya dalam Selangor, sebanyak $75,000.00 seekar seperti yang ditetapkan oleh Ketua Pengarah Hasil Dalam Negeri, Pihak Responden, di dalam Notis Taksirannya bertarikh 5.3.1983, bagi Tahun Taksiran 1981, kepada Pihak Perayu itu, merupakan nilai pasaran yang betul dan tepat untuk harta-harta tersebut pada 6 Mac 1981 bagi maksud Akta Cukai Keuntungan Harta Tanah 1976.

Bagi menentukan apakah dia nilai pasaran yang betul dan tepat dalam kes ini Mahkamah perlulah menimbang fakta-fakta yang dikemukakan: iaitu fakta yang dipersetujui oleh kedua-dua belah pihak dan juga fakta-fakta yang dikemukakan semasa perbicaraan dan samada ia telah membuktikan tuntutan pihak-pihak di dalam rayuan ini. Fakta-faktanya adalah seperti berikut:

Fakta-fakta Yang Dipersetujui

i) "Pihak Perayu" adalah Penjual tanah-tanah yang tersebut di bawah ini menurut suatu Perjanjian Jual-Beli bertarikh 6 Mac 1981 yang dibuat di antaranya dan Development Sdn. Bhd. sebagai "Pembeli":

ii) Menurut Perjanjian Jual-Beli harga jualan tanah-tanah tersebut adalah $327,500.00.

iii) Pihak Perayu telah menyerahkan Borang C.K.H.T. 1 bertarikh 19 April 1982 kepada Jabatan Hasil Dalam Negeri, Jalan Duta, Kuala Lumpur.

iv) Notis-notis Taksiran Cukai Setem Pindahmilik Hartanah bertarikh 18 Januari 1982 telah diterima oleh Peguambela dan Peguamcara, wakil Pihak Perayu dan cukai setem yang ditaksirkan telah pun dibayar oleh Pembeli.

v) Notis Taksiran Cukai Keuntungan Harta Tanah bertarikh 5 Mac 1983 telah dihantar kepada Pihak Perayu dan cukai yang ditaksir adalah $97,491.30.

vi) Pihak Perayu telah membuat bantahan terhadap taksiran tersebut melalui suratnya bertarikh 14 April 1983.

vii) Pihak Perayu elah merayu kepada Pesuruhjaya Khas Cukai Pendapatan dengan memfailkan Borang Q bertarikh 7 September 1987.

viii) Pihak Perayu mendakwa bahawa harga pasaran yang ditaksirkan oleh Pihak Responden untuk tujuan cukai keuntungan harta tanah ini adalah salah dan tidak munasabah.

ix) Pihak Responden mendakwa harga pasaran yang ditaksirkan olehnya untuk tujuan cukai keuntungan harta tanah ini adalah betul dan munasabah.

Fakta-fakta Lain Yang Dikemukakan Dalam Perbicaraan

i) Tanah-tanah tersebut adalah ditanam dengan pokok-pokok getah yang sudah tua.

ii) Tanah-tanah tersebut berpotensi untuk pembangunan.

iii) Tanah-tanah tersebut tidak mempunyai kemudahan atau perkhidmatan asas seperti bekalan air, lektrik dan pengangkutan awam ke tanah-tanah tersebut.

iv) Keadaan rupa bumi tanah-tanah tersebut adalah sama iaitu berbukit-bukit.

v) Tidak ada halangan undang-undang atau halangan perancangan bagi pembangunan tanah-tanah tersebut.

vi) Jalanraya telah dibina hingga ke Taman sahaja.

vii) Lot-lot 5812 dan 5810 tidak ada masalah "access". Lot 5812 adalah bersempadan di sebelah timur dengan Taman.

viii) Jalan masuk (iaitu jalan "reserve") ke tanah-tanah tersebut adalah lebih kurang 1 1/2 hingga 2 batu jauhnya dan ia melalui Lot-lot 5810, 8401 8397, 8400 dan 603.

Pihak Perayu dalam rayuannya menghujah bahawa nilai pasaran yang dikenakan oleh Pihak Responden ke atas tanah-tanah sabjek iaitu Lot 599, Lot 600 dan Lot 602 sebanyak $75,000.00 seekar pada tarikh 6 Mac 1981 adalah terlalu tinggi dan tidak mencerminkan nilai pasaran ketika itu. Alasan-alasannya adalah seperti berikut:

i) Bahawa "access" merupakan faktor utama dalam menentukan harga pasaran. Jika tidak ada "access" atau "access" yang mencukupi, pembangunan tidak boleh dimulakan.

ii) Harga pindahmilik tanah-tanah tersebut sesama masa dengan tanah-tanah sabjek adalah keterangan yang baik sekali untuk menentukan harga pasaran jika tiada keterangan-keterangan yang lain.

iii) Jualan lot-lot berhampiran iaitu Lot-lot 5810 dan 5812 telah pun diambilkira oleh penilainya di dalam laporan penilaiannya ke atas lot-lot yang dipersoalkan.

iv) Harga jualan Lot 597 pada bulan Oktober 1979, sebanyak $37,000.00 seekar merupakan asas yang terbaik untuk menentukan harga pasaran bagi lot-lot yang dipersoalkan.

v) Lot 595 bukanlah merupakan asas yang baik bagi menentukan harga pasaran sebab ia merupakan penjualan sebahagian tanah sahaja. Menurut pengalaman, pada amnya, ramai orang yang sanggup membeli tanah-tanah yang dipecahkan dengan harga yang tinggi.

vi) Opsyen-opsyen yang tuan punya tanah boleh ambil untuk membangunkan tanah-tanah tersebut adalah:

(a) membina jalan masuk ke dalam lot-lot tersebut yang dianggarkan jaraknya kira-kira 1 1/2 batu hingga 2 batu;

(b) membeli "easements" untuk lot-lot pertengahan (intermediate lots); atau

(c) menunggu sehingga lot-lot berhampiran dibangunkan.

Menurut opsyen-opsyen (a) dan (b) di atas akan melibatkan modal yang besar. Bagi opsyen (c) kemungkinan berlakunya pembangunan ke atas tanah-tanah tersebut dalam jangka yang pendek adalah tipis kerana sehingga ketika lawatan penilai setelah 12 tahun berlalu, lot-lot berhampiran masih belum dibangunkan.

vii) Memandangkan tanah-tanah yang dipersoalkan itu tidak mempunyai "access" yang mencukupi pengurangan atau "peratusan penyesuaian" sebanyak 40% adalah didapati munasabah dan berpatutan. Kos untuk membina "access", membawa masuk saluran air dan lektrik dan kos untuk memperolehi laluan atau "easements" haruslah diambilkira dalam penyesuaian ini. Menurut kos-kos memperolehi kemudahan-kemudahan tersebut dan membina "access" sahaja akan melebihi nilai tanah-tanah tersebut.

viii) Pihak Perayu mengemukakan satu formula bagi menentukan harga pasaran lot-lot sabjek dalam kes ini iaitu:

(a) Menurut saksinya SP1, harga pasaran tanah-tanah tanpa mengambilkira peratusan penyesuaian tersebut tersebut adalah $47,000.00 seekar - dan oleh sebab ia mempersetujui bahawa tambahan sebanyak 10% hingga 15% untuk kenaikan harga pasaran bagi tempoh 8.4.1980 hingga 1.3.1981 harus dibuat, maka dengan mengambilkira peratusan kenaikan ini harga pasaran seekar tanah-tanah tersebut adalah di antara $52,124.00 hingga $54,510.00 iaitu $47,000.00 + 15%.

(b) Dan jikalaupun harga jualan Lot 597 pula dijadikan sebagai asas, iaitu $37,000.00 nilai pasarannya mengikut kiraannya ialah $42,550.00 seekar sahaja iaitu $37,000.00 + 15%.

Dari keterangan SP1 itu, harga pasaran tanah-tanah tersebut boleh digenapkan menjadi $45,000.00 seekar.

(c) Sebagai alternatif juga jika diambil peratusan kenaikan yang dipakai oleh Pihak Responden dari tahun 1979 hingga tahun 1981 sebanyak 25% hingga 30% harga lot-lot tersebut adalah dikira di antara $56,000.00 dengan $61,875.00 sahaja iaitu berdasarkan $45,000.00 + 30% kenaikan = $61,875.00.

Maka, adalah jelas bahawa laporan Pihak Responden yang menilaikan harga pasaran tanah-tanah tersebut sebanyak M$75,000.00 seekar adalah terlalu tinggi.

ix) Pihak Perayu menyatakan lagi bahawa peratusan penyesuaian sebanyak 40% yang diambil pakai oleh SP1 adalah munasabah dan dalam hal ini beliau mendapat sokongannya dari kes : *Pentadbiran Tanah Daerah Petaling v. Glenmarie Estate Ltd.* (1992) 1 CLJ 360 - (Supreme Court) di mana peratusan penyesuaian sebanyak 35% telah diberi oleh Mahkamah oleh sebab lokasi lot-lot di dalam kes itu adalah kurang baik, jika dibandingkan dengan lot-lot bandingan yang mana terletak berhampiran dengan jalanraya.

x) Oleh itu, Pihak Perayu berhujah bahawa harga pasaran yang munasabah dan berpatutan (secara maxima) dalam kes ini adalah kira-kira $53,325.00, (iaitu purata bagi $52,140.00 dan $54,510.00) dan ini menjadikan jumlah harga pasaran bagi ketiga-tiga lot sabjek dengan keluasan 8.186 ekar ialah $53,325.00 x 8.186 = $436,518.45.

Ini bermakna, cukai keuntungan harta adalah $52,379.05 yang dikira seperti berikut:

Harga pasaran	=	$ 436,518.45
Tolak		
Kos pemerolehan	=	$ 245,625.00
Kos sampingan	=	$ 6,296.60
Perenggan 2 Jadual 4 = 10%	=	$ 10,000.00
Keuntungan yang boleh dikenakan	=	$ 174,596.85
Jadi 30% daripada $174,596.85 adalah	=	$ 52,379.05

Pihak Perayu merayu supaya Notis Taksiran bertarikh 5 Mac 1983 diubahsuai sewajarnya dan hanya $52,379.05 sahaja cukai perlu dibayar.

Pihak Responden sebaliknya menghujah bahawa penilaiannya adalah munasabah dan berpatutan dan alasan-alasan adalah seperti berikut:

i) tanah-tanah sabjek

(a) Tanah-tanah sabjek mempunyai jalan alternatif untuk masuk selain dari lot-lot bandingan iaitu di sebelah utara dan ia hampir sama jauhnya dengan jalan yang dinyatakan oleh Pihak Perayu melalui lot-lot bandingan.

Jarak jauh dari lot-lot sabjek ke seperti yang disebutkan oleh Pihak Perayu adalah anggaran sahaja dan tidak mengikut skil. Namun demikian "access" adalah faktor utama maka peratusan penyesuaian patut diambilkira dan diberikan dalam menentukan harga pasaran lot-lot sabjek.

(b) Faktor utama lain yang diambil kira dalam menentukan nilai pasaran adalah lokasi yang termasuklah "accessibility", infrastruktur dan servis, keadaan fizikal tanah dan tarikh jual-beli. Dari faktor-faktor itu penyesuaian patutlah diberi juga dan dalam aspek ini Pihak Responden memberi 10% - 15%.

(c) Peratusan kenaikan nilai pasaran dari tahun 1979 ke tahun 1981 juga patut diambilkira dan peratusannya ialah di antara 25% ke 30%.

ii) kaedah penilaian

(a) *Pindahmilik lot-lot tersebut* yang berlaku sebelum 1981 adalah keterangan yang baik sekali dalam menentukan nilai pasaran jika tiada keterangan lain tetapi memandangkan terdapatnya keterangan ini iaitu penjualan Lot 5812 dalam tahun 1980, Lot 5810 dalam tahun 1981 dan Lot 595 dalam tahun 1981 yang berdekatan dengan tarikh penilaian di dalam kes ini, kegagalan Pihak Perayu mengambilkira pindahmilik ini adalah tidak mengikut kaedah penilaian yang telah diperakukan oleh penilai-penilai dan dengan itu penilaiannya tidaklah tepat dan berperaturan.

(b) Pindahmilik bagi Lot 595, yang berlaku pada Jun 1981 telah diambilkira oleh Pihak Responden walaupun penilaian yang dibuat hanya ke atas sebahagian tanah sahaja. Sebagai amalan, pengurangan sebanyak 10% akan diberi berdasarkan bahawa lot-lot yang mempunyai ramai pemilik sukar dilupuskan samada dijual atau dibangunkan jika dibandingkan dengan tanah yang mempunyai pemilik yang tunggal tetapi perbandingan ini mesti diambilkira juga kerana ia adalah perbandingan yang baik.

(c) Pihak Responden telah tidak mengambilkira penjualan Lot 597 pada Oktober 1979 dalam menentukan nilai pasaran lot-lot tersebut, kerana terdapat pindahmilik lot-lot yang lebih baik yang berlaku dalam tahun-tahun yang hampir dengan penjualan sabjek lot iaitu tahun-tahun 1980 dan 1981.

(d) Lot-lot perbandingan Lot 5810 dan 5812 adalah lebih baik daripada lot-lot sabjek hanya dari segi lokasi kedudukannya sahaja dan tidaklah dari semua segi *yang lain seperti yang* tersebut terdahulu dari ini.

(iii) Pengurangan sebanyak 40% yang dipakai oleh Pihak Perayu adalah terlalu tinggi kerana lot-lot perbandingan di dalam kes ini bukannya remote dari tanah-tanah sabjek malah masih dalam persekitaran yang sama. Walaupun penyesuaian 40% ini

coba dipakai oleh Pihak Perayu dengan menyebut kes Glenmarie Estate Ltd., Pihak Responden mendakwa fakta dalam kes itu adalah tidak sama kerana lot sabjek dan lot bandingan di dalam kes itu amatlah jauh iaitu 2.2 batu dari Lot-lot sabjek sedangkan dalam kes ini hanya dalam lingkungan 1 hingga 1 1/2 batu sahaja. Pihak Responden mengesyorkan peratusan antara 10% dan 15% sahaja boleh dipakai bagi faktor ini.

(iv) Pihak Perayu tidak mempunyai angka asas yang tetap (common base figure) dalam menentukan nilai pasaran lot-lot sabjek, malah memakai angka asas yang berubah dalam mencapai harga $45,000 atau $53,325.00 ini. Contohnya, pertama Pihak Perayu mengemukakan harga pasaran sebanyak $40,000.00 seekar berdasarkan harga pelupusan lot-lot sabjek pada Mac 1981. Keduanya beliau telah menggunakan Lot 5812 untuk mendapatkan nilaian $47,400.00 seekar selepas memberi penyesuaian 40% kepada lot tersebut. Ketiganya beliau telah mengemukakan nilaian baru sebanyak $53,325.00 seekar daripada $47,400.00 seekar dengan menambahkan peratusan kenaikan nilai 10% sehingga 15% kepada angka tersebut.

Pihak Responden menghujah harga pasaran tanah-tanah sabjek yang munasabah dan berpatutan adalah $75,000.00 seekar dan harga ini dikira berdasarkan lot-lot perbandingan terbaik iaitu Lot 5812 dan Lot 5810 seperti berikut:

Lot-lot sabjek:

Lot 5812

Kedudukannya bersebelahan dengan kawasan yang telah dibangunkan iaitu Taman, oleh itu lokasinya lebih baik daripada lot-lot yang ke dalam seperti lot-lot sabjek.

Harga (seekar):	= $	79,000.00
Pengurangan bagi lokasi dan "access" = - 15%		
Tambahan bagi kenaikan nilai dari 1990 sehingga tahun 1991 = + 10%		
Pengurangan sebenarnya = - 5%		
	seekar $	3,959.00
Harga pasaran seekar	$	75,050.00

Lot-lot sabjek:

Lot 5810

Kedudukannya tidak sama dengan Lot 5812 kerana ia terletak ke dalaman sedikit dari Lot 5812 tetapi lebih dekat dengan lot-lot sabjek dari Lot 5812 dan mempunyai characteristic yang sama dengan lot-lot subjek kerana ketiadaan "access".

Dari itu penyesuaian telah dibuat dengan memberi pengurangan sebanyak 10% menjadi:

Harga (seekar)	= $	83,500.00
Pengurangan bagi lokasi dan "access" 10% (seekar)	= $	8,350.00
Tambahan kenaikan nilai pasaran		
Harga pasaran (seekar)	= $	75,150.00

Angka-angka ini digenapkan menjadi $75,000.00 sahaja.

ii) Oleh itu harga pasaran yang berpatutan bagi Lot-lot 599, 600 dan 602 ialah:

Lot 599 4,062 ekar @ $75,000/ekar = $304,650.00	= $	304,000.00
Lot 600 2,218 ekar @ $75,000/ekar = $166,350.00	= $	166,000.00
Lot 602 1,906 ekar @ $75,000/ekar = $142,950.00	= $	143,000.00
Jumlah Nilaian	= $	613,000.00

iii) Ini bermakna cukai keuntungan harta adalah dikira seperti berikut:

Harga pasaran	= $	613,000.00
Tolak		
Kos sampingan	= $	327.00
	$	612,673.00
Tolak:		
Harga pemerolehan pada 19/12/1978 = $245,625.00		
Tambah:		
Kos sampingan = $5,969.00	= $	251,594.00
	= $	361,079.00
Tolak:		
Perenggan 2 Jadual 4 (10%)	= $	36,108.00
Pendapatan yang boleh dikenakan cukai atas kadar 30%	= $	324,971.00 - 30%
Cukai pada kadar 30%	= $	97,491.30

Dengan yang demikian Pihak Responden memohon supaya cukai keuntungan bagi kes ini dikekalkan pada jumlah $97,491.30.

Isu Dalam Kes Ini

Isu dalam kes ini ialah: apakah harga pasaran yang munasabah dan berpatutan bagi Lot 599, Lot 600 dan Lot 602 pada 6 Mac 1981.

ALASAN

Kaedah Penilaian

Dalam menentukan harga pasaran lot-lot sabjek pada 6.3.1981 kaedah yang dipakai oleh kedua-dua pihak ialah kaedah perbandingan di mana harga-harga penjualan tanah-tanah berhampiran dan yang di dalam kawasan persekitaran akan dibandingkan dengan lot-lot sabjek dan setelah diberi penyesuaian tertentu iaitu naiknilai (appreciation) dan/atau pengurangan (adjustments) nilainya akan ditaksirkan. Nilai yang tertaksir itu kelak ialah nilai pasaran sesuatu tanah pada sesuatu tarikh. Naiknilai diberi di mana tarikh penjualan tanah-tanah perbandingan berlaku terdahulu daripada tarikh tanah sabjek dijual sementara pengurangan diberi, di antara lain, dengan mengambilkira beberapa fakta seperti 'access', lokasi, potensi untuk pembangunan, kos membina infrastruktur seperti jalan, bekalan air, lektrik dan sebagainya.

Untuk menentukan harga pasaran ini kami nampak ada dua faktor utama yang perlu ditimbangkan iaitu:

(a) Adakah lot-lot perbandingan yang diambil oleh kedua-dua pihak merupakan lot-lot yang terbaik sekali pada 6.3.1981.

(b) Apakah peratusan naiknilai atau pengurangan yang boleh dianggap munasabah dan berpatutan untuk diberi kepada lot-lot perbandingan dan lot-lot sabjek bagi mendapatkan nilai pasaran yang munasabah dan berpatutan baginya.

(i) **Lot-lot Perbandingan Yang Terbaik**

Mengenai faktor pertama kami dapati daripada keterangan dan bukti-bukti yang dikemukakan dua lot perbandingan yang dipersetujui bersama-sama dan dua lot lagi yang menjadi perbalahan di antara Pihak Perayu dan Pihak Responden. Lot-lot yang dipersetujui pakai ialah Lot 5810 dan Lot 5812 sementara lot-lot yang dipertikaikan pula ialah Lot 595 dan Lot 597. Pihak Perayu mempertikaikan Pihak Responden kerana enggan mengambil Lot 597 sebagai lot perbandingan sementara Pihak Responden mempersoalkan motif Pihak Perayu kerana tidak mengambil Lot 595 sebagai lot perbandingan.

Alasan Pihak Perayu mengenepikan Lot 595, menurut laporan penilaiannya ialah kerana beliau menyangka pindahmilik lot ini pada bulan Jun 1981 ialah bagi kesemua lot yang luasnya 3.375 ekar, dengan harga yang dianalisakan sebanyak $11,833.00 seekar yang mana harga ini beliau dapati terlalu rendah. Setelah mendapati fakta yang sebenar, daripada laporan penilaian Pihak Responden, beliau menyatakan pula Lot 595 bukanlah asas yang baik untuk menentukan harga pasaran kerana penjualannya melibatkan 1/6 bahagian hakmilik sahaja (fractional sale). Alasan Pihak Perayu mengambil Lot 597 sebagai bandingan pula ialah kerana penjualannya pada bulan Oktober 1979 sebanyak $37,000.00 seekar merupakan asas yang baik bagi menentukan trend/ aliran harga pasaran.

Alasan Responden mengambil Lot 595 sebagai panduan ialah walaupun tarikh penjualan Lot 595 ini berlaku 90 hari selepas tarikh dalam isu, tetapi transaksi ini merupakan asas yang baik untuk menggambarkan aliran atau kecenderungan pasaran. Beliau mengenepikan Lot 597 pula dengan alasan ianya terlalu terpencil (remote) dan kerana ada bukti transaksi lot-lot yang lebih baik iaitu Lot 5812 pada 8.4.1980, Lot 5810 pada 8.3.1981 dan Lot 595 pada 19.6.1981.

Setelah meneliti hujah-hujah daripada kedua-dua pihak mengenai pemakaian Lot 5810, Lot 5812, Lot 595 dan Lot 597 sebagai lot-lot bandingan, kami bersetuju bahawa Lot 5810 dan Lot 5812 adalah asas-asas yang terbaik dalam kes ini untuk menentukan harga pasaran bagi lot-lot sabjek. Tetapi kami tidak juga mengenepikan dua lot lagi iaitu Lot 595 dan Lot 597 sebagai bandingan yang baik juga kerana sebagai panduan untuk menentukan aliran harga pasaran bagi lot-lot sabjek di sekitar di situ.

Alasan kami ialah walaupun penjualan Lot 595 berlaku 90 hari terkemudian daripada lot-lot sabjek namun ia juga boleh menggambarkan kecenderungan pasaran tanah bagi tempoh, 1979 hingga 1981, iaitu suatu gambaran yang menunjukkan nilai pasaran tanah adalah meningkat. Bagi Lot 597 pula walaupun penjualannya berlaku dua tahun lebih awal dari lot-lot sabjek tetapi ia masih dapat menunjukkan kecenderungan pasaran tanah yang meningkat juga dari 1979 sehingga Jun 1981.

Kesimpulannya kami berpendapat Lot-lot perbandingan yang terbaik sekali dalam kes ini ialah keempat-empat Lot 5810, Lot 5812, Lot 595 dan Lot 597 dan tidak satu pun boleh diketepikan begitu sahaja.

(ii) **Peratusan Pengurangan Yang Munasabah**

Mengenai faktor yang kedua iaitu peratusan pengurangan yang munasabah dan berpatutan untuk diberi kepada lot-lot sabjek, Pihak Perayu mencadangkan bahawa pengurangan 40% adalah perlu untuk mencerminkan kos yang tinggi bagi membangunkan infrastruktur seperti jalan "access", parit, bekalan air, bekalan lektrik dan sebagainya. Beliau memberi alasan secara umum bahawa `kos-kos memperolehi kemudahan-kemudahan dan membina "access" akan melebihi nilai-nilai tanah tersebut.' Beliau juga menyebut kes P.T.D. Petaling v. Glenmarie Estate Ltd. di mana Mahkamah telah memberi pengurangan 35% kerana lokasi lot-lot sabjek adalah kurang baik jika dibandingkan dengan lot-lot berhampiran jalanraya. Oleh itu Pihak Perayu membuat kesimpulan bahawa pengurangan sebanyak 40% dalam kes ini

adalah munasabah dan berpatutan.

Bagaimanapun kami tidak bersetuju peratusan pengurangan 40% ini munasabah dan berpatutan kerana dalam kes Glenmarie Estate Ltd. ini Mahkamah Agung memberi pengurangan 35% kepada lot-lot sabjek dengan alasan ianya terpencil (remote) dan terletak betul-betul di bawah ruang udara penerbangan dan juga kerana saiznya yang luas (60 ekar). Jelas dalam kes Glenmarie Estate Ltd. ini lot-lot sabjek adalah kurang baik dari segi lokasi dan fizikalnya. Tetapi di dalam kes di hadapan kita ini lot-lot sabjek dan lot-lot perbandingan adalah sama dari semua segi kecuali dari segi "accessibility" yang termasuk lokasi. Ini bermakna kedudukan lot-lot sabjek dalam kes ini adalah lebih baik daripada lot sabjek yang berkenaan dalam kes Glenmarie Estate Ltd. dan dengan itu pengurangan yang wajar diberi seharusnya kurang daripada 35%. Pihak Perayu sendiri pun mungkin akan merasai demikian kerana dalam hujah-hujahnya yang bertulis beliau telah meningkatkan nilai $47,000.00 seekar untuk lot-lot sabjek kepada $53,325.00 setelah mengambilkira naiknilai 10% hingga 15% bagi tempoh 8.4.1980 hingga 1.3.1981. Adalah nyata pengurangan 40% yang digunakannya itu terlalu tinggi yang menyebabkan nilaiannya ke atas lot-lot sabjek sebanyak $47,000.00 didapati rendah daripada sepatutnya dan dengan sendirinya telah menaikkannya kepada $53,325.00 seekar pula.

Kami berpendapat peratusan pengurangan 40% yang digunakan oleh Pihak Perayu adalah terlalu tinggi dan kami juga berpendapat pengurangan 10% hingga 15% yang digunakan oleh Pihak Responden untuk faktor lokasi dan "accessibility" adalah terlalu rendah memandangkan bahawa ada faktor-faktor yang patut diberi pertimbangan yang lebih berat oleh Pihak Responden tetapi tidak diambilkira seperti kejauhan lot-lot sabjek dari kawasan kemajuan, potensi untuk pembangunan lot-lot tersebut dan sebagainya yang berpunca daripada faktor lokasi dan "accessibility".

Mengenai faktor-faktor ini adalah nyata lot-lot sabjek terletak jauh ke dalam, sekurang-kurangnya 1.5 batu mengikut rezab jalan (access reserve) dari lot perbandingan dan Lot 5812 pula bersebelahan dengan taman perumahan Taman.

Lot perbandingan Lot 5810 pula terletak hanya berselang satu lot di sebelah barat Lot 5812. Kedua-dua lot ini lebih hampir dengan kawasan kemajuan daripada lot-lot sabjek.
Pada tarikh pelupusan lot-lot sabjek iaitu 6.3.1981 Taman telah pun wujud dan ada tapak bakal kawasan perindustrian di sebelah selatan, kira-kira bersempadan dengan Lot 5810 dan Lot 5812.

Oleh itu adalah munasabah untuk mengandaikan bahawa pembangunan komersial akan sampai ke Lot 5810 dan Lot 5812 lebih awal dan lebih cepat daripada ke lot-lot sabjek, sementara lot-lot sabjek akan terus terbeku dengan sebab belum ada faktor yang mendorong seperti jalanraya, taman perumahan, tapak perindustrian dan sebagainya berlaku berhampiran lot-lot tersebut.

Kesimpulannya kami berpendapat nilai pasaran $75,000.00 seekar yang ditaksir oleh Pihak Responden adalah tidak tepat. Oleh sebab tidak ada potensi pembangunan dan ketiadaan faktor-faktor yang mendorong ini, adalah wajar untuk mengandaikan kenaikan nilai tanah akan berlaku dengan perlahan-lahan sahaja. Menyusul dari itu pada tarikh penilaian yang dipersoalkan adalah tidak mungkin harga pasaran lot-lot sabjek sudahpun meningkat ke $75,000.00 seekar seperti yang dinilai oleh Pihak Responden. Kami berpendapat peratusan pengurangan sebanyak 15% sahaja yang diberi oleh Pihak Responden itu adalah terlalu rendah dan hendaklah dinaikkan lagi dengan mengambil-kira pengurangan dari segi lokasi dan accessibility tersebut.

Setelah mengambilkira faktor-faktor yang dikemukakan di atas ini kami berpendapat peratusan pengurangan yang munasabah dan berpatutan bagi lot-lot sabjek adalah melebihi 15% tetapi kurang daripada 40%. Kami sebulat suara bersetuju memberikan pengurangan 25% kepada lot-lot sabjek berdasarkan harga pasaran $79,000.00 seekar bagi Lot 5810 dan Lot 5812 oleh Pihak Responden. Kami berpendapat pengurangan 25% ini adalah munasabah dan berpatutan bagi Lot 599, Lot 600 dan Lot 602 dalam kes ini.

Dalam menentukan kaedah peratusan pengurangan sebanyak 25% ini oleh sebab faktor lokasi dan accessibility, kes Pentadbir Tanah dan Daerah Petaling v. Glemarie Estate Ltd. tidak diketepikan tetapi tertakluk kepada penyesuaian tertentu. Lot-lot sabjek dalam kes Glenmarie Ltd. Estate termasuk dalam tanah ladang getah/kelapa sawit kepunyaan Glenmarie Estate Ltd. yang jauhnya 2.2 batu dari Lapangan Terbang Subang. Tanah sabjek itu pula adalah jauh ke dalam dan terpisah dari jalan besar menuju ke Lapangan Terbang Subang. Lot-lot sabjek dalam rayuan kita ini pula ialah 1.5 batu dari Taman. Jadi bagi mendapatkan peratusan pengurangan yang munasabah kami mengambil jarak jauh 2.2 batu dan peratusan pengurangan 35% kes Glenmarie yang tersebut tadi sebagai asas perkiraan, dan jarak jauh 1.5 batu dari lot-lot perbandingan 5812 dan 5810 ke lot-lot sabjek di ambil untuk membuat perkiraan peratusan pengurangan seterusnya seperti berikut:-

Jarak jauh 2.2 batu	=	35%
Jarak jauh 1.5 batu = 1.5 - 2.2 x 35%	=	23.86%
Peratusan pengurangan (digenapkan)	=	24%
Ditambah 1% kerana perbezaan tarikh pelupusan 3 hari dari Lot Perbandingan = 24% + 1%	=	25%

Bagi mendapatkan nilai pasaran lot-lot sabjek pada 6.3.1981 kami memilih lot perbandingan yang terbaik sekali di antara Lot 5810 dengan Lot 5812, dalam tempoh yang sama dengan lot-lot sabjek iaitu pada 8.3.1981 iaitu Lot 5810 yang mana harga seekarnya ialah $83,500.00. Dengan memberikan peratusan pengurangan 25% seperti di atas tadi, taksirannya ialah seperti berikut:-

Nilai Pasaran Lot 5810 pada 8.3.1981 (seekar)	= $	83,500.00
Tolak		
Peratusan pengurangan 25%	= $	20,815.00
Harga (saekar)	= $	62,625.00
Nilai pasaran lot-lot sabjek iaitu Lot 599,Lot 600 Lot 602 pada 6.3.1981 ialah:	= $	62,625.00
Jumlah harga pasaran bagi Lot 599, Lot 600 dan Lot 602 pada 6.3.1981 seluas 8.186 ekar = $ 62,625.00 x 8.186	= $	512,648.25
Ini bermakna cukai keuntungan harta adalah dikira seperti berikut:-		
Harga pasaran Lot-lot sabjek	= $	512,648.00
Tolak kos sampingan	= $	327.00
Nilai	= $	512,321.00
Tolak		
harga pemerolehan pada 12.12.1978 $ 245,623		
Tolak: kos sampingan $ 5,969	= $	251,594.00
	= $	260,727.00
Tolak Perenggan 2 Jadual 4 sebanyak 10% $ 260,727.00	= $	26,073.00
	= $	234,654.00
Cukai pada kadar 30% = $234,654.00x30%	= $	70,396.20
Cukai mengikut Notis Taksiran bertarikh 5 Mac 1983 ialah	= $	97,491.30
Cukai yang ditaksirkan pada 13 Februari 1993	= $	70,396.20
Cukai yang patut dilepaskan	= $	27,095.10

KEPUTUSAN

Dengan berasaskan kepada fakta-fakta yang dipersetujui dan fakta-fakta yang dikemukakan oleh Pihak Perayu dan Pihak Responden kami memutuskan bahawa nilai pasaran yang munasabah dan berpatutan bagi Lot 559, Lot 600 dan Lot 602 pada 6 Mac 1981 dalam kes rayuan ini bagi maksud Akta Cukai Harta Tanah 1976 ialah $62,625.00 seekar atau $512,648.25 bagi kesemua lot-lot tersebut, dan dengan itu kami memerintahkan Notis Taksiran 1981 bertarikh 5 Mac 1983 hendaklah dipinda seleras dengan nilai pasaran yang diputuskan oleh kami itu iaitu $512,648.25 dan ditaksirkan sewajarnya.

Report of Education & Examination Committee

The Education & Examination Committee which was formed in 1992 has continued to work on the Examination Syllabus under the current Board. Members of the Committee are as follows:-

Michael Loh	-	**Chairman**
Assoc. Prof. Dr Barjoyai Bardai	-	**UKM**
Assoc. Prof. Veerinderjeet Singh	-	**UM**
K Jeyapalan	-	**UUM**
Ho Juan Keng	-	**ITM**

Pn Shareen Othman
Tuan Hj Abdul Hamid bin Mohd Hassan
Yong Poh Chye
Chow Kee Kan
Khoo Chuan Keat
Ranjit Singh
Robert Lee
Lee Lee Kim

The Committee has finalised the syllabus and is now concentrating on drawing up on the entry qualifications and exemptions for students. The completed syllabus will be tabled to the General Council of the Institution for adoption soon. Once the Council has approved the syllabus, it is the intention of the Committee to circulate it to the relevant government authorities like the Inland Revenue Department, Ministry of Education and some institutions of higher learning (universities) for the their comments.

If everything works according to plan, the first examination may be held by end of 1994. However, the launching of the first examination is dependent on the discussions with accredited commercial institutions which are going to run the courses for the students. These institutions may need time to source the appropriate lecturers and to prepare the course materials. In any case, the first examination will not be later than end of 1995. We will continue to give an update of developments in later issues of this journal. ■

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

Qualification Required For Membership

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

Associate Membership

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

Fellow Membership

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

Application of Membership

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

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

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

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

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

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

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

TAX INCENTIVES

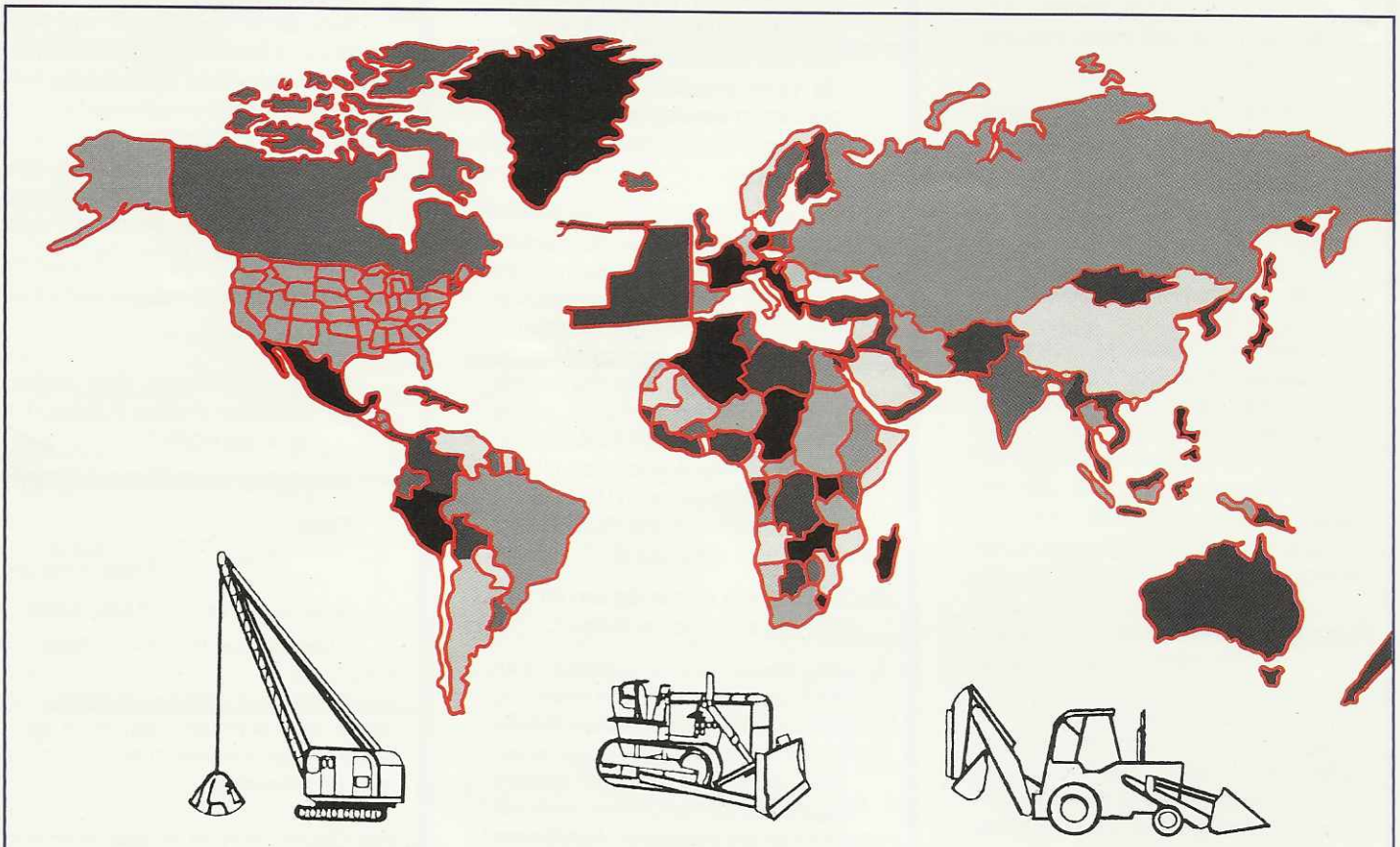
PRACTICAL CONSIDERATIONS AND POLICY GUIDELINES

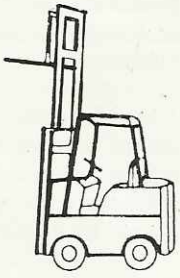
- 30 November 1993 -
Hotel Istana, Kuala Lumpur.

Speakers:

Mr Low Peng Lum
Director,
Industrial Promotions, MIDA

Mr Lee Lee Kim
Associate Director
Kassim Chan Tax Services Sdn Bhd.





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