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# TAX NASIONAL

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MEMO TO FINANCE MINISTER

BUDGET  
1995

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Memorandum to  
the Honorable Minister Of Finance

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Dialogue with Officials of the  
Ministry of Finance

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Income Tax Appeals

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Designing a Value Added Tax:  
What are the Issues?

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Schedular Tax Deduction System:  
Application and Examples

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Taxation of Trusts

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Malaysian Institute Of Taxation

# TAX NASIONAL

## Contents

Memorandum to the Honorable Minister Of Finance	1
Dialogue with Officials of the Ministry of Finance	6
Income Tax appeals	8
Designing a Value Added Tax	12
Schedular Tax Deduction System	23
International Relations	26
Institute's News	27
Students' Section	32
Glossary	36

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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:

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

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MALAYSIAN INSTITUTE OF TAXATION  
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# Memorandum To The Honorable Minister Of Finance

## 1. PROMOTION OF EDUCATION

### 1.1 Industrial Buildings Allowance

Tertiary education as an industry contributing to foreign exchange earning is growing in Malaysia. 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 and relatives will very likely visit their children in Malaysia. Even assuming that parents will only visit Malaysia once 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 step, 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% for initial and an annual allowance of 6% as well as import duty and sales tax exemption on all equipment (e.g. laboratory equipment), used in an educational establishment. In addition, MIA/MIT also proposes that all industrial buildings be given an annual allowance of 6% also in place of the current 2% which is not reflective of the economic use of the buildings.

### 1.2 Study in approved independent schools

To encourage the development of education as an industry at higher and also secondary level, it is suggested that double deduction for a child's study in approved independent schools be given.

Independent schools can play a significant role in making Malaysia an education centre. With more incentive, independent schools can be developed to complement government schools which will reduce government burden on financing for schools.

Parents who send their children to independent schools

are well-to-do. They can afford the fees for the schools which is higher compared to government schools. This will not only offer more choice in terms of children education but form the nucleus of the industry to attract students from the well-to-do in ASEAN and other developing and Muslim countries.

Independent schools can be used to enrol children of foreign investors who until now could only go to a few select 'international schools'. The interaction of local and foreign students will also widen the horizon of local students and provide better all-round education.

### 1.3 Further Promotion of Training

In the 1991 Budget improvements to the double deduction for the training incentive was made with effect from the year of assessment 1992. The criteria for the grant of double deduction to a non-manufacturing company are that the company must be incorporated or registered in Malaysia, its trainees of Malaysian citizenry and in full-time employment. In addition, the training should be conducted by an approved training institution. The approved training institution currently comprise:-

- (i) National Productivity Centre
- (ii) Standards and Industrial Research Institute of Malaysia



- (iii) MARA Institute of Technology
- (iv) Malaysian Agricultural Research & Development Institute
- (v) Forest Research Institute of Malaysia
- (vi) Center for Instructor and Advanced Skill Training
- (vii) Penang Skills Development Centre
- (viii) Institut Kemahiran MARA

The Malaysian Institute of Accountants and its sponsored organisation, The Malaysian Institute of Taxation desire to be included in the above list. The following are some grounds on which the bodies should be considered for inclusion in the list.

#### Statutory Body

The Malaysian Institute of Accountants was formed by an Act of Parliament, the Accountants Act 1967 with the objective of regulating the accountancy profession. Its role is equivalent with those of the Bar Council for the lawyers and the Institution of Engineers for the engineers. The Accountants Act 1967 also covers the practice of taxation which the MIA has accommodated the activity in a sponsored body, The Malaysian Institute of Taxation, whose Council includes nominated members from the MIA.

#### Proven Capabilities in Training

Since 1987 the MIA has organised countless training courses and major international conferences. In fact this ability has been recognised to the extent that the Confederation of Asian and Pacific Accountants (CAPA) has awarded the MIA the privilege to host the 1996 CAPA Conference where some 2000 participants are expected.

Details of past courses will be provided to the Ministry if necessary.

#### Importance of MIA/MIT Type Courses

The courses organised by the MIA/MIT are wide ranging in topics covering management subject matters, accounting, auditing, taxation and commercial legislations. This is due to the fact that an accountant has to be familiar with such a wide range of knowledge. Whilst courses are organised primarily for members who are qualified, frequently, such courses are also meant for semi-qualified accountants and their other support staff like accounting technicians.

MIA/MIT courses therefore not only benefit its some 7300 members, they are useful to support staff such as accountants, clerks, assistant accountants and accounting technicians.

#### Financial Support to Training Capability

The MIA even though a statutory body does not have financial support from the government. It is dependent on members' subscriptions to operate. With increasing inflation the pressure to maintain its services is great especially if members' subscription are to be kept low. The option available here is to have some contribution from selling courses to cover deficit from the operation based on members' subscriptions.

To allow participants attending MIA/MIT courses to claim double deduction is an incentive for more companies to send their accounting and management personnel for training. When this happens the real impact of education and training and the resultant long-term growth could then be felt.

More participation especially in outside the Klang Valley locations could be encouraged. Presently courses other than in

the Klang Valley are not well patronised and the MIA subsidises such locations.

Unlike the Bar Council which has a Justice Ministry and the Malaysian Institute of Medical Research the MIA does not have such 'supporting' organisations. Its meagre income has to be stretched very thinly to fulfill the objectives of regulating the accountancy profession.

#### Conclusion

Just as manufacturing concerns are important to boost exports earnings, the support to manufacturing activities in financial management, audit and other accounting based functions are equally important if growth is to be orderly and sustained. Some assistance to the Malaysian Institute of Accountants and the Malaysian Institute of Taxation in the form of the respective bodies' inclusion in the list of approved training institutions for companies to claim double deduction for training will go a long way to expand training, inculcate a training culture in our corporate citizens and smoothen the path to realising the goals of Vision 2020.

## 2. A MAXIMUM RATE OF 5% FOR SALES AND SERVICE TAX (SST)

#### Introduction

It has been proposed that Sales and Service Tax (SST) which is to be introduced will combine Sales Tax and Service Tax into a single consumption tax. SST being a consumption tax is levied or based on goods and services consumed. Since SST can be imposed on a multi-stage basis, it would also improve efficiency in indirect tax collection. In addition, as SST is a tax on consumption, it will encourage saving and may at the same time check unnecessary or compulsive consumption.

It is proposed that rate of SST should not be more than 5%. A 5% SST will be more acceptable to the public and not over-burden com-



sumers whilst at the same time maintaining the required level of indirect tax revenue. Currently sales tax and service tax which are not multi-stage is levied at the rate of 5%, 10%, and 15%.

In deciding on an appropriate rate for SST, it would be necessary to compare the current rate in Singapore which is only 3%.

### Estimate of revenue from SST

Assuming that the proposed SST would be implemented at a final consumers' level, be it on a multi-stage or a single basis, the revenue to be collected can be estimated based on final consumption figures. Since the new SST would replace the Sales Tax and the Service Tax currently collected separately, the net revenue generated based on 1994 figure should be RM1,229 billion as shown in Table 1.

### 3. A CASE FOR REDUCTION OF INDIVIDUAL TAX RATES

When the Sales and Service Tax (SST) is implemented, it is expected to bring an estimated net increase in revenue of RM1,229 billion in 1994. We propose a reduction of individual tax rates to a maximum of 30 per cent and a higher level of exemption. The proposed changes are illustrated in Table 2. The proposed changes will:

- reduce the high demand for tax officials as many individuals will be outside the tax net and freeing necessary resources of the Inland Revenue Department.
- compensate individuals for the higher cost of their "shopping baskets".
- reduce 'brain drain' especially to Singapore if gap in tax rates is at least narrowed.
- result in higher productivity as the disincentive of working harder and paying more tax can be get rid of.
- encourage expatriates to relocate in Malaysia in view of the

Table 1

		1994 RM
Total Indirect Tax Revenue		15,808,000,000
Consumption tax @5% on Consumption Expenditure		5,634,800,000
<b>Less:</b>		
Sales Tax	3789,000,000	
Service Tax	617,000,000	4,406,000,000
Increase in Indirect Tax Revenue		1,228,800,000
Total Indirect Tax Revenue after Introduction		17,036,800,000
Consumption Expenditure		
Public	22,767,000,000	
Private	89,929,000,000	
		112,696,000,000
<b>Source</b>		
1. Revenue Estimates 1993		
2. Economic Report 1993/1994 Ministry of Finance, Page xii Statistical Tables		

more competitive individual tax rates.

With the reduction in tax rates, consumers will be compensated for the increased tax burden due to SST. The deduction for self, wife and a child has remained the same at RM5,000, RM3,000 and RM800 respectively since Year of Assessment 1991. In this connection, the deduction should be increased to say RM15,000 in order to compensate for the increased tax cost arising from SST.

The proposed top rate at 30% though is equal to that of our neighbouring country Singapore, Singapore's top rate applies to income in excess of S\$400,000 while Malaysia is on income in excess of RM100,000. For income between S\$100,000 to S\$400,000 in Singapore, the applicable tax rates are only between 24 to 28%. (Please refer to Table 3). Overall, even with the reduction in tax rate, Malaysian tax is still higher than Singapore tax. Tax reduction is

Table 2

### Malaysian Tax Table for Individual

	Position for Y/A 1994			Proposed	
	Chargeable Income RM	Rate %	Income Tax Payable RM	Rate %	Income Tax Payable RM
On the first	2,500	2	50	-	-
On the next	2,500	5	125	-	-
On the first	5,000		175	-	-
On the next	5,000	8	400	-	-
On the first	10,000		575	-	0
On the next	10,000	10	1,000	5	500
On the first	20,000		1,575	-	0
On the next	15,000	15	2,250	10	500
On the first	35,000		3,825		2,000
On the next	15,000	21	3,150	15	2,250
On the first	50,000		6,975		4,250
On the next	20,000	26	5,200	20	4,000
On the first	70,000		12,175		8,250
On the next	30,000	31	9,300		7,500
On the first	100,000		21,475		15,750
On all income exceeding	RM100,00		34		30



**Table 3**

**Singapore Tax Table**

**Year of Assessment 1994**

	Chargeable Income S\$	Rate %	Income Tax Payable S\$
On the first	5,000	2.5	125
On the next	2,500	5	125
On the first	7,500		250
On the next	2,500	6	150
On the first	10,000		400
On the next	5,000	7	350
On the first	15,000		750
On the next	5,000	8	400
On the first	20,000		1,150
On the next	5,000	11	550
On the first	25,000		1,700
On the next	10,000	13	1,300
On the first	35,000		3,000
On the next	15,000	15	2,250
On the first	50,000		5,250
On the next	25,000	19	4,750
On the first	75,000		10,000
On the next	25,000	22	5,500
On the first	100,000		15,500
On the next	50,000	24	12,000
On the first	150,000		27,500
On the next	50,000	25	12,500
On the first	200,000		40,000
On the next	200,000	28	56,000
			96,000
Above	400,000	30	

needed more so to increase the quality of life in Malaysia and to reduce 'brain drain' especially to Singapore.

With the reduction in tax rates, this will reduce a substantial number of chargeable taxpayers and thereby reduce the number of returns to be processed. This will eventually increase the efficiency and effectiveness of the IRD in terms of having more time to finalise tax returns.

A reduction of individual tax rate should be taken as compensation for the burden of consumption tax (i.e. the SST) on the consumer.

The SST rate of 5% also should not be increased after implementation for say a 3-5 year period in order to gain

acceptance by the public.

## 4. NON RESIDENT SHIPPING AND AIR LINE COMPANIES

Under Section 54 of the Income Tax Act 1967 the Inland Revenue Department may deem 5% of the gross income derived from Malaysia by a non-resident shipping or air line company to be the statutory income of the company for income tax purpose.

Currently there is no withholding tax requirement imposed by the Income Tax Act on the freight charges paid to these non-resident shipping or air line companies. Our Inland Revenue Department could collect taxes from them either:-

- When the said company files a tax return or
- Appoint a person to be the agent of the shipping or air line company to collect taxes or assume responsibility as a taxpayer of the non-resident company.

Every year Malaysia suffers huge deficits in the balance of payment for service charges and due to the practical problems in collecting taxes from these non-resident operators of the shipping and air line businesses, tax revenue could have been lost.

We suggest that the withholding tax provision similar to Section 109 be imposed on the freight charges paid to non-resident companies deriving Malaysian income. However the withholding tax rates should take into consideration the concessionary rates given under the double taxation agreements with many countries.

The withholding tax would ensure compliance by the non-resident company and to increase tax revenue.

## 5. TAX DEDUCTION ON WAGES PAID FOR DOMESTIC HELP

In line with the Government's efforts to encourage mothers to work, the Institute supports the proposal made by the Human Resources Minister, Dato' Lim Ah Lek, to allow tax deduction on wages paid for domestic help.

The women workforce presently comprise of 47% of the total working population and is expected to increase to 52 % by the year 2020. As the cost of securing domestic help increases, it is imperative that the women workforce be given some form of tax relief whereby they may be able to afford domestic helpers to replace some of their household duties.

The Institute proposes a tax deduction on wages paid for such domestic helper(s) engaged for families with children of 12 years and below.

## 6. REAL PROPERTY GAINS TAX DEDUCTION FOR UNABSORBED INTEREST

As property prices continues to climb, the amount of loan obtained to finance acquisition of properties is



substantially high. Under the Income Tax Act, 1967, unless the taxpayer is in the business of property letting, the cost of funds obtained to finance the acquisition of properties are allowed only if the investment generates sufficient rental income. Where interest expense exceeds the income, the unabsorbed interest is disallowed. Further, the tax payer is not able to obtain a relief for the interest incurred (after the issue of the certificate of fitness) against the real property gains tax payable on subsequent disposal of the investment.

The Institute proposes an amendment to the Real Property Gains Tax Act 1976 to allow such interest expenses which are not absorbed against rental income to be deductible for real property gains tax purposes.

#### 7. PREPARATION OF THE AGREED BUNDLE OF DOCUMENTS AND STATEMENTS OF AGREED FACTS IN TAX APPEALS

When taxpayers are dissatisfied with the assessment of the Revenue, they may file Notices of Appeal to the Special Commissioners of Income Tax with a view to having the assessment discharged either wholly or in part. It is part of the preparation of the record of appeal to submit to the Special Commissioners of Income Tax, the following documents-

- (i) a Statement of Agreed Facts;
- (ii) An Agreed Bundle of Documents.

The Statement of Agreed Facts contains facts of the veracity and genuineness of which are agreed to

by both the Revenue and the taxpayer. It is advantageous to prepare the Statement of Agreed Facts (which is binding on both parties) for the following reasons -

- (i) it serves as an introduction to the Special Commissioners who in fact are accustomed to receive the said Statement, and indeed expect this Statement to be submitted;
- (ii) it saves time and inconvenience because witnesses need not be called and documents need not be produced e.g. by calling the maker.

It is also advantageous to submit an Agreed Bundle of Documents for the same reasons stated in (i) and (ii) above, although in the case of an Agreed Bundle of Documents the agreement is merely as to the authenticity of the documents leaving it open to the parties to disagree as to the contents therewith, e.g. the allegations and arguments contained in the enclosures in the said Bundle; see e.g. Ordinance 27, rule 5 of the Rules of the High Court, 1980 which mentions the word, "authenticity".

These questions are not only questions of law but are regularly questions of practice. They affect also non-legal practitioners because they often engage lawyers to argue tax appeals.

It has come to our notice, however, that difficulties with the Inland Revenue Department is experienced with regard to the preparation of the Statement, and the Bundle, either through long delays or refusal to agree to include e.g. taxpayers correspon-

dence to the Revenue, in the Bundle, thus causing inconvenience to the taxpayer, and his Counsel.

The Superior Courts are also involved for the submission, of the Statement, and the Bundle as these are part of the practice in these Courts whether or not, the litigation consists of taxation or non-taxation matters, or a mixture of both.

The Attorney-General is also indirectly involved because the officers in the Legal Division of the Inland Revenue Department are assigned to the said Department by the Attorney-General assisted no doubt by the Solicitor-General.

We would also like to bring up the problem of the long delay in hearing tax appeals e.g. three to five years or more! from the date of filing the Notice of Appeal, the delay being caused by the long time it takes for the Inland Revenue Department to send the Notices of Appeal to the Special Commissioners. A solution is to allow taxpayers to file a Notice of Appeal directly to the Special Commissioners (e.g. as in criminal and civil appeals) without having to send it through the Revenue which is the party against whose decision the taxpayer is appealing.

We urge that the Ministry consider the matters together with the office of the Lord President of the Supreme Court and the Attorney-General as the problem not only affects lawyers but also all tax practitioners.

The Council of the Malaysian Institute of Taxation  
wishes all our Hindu readers  
**A HAPPY DEEPAVALI!**



# DIALOGUE WITH OFFICIALS OF THE MINISTRY OF FINANCE ON 11 AUGUST, 1994 IN RESPECT OF INCENTIVES FOR TRAINING IN CONJUNCTION WITH THE 1995 BUDGET

The dialogue was chaired by Dato' Iskandar, Deputy Secretary of the Tax Analysis Division, Treasury, Ministry of Finance (MOF) and was attended by representatives from MITI, MIDA, JHDN, Ministry of Human Resources, Prime Minister's Department, Human Resources Development Council, Ministry of Education, Vocational Training Council of Malaysia, MARA, ISIS, FMM, MIA/MIT, UKM, NCCIM and ACEM.

The MIA/MIT was represented by Harpal S. Dhillon and Lim Ka Fan.

The purpose of the dialogue was to obtain clarification and discuss on the training incentives which were proposed by the various associations, namely, ISIS, FMM, MIA/MIT, Association of Consulting Engineers Malaysia, UKM and NCCIM. It was also to find out the extent to which the training incentives can really encourage training.

The proposed incentives by the various associations and the response of the MOF officials and the participants are found in the ensuing paragraphs.

## 1. Institute of Strategic and International Studies Malaysia (ISIS)

ISIS proposed that tax incentives be given to encourage private education and training industry. These could include:

- a) Pioneer status to private training institutes providing science based, vocational, technical and engineering courses.

## MIT PARTICIPATES IN PRE-BUDGET DIALOGUES

The Institute was invited to attend the pre-Budget dialogues which were organised by the Finance Ministry throughout the country during the months of July and August. The purpose of the said dialogues were to obtain the private sector views on the economy so as to provide the framework for drawing up this year's Budget.

The first leg of the dialogue was held in Bank Negara Malaysia on 9 July 1994. The Deputy Prime Minister, YAB Dato' Seri Anwar Ibrahim declared open the dialogue. Representing the Institute were Council Members Tn Syed Amin Al-Jefri and Mr Quah Poh Keat.

Other venues of the dialogues were in Kedah, Johor and Kota Kinabalu, Sabah. Tn Hj Abdul Hamid Hassan, Mr Lee Yat Kong, Mr Tony Seah, Mr Michael Tong and Mr Tan Kim Beng represented the Institute at the aforesaid venues.

- b) Investment tax allowance and reinvestment allowance to approved institutions to help them upgrade equipment.
- c) Double deduction or capital allowances on contributions of equipment and/or services by private firms to approved institutions.
- d) Double deduction for approved expenses to firms which take in industrial trainees from approved institutions.

The MOF's response to the above tax incentives proposed is that liberalisation of the rules and regulations under the Education Act is more effective to encourage the establishment of private education schools, colleges, etc. than providing tax incentives.

The Human Resources Ministry

representative said that the Government is currently undertaking a comprehensive study of the incentives to be given to the private sector to encourage training of their employees or to establish private schools or colleges so as to alleviate the burden of the Government. He said that the incentives will be in the form of fiscal and tax incentives. For fiscal incentives, he said that the Government is considering launching a grant which is targeted towards growth industries and industrial associations will have to take the lead. State Governments will also assist by providing land for training institutions at nominal prices. As for tax incentives, he said that the Government is considering pioneer status for private training institutions.

The general response from the participants is that for the services sector, in particular, the private



education and training industry, mere liberalisation of the Education Act is not enough and tax incentives should be given. There is a crucial need for 'hard' skills training, the costs of which are very high. The private sector is unwilling to undertake too much training because of the high costs. Similarly, the private sector is not venturing into the setting up of institutions which undertake 'hard' training because the returns are low. The existing training institutions (e.g. Federal Institute of Technology) are more towards 'soft' skill training and training institutions for 'hard' skill are few. Although the German Malaysian Institute provides 'hard' skill training and is regarded as a private sector project, it is substantially financed by the Government. There is a need to provide pre-employment as well as post employment training. There is also the constraint of obtaining loans from financial institutions to set up training institutions. Even if there are enough training institutions, there is a shortage of trainers and foreigners have to be brought into Malaysia. The financial assistance under the HRDF is not good enough because it caters more for upgrading the skills of existing employees of the 'soft' skill category and does not increase the number of skilled employees joining the labour force.

## 2. Federation of Malaysian Manufacturers (FMM)

FMM proposed the reduction of withholding tax imposed on foreign trainers from 32% to 15%.

The JHDN representative clarified that the 32% tax rate is only applicable if the foreign trainer is exercising an employment in Malaysia and he is a non-resident for tax purposes. She said that employ-

ment in Malaysia by a non-resident for a period not exceeding 60 days in a basis year is tax exempt. If the foreign trainer is not on employment in Malaysia and he is a non-resident, the withholding tax rate of 15% under Section 109B would apply.

## 3. MIA/MIT

MIA/MIT proposed that educational buildings be treated as industrial buildings with an initial allowance of 10% and an annual allowance of 6%. This will encourage the private sector to set up more educational institutions for technical training. Further, it will produce spin-off effects in that Malaysia could be used as a place of education for people of other countries.

The MOF's response is that this proposal is being considered and needs to be further discussed.

It was brought up that although Paragraph 37B, Schedule 3 of the Income Tax Act, 1967 provides for industrial building allowance on buildings used for industrial training approved by the Minister, it has not been enjoyed by anyone. This is because there are no criteria on how approval from the Minister can be obtained. A representative from MOF said that they will look into the matter.

## 4. Association of Consulting Engineers Malaysia (ACEM)

ACEM proposed the granting of financial or tax incentives for the establishment of more private technical colleges.

MOF's response to this is that liberalisation of the rules and regulations under the Education Act is more effective to encourage the es-

tablishment of private educational institutions and the proposed tax incentive needs further study.

## 5. Universiti Kebangsaan Malaysia (UKM)

UKM proposed the granting of incentives for the development of skills of new and emerging technologies and not to just any skill.

The MOF's response to this is that the double deduction incentive is intended to improve the level of skills directly or indirectly and thus includes the development of skills relating to emerging technologies. Incentives given should not be restricted to the development of certain skills.

## 6. National Chamber of Commerce and Industry of Malaysia (NCCIM)

NCCIM proposed the giving of double deduction for the cost of continuing education.

The MOF's response to this is that the cost of continuing education is a private expenditure which technically cannot be given double deduction.

The participants' response to this is that the cost of continuing education is high and is a burden to an individual. If an individual's skills are improved because of continuing education which is related to the job he is already in, he will be more productive. Consequently, the income which he can generate will increase and the Government can benefit from him in the form of more income tax.

MOF said that some of the proposals, if valid, will be further discussed in the 1995 Budget dialogue session. The Chairman thanked the participants for attending the dialogue.

## Q U O T E

'Keep away from people who try to belittle your ambitions. Small people always do that, but the really great make you feel that you, too, can become great...'

**Mark Twain**



# Income Tax Appeals

By LEE YAT KONG,  
Council Member, MIT

Income Tax Acts are well known for their complexities, due to the necessity for the authorities to cast the tax net wide enough and yet sufficiently refined to cover those who should be taxable, but not so refined as to cause social and financial problems to those who the authorities feel may be inequitable. Therein lies the dilemma for the tax authorities and taxpayers alike. With the growing complexities of the tax statutes which need to cope with the ever changing business environment, the wordings of the Income Tax Act and their interpretation have continued to be a perennial headache for income tax law draftsmen, tax administrators, tax accountants and their clients alike.

Just like any man-made law, no wordings or formulae can fully encompass all the complexities of all businesses or fields of human endeavour. (For example, the word income may be generally understood by all. Yet this very innocuous term has been and continues to be the subject of dispute between tax authorities and taxpayers ever since tax laws are enacted.) Disputes have also constantly arisen from the interpretation of, inter-alia,

- "business" or "trade"
- "plant"
- when a business commenced or ceased
- the difference between "investment", "speculation" or "business"
- what constitutes a "tax deductible expenditure".

Fortunately for taxpayers, a safety valve is provided in all tax acts in the

form of the appeal provisions. In the Malaysian Income Tax Act, these provisions are found in :-

**1. Section 99**

which provides that if a person is aggrieved by an income tax assessment, he may appeal in a prescribed form (Form Q or C.P. 14) to the Director General of Inland Revenue within thirty (30) days after the service of the notice of the assessment.

**2. Section 100**

which allows a person, who has not made an appeal within the time limit allowed, to apply in the prescribed form (Form N or C.P. 15) for an extension of the period within which notice of appeal against the assessment may be given.

**3. Section 101**

which enables the Director General of Inland Revenue to review the assessment under appeal and, for that purpose, he may :-

- call for information with respect to the income to which the assessment relates and any other matter relevant to the assessment under appeal;
- require the appellant to produce all books and documents;
- summon any person to appear before him and who he believes is able to give evidence regarding the assessment;
- examine any such person on oath.

The Director General's review may result in any one of the following :-

- (a) Where the Director General and the Appellant come to an agreement in writing, the assessment against which the appeal is made shall be treated as having been confirmed, reduced, increased or discharged in accordance with the agreement;
- (b) Where the Director General and the Appellant come to an oral agreement and the Director General serves a written confirmation of the agreement on the Appellant, then, unless the Appellant within a period of twenty-one days of being served gives notice in writing to the Director General repudiating the agreement, the oral agreement as confirmed by the Director General shall be deemed to be an agreement in writing upon the expiration of that period, between the Director General and the Appellant;
- (c) Where the Director General makes proposals to the Appellant in writing that the assessment should be confirmed, reduced, increased or discharged and the appellant neither accepts nor rejects the proposals, unless the Appellant within a period of thirty days of being served with such proposals, gives notice in writing to the Director General reject-



ing the proposals, the proposals shall be deemed to be an agreement in writing between the Director General and the Appellant.

However, in situations (b) and (c) one of the Special Commissioners, may, on application by the Appellant made within a period of thirty days after the agreement is deemed to be a written agreement, after giving the Director General an opportunity to make oral or written representations set the agreement aside if he thinks it just and equitable to do so in the circumstances.

- (d) Where the Director General and the Appellant makes a request under Section 102(2) that the appeal be forwarded to the Special Commissioners, then the Director General shall send the appeal forward accordingly.

Where an appeal is sent forward to the Special Commissioners it shall be done in the manner provided by Schedule 5 and that Schedule shall have effect for regulating the hearing and determination of the appeal.

#### 4. Section 102:-

which provides for the disposal of appeals, including Section 102(2) as mentioned in (d) above. Where an Appellant has complied to the best of his ability with all requirements (if any) of the Director General, he may after the expiration of a period of six months beginning with the giving of the notice of appeal, request the Director General in writing to send the appeal forward to the Special Commissioners, and the Director General shall send the appeal forward accordingly within three months after receiving any such request.

#### 5. Schedule 5:

which sets out the rules and procedures under which appeals are heard.

#### 6. High Court:

to which appeals may be made where appellants are dissatisfied with the Special Commissioners' or subsequent decisions.

In terms of the Income Tax Act, therefore, the first step to an appeal is found in Section 99. But what happens in practice and what should a taxpayer do when he is confronted with and is aggrieved by an assessment issued by the Income Tax Department? When such an event occurs it is important to take cognizance of and follow procedures that have been established over the years. These are:-

- A notice of appeal is required to be given in a prescribed form (i.e. Form Q or C.P. 14) within thirty days after the service of the notice of assessment. These prescribed forms can be obtained from any Inland Revenue office. The notice of appeal must state the grounds of the appeal and any other particulars required in the prescribed form. In practice, however, the Inland Revenue Department have recognised practical difficulties in adhering strictly to the provision regarding Forms Q and have accepted letters of objection in lieu of the prescribed form provided they adequately set out the grounds of appeal.

While acceptance of letters of objection in lieu of the prescribed form has been an accepted and established practice, appellants should be aware of the inherent risk of losing an appeal purely on the technical ground that a valid objection has not been lodged in terms of Section 99.

There is also some latitude in the interpretation of the grounds of appeal stated in the prescribed form. The appellant should however bear in mind that uncertain or frivolous grounds of appeal would be detrimental to his case.

The appellant may also be permitted to go into any ground of appeal which has not been specified in the notice of appeal, provided that the omission of that ground in the notice was, in the opinion of the Spe-

cial Commissioners hearing the appeal, not wilful or unreasonable. (Incidentally this discretion is not given to the Board of Review or Court in Australia where upon every reference to the Board and upon every appeal to the Court, the appellant is limited to the grounds stated by him.)

If no agreement is reached with the Director General of Inland Revenue on the appeal and it is referred to the Special Commissioners, it is normal practice for the Approved Tax Agent and/or Counsel for the appellant to prepare:

- (i) an Agreed Bundle of Documents, and
- (ii) a Statement of Agreed Facts

for agreement with the Counsel for the Inland Revenue Department which are subsequently forwarded to the Special Commissioners, in quadruplicate, and within a reasonable time before the hearing date.

These documents save considerable time which otherwise would have to be spent at a hearing to tender and 'prove' every single document or confirm every fact which in normal circumstances may be quite easily and quickly agreed as between the parties, prior to the hearing.

A programme is drawn up in advance by the Special Commissioners for each half-year of the places at which and the dates on which they intend to sit for the information of appellants or their counsels/approved tax agents so as to enable them to prepare their cases well in advance of the hearing.

#### HEARING OF APPEALS

The administrative details of the hearing procedures are found in Schedule 5 of the Income Tax Act, the salient features of which are:-

- (i) Every appeal shall be heard by three Special Commissioners, at least one of whom shall be a person with



judicial or legal experience in terms of Section 98 (3) of the Income Tax Act. (Para.1 Schedule 5).

(ii) The Special Commissioners shall sit for the hearing of appeals in :-

(a) Ipoh

(b) Kota Kinabalu

(c) Kuala Lumpur

(d) Kuching

(e) Malacca

(f) Penang

(g) Such other places (if any) as they think appropriate

(iii) The onus of proving that an assessment against which an appeal is made is excessive or erroneous shall be on the appellant (Para.13 Schedule 5). (This is a departure from the procedures in other courts where the onus falls on the prosecution. In a hearing before the Special Commissioners of Income Tax, therefore, the appellant and/or his witnesses, if any, will be called upon to adduce evidence first and they will then be subject to cross-examination by the Counsel/s for Revenue.)

(iv) The appellant may be represented by an advocate or a tax agent or by both an advocate and a tax agent.

(v) The Special Commissioners shall have :-

- power to summon to attend at the hearing of an appeal any person who in their opinion is or might be able to give evidence respecting the appeal;
- power where a person so summoned, to examine him as a witness on oath or otherwise;
- power where a person so summoned, to require him to produce any books, papers or documents which are in his custody or under his control and which the Special Com-

missioners may consider necessary for the purposes of the appeal;

- power, where a person is so summoned, to allow him any reasonable expenses incurred by him in connection with his attendance;
- all the powers of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;
- subject to Section 142(5), power to admit or reject any evidence adduced, whether oral or documentary and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence, and
- power to postpone or adjourn the hearing of an appeal from time to time (including power to adjourn to consider their decision);

(vi) Subject to the Income Tax Act and any rules made under Section 154 (1)(d), the Special Commissioners may regulate the procedure at the hearing of an appeal and their own procedure (which means that the proceedings can be made as informal as the Special Commissioners think appropriate although in almost all cases the formalities of an ordinary court are usually observed.).

(vii) Proceedings before the Special Commissioners or the Court take place in camera (para.43(1) Schedule 5) but on application by the Director General, such proceedings may be heard in open court, as he may deem necessary, notwithstanding any objection from any other party to the proceedings.

(viii) As soon as may be after completing the hearing of an appeal, the Special Commissioners shall give their decision on the appeal in the form of a deciding Order which, subject to Schedule 5, shall be final.

(ix) Where on an appeal the Special Commissioners do not discharge or amend an assessment, they may, if in their opinion the appeal was vexatious or frivolous, order the appellant to pay as costs to the Special Commissioners a sum not exceeding five thousand ringgit.

## FURTHER APPEALS

Either party to the proceedings before the Special Commissioners may appeal on a question of law against a Deciding Order made in those proceedings, including a Deciding Order made pursuant to para. 26(b) or (c) by requiring the Special Commissioners to state a case for the opinion of the High Court ... (Para. 34 Schedule 5).

The Special Commissioners are regarded as judges of fact and therefore it is normally only on a question of law that a further appeal can be referred to the High Court and subsequently to the Supreme Court, where circumstances permit. However, there are occasions where the Special Commissioners have been found to have misdirected themselves or have not drawn the correct conclusions from the facts which will necessitate the higher courts to decide that it is their duty to hear appeals from Special Commissioners. In hearing such appeals, the courts are always mindful of the principles enunciated by Lord Radcliffe in *Edwards v. Bairstow and Harrison* (1956) A.C. 14 at 35 where Lord Radcliffe said (at page 35).

*" I think that the true position of the court in all these cases can be shortly stated. If a party to a hearing before commissioners expresses dissatisfaction with their determination as being erroneous in point of law, it is for them to state a case and in the body of it to set out the facts that they have found as well as their determination. I do not think that inferences drawn from other facts are incapable of being themselves findings of fact, although there is value in the distinction between primary facts and inferences drawn from them. When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything ex facie which is bad law and which bears upon the determination, it*



is, obviously, erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test. For my part, I prefer the last of the three, since I think that it is rather misleading to speak of there being no evidence to support a conclusion when in cases such as these many of the facts are likely to be neutral in themselves, and only to take their colour from the combination of circumstances in which they are found to occur."

In *Chu Lip Kong v. D.G.I.R.* (1982) 1 M.L.J. Lord Diplock referred, with approval, to the observations of Radcliffe aforesaid in the following terms:

"...it is plainly wrong in law, or else it is a conclusion of mixed fact and law that no reasonable Special Commissioners could have reached if they had correctly directed themselves in law. Whichever way it is looking at, it falls within the well-known principle laid down by Viscount Radcliffe in *Edwards v Bairstow*. It is a conclusion or decision of the Special Commissioners which the High Court was entitled to and ought to have set aside."

And in *Lim Foo Yong Sdn. Bhd. v D.G.I.R.* (1986) 2 M.L.J. 161, when delivering the unanimous judgment of the Privy Council, Lord Oliver, indicated in what circumstances, a court might interfere with the decision of the Special Commissioners (at page 169, Col. 2 F to H) :

"The Special Commissioners are, of course, as the Federal Court rightly observed, the judges of fact, but in finding the facts and drawing inferences of secondary fact from them, they must not misdirect themselves and they must draw conclusions from facts having probative value. In their Lordship's judgment, the Special Commissioners in this case both misdirected themselves by reaching conclusions inconsistent with primary facts found by them and drew inferences from matters which were of no probative value in supporting their conclusions."

In *Commissioners of Inland Revenue v. Fraser* 24 T.C. 498, Lord President Normand said this (at page 501).

"Then the Commissioners, on consideration of the facts and arguments submitted to them, decided by a majority that an adventure in the nature of trade had not been carried on; that an investment had been made and subsequently realised, and that the profit was not assessable to Income Tax. It is obvious from the way in which the Commissioners have stated their conclusion that they were quite aware that they were not stating something in the nature of a primary fact but were stating a conclusion into which argument upon the construction of the Income Tax Act had entered. The Respondent's Counsel maintained, however, that that finding was a finding in fact and, as such, was not reviewable by this Court. I think we have jurisdiction to entertain the question at law, which is whether the majority of the Commissioners were warranted on the evidence in determining as they did. At the narrowest it is always open to this Court in a Stated Case to review a finding in fact on the ground that there is no evidence to support it. That has been stated again and again."

Thus although Para.39 of Schedule 5 of the Income Tax Act provides that "The High Court shall hear and determine any question of law...", there may be occasions where the Special Commissioners' findings or conclusions are so inconsistent with the facts of an appeal that an appellant may be given an opportunity to appeal to the High Courts, with a reasonable chance of success.

To the credit of the Special Commissioners, however, such cases are uncommon in Malaysia and appeals to the Courts are mostly on questions of law or fact with legal consequences. The majority of appeals to the Courts have also found affirmation of the Special Commissioners' decisions, which is clear testimony of the degree of care they have taken in their proceedings where it is not unusual for the massive amount of facts and detailed accounts to be presented, which have to be thoroughly studied and carefully considered before the Special Commissioners can arrive at a decision. This is all the more creditable when, in recent years, the appointments of Special Commissioners, other than the Chairman who must be a person with judicial or legal experience, are not drawn from the ranks of tax experts or accountants which used to be followed, as an ideal combination, in the earlier appointment of Special Commissioners due to the technical and complex nature of certain appeals which involve rather complicated accountancy, business and legal intricacies.

Special Commissioners have also shown themselves to be mindful of the need of being impartial, patient and reasonable in their proceedings, although decisions may not turn out to be what appellants or their counsels expect.

Malaysians, as a general rule, do not appeal against decisions made by the Inland Revenue Department, usually due to constraints of time involved in an appeal, limited financial resources or just plain fear of going to the Courts. This, however, is changing, albeit slowly, as the younger taxpayers are now more knowledgeable and are more assertive of their rights as taxpayers, especially in cases where the Inland Revenue Department's interpretation is clearly erroneous or unjust and, as tax officials are only human, such errors do occur from time to time and there is no reason why taxpayers should not make use of the recourse made available to them and appeal against erroneous decisions.



# Designing A Value Added Tax (VAT)

## What Are The Issues?

This paper was presented by Mr. Michael Brian Evans during the Malaysian Institute of Accountants' 10th National Accountants Conference held on 1 - 2 August 1994

### COMMENTARY

Malaysia is at the crossroads of its taxation history. This topic is a very important one as it has been widely speculated that the Sales and Services Tax (SST) announced by the Government will be introduced after the general elections. The general elections may be held this year. "If accountants are to be in the mainstream of the race for the dollars and cents they should be conversant with this topic", remarked the Chairman of Sessions Dr. Arjunan Subramaniam.

As an introduction to the subject, a definition of the tax, whether it is called Value Added Tax (VAT), Goods or Services Tax (GST) or Sales and Services Tax (SST), it is necessary. VAT, GST or SST is a multistage consumption tax paid by a consumer when he buys goods or services. This indirect form of taxation has the benefit of being fairer and most countries now favour it.

Mr. Michael Evans, the speaker for the Session, is presently a tax partner in KMPG Peat Marwick in Australia who has spent some 17 years with the Inland Revenue Department. Mr. Evans' paper is very comprehensive in describing all the features of a typical consumption tax and the issues relating to the design of such a tax.

The main principles in designing a consumption tax are that it should be simple to understand and comply with, efficient in its application, equitable such that persons in the same situation are treated equally and that it is visible with no tax-on-tax effect.

For the Government to achieve an efficient consumption tax collection mechanism the system must not require additional accounting functions merely for the new tax, change in accounting rules, new documentation and complex recording, calculations and preparation of returns. The new tax regime should also be fair in the distribution of cash flow costs or advantages between the various parties in the chain. The imposition of the tax on some supplies but not others has the ability to bias business and consumers towards different goods and services or suppliers. Some possible solutions to reduce bias are having exemption, registration threshold and zero-rating exports.

A very current concern in Malaysia is impact on inflation. Even though it has been said that a consumption tax could be inflationary, the speaker clarified that any impact on the Consumer Price Index is only one-off in the month of implementation; thereafter, it will not continue. The other criterion on how inflation may be affected is the extent in which the present Sales Tax and Services Tax collect revenue. With this current serious concern of the Government allayed, the introduction of the Malaysian Sales and Services Tax will be one step closer to reality.



Mr Michael Evans and Dr Arjunan Subramaniam deliberating on the subject of Value Added Tax

### INTRODUCTION

VAT has its origins in France in the 1950's and is now the requisite form of indirect taxation for countries in the European Community.

VAT systems have been instituted widely in our own region in the last ten years - the following countries in the Asia Pacific having adopted this form of tax:

China	Fiji
Indonesia	Japan
New Zealand	Philippines
Singapore	Taiwan
Thailand	

Generally, the New Zealand VAT (called "GST") is regarded as the model to be emulated. Nevertheless, the NZ GST is based heavily on the VAT in the United Kingdom and all models have the same essential features.

This paper addresses the basic features and mechanics of VAT and identifies the issues and consequences inherent in the design of a VAT.

I have assumed a standard rate of VAT of 10%.



## INTRODUCTION TO VAT

A VAT is intended to tax "end consumption" within the particular country in which it operates. In this paper, I refer to the country as the "relevant jurisdiction".

VAT is charged every time a business supplies goods or services in the course of its business activity. VAT is also charged on imports into the relevant jurisdiction (see below).

The essential design feature of the VAT is that tax paid by business on purchases of goods and services is credited to the business and in some cases can be refunded. This is referred to as the "credit offset" system and is common to all VAT systems. The aim is that no part of the VAT represents a cost to business. The VAT rolls forward at each transaction to the point of sale to the end consumer.

The effect of the credit offset mechanism is that registered persons are allowed a credit of VAT they are charged on purchases made for their business activity. The mechanism by which the tax paid by business is credited to them is as follows:

- At the end of each fixed period registered persons lodge returns with the Revenue Authority showing total sales and purchases made during the period.
- The tax charged by the business on sales is "output tax".
- The tax paid by the business on its business purchases or tax paid by the business on imports is "input tax".
- In each return lodged, the input tax is subtracted from the output tax to ascertain the amount of VAT payable for that period.
- Where the output tax for the period exceeds the input tax for the period, payment of the excess VAT accompanies the VAT return for that period.
- If input tax exceeds output tax for the period, the Revenue Authority must refund the excess.

There are three important exceptions to the rule that VAT is not a tax cost to business and these arise where:

- *the supply of so-called exempt goods or services* (discussed later). In these cases no credit is allowable for VAT paid on inputs relating to those exempt goods or services;
- *acquisition of so-called exempt goods or services* where the cost of those goods and services will include VAT paid at a prior point in the production and distribution chain that has not been credited to the business that supplied the exempt goods or services; and
- those businesses that *choose not to register for VAT* (registering for VAT is discussed later) because they have an annual turnover less than the relevant threshold. For those businesses, VAT paid on goods and services acquired is not creditable. On the other hand, the business is not required to charge VAT on goods and services that it supplies.

## WHAT DOES VAT APPLY TO?

VAT is charged on the supply of goods and services where

- the goods or services are supplied in the relevant jurisdiction;
- the supply is made in the course of a business activity;
- the supplier is a person registered with the appropriate Revenue Authority;
- the goods or services are not specifically exempt from VAT.

## HOW MUCH IS VAT?

### Multiple Rates or Single Standard Rate

While New Zealand, and most Asian countries have only one rate of tax (not including a rate of 0%, which will be discussed later), many countries run VAT systems under which there are a range of rates applied to the supply of goods and services falling within different categories.

### Supplies - Single Standard Rate

If one rate of VAT were to apply and that rate were 10%, supplies of goods and services in the relevant jurisdiction would have 1/10th added to their tax exclusive sales price. That is, for any supply of goods and services subject to VAT, a consumer could identify the tax component of the supply by dividing the total consideration (including VAT) by 11.

For example, if a consumer buys a \$110,000 BMW, \$10,000 (being 1/11th) of that total purchase price, is VAT.

### Supplies - Zero Rate

As will be indicated later in this paper, in all jurisdictions where VAT presently operates, exported goods and services are taxed at the rate of 0%. In other words, for a sale of a container of stock for \$1,000,000 and entered for export, no VAT would be payable.

While this sale is a sale which is subject to VAT at the rate of 0% it should not be confused with a supply of goods or services which might be exempt from VAT. The distinction is explained later.

### Imports

For goods (and some services) imported into a relevant jurisdiction, VAT is payable to the Customs Authorities at the applicable VAT rate of the value of the goods imported. In most jurisdictions the value upon which tax is imposed is the customs value, including insurance and freight, as well as duties and other levies payable on importation ("CIF").

## WHO PAYS VAT?

### Supplies

Businesses that are registered as taxpayers are required to charge VAT on supplies of goods and services made by them. The VAT so charged is collected by the registered person from the purchaser and remitted to the Revenue Authority by means of lodging periodic returns. For example, a registered person that makes supplies during a period of \$110,000 pays \$10,000 VAT to the Revenue, in respect of that period.

### Imports

VAT levied on importation of goods is required to be paid by the importer of those goods, to the Customs Author-



ity, at the time of entering the goods for home consumption. In some jurisdictions the Customs Authority have adopted a system whereby the VAT imposed on importation can be deferred until after the time of entering those goods for home consumption.

By imposing tax on goods imported, business and consumers alike are indifferent as to whether they purchase from a domestic supplier or an overseas supplier. In this way, the tax regime does not favour offshore busi-

- paid to the Customs Authority on importation of goods entered for home consumption;
- in the NZ and some other models, the credit available on the purchase of second hand goods.

## CREDIT OFFSET

When registered persons furnish their periodic returns they may deduct input tax for that period from the output tax for that period. For example: ▼

Total Sales (including VAT)	\$110,000	Output tax	\$10,000
Total Purchases (including VAT)	\$ 11,000	Input tax	\$ 1,000
Value Added	\$ 99,000	VAT Payable	\$ 9,000

nesses above residents.

Imported services, on the other hand, are not taxed under the New Zealand model. Many other jurisdictions have a system whereby, if a business imports services (for example intellectual property) the payment made by the business to the offshore supplier is subject to VAT at the standard rate. The tax so imposed is payable by the importer as if it were a supply of services made by that importer (i.e., a self supply). If the services are used for taxable purposes, the importer is allowed a credit for the tax paid, so that neutrality is preserved between domestic and offshore suppliers.

Singapore's GST legislation contains provision for the imposition of tax on imported services but, to date, no regulations have been made to determine the manner in which GST on imported services might be applied.

## OUTPUT TAX AND INPUT TAX

Output tax is VAT that is charged on supplies of goods and services made by registered persons, i.e., for a \$1100 supply of goods, \$100 is output tax.

### Input tax is VAT,

- charged on purchases made from a registered person, i.e., for a \$1100 purchase of goods from a registered person, \$100 is the purchaser's input tax;

The effect of the credit offset mechanism is that registered persons are allowed a credit (or a refund if input tax exceeds output tax for the period) of all VAT they are charged on purchases made for their business activity.

Accordingly, it is only:

- consumers;
- businesses that do not register; or
- registered persons who acquired goods or services for non-business purposes;

who bear the cost of VAT.

In this way VAT is passed on from registered person to registered person until the end consumer who bears the ultimate cost of the tax.

## ZERO-RATED VS EXEMPT SUPPLIES OF GOODS AND SERVICES

You will appreciate that where the supply of goods or services is zero-rated, there is no output tax charged on the supply, but a credit is claimed for all the input tax paid in making the supply. It is this mechanism of zero-rating and credit offset that allows some goods and services to be sold free of any VAT.

In NZ and Singapore, the category, generally, is restricted to exported

goods and services. In the United Kingdom, basic foodstuffs are also zero-rated.

Some goods and services supplied by registered persons may be exempt from VAT. i.e., no VAT is charged on the supply of those goods and services by registered persons. No credit can be claimed for input tax paid on purchases used to make exempt supplies of goods and services.

If a supply of goods and services is zero-rated, however, no output tax is charged on the supply but full input tax credits are available for purchases used to make the zero-rated supply.

## WHAT IS A SUPPLY ?

The term supply includes all forms of supply. It is not restricted to the sale of goods or services. It is intended to encompass the broadest manner in which goods or services can be provided to a person.

## GOODS & SERVICES

As indicated above, VAT applies to the supply of goods and services. A consumption tax is intended to have as its base, the national consumption expenditure of the relevant jurisdiction. Accordingly, to encompass the totality of consumption expenditure, the definition of goods and services must be sufficiently wide to cover the full range of outgoings which may be incurred by the community.

In some regimes (notably New Zealand and the United Kingdom) goods are defined exhaustively, and services are defined to be anything that are not goods.

For example, in New Zealand

- Goods are all kinds of real and personal property but not choses in action or money.
- Services are anything that is not goods or money.

It is significant to note that under a value added tax system there is no distinction between capital and revenue items. VAT applies to the sale and purchase of assets, as well as trading



stock, choses in action and tangible property.

## PLACE OF SUPPLY - "IN THE RELEVANT JURISDICTION"

If the tax base for a VAT is consumption expenditure then it is only goods and services consumed in the relevant jurisdiction which should be subject to the tax.

In Singapore, a supply of goods is in Singapore if the goods are physically located in Singapore. For services the place of supply is where the supplier "belongs" - generally where the supplier has a business or some other fixed establishment.

## WHAT IS A BUSINESS ACTIVITY?

### Why is it important?

The definition of "business activity" is significant in three respects:

- it is only supplies made in the course or furtherance of a "business activity" that are subject to VAT.
- it is only persons engaged in business activities who are able to register for VAT, charge VAT on their outputs and claim credits for VAT paid on inputs.

The definition of "business activity" is a central part of a value added tax system. Any person that does not fall within the definition of "business" is a consumer and bears the cost of the tax imposed on goods and services purchased.

The United Kingdom definition of "business" is similar to that used for income tax purposes and, to a significant extent, requires a profit motive.

The New Zealand definition (called a "taxable activity") is broader than that used in the United Kingdom, and extends to any activity conducted in a business like way whether or not for the purpose of making a profit. Accordingly, many non-profit organisations are regarded as being businesses for the purpose of the New Zealand VAT and may register as such. Since most of these clubs and associa-

tions actually run at a loss (i.e. have a negative value added in pecuniary terms) the input tax exceeds the output tax in each period, giving rise to refunds.

Any definition of "business activity" generally will exclude a hobby or private recreational pursuit, or the engagement as an employee.

## WHO MUST REGISTER FOR VAT

It is common for value added tax systems to prescribe a mandatory level of turnover above which the person must register for VAT purposes. Systems overseas differ as to whether businesses operating beneath this threshold have the option of registering.

In Singapore the amount is \$S1,000,000 pa.

In New Zealand, persons who made supplies totaling more than \$NZ30,000 in the past 12 months must register unless the Commissioner is satisfied that the next 12 months will be less than that figure. In addition, the person must register if it is reasonable to expect that the next 12 months' turnover will be more than \$NZ30,000.

For businesses under the threshold, the decision as to register may be determined by the market place in which the business sells its product. If sales are made to other businesses it might be preferable to register and charge tax, because the purchaser will get a credit for the input tax anyway.

On the other hand, if the supplies are made to end consumers, the unregistered small business may be at a price advantage if output tax does not have to be charged. A business that is not registered will be treated as an end consumer and have to absorb the increased cost of purchases within its own pricing structure.

Because the option of not registering can give business a pricing advantage, high threshold levels can constitute a significant bias in a VAT system. These biases are discussed below.

## EXEMPTIONS

All value added tax systems through-

out the world contain some exemptions. It is almost universal that the following supplies are exempt:

- financial services (including insurance);
- rental of domestic premises.

The following matters are relevant to exemptions:

- input tax credits are not available, the cost of business inputs will increase and result in higher prices to customers, or lower profits to the business concerned. You will appreciate from the above that "exemption" means the business pays tax;
- for businesses which sell at retail level, customers will not perceive that the price increase is on account of VAT.
- for inputs that are used for both taxable and exempt purposes (e.g., for a financial institution, inputs by way of buildings, electricity, stationery, consultant and legal fees, furniture, computer systems, motor vehicles, etc.) complicated systems of apportionment of the input tax must be designed;
- the exemption of some goods or services creates a distortion in the market and discriminates against some products. In addition, the definition of the goods or services to be exempt is likely to be a very complicated matter;
- to be consistent, and avoid as far as possible discriminating against one business, the exemption must be applied consistently between suppliers. Accordingly, if arranging for mortgage or loan documents was to be an exempt financial service of a bank, that same service rendered by a solicitor should also be exempt. The complications therefore extend throughout the whole business community;
- exemptions in all regimes apply to goods and services, not to the body supplying them. As a result, just because a bank supplies financial services does not mean it is totally



exempt. Only the services falling within the strict terms of the legislative definition of exempt services will be exempt, and all other supplies of goods and services are taxed under the normal rules;

- the different treatment of exempt goods and services leads to "biases" in the actions of businesses and consumers. These biases might be a preference for:

- substitution of some goods and services for others;
- imported services rather than domestic services;
- services supplied internally within the organisation.

These biases are discussed later on this paper - they are, of course, similar to those that arise through business operating at below the registration threshold.

## VAT RETURNS AND TAXABLE PERIODS

Registered persons must furnish periodic returns and make payments to the Revenue Authority of the excess of output tax over input tax for each taxable period. The choice of taxable periods is a crucial one in determining whether or not businesses will suffer a cash flow advantage or disadvantage as a result of the VAT system.

In Singapore, two periods are available, a standard period of three months and an optional period of one month. In Taiwan, the return period is two months.

The New Zealand VAT model contains three different taxable periods. The standard period to which most businesses must comply is two months. Businesses with turnover of more than \$24,000,000 per annum must use a one month period.

Registered persons may apply for a one month or a six month period but while the one month period is available to all registered persons upon application, only those businesses with a turnover of less than \$250,000 per annum may apply for the six month period.

Where the output tax for the period exceeds the input tax for the period, payment of the excess VAT must accompany the VAT return for that period. All value added tax systems allow a period of time after the close of the taxable period for the return to be lodged and payment made. In New Zealand and Singapore, for example, a period of one month following the end of the taxable period is allowed.

Because most businesses' output tax will exceed their input tax for the period, the longer the taxable period and additional time available before payment of the excess VAT must be made to the Revenue, the greater the cash flow advantage flowing to the business concerned.

For business that seek a refund of VAT on lodgement of its returns periods are preferred. The more often returns are lodged, the lower the cash flow costs to the business concerned but, of course, there is a commensurate increase in compliance costs due to more returns being prepared.

## CALCULATION OF TAX PAYABLE AND REFUNDS

The VAT payable for each taxable period is calculated by subtracting from the output tax, the total input tax for that taxable period. If the input tax exceeds the total output tax, the excess must be refunded to the registered person.

In the U.K., refunds of this type are generally made within 10 working days. In New Zealand and Canada refunds must be made within 15 working days or 21 days respectively, or interest is payable on the amount unpaid.

In Singapore, for returns lodged quarterly, the Comptroller must be refund within 3 months after the return is received. For shorter return periods, the refund must be made within one month or interest is payable.

## ACCOUNTING BASIS

In most value added tax jurisdictions the general method for accounting for the tax is on an accruals basis. That is, registered persons bring output tax to account on goods and services sold

during that period, even if payment has not been received. Similarly, where goods and services have been acquired by the registered person and invoices have been received for the supply, input tax is creditable even if payment has not been made to the vendor.

The cost of complying with VAT legislation can be significant and, to limit the compliance cost to business, it is essential that the accounting basis used by businesses in preparing their periodic VAT returns closely reflects the accounting basis generally used by businesses for their own commercial purposes.

To minimise the cost of compliance to small business, most VAT systems allow a basis of accounting for VAT which is similar to the **cash method of accounting**.

Because some businesses buy on credit and sell on cash terms significant cash flow advantages can arise from the adoption of a VAT system of taxation. On the other hand those businesses which must pay cash for their inputs but sell on credit terms might suffer a cash flow disadvantage.

## CREDITS FOR INPUT TAX

As indicated above, if goods or services are exempt from tax, no input tax credit can be claimed by the supplier to the extent that the input tax relates to that exempt supply.

Where both exempt and taxable goods or services are sold by a business, an apportionment of the amount of the input tax credit must be made.

In Singapore, the basic method of calculating the credit for input tax is to multiply the total input tax paid by the fraction arrived at by dividing the total taxable supplies by the value of total supplies. You will appreciate that the amount of inputs used in producing goods of particular categories are not always in proportion to the sale price of those categories of outputs. Accordingly, different methods of apportionment of inputs can be approved by the Comptroller, provided that the taxpayer continues to use that method.



## SUPPLIES OF GOODS & SERVICES FOR WHICH SPECIAL RULES APPLY

All values added tax systems contain exceptions to the general rule that the value upon which VAT is calculated is the consideration paid for the supply of goods and services, and that the time of supply is the period during which an invoice is issued for the supply of the goods and services. Many jurisdictions - e.g. Singapore - deem the time of supply to be earlier than the above if the goods are removed or services are performed prior to invoice or payment.

While it is not appropriate in this paper to set out the huge variety of special rules, and how they are applied in practice, the following list is offered by way of example of the types of transactions requiring special rules:-

- periodic payments for services such as hire of goods, leases, rental agreements;
- hire purchase agreements;
- door-to-door sales;
- insurance indemnities received;
- retention payments, variations to building or civil engineering work;
- tokens, stamps and vouchers;
- gaming, lottery and racing;
- credit and debit notes;
- lay-by sales and deposits;
- second hand goods;
- consideration not in money;
- bad debts written off and recovered;
- imported services;
- entertainment, club fees and other leisure pursuits.

## FRINGE BENEFITS

In almost all VAT jurisdictions the supply of fringe benefits to an employee constitutes a taxable supply by the

employer to the employee which is subject to VAT.

The issue to be determined in designing a VAT system is the value upon which VAT will be charged for the provision of fringe benefits. Where the income tax system contains special valuation rules for the taxation of fringe benefits (such as New Zealand and South Africa), those rules are generally adopted for VAT purposes.

## TAX INVOICES

A significant area in which compliance costs of business will increase as a result of an introduction of VAT is in the documentation that is necessary for each and every supply of goods and services made by business. All value added tax regimes require a tax invoice or similar document to be produced for the taxable supply of goods and services. Registered persons need to possess a tax invoice to qualify for a credit of input tax charged on the supply.

In Singapore, a tax invoice for supplies of over \$1,000 must contain:-

- the words "tax invoice";
- a serial number;
- the date of supply;
- the name, address and registration number of the supplier;
- the name and address of the recipient;
- a description of the goods and services supplied;
- the type of supply (e.g. lease, hire, sale etc.);
- the quantity of the goods or extent of services, rate of tax, value of supply;
- the gross totals for value of supplies and the tax charged;
- cash discount offered;
- the Singapore dollar equivalent if transacted in foreign currencies.

Rules for tax invoices containing less information, and for a self generation of tax invoice, are contained in the Singapore, New Zealand, and United Kingdom regimes.

For example, in Singapore, a simplified invoice can be issued for supplies which do not exceed \$51,000 as follows:

- the name, address and registration number of the supplier;
- the date of supply;
- a description of the goods and services supplied;
- the rate of tax;
- the total amount payable (inclusive of GST).

## THE DESIGN FEATURES OF A VAT

In considering the desirable design features of a VAT, the system should be:

- **simple** to understand and comply with;
- **efficient** in its application. The aim is that, as far as VAT is concerned, business and consumers alike should be indifferent as to what is produced, how it is produced or from whom it is purchased;
- **equitable** such that persons in the same situation should be equally treated, and those in different situations differently treated;
- **visible**. If taxes are paid by business and recovered through higher prices for goods and services consumed, the taxes are not visible to the end consumer.

Each of the above accepted determinants of a "good" tax system are best achieved if a VAT is universally applied at a single rate. This was also the conclusion and recommendation contained in *The Report to the New Zealand Minister of Finance of the Advisory Panel on Goods and Services Tax* ("the Brash Committee Report") in 1986.



## COMPLIANCE COSTS

From a compliance cost point of view, the likely impact of VAT lies principally in four areas:

- documentation;
- calculation and collection of the tax charged on sales;
- preparation of returns; and
- cash flow.

In designing a VAT, Governments ought to achieve tax collection mechanisms that:

- **minimise any requirement to perform particular accounting functions merely for VAT purposes.** In particular:

- to avoid any need to maintain a separate VAT accounting system, the accounting rules should be consistent with the accounting methods used commercially on a day by day basis.
- so that special documents are not created merely to evidence VAT on transactions, the contents of tax invoices ought to reflect the information contained on commercial documentation.
- to simplify the recording and calculation of the tax component of sales and purchases and the preparation of returns, as far as is practicable, VAT ought to apply at the standard rate to all goods and services throughout the production and marketing chain.

- **is fair in the distribution of cash flow costs or advantages that might arise as a result of VAT.** For example:

- through flexible return periods and accounting methods, entities ought to be able to select options which are both consistent with internal accounting systems and provide the best cash flow result;

- the Revenue Authorities ought to be required to pay refunds to taxpayers within a specified period from the date of lodgement of returns;
- time ought to be allowed after the end of the particular VAT accounting period before lodgement of a return and payment of tax is required;

- **contribute to certainty of the VAT treatment of a particular supply such that it can be readily and simply established at the point of sale.** A highly undesirable feature of some VAT systems is that certain goods must be classified as to their taxable status at the point of sale. In most cases a classification decision has to be made, not by taxation professionals who may be aware of the intricacies of the classification concerned, but by sales or accounts staff. Generally, if errors are made at this time, the cost of the mistake falls on the vendor.

In summary, these aims could best be described objectively as seeking a tax system:

- with which taxpayers/registered persons (being business, Government and non-profit bodies) can comply without resort to accountants and lawyers; and
- that is capable of being understood and administered on a day to day basis by all sales or accounting staff (as appropriate).

## FEATURE TO MINIMISE BIAS

The imposition of VAT on some supplies but not others has the ability to bias business and consumers towards different goods and services or suppliers.

In particular, consumers will be biased towards

- suppliers who charge less than the full VAT rate on their goods and services - e.g. suppliers who are,
  - not registered; or
  - not resident in the relevant jurisdiction (in countries like

Malaysia with common borders, the difficulty in monitoring cross border trafficking in goods and services can be significant. This has proved to be a real commercial factor in Canada where the mere perception that prices are lower across the border has increased turnover of US businesses and enabled them to sell at lower prices even ignoring the GST effect); and

- goods or services that do not carry the full VAT rate.

The most common example of such a bias for both consumers and business is in the area of the threshold at which businesses must register for a VAT.

## REGISTRATION THRESHOLD

In the absence of a minimum "threshold" all persons conducting taxable activities would be required to register. Most VAT jurisdictions allow small scale businesses the option of not registering for VAT purposes. The exclusion of such activities from the taxable sector can be justified on two bases:

- where the level of turnover is low, the revenue foregone is likely to be small relative to the costs of enforcement and administration; and
- the compliance obligations for very small scale activities are likely to be relatively high as a percentage of turnover.

To require a minimum threshold of turnover before registration is effected would mean that businesses which have a long lead time before substantial sales are made would be unable to obtain input tax credits on their purchases during the establishment phase of their operations. While this approach was adopted in South Africa initially, it is not an approach that is generally favoured.

In setting a threshold the following factors are relevant:

- the higher the threshold the more need there is for an anti-avoidance grouping provision so that large



businesses can not split into smaller business units and thus compete unfairly;

- the higher the threshold the more competitive pressures there are on businesses operating just above the threshold. A person conducting a full time business should be required to register, because to allow a full time business not to do so would be in conflict with the objectives of efficiency and equity;
- thresholds should be low enough to involve minimal loss of revenue to the Government, but high enough to exempt most part-time traders and non-profit organisations;
- end consumers and other business that is itself either not registered or supply exempt goods and services will prefer to deal with businesses who do not charge VAT - particularly where a large component of the end price is for value added, such as where services are performed;
- business that is not registered and can not obtain credit for input tax will prefer to access services from overseas if those services can be obtained free of VAT.

For these reasons the level at which the threshold is set is a very important matter. It must be high enough to enable small business to "opt out" and hence avoid relatively high compliance costs but low enough to ensure that the competitive advantage available to those not registered does not become a major economic distortion.

A practical example of the difficulties that can occur in this regard is that, when Canada introduced its GST, the threshold was set at a level that allowed some taxi operators to offer "GST free" taxi services to the public - thus creating a competitive advantage to those smaller operators. The Government was forced to respond by amending the law to force all taxi operators to register and charge GST.

## EXEMPTIONS.

Perhaps the most significant bias that

arises in a VAT system is that caused by exemptions. Governments must be careful to assess the impact of exemption of the goods and services. In particular, because:

- rather than buying goods or services from an external supplier, an exempt business might manufacture the goods or produce the services internally, thus avoiding VAT on the internal value added. This is the "internalisation bias".
- for businesses that sell to other businesses, the increase in price will be a real cost increase to the customer, and, unlike other increases on account of VAT, will not qualify for input tax credits. Accordingly, if the exempt goods or services supplied by one business can be substituted by other goods or services that are taxable, the purchaser will prefer the latter over the former. This is the "substitution bias";
- organisations making exempt supplies are not entitled to a credit for their input tax, and will seek ways to avoid paying the increased prices resulting from VAT being imposed on their inputs. One such avenue might be to access services from offshore where the supplier is not covered by the domestic tax regime of the relevant jurisdiction. For example, computer installations might be set up in Singapore, where the company will get a credit for tax paid on the equipment and the service fee paid by the Malaysian parent is zero-rated under the Singapore VAT. This is referred to as the "imported services bias";

## Possible Solutions to the "Internalisation" Bias

The internalisation issue presents significant economic distortions - affecting the way that the business is done by:

- persons making exempt supplies;
- persons making taxable supplies to these "exempt suppliers"; and
- the recipients of exempt services.

For example,

- if insurance services are exempt, the impetus would exist for insurance companies to internalise the function performed by loss adjusters and for commercial customers generally to self insure;
- if financial services are exempt, the impetus would exist for relevant financial institutions to internalise numerous services, e.g. printing stationery for internal use etc.;
- businesses that use exempt goods and services to produce taxable goods and services are inclined to "internalise" the exempt products and thus avoid the VAT that is "trapped" in the cost structure of the exempt supplier.

Three alternatives exist to address this problem:

- The first possible solution (which would at best be partial) is to "extend the exemption backwards". Supplies made by persons who make supplies solely or mainly to persons who make exempt supplies will also be exempt. Whilst this would reduce the impetus to internalise the service by the recipient of the service, it would not stop the revenue leakage. In matter of fact it would formalise this loss to the Revenue and cause businesses which supply the "new" exempt activities to also seek exempt status, thus bringing more and more businesses in contact with the "exempt sector".

If the exemption is to be extended, the question then becomes how many levels to extend this "exemption". The use of limiting language e.g. "persons making supplies solely or mainly" will mean that the net of exempt supplies will not extend indefinitely. However, it must be recognised that such an approach will extend the range of exemptions which bring with it all the anomalies, inequities and inconsistencies of exemptions, along with a greater leakage from Revenue.

However, if the VAT system is to



have exemptions, the "backwards extension" system can provide relief to some suppliers that might otherwise become price uncompetitive.

● The **second** alternative is to introduce provisions which require persons making exempt supplies to treat self supplies as a deemed supply. Consequently, the person will have to account for output tax on these supplies, and would be entitled to some part of the input tax as relates to these supplies.

To operate effectively, a deemed supply rule should apply to all persons, not merely those who supply exempt goods. As the value added by consumers is not to be taxed, they would need to be excluded. This can practically be achieved by reference to the fact that there is no taxable activity with which to link the supply.

The extension of deemed self supply rules to all persons other than end consumers would increase compliance costs to all business, although no added VAT liability would arise to persons making taxable supplies as an input tax credit would be available in respect of each self supply. This seems an impractical way of overcoming a mischief represented only by business making exempt supplies.

As a result, to be effective and administratively simple in operation, the self supply rules should only apply to persons (other than end consumers) who make exempt supplies above a minimum threshold. This has certain practical problems, e.g. the person making the self supply will need to be classified as an "exempt supplier" at the time of the self supply. During that period, a registered person may or may not make an exempt supply - thus requiring some form of reasonable anticipation of exempt supplies.

If it is accepted that the restrictive class of supplies is preferable to applying the rules to all supplies, a policy decision is required as to whether the rules applied to:

- **all internal supplies of goods or services**

Ideally the deeming of self supply of all internal value added restores the neutrality in decision making by persons making exempt supplies. Further, VAT is paid on the total value added by that organisation. However, to tax the total value added is to destroy the exemption granted to that particular supplier.

It must be appreciated that to tax all internal supplies will place additional VAT compliance cost on the relevant entity which must be recovered through higher prices to the recipient of the exempt supplies.

Given the objective of retaining simplicity and containing compliance costs, any remedial self supply rules are unlikely to be acceptable if they are designed to be effective.

It must be appreciated that if any of the rules adopted were effective in rendering a person who makes exempt supplies liable to VAT, the consequence is an increase in costs of that person, decreased price competitiveness and a VAT cascade.

- **certain generic types of supplies** that constitute a particular mischief (e.g. in-house printing)

This is the method that is employed in the UK and is also relatively restrictive. It is not favoured because it involves the identification of certain businesses, e.g. printers, that are more worthy of protection than others. As in the UK, this method in practice also requires a provision for delegated legislation and may result in policy being decided at an administrative level.

Nevertheless, for protection of those industries providing goods or services that are most at risk, self supply rules can perform a neutralising function;

or

supplies which were previously acquired externally but since a particular operation date been internalised (i.e. an **ante-cedent transaction test**).

This the narrowest application of any anti avoidance rule that might be formulated. Its adoption would lead to discriminatory and anomalous results. Existing businesses would be disadvantaged as compared with new businesses as new businesses may commence with internalised functions which existing ones may not currently have. Even as between existing businesses, differences will arise due to different levels of internalised functions at the start date.

This approach is not favoured and any provision to give effect to such an approach would eventually become otiose in its application.

- The **third** alternative is not to include any provisions at all in relation to self supplies and allow the action of the suppliers of exempt supplies to settle into a new equilibrium after the introduction of VAT.

One mitigating circumstance in this regard is that the decision to internalise a supply will be made not merely on VAT consideration. Persons making exempt supplies will also take into account numerous commercial considerations and often the reasons not to internalise will outweigh the VAT consideration. Further, if very few exemptions exist or the rate of VAT is quite low the importance of self-supply rules will diminish.

#### POSSIBLE SOLUTIONS TO THE "SUBSTITUTION" BIAS

It should not be overlooked that exemptions (and to a lesser extent zero-rating) have the effect of creating distortions in the way in which business are conducted.

Business and consumers are not indif-



ferent as to choice between zero-rated or exempt and taxable goods or services. International experience indicates the efficiency of the GST system is significantly diminished in areas where zero-rating, exemption or multiple rates applies.

The argument in favour of zero-rating or exemption is generally mounted on two bases:

- the goods or services are essentially "meritorious" and therefore should not be subject to tax - in this category generally fall, health, education, housing, food etc.;
- the goods are services, for practical reason are difficult to subject to VAT - this is said to be the case for financial services, gambling and insurance where the "value added" is the "margin" enjoyed by the provider of the service.

In the case of medical and health related matters, Ireland's Commission on Taxation, *Third Report of the Commission on Taxation: Indirect Taxation*, stated at page 71:

*"We do not favour the exclusion of oral medicines from taxation.... While some outlays on drugs and other medical products have to be made by most consumers, these normally account for a relatively modest portion of expenditures. However, we do accept that there are people who are compelled, by circumstances over which they have no control, to spend very considerable amounts on these products. With a general sales tax these consumers would have to bear a disproportionate share of the tax burden because of their state of health, irrespective of their financial circumstances. We believe that these people should be assisted directly by the state. We also believe that the most effective and efficient way to do this is not through general exemption from taxation of all medicines, or even certain groups of medicines which could extend into the area of unnecessary and "fringe" pharmaceuticals, but rather through direct monetary payments to the people concerned..."*

The above comments are said to be a "tough line" approach. It is, however, consistent with the views expressed by

the *Asprey Committee*. Further, from a matter of tax design and administration, it seems inefficient for judgments of the medical qualities and the relative medicinal merits of goods to be made by taxation administrators.

The zero-rating of certain categories of goods only (as opposed to prescription drugs) requires a definitional classification. By limiting the zero-rate to prescription drugs the classification requirement is alleviated but inefficiencies may still occur, e.g. taxpayers may be encouraged to obtain goods by way of prescription that would normally be available without a prescription (analgesic drugs, cough mixtures, throat lozenges, etc.).

A prescription, *of itself*, from a medical professional does not evidence goods that have "meritorious" qualities.

Often, countries that have adopted a concessional approach for health items have divided the classification into two areas. Firstly, goods or services that can only be used in intended medical conditions are zero-rated unconditionally - i.e. any person in the production or marketing chain that sells them is required to apply the zero-rate - e.g. an artificial eye.

While it is superficially attractive for Governments to treat "basic foodstuffs" and other necessities of life on a concessional basis, the experience in those countries that have adopted this approach is a classification system that would be laughable if businesses were not forced to succumb to its illogical and restrictive definitions.

An illustration of the extent to which the description of goods falling within a particular classification can be complicated is to be found in the example of zero-rated children's clothing under the Value Added Tax ("VAT") in the United Kingdom ("UK") which extends to:

*"Shawls, provided that they are square, measure not less than 42 inches by 42 inches (106.7 cm) and not more than 54 inches by 54 inches (137.2 cm) (all measurements to include any fringe) and are white or pastel shades of blue, pink or yellow only."*

Clearly, manufacturers will restrict their designs and production to garments falling within these restricted measurements and colours. In fact Her Majesty's Customs and Excise Booklet entitled "VAT: Young children's clothing and footwear" (Notice 714 of September 1986) is 23 pages in length - 14 pages deal with how to measure clothing.

An examination of the zero-rating of food and drink for human consumption in the UK is also instructive. Clearly, policy makers have taken a decision that "the basic necessities" ought not be subject to tax but then have recognised that some foods and the taking of foods in restaurants are more "luxuries" than necessities.

The manner in which this conflict is sought to be resolved is instructive to Governments that might be tempted to tread down this path.

While "food of a kind used for human consumption" is zero-rated in the UK, this concession does not extend to:

- excepted items - in this category fall a variety of goods that could be loosely described as confectionaries, beverages and savouries, but it should be noted that confectionaries is described in a list of 26 items often themselves referring to more than one type of sweet etc. and further there are 8 exceptions to the general list; and
- supplies of food "in the course of catering". In this regard, to treat take away and restaurant food equally, "catering" includes supplying "hot" food,

"Hot" in this context means above room temperature or, in the case of supplies made from an open air stall or kiosk, above generally surrounding air temperature. You do not need to check the precise temperature because food or drink which has been heated so that it can be consumed while still hot will be at a higher temperature than the surrounding air temperature. ...

Some products which may be eaten while they are still hot are also bought like other grocery items for



consumption later, either cold or after re-heating. Examples include meat pies, pasties ... and croissants. If you sell these freshly baked their liability will depend on the way in which you sell them:

- (i) if you have an established hot take-away trade any food you sell from a heated cabinet will always be standard-rated;
- (ii) if your shop has a separate take-away counter any hot pies etc. you sell from this counter are standard-rated, while you sell from unheated shelves at other counters where it is a matter of chance whether a customer gets a cold pie or a warm one, are zero-rated;
- (iii) if you sell food while it is still warm only because it happens to be freshly baked and not to enable it to be eaten while it is still hot, it is zero-rated. For example a loaf of bread, a bun ... are usually eaten cold. You can zero-rate these items whether or not they are still warm when you sell them."

## Possible Solutions to the "Importation" Bias

Many jurisdictions (with the exception of New Zealand and, to date, Singapore) have a so-called "reverse charge" regime in respect of imported services.

Reverse charge services are services that are deemed to be supplied where they are received. This means that a customer in the UK who receives a service from Australia must charge himself VAT as if he has supplied the services. The object of this arrangement is to avoid a possible distortion of trade. If the reverse charge did not exist there would be an incentive for exempt and partially exempt persons to acquire services from abroad and not in their own country thus avoiding VAT and discriminating against home industries (*A.A. Tait, Value Added Tax, IMF, 1988, pp. 100-101*).

Other countries have attempted varied methods of imposing GST/VAT on imported services. There seem to be three kinds of approaches in use:

- impose a liability in respect of all imported services consumed otherwise than in the course of making taxable supplies (e.g. South Africa and Canada);
- impose a liability on recipients who conduct taxable and/or exempt activities and who receive imported services for the purpose of those taxable or exempt activities (e.g. UK);
- do not attempt to tax imported services at all (e.g. New Zealand).

An attempt to subject one-off or infrequent importations by non-registered end consumers (not including persons

making exempt supplies) would be difficult and not cost efficient.

In Canada, while end consumers are required by law to account for GST on any services acquired from overseas, e.g. a subscription to the Institute of Chartered Accountants in Australia, the obligation is neither observed by consumers nor enforced by the Revenue Authorities in Canada. A legal obligation that is not intended to be complied with or enforced should not be adopted.

## CONCLUSION

While VAT is the preferred tax form throughout Europe and Asia Pacific, Government's have often chosen design features that relieve particular segments of the economy or consumers from the full impact of the standard rate.

Such decisions are made at the expense of business compliance costs and add to the distortions that the tax initiates in market choice.

If Government's can survive the acrimony of a standard rate, comprehensive VAT system, its design can be flexible enough to avoid the cash flow and compliance cost attributes that make it an unpopular business tax in other countries.

The New Zealand system is, as a consequence, still the model to emulate.

## MIA HELD 10TH NATIONAL ACCOUNTANTS' CONFERENCE

The Malaysian Institute of Accountants (MIA) held its 10th National Accountants Conference on 1 and 2 August 1994. The two-day Conference was declared open officially by The Deputy Minister of Finance, YB Senator Dato' Mustapa Mohamed. This annual event with the theme, "Prospects in an Open Market - the Accountant as a Catalyst" was attended by a record of 900 participants.

A total of 7 papers were presented by both local and foreign speakers at the Conference. Among the papers presented were "The Securities Commission in the Midst of Change", "Malaysian Stock Market Outlook", "Transforming Enterprises" and "Designing A Vat: What are the Issues?".

The Institute also celebrated its 27th Anniversary Dinner on the first night of the Conference. This annual event was attended by 1,000 Conference participants and guests. The Guest-of-Honour for that evening were Deputy Prime Minister, YAB Dato' Seri Anwar Ibrahim and his wife, Y Amat Berbahagia Datin Seri Dr Wan Azizah binti Dato' Wan Ismail.

A day before the Conference, the Annual Accountants' Golf Tournament was also organised in conjunction with the National Conference and Anniversary Dinner. This event was participated by about 70 individuals at the Tropicana Golf and Country Club.



# Schedular Tax Deduction System:

## APPLICATION AND EXAMPLES

The Honourable Finance Minister, Yang Amat Berhormat Dato' Seri Anwar Ibrahim has announced in the 1994 Budget proposals that the system of tax deduction based on schedules as in Sabah and Sarawak be extended to Peninsular Malaysia with effect from 1 January, 1995. To ensure a smooth implementation of the Schedular Tax Deduction System (STD), a forum was recently organised by the Inland Revenue Department (IRD) to introduce the operational aspects of the STD system. It should be noted that besides introducing the STD system, the forum was also held to obtain feedback/comments from employers to allow the IRD to make any necessary amendments before the STD system becomes operational.

The STD system is basically a scheme of tax deduction which ensures a more orderly and efficient manner of collecting tax from employees, i.e. through the employers. Presently, salaried taxpayers are required to pay their income tax under an instalment payment scheme according to Form CP 38 issued by the IRD. This scheme, however, is only compulsory for those with a tax liability exceeding RM1,000/- although those with less than RM1,000/- estimated tax liability may also opt upon request to the IRD for the instalment scheme.

Under the STD system, no separate Form CP 38 will be issued to instruct employers to deduct the amount of income tax from the salaries of their employees. Instead, employers are required to deduct from the salaries of their employees a certain sum accord-

### IRD HOLDS SEMINARS ON SCHEDULAR TAX DEDUCTION SYSTEM

In anticipation of the implementation of the new Schedular Tax Deduction (STD) System on 1 January 1995, the Inland Revenue Department is currently holding seminars nationwide to brief the public on the operation of this new system. IRD is also working closely with our Institute by holding seminars for our members.

ing to the STD table which is quite similar to the EPF contribution table. The STD system therefore, besides ensuring a fast and efficient tax collection system for the Government also reduces the voluminous administrative paperwork that the IRD would otherwise need to handle.

### SCOPE OF INCOME UNDER THE STD SYSTEM

The STD system applies to all employment income taxable under Section 13 of the Income Tax Act 1967 (the Act). It therefore includes any wages, salary, overtime, commission, tips, allowances, bonus, gratuity, directors' fees, benefits-in-kind, etc. The STD system is also applicable to expatriates if they qualify as 'resident' under Section 7 of the Act.

### STD TABLE AND TAX DEDUCTION APPLICABLE

The amount of tax deduction applicable for an employee depends on two criteria:-

- (i) the monthly emolument group, which refers to an employee's monthly income less deduction for contribution to the Employees' Provident Fund (EPF); and

- (ii) the category of taxpayer which an employee falls under, i.e. Category 1, 2 or 3

Category 1 refers to taxpayers who are single/unmarried. Married women who are working are also included under this category. The table for tax deductions under Category 2 on the other hand, refers to taxpayers who are married men with non-working wives while married men with working wives fall under Category 3.

The differences between Category 2 & 3 in the table is an inclusion of wife relief in the tax deduction computed under Category 2. Accordingly, an employee who is a divorcee, a widow or a widower and pays for the maintenance of the children will fall under Category 3 in the tax deduction table.

The tables under Category 2 & 3 are further sub-categorised into 6 columns, ranging from married with no child to married with 5 children. Under Section 48 of the Act, an individual is entitled to claim child relief up to a maximum of 5 children for each of his legitimate child, step child and a child adopted in accordance with any laws who is under the age of 18 years or if over the age of 18 years but is undergoing a full-time education. The age limit however



does not apply to handicapped children.

## WILL THE STD SYSTEM BE SIMILAR TO THE PAYE SYSTEM.

The pay-as-you-earn (PAYE) system presently adopted in Sabah and Sarawak requires tax to be collected in the same year the salary is earned. The STD system, on the other hand and as far as existing employees are concerned requires the payment of tax only after it has been earned. However, for "new employees" who are commencing employment on or after 1 January, 1995, their employers will be required to deduct the amount of tax applicable upon paying the net salaries. "New employees" is defined as those employees who have not worked elsewhere before 1 January 1995. This exception will mean that persons commencing employment on or after 1 January 1995 are effectively on the PAYE system.

## TRANSITIONAL PERIOD

In cases where as at 31.12.94, tax payers have not settled their tax liabilities for year of assessment 1994 in full under the CP 38 instalment scheme in 1994, the IRD will continue to issue Form CP 38 to instruct their employers to deduct the tax liabilities in-arrears by monthly instalments in 1995. Therefore, during the transitional year 1995, it is possible that salaries of employees to be deducted for tax under both Form CP 38 and the STD system, settling the outstanding tax liability in-arrears for the year of assessment 1994 and the tax liability for the year of assessment 1995 respectively.

## ADMINISTRATIVE MATTERS

In view of the personal details required to identify the amount of tax deduction applicable to an employee, employers are advised to maintain proper and up-to-date records for all their employees.

Employers are also reminded that the tax deduction according to the STD table must be strictly complied with and no changes whether to increase or reduce the tax deduction may be made to the deductions without the approval of the IRD.

In this regard, since most taxpayers' income are assessable to income tax in the year following it is earned while the tax deduction to be applied under the STD system is according to the employee's present salary, it is very likely that most taxpayers will have an overpayment in their tax position. The IRD has clarified that should this occur, taxpayers may request for refunds to be made to them. It was also indicated that these refund cheques should be ready within 1 month in most cases.

On the other hand, where the tax deducted from salaries is insufficient to settle the taxpayers income tax payable stated in his Notice of Assessment, the difference must be paid within 30 days from the date of the Notice of Assessment.

The IRD is not expected to make any changes to the present procedures on remittance of the tax deducted from employees' salaries. Accordingly, the present Form CP 38 and remittance deadline on or before 10th day of the following month are still applicable.

Detailed procedures and tax deduction tables under the STD system will be sent to employers as soon as the system is finalised by the IRD.

### Example (a)

Mr A is a single man earning a monthly salary of RM900/-. His employer deducts RM100/- monthly from his salary for Mr A's portion of EPF contribution. What is the amount of tax deduction that Mr A's employer should deduct from his salary under the STD system?

#### Answer :

As the minimum threshold for tax deduction under the STD system is monthly emoluments less EPF of at least RM801, Mr A's employer need not deduct any sum from Mr A's salary - his monthly salary less EPF of RM800 is below the threshold of RM801.

### Example (b)

Mr B is a married man with 3 children. His monthly salary is RM2,280 and his monthly EPF contribution is RM200. Mrs B is not working. What is the amount of tax deduction that Mr B's

employer should deduct from his salary under the STD system?

#### Answer :

Mr B's salary less EPF's contribution is RM2,080 (i.e. RM2,280 - RM200). Therefore, his income falls under the group RM2,051 to RM2,100 and since he is married to a non-working wife and has 3 children, his employer will deduct an amount of RM88 per month from Mr B's salary (Column K3 of Category 2).

### Example (c)

Mr C is married with one child. His monthly salary including overtime for July 1995 is RM1,800 and his EPF contribution deducted is RM150. Mrs C who is also working earns a monthly salary of RM1,300 and her EPF contribution deducted is RM130. What is the amount of tax deduction that the employers of Mr C and Mrs C require to deduct from their respective salaries under the STD system?

#### Answer :

Mr C's salary less EPF contribution is RM1,650 (i.e. RM1,800 - RM150). Therefore his income falls under the group RM1,601 to RM1,650 and since he is married to a working wife and has only one child, his employer will deduct an amount of RM801 from his July 1995 salary. (Column K1 of Category 3).

Mrs C on the other hand, will fall under Category 1. Her salary less EPF contribution of RM1,170 (i.e. RM1,300 - RM130) will be deducted for tax of RM36.

### Example (d)

Mr D who is married with 2 children earns a monthly salary of RM2,250 (assume that there is no EPF contribution). He received a bonus of RM4,800 at year-end. His wife is working. Calculate the amount of tax his employer should deduct from his salary under the STD system.

#### Answer :

Mr D falls under K2 of Category 3 with a salary less EPF contribution of RM2,250. His employer will therefore deduct RM136(A) monthly from his salary from January to November 1995. However, for the month of December 1995 when he also received his bonus



of RM4,800, the tax deduction is computed as below:-

- (i) His income for December 1995 is assumed to be RM2,650 (B) i.e.  
 $\frac{RM4,800 + RM2,250}{*12 \text{ months}}$

\*Taxpayers' income tax are assessed on a yearly basis, therefore, income is assume to be earned evenly over 12 months. Accord-

ingly, the tax deductions computed in the STD table are also prorated as such.

- (ii) According to the STD table, the tax deduction on the income of RM2,650 is RM196 (C).

- (iii) Therefore, to compute the amount of tax on the bonus received, [(C) - (A)] x 12 months i.e.  
 $(RM196 - RM136) \times 12 \text{ months} = RM720 \text{ (D)}$

- (iv) The total amount of tax to be deducted in the month that bonus is paid will be (A) + (D) i.e.  
 $RM136 + RM720 = RM856$

The above method of computation applies to any employment income which the employee receives on a lump sum basis. e.g., salary in-arrears, directors fees, incentive commission etc.

## JADUAL POTONGAN CUKAI BULANAN

Pindaan 4/94  
Contoh

K1 = Berkahwin dengan 1 orang anak  
 K2 = Berkahwin dengan 2 orang anak  
 K3 = Berkahwin dengan 3 orang anak  
 K4 = Berkahwin dengan 4 orang anak  
 K5 = Berkahwin dengan 5 orang anak

B = Bujang  
 K = Kahwin

### POTONGAN CUKAI BULANAN

Jumlah bekerja Emolumen Bulanan RM	Kategori 1		Kategori 2						Kategori 3				
	B		Di mana isteri tidak bekerja						Di mana isteri				
	B RM	K RM	K1 RM	K2 RM	K3 RM	K4 RM	K5 RM	K RM	K1 RM	K2 RM	K3 RM	K4 RM	K5 RM
801 - 850	8	-	-	-	-	-	-	8	-	-	-	-	-
851 - 900	12	-	-	-	-	-	-	12	7	-	-	-	-
901 - 950	16	-	-	-	-	-	-	16	11	6	-	-	-
951 - 1000	20	-	-	-	-	-	-	20	15	10	-	-	-
1001 - 1050	24	-	-	-	-	-	-	24	19	14	8	-	-
1051 - 1100	28	-	-	-	-	-	-	28	23	18	12	7	-
1101 - 1150	32	8	-	-	-	-	-	32	27	22	16	11	6
1151 - 1200	36	12	7	-	-	-	-	36	31	26	20	15	10
1201 - 1250	40	16	11	6	-	-	-	40	35	30	24	19	14
1251 - 1300	53	20	15	10	-	-	-	53	39	34	28	23	18
1301 - 1350	58	24	19	14	8	-	-	58	51	38	32	27	22
1351 - 1400	63	28	23	18	12	7	-	63	56	50	36	31	26
1401 - 1450	68	32	27	22	16	11	6	68	61	55	40	35	30
1451 - 1500	73	36	31	26	20	15	10	73	66	60	45	39	34
1501 - 1550	78	53	35	30	24	19	14	78	71	65	58	51	45
1551 - 1600	83	58	51	34	28	23	18	83	76	70	63	56	50
1601 - 1650	88	63	56	50	32	27	22	88	81	75	68	61	55
1651 - 1700	93	68	61	55	48	31	26	93	86	80	73	66	60
1701 - 1750	98	73	66	60	53	35	30	98	91	85	78	71	65
1751 - 1800	103	78	71	65	58	51	34	103	98	90	83	76	70
1801 - 1850	108	83	76	70	63	56	50	108	101	95	88	81	75
1851 - 1900	113	88	81	75	68	61	55	113	106	100	93	86	80
1901 - 1950	118	93	86	80	73	66	60	118	111	105	98	91	85
1951 - 2000	123	98	91	85	78	71	65	123	116	110	103	96	90
2001 - 2050	126	103	96	90	83	76	70	126	121	115	108	101	95
2051 - 2100	134	108	101	95	88	81	75	134	126	120	113	106	100
2101 - 2150	141	113	106	100	93	86	80	141	131	121	118	111	105
2151 - 2200	149	118	111	105	98	91	85	149	139	130	123	116	110
2201 - 2250	156	123	116	110	103	96	90	156	146	136	128	121	115
2251 - 2300	164	128	121	115	108	101	95	164	154	144	134	126	120
2301 - 2350	171	134	126	120	113	106	100	171	161	151	141	131	125
2351 - 2400	179	141	131	125	118	111	105	179	169	159	149	139	130
2401 - 2450	186	149	139	130	123	116	110	186	176	166	156	146	135
2451 - 2500	194	156	146	136	128	121	115	194	184	174	164	154	144
2501 - 2550	201	164	154	144	134	126	120	201	191	181	171	161	151
2551 - 2600	209	171	161	151	141	131	125	209	199	189	179	169	159
2601 - 2650	216	179	169	159	149	139	130	216	206	196	186	176	166
2651 - 2700	224	186	176	166	156	146	136	224	214	204	194	184	174
2701 - 2750	231	194	184	174	164	154	144	231	221	211	201	191	181
2751 - 2800	239	201	191	181	171	161	151	239	229	219	209	199	189
2801 - 2850	246	209	199	189	179	169	159	246	236	226	216	206	196
2851 - 2900	254	216	206	196	186	176	166	254	244	234	224	214	204
2901 - 2950	261	224	214	204	194	184	174	261	251	241	231	221	211
2951 - 3000	269	231	221	211	201	191	181	269	259	249	239	229	219



# PRESIDENT OF AOTCA Visits Institute

On 24 August 1994, the President of Asia-Oceania Tax Consultants' Association (AOTCA), Mr Teruaki Kataoka visited our Institute. Accompanying Mr Kataoka were his daughter, Ms Yoko Kataoka, Managing Director of Japan Federation of CPTAs Association, Mr Takeshi Abe and Ms Junko Kashiwagi of the AOTCA secretariat. The delegation from AOTCA was on their return journey from Indonesia.

On hand to receive our visitors from Japan were the President, En Ahmad Mustapha Ghazali, En Hamzah HM Saman, Tn Syed Amin Al-Jefri and Mr Chuah Soon Guan. En Ahmad Mustapha Ghazali is also one of the Vice-Presidents of AOTCA elected at the last AOTCA Inaugural meeting on 1 January 1993.

The President briefed our visitors on the recent developments of the Institute such as the forthcoming examinations. As they were keen to know more about the economy of the country, the President informed them on the current economic policies and investment opportunities in Malaysia. They were also briefed on the 'Look East Policy' and the national car project.

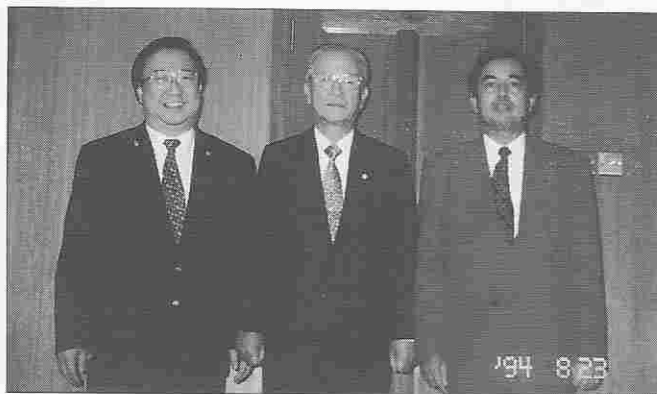
As Japanese tax firms are computerised, Mr Takeshi Abe was curious on the extent of computerisation in our local tax firms. The President replied that basic computerisation is presently utilised by most if not all local tax firms.

After the meeting at the Institute, the visitors were feted with lunch. At the luncheon, they were joined by the Vice-President of Malaysian Institute of Accountants, Mr Soon Kwai Choy. Also present were En Abu Hassan bin Mohd Akhir, Deputy Director-General II, Mr Lim Heng How, Deputy Director-General III and En Nujumudin bin Mydin, Assistant Technical Director I of the Inland Revenue Department.



MIT President, En Ahmad Mustapha Ghazali briefing our Japanese visitors, whilst council members, Tuan Syed Amin Al-Jefri (far left), Mr Chuah Soon Guan (2nd from right) and En Hamzah HM Saman (far left) looks on.

En Ahmad Mustapha Ghazali and En Teruaki Kataoka exchanging souvenirs during the visit



Mr Teruaki Kataoka being flanked by MIT President, En Ahmad Mustapha Ghazali and MIA Vice President Mr Soon Kwai Choy

One for the Album ...  
(left to right)  
Mr Soon Kwai Choy  
(Vice President of MIA),  
En Abu Hassan  
bin Mohd Akhir  
(IRD Deputy Director  
General II), Mr Teruaki  
Kataoka (President of  
AOTCA) and En Ahmad  
Mustapha Ghazali  
(MIT) President





# Examinations To Be Launched Before The End Of This Year

The Examinations and Education & Training Committees are pleased to announce that they have completed developing the MIT Examination pilot questions and answers together with the examination syllabus. The Council of MIT gave its approval at its last Council meeting held on 26 July 1994.

As most tax practitioners are aware, there is presently an acute shortage of qualified tax practitioners in the country. Hence with the introduction of the MIT Examinations, the Institute hopes to produce enough qualified tax practitioners to arrest this situation who will not only be well-versed in taxation matters but contribute effectively to the nation as it approaches the year 2020.

The Examination syllabus will not only concentrate on taxation as fifty percent of the syllabus contain a variety of non tax subjects such as Economics, Business Statistics, Computer Appreciation, Company & Business Laws, Financial Accounting and Business & Financial Management. This will ensure that MIT graduates are not handicapped by their lack of knowledge in other disciplines but will instead broaden their outlook and enjoy better employment prospects.

The Education & Training Committee is presently working hard to develop a Student's Guide to be distributed to potential students. The Student's Guide is aimed at providing as much information on the Examinations as possible. It will also contain the examination syllabus and touch briefly on career prospects in the taxation field. Application forms for registration as a student, to sit for the Examinations and for exemptions can also be found in the Guide.

The Examinations Committee after committing more than two years of their time developing the pilot questions and answers together with syllabus

is now working on the translation of the syllabus into Bahasa Malaysia. It is also developing the framework for the first sitting of the Examination which is scheduled to be held at the end of 1995.

The Institute is also working hard to promote the Examinations to various government bodies and educational institutions. On 13 August 1994, the President, En Ahmad Mustapha Ghazali, accompanied by Vice President, En Hamzah HM Saman, Deputy President and Chairman of Examinations Committee, Mr Michael Loh and Chairman of Education & Training Committee, Mr Lee Lee Kim paid a courtesy call on the Director-General of Inland Revenue Department's (IRD) Office to brief them on the Examinations. En Ahmad Mustapha and Mr Michael Loh also visited the Principal of Tuanku Abdul Rahman (TAR) College on 23 August 1994 to inform him of the forthcoming Examination and to look at possible areas of co-operation between the Institute and TAR College on the Examinations. The Institute will be visiting the Director General of the Ministry of Education, the Finance Ministry and Mara Institute of Technology to let them know about the Examinations.

As the Institute intends for private educational institutions to conduct the Examinations, a number of institutions will be invited to a dialogue session to be held on 2 September 1994, whereby they will be able to obtain more information on the forthcoming examinations. The dialogue session will be hosted by both the above-mentioned Committees.

The official launch of the Examination by a Deputy Minister of Finance will be held sometime in October this year at one of the local hotel. Members will be informed of the launching date in due course so as not to miss this historical occasion.

## MIT EXAMINATION SYLLABUS

- Level I** Taxation I  
Financial Accounting I  
Economics, Business  
Statistics and Computer  
Appreciation
- Level II** Taxation II  
Taxation III  
Company & Business  
Laws
- Level III** Taxation IV  
Taxation V  
Financial Accounting II  
Business & Financial  
Management

If you are interested to know more about the MIT Examinations, please complete the form below and return it to:

**The Secretary,  
Malaysian Institute of Taxation,  
Level 4, Dewan Akauntan,  
No.2, Jalan Tun Sambanthan 3,  
Brickfields, 50470 Kuala Lumpur**

Tel No. (03) 274 5055

Fax No. (03) 273 1016

Please cut here

Yes! I would like to know more about the MIT Examinations. Please send me details on it.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tel No. (Hse): \_\_\_\_\_

Tel No. (Off): \_\_\_\_\_

Fax No.: \_\_\_\_\_

Occupation: \_\_\_\_\_



# Courtesy Visit To Inland Revenue Department

**O**n 13 August 1994, the President, En Ahmad Mustapha Ghazali led a delegation to pay a courtesy visit to Pn Najirah bt Mohd Tassaduk Khan, the Deputy Director-General I of the Inland Revenue Department (IRD). The MIT delegation comprised of Mr Michael Loh, En Hamzah HM Saman and Mr Lee



MIT President, Ahmad Mustapha Ghazali (2nd from right) briefing Pn Najirah (far right) on the MIT Examinations whilst En Hamzah HM Saman, Mr Lee Lee Kim and Mr Michael Loh listen in. (left to right)

Lee Kim. Also present at the meeting were En Abu Hassan bin Mohd Akhir, Deputy Director-General II, Mr Lim Heng How, Deputy Director-General III and En Nujumudin bin Mydin, the Assistant Technical Director I.

During the visit, the President took the opportunity to brief the IRD officials regarding the past and present developments of the Institute. Together with the Chairman of the Examinations Committee, Mr Michael Loh, they informed that two years ago, the Examinations and Education Committee was formed to develop an examination for the Institute. They explained that the purpose of the examinations was to help ad-

dress the present shortage of tax professionals and to educate individuals on taxation matters. A set of pilot questions and answers together with the syllabus and entrance requirements was then presented to Pn Najirah for the Department's comments.

The President also invited more IRD officials to join the Institute to encourage better working relationship between both bodies. Mr Lee Lee Kim further informed that the Institute was considering admitting IRD officials who have completed the preliminary course into a new category of membership namely, Tax Technicians. The IRD officials were responsive to these

proposals.

At the meeting, Pn Najirah requested the Institute to explain to our members on IRD functions and objectives as a better understanding will ensure and continue to foster better co-operation between the practitioners and IRD officials. The Institute's delegation responded positively to this and suggested that a working group between IRD and the Institute could be formed to meet on a quarterly basis to exchange views and information on taxation matters. The IRD officials expressed interest in this proposal which will be considered.

## Briefing On MIT Examinations

**O**n 23 August 1994, the President, En Ahmad Mustapha Ghazali and Chairman of the Examinations Committee, Mr Michael Loh visited the Principal of Tuanku Abdul Rahman College, Dr Lim Khaik Leang. Also present were Vice Principal, Dr Ng Lay Swee, Registrar, Mr Chee Ah Kiow, Acting Head of the School of Business, Mrs Chan Yoong Lai Thye and Assistant Registrar, Ms Leong Lai Fun.

The purpose of this visit was to establish relationship with the College and to brief them on the forthcoming examinations. Mr Michael Loh informed Dr Lim that the Institute is presently working with some local institutions of higher learning to develop taxation courses. He then proposed to Dr Lim that the Institute could work together to develop a taxation programme leading to the MIT examinations. Dr Lim

replied that at present, the College is facing constraints such as staff shortage and space. However, once these constraints are overcome, the College may consider conducting courses leading to the MIT examinations.

To maintain ties with the College, Mr Loh invited a representative from TAR College to sit in the Examinations Committee.



# Institute Visits Universiti Utara Malaysia



MIT Vice President, En Hamzah HM Saman speaking on the Institute whilst some UUM students listen intently

conjunction with the University's One Decade Celebration. Puan Azizah binti Mohd Jaafar, Deputy Accountant-General II of the Accountant General's Office declared the occasion open. The Institute's Vice-President, En Hamzah HM Saman was present at the opening ceremony.

The Institute together with the Malaysian Institute of Accountants and Malaysian Association of Accounting Technicians participated in the 3-day programme. Questions on the Institute and membership prospects were aplenty. Three secretariat staff were on hand to answer all queries, both from parents and students.

Other programmes such as an Accounting Quiz, Seminars and Book Shows were organised in conjunction with the one week celebration.

The Institute participated in the Boothng programme during the Fourth Accountancy Week organised by the Northern Varsity Accountancy Club (NOVAC) in collaboration with the

School of Accountancy, Universiti Utara Malaysia (UUM) from 28 to 30 July 1994.

The Accountancy Week was held in

## Get Yourself A MIT Lapel Pin



For Only  
**RM5.00!**

**YES!** I would like to order the MIT Lapel Pin.

QTY	UNIT PRICE	TOTAL
	RM5.00	RM

I have enclosed a cheque / Money Order No \_\_\_\_\_ payable to:

**THE MALAYSIAN INSTITUTE OF TAXATION**  
 Level 4, Dewan Akauntan,  
 No.2, Jalan Tun Sambanthan 3, Brickfields,  
 50470 Kuala Lumpur  
 Tel No. (03) 274 5055  
 Fax No. (03) 273 1016

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_



## N O T I C E

### TO ALL MEMBERS

We wish to apologise for the delay in the Membership Directory. This is due to the fact that much of the data needs to be updated. We hope that you will assist us in our process to update the membership data by completing the form below and returning it by **15 October 1994**.

Name (Membership No.) : \_\_\_\_\_  
 Mailing Address : \_\_\_\_\_  
 Tel. No. (Residence) : \_\_\_\_\_  
 I.C. No. : \_\_\_\_\_  
 Firm Address : \_\_\_\_\_  
 Designation : \_\_\_\_\_  
 Tel No. (Office) : \_\_\_\_\_  
 Fax No. : \_\_\_\_\_

1. Tax Agent Licence Number and  
Date when licence first issued : \_\_\_\_\_
2. Audit Licence Number and  
Date when licence first issued : \_\_\_\_\_
3. Advanced course examination and  
Date when certificate issued : \_\_\_\_\_

*Sample of the Membership Directory;*

Name	Class /M. No.	Practising As
Abdul Salim bin Ghazali	A 3524	Partner
8, JalanSeri Bunga		XYZ Tax Services Sdn Bhd
Taman Bunga		No. 2, Jalan Mawar
58800 Johor Bahru		58800 Joohor Bahru
Johor		Johor

I.C No. : 2999341

Tel. No. : 3388554

A 1438 /7/90 (J)

## Q U O T E

**'AN ENTERPRISE, WHEN fairly once begun,  
should not be left till all that ought is won..'**

*William Shakespeare*

## ADMISSION TO MEMBERSHIP

The Following are the persons who have been admitted as associate members of the Institute as of 23 August 1994.

Augustine Bong	686
Chia Soo Hien	687
Chin Sie Tiong @ Augustine	
Chieng Sie Tiong	688
Goh Chooi Eam	689
Jukinol Joimil @ Victor Joimil	690
Lim Hong Sim	691
Sing Chui Boon	692
Soo Sing Kooi	693
Tan Kim Han	694
Tan Swee Huat	695
Teoh Lye Huat	696
Wong Yow Seng @	
Ong Yow Seng	697
Yeo Chin Meng	698
Neoh Chin Wah	699
Kho Soon Kheng	700
Ching Pong Hua	701
Liang Ah Mooi @	
Leong Chik Yuan	702
Salmah Bt Yup Yahaya	703
Thorailingam @ Thurailingam	
s/o Selvanayagam	704
Lo Haw Seang	705
Low Swoo Eng	706
Si Kiang Seng	707
Suna Teo	708
Tung Kai Shek	709
Yeo Chor Gaik	710
Lau Phui Ching	711
Hii Khing Siew	712

## Membership Status of MIT as at 23 August 1994

Honorary Fellows	4
Fellows	15
(Founder Council Members)	
Associate Members*	696
	711

### \* Associate Members

Public Accountants of MIA	442
Registered Accountants of MIA	63
Licensed Accountants of MIA	16
Advanced Course Exam of IRD	73
Advocates & Solicitors	5
Approved Tax Agents	96
Others	1
	696



**COMPLIMENTARY FROM  
MR. YONG POH CHYE**

1. Yong Poh Chye. Malaysian Corporate Income Tax. 2nd Ed. Tax advisory, 1992.
2. Yong Poh Chye. Malaysian Corporate Income Tax. 3rd Revised Ed. Tax advisory, 1994.
3. Yong Poh Chye. An Intro To Malaysian Income Tax. 1989.
4. Yong Poh Chye. An Intro To Malaysian Income Tax. 3rd Revised Ed. 1994.

**COMPLIMENTARY FROM JFCPTAA.**

5. Yuji Gomi. Guide to Japanese Taxes 1992 - 1993. Zaikei Shoko Sha, 1992.
6. Certified Public Tax Accountant Law. Revised Ed.
7. Japan Ministry of Finance. An Outline of Japanese Taxes 1991.

**COMPLIMENTARY FROM  
PERSATUAN AKADEMIK  
PERAKAUNAN MALAYSIA.**

8. PAPM. Accounting for Socio-economic Development. 1993.
9. Ahmad Ibrahim, Datuk Prof. Income Tax Case Law of Malaysia and Singapore. Malaysia Law Journal S'pore, 1984.

**COMPLIMENTARY FROM ILBS.**

10. Unclaimed Money Act, 1965. 1993
11. Banking and Financial Institution Act, 1989 (Act 372), Regulations and Orders. 1993.
12. Companies (Winding Up) Rules, 1972. 1993.
13. Bills of Exchange Act, 1949 (Act 204) and Bills of Sale Act, 1950 (Act 268). 1993.
14. Exchange Control Act, 1953 (Act 17). 1993.
15. Accountants Act, 1967 (Act 94) and Rules, 1972 and Audit Act, 1967. 1993.
16. Income Tax Act, 1967 (Act 53). 1994.
17. Valuers, Appraisers and Estate Agents. 1993.
18. Sales Tax Act, 1972 (Act 67) and Regulations and Sales Tax Credit System. 1992.
19. Stamp Act, 1949 (Act 378). 1994.
20. Service Tax Act, 1975 (Act 151) and Regulations and Order, 1975. 1994.
21. Companies Act, 1965 (Act 125). 1993.
22. Mavrovitis, Basil P. Cash Flow Credit and Collection. Golden Books Centre, K.L., 1993.

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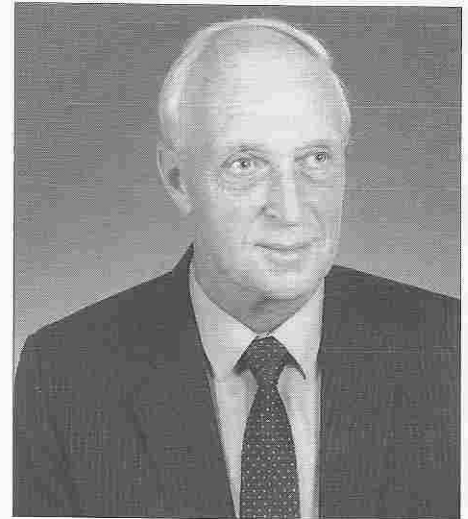
# Taxation of Trusts

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## WHAT IS A TRUST

To many of us a trust seems like a very mysterious thing which is known only to judges, lawyers and people who are rich enough to have a use for one. It is not an everyday thing like a company or a cooperative which is brought into existence and registered under the provisions of a specific law. Although the concept of a trust is recognised under Malaysian law, we need to go to English law to find out what a trust really is and to gain an understanding of some of the terminology used.

A trust has been defined as:

*"An equitable obligation imposing on a person (called the trustee) the duty of dealing with property over which he has control (called the trust property), for the benefit of persons (called the beneficiaries or "cestuis que trust"), of whom he may himself be one, and any of whom may enforce the obligation"* (Underhill quoted with approval in *Green v. Russell* (1959) 2 Q.B. 226)

In short it means that legal control of some property is given to the trustee (or trustees if more than one) to look after it for somebody else for a time. Normally the trustee will have no right to take it or use it for himself.

A trust can be created in a number of different ways. Usually it will be made during his lifetime by the person who gives the property (called the settlor) but it might come into existence on a death by the operation of law or a Will

or it might be created by some other law.

The terms of the trust will usually be set out in a written document (The Deed of Trust). Trust provisions can vary widely but two basic aspects are important; certainty as to what is the trust property, and certainty as to the intended beneficiaries. Beneficiaries might be named specifically or as a class of persons. Frequently, a beneficiary will be given a right to income only and the capital will pass later to somebody else.

## METHOD OF TAXING

The Income Tax Act 1967, in Sections 61 and 62, sets out specific rules for taxing the income of trusts. These cover the trust body itself and the beneficiaries, who are assessed and charged to tax separately from the trust body.

The trustees from time to time are known as "the trust body", and as such, are regarded as a single and separate "person" for all tax purposes (except the penalty provisions).

The first step in dealing with the tax position of the trust body and of the beneficiaries is to ascertain the total income of the trust body.

## TAXING THE INCOME OF THE TRUST BODY

The normal rules for computation of income, including the source and basis period rules, continue to apply. In-

come of the trust body consists of income from any source comprising property of the trust including a trustee's share of any partnership income which is also trust income.

Subject to one important exception, the trust body is assessed and charged to tax by reference to the whole of its total income. For this purpose, total is calculated under the normal rules, so that it includes income from all sources after all deductions except personal allowances.

Double taxation would result if the law made no allowance for the fact that beneficiaries who are entitled to trust income can be taxed separately. To cover this, Section 61(2) provides for a deduction from the total income in assessing the trust body, equal to the beneficiary's share of that total income.

However, such deduction is only to be made where both the trust body and the beneficiary concerned are resident in Malaysia for the basis period for the year of assessment.

Tax on the income of a trust body is chargeable at the rates specified by paragraph 2 of Schedule 1 to the Income Tax Act. For year of assessment 1994 this rate is 32%.

## RESIDENCE AND NON RESIDENCE

Normal rules also apply to determine the tax residence position of the beneficiaries (as well as that of the trustees as



**EXAMPLE 1**

The trust body of ABC Trust is resident and has the following income for year of assessment 1993:

Property income	16,000
Dividends	8,000
Total income	<u>24,000</u>

Beneficiary D, who is also resident for that year, is entitled to the whole of the trust income.

D's statutory income from his ordinary source for that year is RM 24,000.

Assessable income of the trust Body is nil (24,000 - 24,000) and the trustees are entitled to have repaid to them the tax deducted at source on dividend income.

individuals).

However, there is a special rule to ascertain the residence position of the trust body:-

Where no trustee is resident, the trust body is not resident.

Where one or more trustee is resident the trust body is resident unless all the following apply:

- The trust was created outside Malaysia by a non citizen
- The trust income for the basis year is wholly derived outside Malaysia
- The trust is administered for the whole of the basis year outside Malaysia
- At least half the trustees are not resident in that basis year

A resident trust body is assessable and chargeable to tax on its total income but a non resident one will only be chargeable in respect of income derived from Malaysia.

**TAXING THE INCOME OF THE BENEFICIARY**

So far as the beneficiary is concerned, the starting point is the total income of the trust body, ascertained as indicated above. Next we need to examine his entitlement to distributable income of the trust in the basis year for the year of assessment. Distributable income may not be the same as total income,

especially where the trustees have incurred some administrative expenses which are not deductible for tax purposes. Where, under the terms of the trust, he is absolutely entitled to all of the distributable income, the whole of the total income of the trust body is deemed to be his. This is income from his "ordinary source" which is deemed to be derived from Malaysia whether the trust body is resident or not. To ascertain his statutory income, we must add any income from his "further source" (to be discussed later).

Entitlement to a fractional share means that the same fraction of the total income of the trust body will be deemed to be his. When fractional entitlements change during the basis year, the total income is apportioned between the different periods on a time basis. The beneficiary's entitlement is then calculated separately for each time period

and his ordinary source income for the year is the aggregate of the fractional entitlements.

Trusts intended to benefit children frequently provide that income is to be accumulated by the trustees for a period of time rather than being distributed year by year. For such income the trustees, and not beneficiaries, will be responsible for tax on the income. Where some of the income is to be accumulated and some distributed, an appropriate part of the total income of the trust body will be disregarded in calculating the share of income of the beneficiary entitled to income distributions.

**FURTHER SOURCE INCOME OF A BENEFICIARY**

Trustees are rarely in a position to pay out all of the income they have received in the year in which it is received and a beneficiary will usually receive some of his income in a later year. The "further source" concept involves the matching of actual receipts with nominal entitlements so that any excess distribution does not escape tax.

A beneficiary's income from his further source is the excess of:

- all sums of income received in Malaysia from the trust plus
- all sums received outside Malaysia from the trust in any year and remitted to Malaysia in the basis year over
- his statutory income from his ordinary source.

**EXAMPLE 2**

ABC Trust continued to be resident for year of assessment 1994. Beneficiary E became entitled to 25% of the income from 1st August 1993, from which date Beneficiary D's entitlement fell to 75%. Both D and E were resident. Total income of ABC Trust for that year is RM 30,000.

Apportionment of total income;

1/1/93 to 31/7/93 (212 days)	=	212/365 x 30,000	= 17,425
1/8/93 to 31/12/93 (153 days)	=	153/365 x 30,000	= 12,575

D's ordinary source income (100% x 17,425 plus 75% x 12,575)	=	26,856
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E's ordinary source income (25% x 12,575)	=	3,144
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Where the Director General of Inland Revenue is satisfied that the excess or part of it was included in ordinary source income for the previous year, he will allow an appropriate reduction.

It will be seen that if trustees derive income overseas which they do not remit to Malaysia but distribute to beneficiaries overseas, tax is not avoided as the amounts will be included in the further source income when they are remitted by the beneficiary.

### DISCRETIONARY TRUSTS

Though many trusts are quite simple, there has been a tendency in recent years to make trusts with more complicated provisions, such as discretionary powers. Such trusts give the trustees power allocate income between members of a class of beneficiaries in varying proportions or not at all. This requires a different method of calculating the beneficiary's share of income (under Section 62) which applies whether the trust is resident in Malaysia or not.

It is done by taking the lesser of (i) all sums received by the beneficiary from the trust in the basis year for the year of assessment and (ii) the total income of the trust, or his share of it, for the year. Where there is more than one discretionary beneficiary and the total of the sums received by all of them exceed the total income, a beneficiary's share of the total income is calculated using the following fraction, where TI is total income, IRB is income sums received by him and IRA is income sums received by all:

$$\frac{\text{IRB}}{\text{IRA}} \times \text{TI}$$

It can also be the case that a trust is part discretionary and part non discretionary (a "mixed trust"). Where that applies the total income is divided into a discretionary part and a non discretionary part and the calculations proceed separately for each one. Division is made in proportion to the entitlements to distributable income. For a beneficiary with an interest in each part the sums are aggregated and his further source income, if any, is calculated in total.

### EXAMPLE 3

QRS Trust, resident in Malaysia, had a total income for the year of assessment 1994 of RM 40,000. Under the terms of the trust, half of the income is to be accumulated for a period of years and half goes to beneficiary T (a resident).

In 1993, RM 18,000 of income was accumulated and the following amounts of income were paid out to T.

In Malaysia - from 1992 income RM 4,000 - from 1993 income RM 6,000  
Outside Malaysia - from 1991 income RM 10,000 - from 1993 income RM 7,000

T remitted the whole of the RM 17,000 to Malaysia in 1993

Statutory income of T for year of assessment 1994:

ordinary source	18,000	x	40,000	=	20,000
	(2 x 18,000)				
further source:					
received in Malaysia					10,000
remitted to Malaysia					17,000
					27,000
less ordinary source income					20,000
					7,000
less part being ordinary source income for 1992					4,000
					3,000
statutory income for the year					23,000
Chargeable income of the trust:					
total income					40,000
less T's share					20,000
					20,000
tax payable at 32%					6,400

### EXAMPLE 4

RST Discretionary Trust was set up in 1992 and had total income of :

Year of assessment 1993	25,000
Year of assessment 1994	35,000

The trustees exercised their discretion and distributed income:

in 1992	to beneficiary V	20,000
1993	to beneficiary V	20,000
	to beneficiary W	20,000

Shares of total income are :

Year of assessment 1993		
V		20,000
Year of assessment 1994		
V	$\frac{20,000}{40,000} \times 35,000$	17,500
W	same calculation	17,500



## TRUST ANNUITIES

The terms of a trust might provide that a person should be paid an annuity of a stipulated sum out of the trust income. This is dealt with by Section 63 in rather a different way from a mere share of income.

The annuity represents a source of income for the recipient of the annuity and is deemed to be derived from Malaysia when the trust body is resident in Malaysia or all of its income is derived from Malaysia in the basis year for the year of assessment. This applies even if the trust body has no total income for that year.

For the trust body, the amount of the annuity can be deducted in arriving at total income before deducting certain monetary gifts permitted by Section 44 (c).

On the other hand, a non resident trust body is only entitled to a deduction to the extent that the trust body has Malaysian source income. Where this applies, the annuity itself is deemed to be derived from Malaysia but only to extent that it is so deductible.

## WHY USE A TRUST?

Use trusts for tax planning purposes has become popular in the United Kingdom and the United States. In these countries, high rates of tax on inheritances have encouraged tax experts to be creative in finding ever more sophisticated means of avoiding these imposts. Although the top rate of Estate Duty in Malaysia was as high as 60% only ten years ago, similar planning strategies were not widely used and, since the abolition of Estate Duty in 1991, the matter has ceased to be of interest.

Nevertheless, a trust can have other uses which may have tax consequences. It is a satisfactory way to safeguard the financial interest of minors, incapacitated and elderly persons who are not capable of looking after their own affairs. Frequently a form of trust, usually referred to as a Foundation or Yayasan, is used to hold and administer the financial interests of a "charity". In this sense charity covers a range of benevolent activities including the ad-

vancement of education or religion.

A trust established for charitable purposes only can gain exemption from tax on all of its income, except for dividends, under paragraph 13 of Schedule 6 of the Income Tax Act if the Director General of Inland Revenue gives his approval. Whereas most are prevented by the law against perpetuities from continuing in existence indefinitely, a trust of this nature need not be limited in time.

Trusts for minors have often proved useful to safeguard children's inheritances. Income can be used to provide for their maintenance and education whilst preserving the capital until they reach maturity. Surplus income can be accumulated and handed over to them at the age of maturity. In contrast to other countries where such accumulation powers are used to roll up income at relatively low tax rates, the system in Malaysia imposes a flat rate tax (currently 32%) on income which is accumulated. The use of such accumulation powers is therefore only beneficial when the accumulation can take place in an offshore trust established in a low or non tax jurisdiction.

Any attempt to use a trust for tax mitigation must pay regard to restrictions imposed by the Income Tax Act. A general anti-avoidance provision is contained in Section 140 which empowers the Director General to disregard certain transactions which have the effect of avoiding tax.

Section 65 contains a more specific provision dealing with trusts (or settlements as referred to in the section). It

## EXAMPLE 5

Madam L receives an annuity of RM 24,000 per annum from a non resident trust. For the year of assessment 1994 the trust had income derived from Malaysia of RM 15,000.

Only RM 15,000 can be deducted by the trust body leaving it with a chargeable income of nil.

Madam L's annuity income deemed to be derived from Malaysia, and therefore chargeable to tax, is RM 15,000.

The balance of the annuity, RM 9,000, represents foreign source income. It will only be chargeable to tax to the extent that it is received in Malaysia by Madam L.

works by deeming the income of the trust to be income of the settlor where one of two conditions apply. Stated briefly the first condition covers a situation where income of the trust could become payable to or applicable for the benefit of a relative of the settlor who at that time is under the age of twenty one. The second case refers to a situation where the gift of trust property is incomplete so that under the terms of the trust there is a possibility of the trust property or income from the trust passing back to the settlor or to a husband or wife of the settlor.

## FINAL COMMENTS

Although the area of trust taxation is one of some complexity it is not one that can be ignored. Even without the substantial opportunities available elsewhere for the use of trusts as a tax planning tool, trusts will continue to be used in Malaysia, if only for practical purposes. Students and tax practitioners still need to be familiar with the problems of trust administration and its related tax aspects.

We are aware that many students are studying for the examinations of overseas bodies in which a knowledge of the tax system of another country is called for. We regret that the space available for this article does not allow for a detailed coverage of other tax systems and we have had to confine ourselves to the tax system applying in Malaysia.



ISTILAH PERCUKAIAN

BAHASA INGERRIS	TAKRIF	BAHASA MELAYU
abatement (of adjusted income)	Pengurangan ke atas pendapatan kasar setelah ditolak perbelanjaan yang dibenarkan.	pengurangan (pendapatan larasan)
accelerated depreciation allowance	Elaun yang diberi lebih daripada kadar biasa.	elaun modal dipercepatkan
accrual period	Jangka masa pendapatan atau perbelanjaan diiktirafkan walaupun tidak melibatkan penerimaan atau pembayaran wang tunai.	tempoh akruan
accrue evenly	Pendapatan yang dibahagikan sama rata mengikut tempoh tertentu.	terakru sama rata
acquisition price	Harga aset ketika diperolehi	harga perolehan
ad valorem tax	Cukai yang dikenakan terhadap barangan atau suratcara berdasarkan peratusan tetap atas nilai.	cukai "ad valorem"
additional assessment	Taksiran yang dibuat melibatkan tambahan cukai.	taksiran tambahan
adjusted income	Pendapatan kasar setelah ditolak perbelanjaan yang dibenarkan.	pendapatan larasan
adjusted loss	Kerugian yang telah diselaraskan.	rugi larasan
administrator	Orang yang mentadbir harta pusaka tanpa wasiat si mati.	pentadbir
advance assessment	Taksiran yang dikeluarkan dalam sesuatu tahun bagi tahun yang berikutnya.	taksiran terdahulu
aggregate amount	Amaun yang disatukan.	amaun terkumpul
aggregate income	Pendapatan dari berbagai sumber yang disatukan.	pendapatan terkumpul
agriculture allowance	Elaun yang diberikan ke atas perbelanjaan pertanian layak.	elaun pertanian
agriculture charge	Penarikan elaun pertanian atau pengenaan cukai terhadap subsidi atau geran yang diterima.	caj pertanian
alimony payment	Bayaran yang dibuat oleh suami kepada bekas isteri.	bayaran alimoni
allocation of profit	Keuntungan yang dibahagikan kepada pekongsi.	pembahagian untung
allowable expenses	Belanja yang dibenarkan mengikut peruntukan akta percukaian.	belanja dibenarkan
annual value	Nilai yang ditetapkan oleh pihak berkuasa tempatan untuk maksud cukai pintu dan sebagainya.	nilai tahunan
annuity	Satu siri pembayaran atau penerimaan secara berkala untuk tempoh tertentu. Jumlah dan jeda bagi setiap pembayaran atau penerimaan adalah sama.	anuiti
anti-avoidance provision	Undang-undang yang telah ditetapkan untuk mencegah pengelakan cukai.	peruntukan elak cukai
apparent income	Pendapatan yang sepatutnya diperolehi mengikut kaedah uji upaya.	pendapatan ketara
appeal	Permohonan kepada pihak berkuasa mengenai ketidakpuasan dalam urusan percukaian.	rayuan
appellant	Pembayar cukai yang membuat rayuan.	perayu
approved institution	Sesebuah institusi di Malaysia yang tidak bertujuan mencari keuntungan dan memenuhi syarat-syarat tertentu untuk mendapat kelulusan di bawah Akta Cukai Pendapatan.	institusi lulus
approved organisation	Sesebuah organisasi di Malaysia yang tidak bertujuan mencari keuntungan dan memenuhi syarat-syarat tertentu untuk mendapat kelulusan dibawah Akta Cukai Pendapatan.	organisasi lulus
approved product	Keluaran yang diluluskan oleh pihak berkuasa.	keluaran lulus
approved scheme	Skim yang diluluskan oleh Ketua Pengarah Hasil Dalam Negeri.	skim lulus



## ISTILAH PERCUKAIAN

BAHASA INGERRIS	TAKRIF	BAHASA MELAYU
arm's length transaction	Urus niaga di antara dua pihak yang tidak ada kaitan.	urus niaga selengan
articles or indentures	Perjanjian latihan profesional atau teknikal di antara individu dengan majikan.	artikel atau indentur
artificial transaction	Urusniaga yang sengaja dipalsukan untuk mengelak atau melarikan cukai.	urusniaga palsu
assessable income	1) Pendapatan yang boleh ditaksir untuk tujuan cukai. 2) Pendapatan berkanun tolak rugi bawa ke hadapan bagi tujuan cukai pendapatan petroleum.	pendapatan tertaksir
assessment	Perkiraan cukai yang dikenakan ke atas pendapatan atau laba.	taksiran
authorised agent	Orang yang diberi kuasa oleh pembayar cukai untuk mewakili pihaknya.	ejen berkuasa
back duty	Cukai terhadap pendapatan tahun-tahun lepas yang tidak dilaporkan.	duti tunggakan
badges of trade	Tanda-tanda khas yang membuktikan wujudnya sesuatu perdagangan.	ciri dagang
balancing allowance	Perbezaan yang diperolehi apabila nilai pelupusan lebih rendah daripada nilai baki.	elaun imbang
balancing charge	Perbezaan yang diperolehi apabila nilai pelupusan lebih tinggi daripada nilai baki.	caj imbang
basis of assessment	Asas yang digunakan untuk membuat sesuatu taksiran.	asas taksiran
basis period	Jangka masa satu pendapatan diperolehi untuk pengiraan cukai bagi suatu tahun taksiran.	tempoh asas
basis year	Tahun kalender sebelum tahun taksiran.	tahun asas
beneficial occupation	Penghunan yang dianggap sebagai manfaat bagi maksud cukai.	penghunan benefisial
beneficial ownership	Manfaat yang diperolehi daripada pemilikan.	pemunyaan benefisial
beneficiary	Individu yang berhak menerima harta simati atau apa-apa manfaat (tidak semestinya mempunyai talian darah)	benefisiari
benefit-in-kind	Sebarang manfaat yang selain daripada wang.	manfaat barangan
best judgement assessment	Taksiran yang dibuat berdasarkan pertimbangan yang terbaik pada ketika itu.	taksiran pertimbangan terbaik
bilateral agreement	Perjanjian yang dibuat di antara dua buah negara untuk mengelakkan pembayar cukai dikenakan dua kali. perjanjian cukai	perjanjian cukai dwihala
bilateral credit	Kredit cukai yang diberi berdasarkan perjanjian di antara dua pihak.	kredit dwihala
bilateral relief	Pelepasan cukai yang diberi berdasarkan perjanjian di antara dua pihak.	pelepasan dwihala
body of persons	Suatu kumpulan person yang tidak diperbadankan termasuk keluarga sekutu Hindu tetapi tidak termasuk syarikat dan perkongsian.	kumpulan person
bond	Janji bertulis untuk membayar sejumlah wang pokok dan faedahnya pada sesuatu kadar dalam tempoh tertentu.	bon
capital accretion method	Cara mengira pendapatan yang tidak dilaporkan melalui perbandingan semua pendapatan dengan penggunaannya.	kaedah tokok modal
capital allowance	Elaun yang diberi ke atas perbelanjaan modal yang layak.	elaun modal
capital expenditures	Perbelanjaan yang mewujudkan aset.	belanja modal
capital gains	Perolehan yang didapati daripada pelupusan aset modal.	laba modal
capital gains tax	Cukai yang dikenakan ke atas perolehan yang didapati daripada pelupusan aset modal.	cukai laba modal



ISTILAH PERCUKAIAN

BAHASA INGERRIS	TAKRIF	BAHASA MELAYU
capital loss	Kerugian daripada pelupusan aset modal.	rugi modal
capital sum	Amaun yang diinsuredkan tidak termasuk manfaat lain.	amaun modal
capital sum on death	Jumlah wang yang diterima daripada polisi insurans apabila berlaku kematian.	amaun jaminan kematian
captive insurance company	Syarikat yang ditubuhkan atau dimiliki oleh sesebuah organisasi dengan tujuan untuk memberi perlindungan kepada risiko yang berkaitan dengan organisasi tersebut dan anak-anak syarikatnya.	syarikat insurans kaptif
casual call	Suatu persinggahan oleh sesebuah kapal laut atau kapal terbang di Malaysia, di mana 24 bulan sebelum dan selepasnya tiada persinggahan di Malaysia.	singghah sesekali
casual income	Pendapatan yang diperolehi sekali sekala.	pendapatan sesekali
chargeable gains	Berkaitan dengan cukai untung harta tanah, harga pelupusan ditolak harga pemerolehan.	laba tercukai
chargeable income	Jumlah pendapatan bagi tahun taksiran ditolak semua pelepasan (jika ada). Amaun ini menjadi asas untuk pengiraan liabiliti cukai.	pendapatan tercukai
chargeable person	Person yang dikenakan cukai.	person tercukai
chargeable petroleum	Petroleum yang dikenakan cukai daripada operasi petroleum.	petroleum tercukai
charitable institution	Institusi yang menjalankan aktiviti yang berbentuk kebajikan atau amal.	institusi khairat
charitable purpose	Aktiviti yang berbentuk kebajikan atau amal.	tujuan khairat
child relief	Amaun yang diberi kepada pembayar cukai sebagai potongan bagi anak yang layak mengikut peruntukan Akta Cukai Pendapatan 1967.	pelepasan anak
classical systems	Sistem di mana cukai dikenakan ke atas keuntungan syarikat dan dividen yang dibayar juga dikenakan cukai tanpa kredit atau rebat.	sistem klasik
classified material	Sebarang maklumat, borang penyata atau dokumen lain yang dikemukakan bagi tujuan akta-akta percukaian.	bahan terkelas
classified person	orang-orang tertentu yang diberi kuasa untuk akses kepada bahan terkelas.	orang terkelas
claw-back	Penarikan semula sesuatu yang telah diberikan kepada pembayar cukai. Contohnya pelepasan atau elaun modal.	tarik balik
clearance certificate	Perakuan yang dibuat untuk membuktikan bahawa pembayar cukai telah menjelaskan bayaran cukainya.	surat penyelesaian
completed years of service	Tempoh perkhidmatan setiap dua belas bulan bagi seseorang pekerja.	tahun perkhidmatan penuh
composite assessment	Satu notis taksiran yang merangkumi beberapa tahun taksiran.	taksiran komposit
compulsory age of retirement	Seseorang pekerja yang mencapai umur wajib bersara di bawah undang-undang bertulis.	umur bersara wajib
connected persons	Individu atau person yang mempunyai hubung kait mengikut perundangan cukai.	orang berkait ; person berkait
contingent liability	Liabiliti yang bergantung kepada berlakunya sesuatu peristiwa.	liabiliti kontinjen
continuing partner	Pekongsi yang kekal walaupun ada perubahan dalam keahlian perkongsian.	pekongsi berterusan
contract for service	Satu kontrak antara dua pihak untuk menjalankan sesuatu perkhidmatan.	kontrak untuk perkhidmatan
contract of service	Satu kontrak antara majikan dengan pekerja berkenaan perkhidmatan perkhidmatan.	kontrak perkhidmatan
controlled company	Syarikat yang dianggap terkawal mengikut perundangan cukai.	syarikat terkawal



**ISTILAH PERCUKAIAN**

BAHASA INGERRIS	TAKRIF	BAHASA MELAYU
controlled transfer	Pemindahan aset layak di antara dua pihak yang berkaitan.	pindah terkawal
conveyance	Perpindahan hak atau harta.	pindah hak
corporate tax	Cukai yang dikenakan ke atas syarikat atau perbadanan.	cukai korporat
corporation sole	Satu kategori person yang dikenakan cukai.	perbadanan seorang
corrective affidavit	Afidavit yang diperbetulkan bagi maksud duti harta pusaka.	afidavit pembetulan
countervailing duties	Duti yang di kenakan ke atas syarikat pengimport supaya setanding dengan pengeluaran tempatan.	duti timbal balas
current year basis	Tahun semasa yang dijadikan asas pengiraan cukai.	asas tahun semasa
death duties	Cukai yang dikenakan ke atas harta si mati.	duti harta pusaka
deceased person's estate	Harta peninggalan si mati.	harta pusaka
deciding order	Keputusan yang dikeluarkan oleh Pesuruhjaya Khas Cukai Pendapatan setelah perbincangan ditamatkan.	perintah keputusan
deduction	Amaun yang ditolak daripada pendapatan dalam pengiraan cukai.	potongan
deduction at source	Potongan yang dibuat semasa pendapatan dibayar atau dikreditkan.	potongan sumber
deemed derived	Menganggap sesuatu pelbagai diperolehi. Contohnya pendapatan dari luar Malaysia dianggap sebagai diperolehi di Malaysia.	anggap peroleh
deemed interest	Menganggap sesuatu sebagai faedah.	anggap faedah
deferment of tax	Penundaan cukai melalui perancangan atau bayaran secara ansuran.	tunda cukai
defined value	Satu nilai yang ditentukan bagi maksud percukaian. Contohnya nilai kediaman atau nilai harta tanah.	nilai tertentu
dependent relatives	Ahli keluarga yang ditanggung oleh pembayar cukai, misalnya ibu bapa.	keluarga tanggungan
depletion allowance	Elaun yang diberikan ke atas perbelanjaan modal perlombongan dan sebagainya.	elaun susut
depreciation allowance	Elaun yang diberikan ke atas perbelanjaan modal yang layak.	elaun susut nilai
derived and remittance basis	Asas pengenaan cukai ke atas pendapatan yang berpunca dari sesuatu negara dan pendapatan yang diterima dari luar negara.	asas peroleh dan remit
derived basis	Asas pengenaan cukai ke atas pendapatan yang berpunca dari sesuatu negara.	asas peroleh
development tax	Cukai tambahan yang dikenakan ke atas pendapatan perniagaan, sewa dan royalti.	cukai pembangunan
direct tax	Cukai yang dikenakan terus kepada pembayar cukai, misalnya cukai pendapatan dan cukai pembangunan.	cukai langsung
discounts	Suatu sumber pendapatan yang merupakan potongan pada jumlah pinjaman yang dikenakan lebih awal iaitu semasa pinjaman dibuat.	diskaun
discretionary trust	Sejenis amanah yang membolehkan pemegang amanah menggunakan budi bicara dalam pembahagian pendapatan kepada benefisiari.	amanah budi bicara
disposal price	Untuk tujuan cukai untung harta tanah, harga yang dikira semasa harta atau aset dilupuskan.	harga lupus
disposal value	Nilai semasa harta atau aset dilupuskan.	nilai lupus
distributable income	Pendapatan bersih badan amanah yang dibahagi-bahagikan kepada benefisiari.	pendapatan boleh agih
dividend	Untung syarikat koperasi dan amanah saham yang diagihkan kepada pemegang saham atau ahli.	dividen



## CONTINUING PROFESSIONAL DEVELOPMENT

## CALENDAR



### SEPTEMBER

Date	Topics	CPD Points	Location
6	Exchange Control Regulations	24	Kuala Lumpur
23		24	Kota Kinabalu
13-14	Executive Report Writing	48	Kuala Lumpur
5-6		48	Kota Kinabalu
7-8	Real Property Gains Tax	48	Tawau
5		24	Penang
7		24	Ipoh
12		24	Kuala Terengganu
14		24	Kuantan
16		24	Johore Bahru
19		24	Kota Kinabalu
20		24	Tawau
21		24	Miri
22		24	Kuching
27		24	Kuala Lumpur
1-3	Speak Your Way To Success	72	Penang
12-14		72	Johore Bahru
16	Auditors' Report	24	Kuala Lumpur
16		24	Penang
16		24	Kuching
22	Successful Client Meetings	24	Johore Bahru
5		24	Kuala Lumpur
7	Workshop on Joint Venture	24	Penang
9		24	Ipoh
15		24	Johore Bahru
16		24	Sandakan
23		24	Tawau
	ET: Creative Thinking	6	Kuala Lumpur

### OCTOBER

3	Exchange Control Regulations	24	Kuala Lumpur
3-5		72	Kota Kinabalu
6-8	Speak Your Way To Success	72	Sandakan
10-12		72	Miri
7-8	Negotiation Skills	48	Kuala Lumpur
25-26		48	Johore Bahru
10-11	Management of Foreign Exchange Risks	48	Penang
3-4		48	Kuala Lumpur
5-6		48	Johore Bahru
3-4		48	Penang
3-4		48	Ipoh
17-18		48	Kuching
19-20		48	Miri
21-22		48	Sibu
17-18		48	Kota Kinabalu
17-18		48	Tawau

### NOVEMBER

7	Budget Update 1995	9	Kuala Lumpur
		9	Seremban
		9	Malacca
		9	Johore Bahru
		9	Kuantan
		9	Kuala Terengganu
		9	Kota Bahru
		9	Kota Kinabalu
		9	Tawau
		9	Sandakan
12	Budget Update 1995	9	Kuching
		9	Miri
		9	Sibu
		9	Penang
		9	Ipoh
		31.5	Penang
		24	Seremban
		48	Kuala Lumpur
		48	Kuala Lumpur
		48	Kuala Lumpur



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Malaysian Institute Of Taxation

## HOW TO BECOME A MEMBER OF THE MALAYSIAN INSTITUTE OF TAXATION

### Benefits and Privileges of Membership

The Principal benefits to be derived from membership are:

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

### Qualification Required For Membership

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

### Associate Membership

1. Any person who has passed the Advanced Course examination conducted by the Department of Inland Revenue and who has not less than five (5) years practical experience in practice or employment relating to taxation matters approved by the Council.

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

9. Any person who is an approved Tax Agent under Section 153 of the Income Tax Act, 1967.

### Fellow Membership

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

### 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 on and thereafter annually before January 31 of each year.